MEMORANDUM OF UNDERSTANDING
BETWEEN
ARMY CORPS OF ENGINEERS
U.S. DEPARTMENT OF THE ARMY
AND
BUREAU OF OCEAN ENERGY MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
TO COORDINATE THE
USE OF SAND, GRAVEL, AND SHELL RESOURCES
FROM THE OUTER CONTINENTAL SHELF

I. Introduction.

The U.S. Army Corps of Engineers (Corps) and the Bureau of Ocean Energy Management (BOEM) are the “Parties” to this Memorandum of Understanding (MOU). This MOU is designed to synchronize the Corps’ Civil Works and Regulatory Programs and BOEM processes when the Corps is involved in the construction or regulatory permit review of shore protection, Coastal Storm Risk Management (CSRM), aquatic ecosystem restoration, and other types of projects utilizing sand, gravel, and shell resources from the Outer Continental Shelf (OCS).

II. Purpose.

A. The purpose of this MOU is to establish a framework for early and sustained coordination and cooperation between the Parties to satisfy each agency’s mission. In addition, the MOU supports consistency in environmental compliance, project scheduling, and negotiated lease agreement requirements for projects proposing to use OCS sand, gravel, and shell resources.

B. Cooperation between the Parties will ensure that each Party can support its mission and meet its responsibilities under the National Environmental Policy Act (NEPA) and other applicable federal laws, including, but not limited to, those identified in this MOU.

III. Background.

A. BOEM is responsible for issuing leases, granting easements, coordinating sand conveyance pipelines, and negotiating agreements for a variety of energy and mineral-related activities on the OCS. BOEM strives to ensure those activities are conducted in a safe and environmentally sound manner. Within this context, BOEM administers the Marine Minerals Program (MMP) to manage the use of non-energy minerals on the OCS. The MMP is responsible for negotiating agreements for the use of OCS sand, gravel, and shell resources for coastal projects. BOEM does not have jurisdiction over sand, gravel, shell, and other resources that lie landward of the Submerged Lands Act boundary.

B. The Corps is responsible for executing congressionally authorized CSRM projects and aquatic ecosystem and other types of projects implemented jointly by the Corps and a non-federal partner.
C. The Corps also administers a regulatory program to protect the Nation's aquatic resources, including wetlands, under Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA). In instances where a non-Corps entity proposes to discharge sand, gravel, and shell resources from the OCS into waters of the U.S., it may need a permit from the Corps under Section 10 and Section 404. Both the Corps and BOEM are responsible for ensuring that their respective actions comply with NEPA and other applicable laws. Because the actions are related, albeit distinct, the agencies may benefit from establishing cooperating agreements on a case-by-case basis to define roles and responsibilities to satisfy NEPA and other environmental requirements.

IV. Statutory Authorities.

A. Outer Continental Shelf Lands Act (OCS Lands Act), as amended (43 U.S.C. § 1331 et seq.). Section 8(k) of the OCS Lands Act (43 U.S.C. § 1337(k)) authorizes the Secretary of the Interior, acting through BOEM, to negotiate noncompetitive agreements (negotiated agreement) for the use of OCS sand, gravel, and shell resources for shore protection, beach restoration, or wetlands restoration projects undertaken by a federal, state, or local government agency, or for use in a construction project funded in whole or in part by, or authorized by, the federal government.

Section 4 of the OCS Lands Act (43 U.S.C. § 1333(e)) extends the Corps regulatory authority under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) to all artificial islands and to all installations and other devices permanently or temporarily attached to the seabed of the OCS.

Section 20 of the OCS Lands Act (43 U.S.C. § 1345) authorizes the Secretary of the Interior, acting through BOEM, to conduct studies necessary to manage and assess environmental impacts.

B. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.). NEPA requires federal agencies to use a systematic, interdisciplinary analysis approach that will insure the integrated use of the natural and social sciences in planning and decision making that may have an impact on the natural and manmade environment. In the development of any detailed environmental impact statement, the responsible federal official shall consult with, and request cooperating agency status with, any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved.

C. Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. § 403). Section 10 of the RHA requires authorization from the Secretary of the Army, acting through the Corps, for work in or affecting any navigable water of the United States. The Corps authority under Section 10 extends to artificial islands, installations, and devices located on the OCS. As a general rule, the Corps Section 10 authority does not regulate dredging on the OCS. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work would affect the course, location, or condition of the navigable waters.
D. Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344). Section 404 of the CWA requires authorization from the Secretary of the Army, acting through the Corps, for the discharge of dredged or fill material into waters of the United States, including wetlands. Discharges of fill material generally include, without limitation, placement of fill that is necessary for the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. A Corps permit is required whether the work is permanent or temporary. Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, and storage and work areas. The Corps authority under Section 404 does not extend to the OCS.

E. Marine Protection, Research, and Sanctuary Act (MPRSA) (33 U.S.C. § 1431 et seq.). Section 103 of the MPRSA, also called the Ocean Dumping Act, generally prohibits dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment (codified at 33 U.S.C. § 1413). Most material dumped in the ocean today is dredged material removed from the bottom of water bodies to maintain navigation channels and berthing areas. A permit may be required to transport and/or discharge such material into the ocean. Section 103 of the MPRSA states that the Secretary of the Army may issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters when it has been determined that no unreasonable degradation or endangerment to human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities will occur.

F. Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (Public Law 93-288, as amended, 42 U.S.C. § 5121 et seq.). The Stafford Act provides federal disaster relief to State and local governments and their citizens. The Stafford Act establishes a process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal government, and sets the conditions for obtaining that assistance. The disaster declaration gives the Corps responsibility for emergency support functions related to public works and engineering.

G. Public Law 84-99, Flood Control and Coastal Emergencies. The Corps has authority under PL 84-99, Flood Control and Coastal Emergencies (FCCE) (33 U.S.C. 701n) (69 Stat. 186) for emergency management activities. Under PL 84-99, the Chief of Engineers, acting for the Secretary of the Army, is authorized to undertake activities including disaster preparedness, Advance Measures, emergency operations (Flood Response and Post Flood Response), rehabilitation of flood control works threatened or destroyed by flood, protection or repair of federally authorized shore protective works threatened or damaged by a coastal storm, and provisions of emergency water due to drought or contaminated source.
V. Agency Responsibilities.

This MOU sets forth the Parties’ responsibilities as they relate to: (A) BOEM authorizations and agreements under Section 8(k) of the OCS Lands Act for the use of OCS sand, gravel, and shell resources in projects undertaken or authorized by the Corps, (B) Corps feasibility studies or other congressionally authorized studies involving OCS sand, gravel, and shell resources, and (C) Corps regulatory authorizations under Section 10 of the RHA, Section 404 of the CWA, and Section 103 of the MPRSA that involve the use of OCS sand, gravel, and shell resources.

Whenever the Corps and BOEM agree that it would be appropriate, the agencies will invite each other to participate as cooperating agencies early in the NEPA process, including opportunities to participate in consultation, conference, and/or coordination procedures as required by other applicable environmental laws, regulations, regulatory permit review, executive orders, or other directives. The Parties will begin coordinating early and will involve the public and other government agencies during the environmental review process, as appropriate.

To this end, both Parties agree to:

1. Work together, including applicants and stakeholders, to align and facilitate processes when BOEM coordination is needed or cooperative environmental documents are required;
2. Identify and resolve issues;
3. Provide for effective and efficient environmental and technical review of requests for use of OCS sand and gravel resources;
4. Identify and seek opportunities to streamline the overall environmental review and consultation processes through regional partnership;
5. Work together, including applicants and other stakeholders, to develop mitigation strategies, to ensure environmental compliance, including post-construction monitoring and reporting requirements;
6. Share non-sensitive (e.g., unclassified, nonproprietary) geological, geophysical, and environmental data pertinent to the OCS; and
7. Identify partnership and leveraging opportunities in conducting scientific research to fill critical data gaps and inform resource management decisions.

