

MEMORANDUM OF UNDERSTANDING

**between the
BUREAU OF OCEAN ENERGY MANAGEMENT
and the
STATE OF ALASKA**

**On Coordination and Collaboration Regarding Outer Continental Shelf
Energy and Marine Minerals Development and Environmental Stewardship**

A. PURPOSE

This Memorandum of Understanding (MOU) documents an understanding between the U.S. Department of the Interior (DOI), Bureau of Ocean Energy Management (BOEM), and the State of Alaska (hereinafter, "Parties") regarding the coordination and collaboration of the Parties concerning the development of energy and marine mineral resources in all areas of the Outer Continental Shelf (OCS) offshore Alaska.

This MOU sets forth the processes and means by which the Parties will cooperate and coordinate the review and consultation of proposed energy and marine mineral resource projects on the OCS such as leasing, exploration, and development and production, by:

1. Describing specific processes to ensure effective and timely communication of agency priorities and upcoming activities; and
2. Sharing of information regarding the marine ecosystems, resources, and coastal communities; and
3. Describing specific collaborative processes related to decision-making on OCS energy and marine mineral leasing, exploration, and development and production activities.

B. AUTHORITIES

The BOEM authorities relevant to this MOU include but are not limited to:

1. Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 et seq.;
2. Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 et seq.;
3. National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.;
4. Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.;
5. Marine Mammal Protection Act, 16 U.S.C. §§ 1361 et seq.;
6. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801, et seq.;

7. National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101 et seq.;
8. Fixing America's Surface Transportation (FAST) Act, 42 U.S.C. § 4370m et seq.;
9. Executive Order 13212 (May 18, 2001)--Actions to Expedite Energy-Related Projects;
10. Executive Order 13580 (July 12, 2011), Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska ;
11. Executive Order 13604 (March 22, 2012) -- Improving Performance of Federal Permitting and Review of Infrastructure Projects;
12. Executive Order 13783 (March 28, 2017) – Promoting Energy Independence and Economic Growth;
13. Executive Order 13795 (April 28, 2017) – Implementing an America-First Offshore Energy Strategy; and
14. Executive Order 13807 (August 15, 2017) – Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure

The State of Alaska authorities relevant to this MOU include, but are not limited to:

1. Alaska State Constitution, Article VIII - Natural Resources
2. Title 29 of the Alaska Statutes
3. Title 38 of the Alaska Statutes

C. BACKGROUND

1. BOEM's mission is to manage the development of the nation's offshore energy and mineral resources in an environmentally and economically responsible way.
2. The Alaska State Constitution, Article VIII, Section 1, provides: Statement of Policy. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.
3. The State of Alaska's Department of Natural Resources' (DNR) mission is to responsibly develop Alaska's resources by making them available for the maximum use and benefit consistent with the public interest.

D. COORDINATION AND COLLABORATION BETWEEN BOEM AND STATE OF ALASKA-- Development of OCS Energy and Marine Mineral Resources

1. **Notification of Proposed OCS Energy and Marine Mineral Resource activities - Alaska.** BOEM will notify the State of Alaska of all individual OCS lease sales

planned by BOEM, and will engage with the State of Alaska early in each OCS lease sale planning process. BOEM will also notify the State of Alaska within a reasonable time of receiving any industry proposal to conduct OCS exploration, development, or production activities, i.e., Geological and Geophysical permit applications, Exploration Plans, and Development and Production Plans.

2. **National Environmental Policy Act (NEPA) Process.** Where BOEM is the lead agency with respect to NEPA analysis (typically when the proposed actions are within BOEM's decision-making authority), BOEM has the primary responsibility for completing Environmental Assessments (EA) and Environmental Impact Statements (EIS). The State of Alaska will participate, to the extent practicable in the NEPA process through coordinated reviews, information exchange, technical assistance, and cooperating agency status, as appropriate, and pursuant to DOI's regulations implementing NEPA at 43 CFR Part 46.
 - a. BOEM intends to:
 - i. Engage the State of Alaska early in the NEPA process.
 - ii. Implement this MOU in accordance with the DOI regulations implementing NEPA at 43 CFR Part 46 and the Council on Environmental Quality (CEQ) regulations on cooperating agencies at 40 CFR §§1501.6 and 1508.5.
 - iii. Consider the State of Alaska's special expertise (as contemplated under 40 CFR § 1508.5) with regard to environmental impacts on State resources.
 - iv. Designate a primary point of contact for the specific NEPA processes.
 - v. Determine, after discussion with the State of Alaska, whether a Health Impact Assessment (HIA) will be prepared by the State and, if so, what level of assessment is appropriate and how to integrate HIA conclusions into the NEPA analysis.
 - vi. Provide the State of Alaska with a summary of all comments received during the public comment period for an EA or EIS where the State of Alaska is a cooperating agency.
 - vii. Endeavor to use the environmental analyses and recommendations of the State of Alaska as they relate to the preparation and finalization of relevant NEPA analyses but recognizing that BOEM has the ultimate responsibility for the content of its NEPA analyses pursuant to 40 CFR §§ 1501.3 and 1501.4.
 - b. State of Alaska intends to:
 - i. Implement this MOU, to the extent practical, pursuant to the guidance provided in the DOI regulations implementing NEPA at 43 CFR Part 46 and CEQ regulations on cooperating agencies at 40 CFR §§ 1501.6 and 1508.5.
 - ii. Designate a primary point of contact within the DNR Office of Project Management & Permitting (OPMP) to represent the State of Alaska for the specific NEPA process.

