

**Memorandum of Understanding between  
the Bureau of Ocean Energy Management  
and  
the National Aeronautics and Space Administration  
for the Preparation of the Programmatic Environmental Impact  
Statement for the *2017-2022 Outer Continental Shelf Oil & Gas  
Leasing Program***

**Introduction and Purpose**

The Bureau of Ocean Energy Management (BOEM) is preparing a Programmatic Environmental Impact Statement (PEIS) to assess the potential environmental effects of the *2017-2022 Outer Continental Shelf Oil & Gas Leasing Program* (Program). BOEM's PEIS preparation process will comply with the provisions of the National Environmental Policy Act (NEPA), as detailed in the Council for Environmental Quality's (CEQ) regulations at 40 CFR Parts 1500 --1508.

The Department of the Interior's (DOI's) regulations for implementing NEPA emphasize Federal agency cooperation in the NEPA process. *See, e.g.*, 43 CFR § 46.225. The National Aeronautics and Space Administration (NASA) has requested cooperating agency status on this PEIS because NASA has special expertise as defined in 40 CFR § 1508.26. Pursuant to 43 CFR § 46.225(c), BOEM has determined that NASA should serve as a cooperating agency for the purposes set forth in this Memorandum of Understanding (MOU).

Pursuant to 43 CFR § 46.225(d), a MOU is the appropriate vehicle to institute cooperating and lead agency status, to identify each agency's respective roles, and to assign issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. This MOU outlines the responsibilities agreed to by BOEM and NASA (the "Parties") with respect to preparation of the PEIS for the Program.

This MOU does not affect NASA's ability to independently review the PEIS. Nor does this MOU affect BOEM's responsibilities under the Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended and its implementing regulations found at 30 CFR Parts 550 and 556.

**Authority of the Parties**

This MOU is established, and both parties agree to enter into it, pursuant to the provisions of the NEPA, 40 CFR Parts 1500-1508, 43 CFR Part 46, the OCSLA and the National Aeronautics and Space Act, as amended (51 U.S.C. § 20113(e) and (f)).

## **BOEM Responsibilities**

BOEM is the lead agency for preparation of the PEIS and is responsible for NEPA compliance. As the lead agency, BOEM has the ultimate responsibility for the content of the PEIS and for complying with applicable NEPA requirements. BOEM will endeavor to use the environmental analyses and recommendations of NASA as they relate to the preparation and finalization of the PEIS.

To foster cooperation with NASA, BOEM will:

1. Follow the provisions of the CEQ regulations on inter-agency cooperation at 40 CFR 1501.6 in implementing this MOU.
2. Designate a primary point of contact for matters related to the MOU.
3. Have the lead in setting up and holding public meetings for the PEIS.
4. Include a copy of this MOU in an appendix to the PEIS.
5. Provide NASA with copies of a summary of all comments received during preparation of the PEIS that are related to the Mid-Atlantic planning area and are within NASA's expertise. This includes comments BOEM receives during the scoping process, public meetings, public hearings, government-to-government meetings and from circulation of the PEIS.

## **NASA Responsibilities**

NASA is a cooperating agency for preparation of the PEIS.

To foster agency cooperation in the NEPA process, NASA will:

1. Follow the provisions of the CEQ regulations on inter-agency cooperation at 40 CFR 1501.6 in implementing this MOU.
2. Designate a primary point of contact to represent NASA for matters related to this MOU.
3. Participate as NASA deems appropriate in the public meeting process.
4. Contribute its special expertise regarding the location and nature of launch range hazards offshore of Wallops Flight Facility (WFF). Employing its own staff, it will provide to BOEM an assessment of how WFF's operations could pose a direct risk to offshore infrastructure, personnel, and ultimately, the environment. Additionally, based on nationally adopted flight safety criteria, NASA will determine those areas in the Atlantic planning areas in which oil and gas development would most likely result in the inability of WFF to conduct operations due to unacceptable risk. Such an assessment will be necessary to identify areas where use conflicts exist and those areas in which oil and gas activities could be compatible.
5. Provide BOEM with the geospatial analyses and resulting data described in the preceding paragraph (item 4) by July 1, 2015.