A. BOEM will to the extent appropriate:

1. Participate in related Corps Project Delivery Team (PDT) meetings and other joint planning and permitting processes upon invitation;
2. Provide relevant information to the Corps concerning BOEM’s authority or authorization process during public notice or scoping processes upon request;
3. Participate as a cooperating agency in the preparation of environmental documents upon request from the Corps;
4. Invite the participation of the Corps, if BOEM, at its discretion, prepares supplemental environmental review documents;
5. Participate in programmatic, regional, and project-specific consultations and coordination (e.g., Endangered Species Act (ESA) Section 7, Magnuson-Stevens Fishery Conservation and Management Act (MSA) Section 305, Coastal Zone...
Management Act (CZMA) Section 307, National Historic Preservation Act (NHPA) Section 106, Clean Air Act (CAA) Section 176, and other Tribal consultations, etc.) upon the request of the Corps when the Corps is the lead agency, and review relevant documents, such as biological assessments, consistency determinations, and cultural resource reports;
6. Invite the participation of the Corps if BOEM is the lead agency for consultation and coordination for OCS sand, gravel, and shell resources;
7. Prepare portions of draft environmental documents, upon request, for which BOEM has special expertise;
8. Complete its reviews of pertinent environmental documents within mutually agreed upon schedules. This refers to cases when there are required environmental documents;
9. Review and provide written comments on the relevant portions of draft environmental documents provided by the Corps according to mutually agreed upon schedules;
10. Review and provide written comments on pertinent construction plans and specifications provided by the Corps per the requirements specified in a negotiated agreement;
11. Identify issues and concerns and attempt to resolve them in accordance with the schedule;
12. Review and issue geological and geophysical activity authorizations requested by non-exempt applicants or their contractors as appropriate;
13. Issue independent findings and records of decision on NEPA documents, as appropriate;
14. Monitor and analyze pertinent Corps Dredging Quality Management (DQM) data, in consultation with Corps Districts, to ensure proper environmental stewardship, and resource management, and negotiated agreement compliance. Coordinate with appropriate Corps Districts and Planning Offices DQM technical support staff upon documentation of non-compliance events to confirm issues and concerns and develop a course of action to rectify them; and
15. Coordinate relevant fiscal year studies contained within the MMP Study Development Plans (SDPs) to identify partnership and leveraging opportunities and align BOEM and Corps research initiatives where appropriate.

B. For all Corps projects that require use of OCS sand, gravel, or shell resources, the Corps will, to the extent appropriate:

1. Coordinate with BOEM prior to, or during scoping;
2. When appropriate, solicit the involvement of BOEM as a cooperating agency in the NEPA review of activities undertaken by the Corps using OCS sand, gravel, or shell resources;
3. When the Corps is the entity utilizing OCS resources for a Corps Civil Works project, the Corps will assume the role of lead agency to comply with other environmental requirements, including, but not limited to ESA Section 7, MSA Section 305, CZMA Section 307, NHPA Section 106, and CAA Section 176, as appropriate;
4. Invite BOEM to participate, as appropriate, in programmatic and regional consultations and coordination;
5. Participate, as appropriate, in any programmatic, regional, and project-specific consultation or coordination when BOEM is authorizing use of OCS resources;
6. Provide pertinent draft NEPA and other environmental documents to BOEM for review, which will include copies of planning materials such as proposed schedules and drawings;
7. Recognize that geological and geophysical activities conducted on the OCS by an entity that also requires authorization from Corps Regulatory to discharge such material into water of the U.S. must be authorized by BOEM prior to conducting such activities. Federal agencies and their contractors are not required to obtain an authorization;
8. Conduct timely Quality Assurance (QA) and Quality Control (QC) of DQM data and provide data to BOEM. Monitoring and analysis of DQM data will support BOEM’s efforts to document environmental performance, improve environmental analyses and consultations, develop and adapt mitigation strategies, and support proper stewardship and management of OCS borrow areas and environmental resources.
9. Provide any post-construction operational and monitoring information, including DQM data, per the requirements specified in a negotiated agreement; and
10. Coordinate relevant research proposed by the Corps’ Engineer Research and Development Center (ERDC) on an annual basis to identify partnership and leveraging opportunities and align BOEM and Corps research initiatives where appropriate.

This MOU is not intended to preclude other arrangements that may be necessary to foster coordination, including but not limited to the Parties acting as joint lead agencies.