- iii. Notify BOEM whenever a State lessee or operator of a State-regulated facility (to include facilities regulated jointly by the State and BOEM) proposes to conduct new or modified activities with the potential to affect OCS resources or Federal oversight of such activities.
 - iv. If requested by BOEM, prepare a Health Impact Assessment (HIA) to help inform BOEM's NEPA analysis. The State of Alaska will invite BOEM to participate in any public meetings to be held by the State of Alaska regarding such HIA.
 - v. Participate as appropriate in scoping meetings and public hearings.
 - vi. Provide BOEM a brief description of the State of Alaska's cooperating role, for inclusion in any EA or EIS where the State of Alaska is a cooperating agency.
 - vii. Review the EA or EIS and provide comments or recommendations to BOEM within established timelines.
 - viii. Enter into nondisclosure agreements with BOEM, as appropriate.
3. **National Historic Preservation Act (NHPA) Consultation:** BOEM will engage the State of Alaska in NHPA consultation in the event historic properties on the OCS may be affected by BOEM-authorized activities. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register and may include shipwrecks.
4. **Air Emissions and Air Quality Monitoring.** BOEM has jurisdiction over air emissions from activities it authorizes under OCSLA located on those portions of the OCS adjacent to the North Slope Borough of Alaska (Beaufort Sea, Chukchi Sea, and a portion of the Hope Basin Planning Areas). The State of Alaska has regulatory authority (delegated from the EPA) for permitting certain air emissions from sources located within Alaska, including the area located three miles seaward from the coast. The Parties regulate air emissions to ensure that each of their respective responsibilities for air quality compliance is met in the North Slope region.

The Parties will endeavor to exchange information on air emissions that could affect the air quality in the subject areas under the jurisdiction of the other Party.

The Parties agree to organize a workgroup when circumstances or concerns involving air emissions from OCS facilities warrant. The workgroup will meet periodically to discuss air quality concerns and consider developing a process for the exchange of information. BOEM and the State of Alaska agree to cooperate on the development of the workgroup meeting agendas and on hosting meetings, with the objective of discussing and resolving concerns. The workgroup may create subgroups to explore and discuss specific topics. Cooperation may include granting access to, and sharing of, non-confidential data generated by BOEM and the State of Alaska, as well as non-confidential data generated by industry.

5. **Wastewater Discharges from Oil and Gas Activities.** Regulatory authority over certain wastewater discharges from oil and gas activities on state lands and in state waters was delegated from EPA to the State of Alaska in October 2012.

The Parties agree to cooperatively exchange information regarding the effects of wastewater discharges associated with OCS oil and gas activities.

The Parties agree to organize a workgroup when warranted to discuss wastewater discharges and water quality concerns of interest to both parties and to develop a process for the exchange of information. BOEM and the State of Alaska agree to cooperate on the development of the meeting agendas and on hosting meetings.

6. **Oil Spill Financial Responsibility (OSFR) for Offshore Facilities.** BOEM is responsible for implementing the provisions of OPA concerning financial responsibility for all offshore waters, including those above state submerged lands offshore Alaska within the three miles of the coastline.
7. **Scientific Research.** The Parties will work collaboratively to support research endeavors addressing issues of mutual concern including, but not limited to, offshore oil, gas, sand and gravel, or mineral resource assessments.
8. **Senior Leadership Meetings.** The Parties agree to hold senior leadership meetings periodically to discuss relevant OCS energy and marine mineral resource development activities and this MOU. The purpose of these meetings will be to, among other things:
 - a. Discuss any issues arising under this MOU; and
 - b. Discuss emerging issues and facilitate resolution of any issues related to cooperation and coordination between BOEM and the State of Alaska on matters related to OCS development of energy and marine mineral resources; and
 - c. Make both BOEM and the State of Alaska aware of relevant upcoming offshore activities on the OCS and in State waters.
9. **Point of Contacts for this MOU.** The Governor of Alaska and the Director of BOEM will designate their respective points of contact for this MOU.

E. GENERAL PROVISIONS

1. All identified procedures in the MOU are subject to the availability of appropriated funds and each Party's budget priorities. Nothing in the MOU obligates the Parties to expend appropriations or enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Further, this MOU does not obligate BOEM or the United States to spend funds on any particular project or purpose, even where funds are available.
2. This MOU is not a fiscal document nor does it obligate funds. However, should the Parties contribute funds to or reimburse one another, they will do so in accordance with

applicable laws, regulations and procedures, subject to a separate subsidiary agreement that they will make in writing.