6. Review preliminary sections of the Draft PEIS that contain NASA information and provide comments to BOEM within two weeks following receipt of the document.
7. Review preliminary sections of the Final PEIS that contain NASA information and provide comments to BOEM within one week following receipt of the document.
8. Realize that its analyses and comments on the preliminary versions of the Draft PEIS and the Final PEIS are only advisory to BOEM.
9. Comply with BOEM's PEIS preparation schedule, most particularly the time scheduled for review and comment.
10. Be responsible for any expenses it incurs related to this MOU.


### **General Provisions**

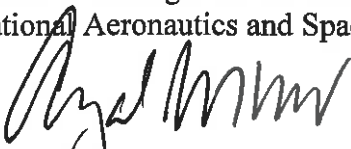
1. All activities identified in the MOU are subject to the availability of appropriated funds and each agency's budget priorities. Nothing in the MOU requires BOEM or NASA to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur other financial obligations. Nor does this MOU obligate BOEM or NASA to spend funds on any particular project or purpose, even if the funds are available.
2. This MOU is not a fiscal document nor does it obligate funds. However, should the Parties reimburse or contribute funds to one another, they will do so in accordance with applicable laws, regulations, and procedures, subject to separate-subsidary agreements that they prepare in writing.
3. This MOU does not create any right or benefit enforceable against BOEM or NASA, their officers or employees, or any other person. This MOU does not apply to any person outside BOEM or NASA. Nothing in this MOU will be construed to alter the legal rights and remedies that each party would otherwise have.
4. Nothing in this MOU will be construed to extend jurisdiction or decision-making authority to either party to this MOU, beyond that which exists under current law, regulations or ordinances.
5. NASA will obtain prior approval from BOEM of all press releases, published advertisements or other statements intended for the public that refer to this agreement or to the PEIS, BOEM, the Department of the Interior, or any employee of the Department, in connection with this agreement.
6. Unless constrained by other factors, such as the need to protect the confidentiality of proprietary or contractual information, pre-decisional documents will be shared between the Parties as needed to accomplish cooperation under this MOU. The Parties hereby agree to maintain confidentiality of pre-decisional documents and deliberations on any NEPA document prepared pursuant to this agreement, including drafts.


- a. The Parties agree that documents generated in furtherance of, or as a result of, this MOU (by BOEM or NASA) will be maintained as confidential unless and/or until BOEM expressly waives any privilege with regard to such documents. These provisions apply to all communications, including e-mail messages, "note(s) to the file," meeting notes, letters, reviews, evaluations, drafts, and all documents created or shared as part of the collaborative process established by this agreement.
  - b. The duty of confidentiality will survive termination of this MOU.
  - c. Each individual who receives documents and/or information under this agreement will be provided the attached Confidentiality Agreement (Appendix I) for signature to indicate his/her agreement with these items.
  - d. Each party has a right to expressly waive any privilege with regard to documents provided by it and may do so by advising the other party in writing of its decision to waive such privilege.
7. Modification of this MOU may be made only by written agreement, signed and dated by both BOEM and NASA.
  8. None of the documents or information provided by BOEM to NASA pursuant to this MOU will be used for any purpose other than for review and preparation of the PEIS.
  9. The provisions in the MOU are subject to the laws of the United States and the regulations of the Department of the Interior.
  10. The Parties agree to resolve disputes through good-faith discussions. If disputes cannot be resolved at the appropriate staff level, the issues will be referred to the BOEM Headquarters Chief of the Branch of Environmental Coordination in the Division of Environmental Assessment and the NASA Headquarters Director of Environmental Management for resolution.
  11. Either party may terminate the MOU at any time before the date of expiration by providing written notice to the other party of the termination. However, the Parties will endeavor to give thirty days written notice to the other party prior to such termination.
  12. This MOU will be deemed executed as of the date the last required signature is affixed to this document. Unless previously terminated in accordance with the provisions of this document, this MOU will remain in full force and effect through the execution of BOEM's Record of Decision for the 2017-2022 Five-Year Program.
  13. This MOU in no way restricts BOEM from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

**Signatures:** The Parties hereto have executed this agreement:

  
\_\_\_\_\_  
Calvin F. Williams  
Assistant Administrator  
Office of Strategic Infrastructure  
National Aeronautics and Space Administration

  
\_\_\_\_\_  
Date

  
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Abigail Ross Hopper  
Director, Bureau of Ocean Energy Management

  
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Date