VI. Planning and Scheduling, Processing and Information Exchange, Communication, and Public Involvement.

The Parties agree to work to ensure that timely decisions are made, the responsibilities of each Party are performed, and the goals of each Party are met. Both Parties will adopt the principles and measures outlined below to obtain these objectives:

A. Planning and Scheduling:

1. Make an initial request for resources as early as possible and conduct review of project details. As soon as practicable after a possible requirement for OCS sand, gravel, or shell resources is identified or planned for a Corps Civil Works project, the Corps will inform BOEM and request that the project be placed on BOEM’s list of pending OCS dredging projects. Should the Corps receive a permit application that identifies the use of OCS sand, gravel, or shell resources, the Corps will notify BOEM or instruct the applicant to notify BOEM as early as is practicable. At this time, each party will assess its role in the review and issuance of required approvals.

2. Identify agency contacts for the proposed study or permit application. If a negotiated agreement applicant or other entity needs assistance in determining regional, local, or project-specific contacts, the agency contacts are provided below:
U.S. Army Corps of Engineers:
Mr. Joseph Wilson
Senior Program Manager
Operations and Regulatory Division, Headquarters Civil Works
441 G Street NW
Washington, DC
Joseph@usace.army.mil

Bureau of Ocean Energy Management:
Marine Minerals Program
Dr. Jeffrey Reidenauer
Chief, Marine Minerals Branch, VAM-LD
45600 Woodland Rd.
Sterling, VA 20166
jeffrey.reidenauer@boem.gov

3. Meet with project proponents. The Parties will meet with applicants and other affected parties, as appropriate, to discuss issues of potential concern related to a proposed project and assess agency resources and capabilities to address them.

4. Consult in establishing a schedule. The Corps is responsible for notifying BOEM as early as possible of upcoming needs for negotiated agreements and any other actions that will be subject to BOEM authorization or involvement. To avoid project delays, the Corps and BOEM will work together to develop schedules to assure that the Parties’ timelines for conducting environmental compliance are considered. The Parties will adopt a final schedule for each project.

5. When the project proponent is an entity other than the Corps (i.e., a Corps Regulatory Program permit applicant), the parties will strive to ensure that the Corps permit reviews and BOEM authorization processes occur concurrently rather than sequentially, to avoid unnecessary delays. Under NEPA, each agency is responsible for conducting its own environmental evaluations as necessary to support its jurisdictional requirements, including any required consultations under Section 7 of the ESA, Section 106 of the NHPA, etc. However, when it is beneficial for the Corps and the BOEM to produce one joint environmental document or conduct joint consultations, the agencies may do so, or one agency can serve as a cooperating agency for the other. In such cases, the Corps and the BOEM agree to coordinate and share their documents with each other, and either the Corps or the BOEM may adopt, incorporate by reference, or make reference to the other agency’s documents, when appropriate.

6. Communicate any issues related to adhering to the schedule. If at any point during the environmental review and authorization processes, either Party anticipates an inability to comply with the established schedule, it will communicate the reason for this inability as soon as possible. The parties will then work together to help avoid any anticipated delay and update the schedule as necessary.
7. Following a Presidential Declaration of a Major Disaster or Emergency (Stafford Act) or an event covered under Public Law 84-99 that may require the use of OCS resources, the parties will immediately establish agency points of contact so that an agreement may be obtained expeditiously. To meet the objectives of FEMA’s National Disaster Recovery Framework and the Presidential Policy Directive-8 (National Preparedness), both parties agree to cooperatively develop a protocol and schedule for identifying possible OCS resources, conduct environmental consultations, and develop a negotiated agreement for OCS resources.

B. Processing and Information Exchange.

The Parties will share, as appropriate, with all cooperating agencies and other participating agencies, the information gathered during the environmental review process. Specifically, the Parties agree to the extent appropriate:

1. Cooperate in the preparation of requests for additional studies or data and to compile a consistent set of information available to all of the agencies.

2. Cooperate in identifying and developing the information required to complete technical, environmental, and cultural resources reviews for the project, including any requirements related to geophysical surveys, biological sampling, diver observations, and/or modeling.

3. Provide available information requested by either Party that may be necessary to complete an administrative or decision record.

C. Communications.

The Parties agree to communicate with each other and other relevant agencies throughout the project reviews. The Corps and/or BOEM will coordinate and share information and concerns as appropriate with all cooperating and participating agencies.