3. This MOU does not create any right or benefit enforceable against BOEM or the State of Alaska, their officers or employees or any other person. This MOU does not apply to any person outside BOEM or the State of Alaska. 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. The State of Alaska will obtain BOEM's approval prior to issuing any press releases, advertisements, or other public statements that refer to this MOU or to BOEM, DOI, or any employee of the Department, in connection with this agreement.
6. Unless constrained by other factors, such as the need to protect privileged or confidential material, pre-decisional documents may be shared between the Parties as needed to accomplish cooperation under this MOU. The Parties will not release any pre-decisional document produced by the other Party, unless (1) the other Party consents in writing prior to such release, or (2) the Freedom of Information Act (FOIA) or other applicable law requires such release, and the releasing Party notifies and consults with the other Party prior to making the release. The term "release" as used in this paragraph includes transmitting or providing any other form of access to documents, or copies thereof, to any person or entity outside of the State of Alaska or BOEM. The term "document" as used in this paragraph includes all draft and final versions of meeting notes, note(s) to the file, e-mails, letters, reviews, evaluations, data reports, analyses, briefing materials, drafts, and any other physical or electronic record of communications between the Parties pursuant to the collaborative process established by this MOU. Documents are "pre-decisional" for the purpose of this paragraph if they relate to any ongoing decision-making process conducted by either Party. The duties described in this paragraph will survive termination of this MOU.
7. The State of Alaska agrees that none of the documents or information provided by BOEM pursuant to this MOU will be disclosed or otherwise provided to attorneys representing the State of Alaska or to any persons retained for litigation support against the United States, nor will such materials be otherwise used in litigation or preparation for litigation against the United States. This provision does not otherwise restrict the use of such documents or information if acquired by the State of Alaska not pursuant to the MOU.
8. The provisions in this MOU are subject to the laws of the United States and the regulations of DOI and BOEM.
9. This MOU in no way restricts BOEM from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

10. Modification of this MOU will be made only by written agreement, signed and dated by both Parties.

F. RESOLVING DISAGREEMENTS

The Parties agree to resolve disputes through good faith discussions. Issues that cannot be resolved at the initial level of dispute will be referred to each Parties’ next level of respective authority.

G. PERIOD OF PERFORMANCE

This MOU will be deemed executed as of the date the last required signature is affixed to this document. This MOU will be in effect for three (3) years from the date it is executed unless the Parties agree in writing to extend it to another date certain. This MOU will be reviewed periodically at the senior leadership meeting. Should both Parties agree to extend this MOU, the extension will be in writing and the period will be as determined by the review at the senior leadership meeting. 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 a 30-day-written notice to the other Party prior to such termination.

H. CONTACTS

The list of contacts below is designed to identify specifically the respective personnel responsible for implementing the various provisions of this MOU.

Topic	BOEM Alaska Region, unless otherwise noted	State of Alaska
Leadership Meetings	Regional Director Deputy Regional Director Regional Supervisor, Environment Regional Supervisor, Leasing & Plans Regional Supervisor, Resource Evaluation	Commissioner, Department of Natural Resources Commissioner, Department of Environmental Conservation Director, Office of Management & Permitting
National Environmental Policy Act Analyses	Regional Director Chief, Environmental Assessment Division, HQ	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting
Environmental Studies Program – Research and Science	Regional Director Chief, Environmental Sciences Division, HQ	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting ADEC, Office of the Commissioner
Regional Environmental Analysis	Regional Director Regional Deputy Director Regional Supervisor, Environment	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting ADEC, Office of the Commissioner

Memorandum of Understanding

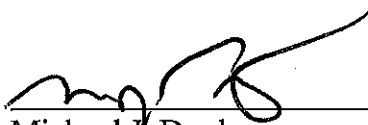
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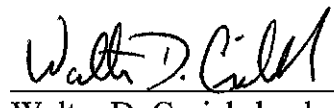
Topic	BOEM Alaska Region, unless otherwise noted	State of Alaska
Regional OCS Activities – Leasing; Exploration; Development and Production	Regional Director Regional Deputy Director Regional Supervisor, Leasing & Plans Regional Supervisor, Resource Evaluation	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting ADEC, Office of the Commissioner
Air Quality Working Group	Chief, Plans Section Regional Supervisor, Environment	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting DEC, Office of the Commissioner
Water Quality Working Group	Regional Supervisor, Environment Regional Supervisor, Leasing & Plans Chief, Plans Section	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting ADEC, Office of the Commissioner
Announcements	Public Affairs Officer	Governor’s Press Secretary

I. Signatures

The parties hereto have executed this agreement:



 Michael J. Dunleavy
 Governor of Alaska



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

7/19/19

 Date

AUG 30 2019

 Date