D. Public Involvement.

1. The Parties will coordinate efforts to the maximum extent practicable to comply with scoping and commenting requirements, as specified in regulations and agency policy implementing NEPA. To the extent practicable, the Corps will address the involvement of BOEM in Regulatory Public Notices issued pursuant to 33 CFR 325.3, which will clarify that BOEM is the NEPA lead federal agency for dredging activities on the OCS and that BOEM will be responsible for complying with all laws and regulations applicable to those activities.

2. Both Parties will participate in any public hearings held on a project, subject to the availability of funds and if each agency determines that such participation would be appropriate. Hearings include any public proceeding conducted by the Corps and any NEPA-related scoping and comment hearings conducted by the Corps and/or BOEM.
3. The Corps will participate in BOEM-established OCS sand management working
groups or other joint planning mechanisms upon invitation by BOEM, subject to the
availability of funds, and where the Corps determines that to be appropriate.

4. The Parties will coordinate to publish press releases, notices to stakeholders, or other
relevant communications to the public and stakeholders so that information
conveyed is consistent and approved by both parties. Public affairs officers from
both Parties will coordinate on the content and timing of such releases, including the
public recognition of each other’s role in planning and executing projects or other
activities. Both Parties will identify, in a timely manner, the appropriate responsible
party for public affairs interests.

VII. Administration.

A. The Memorandum of Agreement (MOA) between BOEM (previously Minerals
Management Service (MMS)) and the Corps dated April 21, 1999 is rescinded.

B. This MOU is to be construed in a manner consistent with all existing laws and
regulations. This MOU neither expands nor detracts from those powers and authorities vested in
the participating Parties by applicable laws, statutes, or regulations.

C. The terms of this MOU are not intended to be enforceable by any Party. This MOU is
intended only to improve the working relationships of the participating parties in connection with
the authorization of the use of OCS sand, gravel, and shell resources and is not intended to, nor
does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at
law or equity by any person or party against the United States, its agencies, its officers, or any
other person.

D. This MOU may be modified, amended, or terminated upon written request of either
Party. Changes to this MOU shall be made by mutual consent of both Parties, through the
issuance of a written modification signed and dated by both parties. Participation in this
agreement may be terminated 60 days after one party provides written notice of such termination
to the other party.

E. This MOU in no way restricts the Parties to this MOU from participating in similar
activities or arrangements with other public or private agencies, organizations, or individuals, as
authorized by law.

F. The Parties will consult with one another to resolve disputes at staff levels and elevate
disputes through the respective organizational levels only if necessary. Notification of potential
conflict or a dispute by either Party must be put in writing, and attempts to resolve the matter at
the staff level should occur within 30 days. If there is no resolution at this level within 30 days,
either Party may elevate the issue to the appropriate officials. Notwithstanding any such referral,
BOEM reserves the right to make a final decision on any matter within BOEM’s regulatory
authority, and the Corps reserves the same right for any matter within its authority.

G. The Parties shall schedule meetings to review progress and identify opportunities for
advancing the principles of this MOU.
H. Nothing in this MOU, in and of itself, requires either Party to enter into any contract, grant, or interagency agreement.

I. Nothing in this agreement may be construed to obligate the Parties to this MOU or the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress. Nor does this agreement obligate the Parties or the United States to spend funds on any particular project or purpose, even if funds are available.

J. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or other transfer of anything of value between the parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.

K. Documents furnished to a party under this MOU may be subject to the Freedom of Information Act (FOIA, 5 U.S.C. § 552). A Party shall not release documents originating in the other Party to a FOIA requester. Rather, the Party shall forward such document(s) to the originating Party for review, determination, and response directly to the requester.

VIII. Effective Date

This MOU shall become effective as of the date the last Party duly executes it below and will terminate 5 years from that date, unless extended by amendment with the written consent of both Parties.

For the U.S. Army Corps of Engineers

[Signature]
James C. Dalton
Director of Civil Works

24 Feb 2017
Date

For Bureau of Ocean Energy Management

[Signature]
Walter D. Cruickshank
Acting Director, Bureau of Ocean Energy Management

2 - 24 - 2017
Date