



# Marine Minerals Program

## 30 CFR 583: Negotiated Noncompetitive Agreements for the Use of Sand, Gravel, and/or Shell Resources on the Outer Continental Shelf

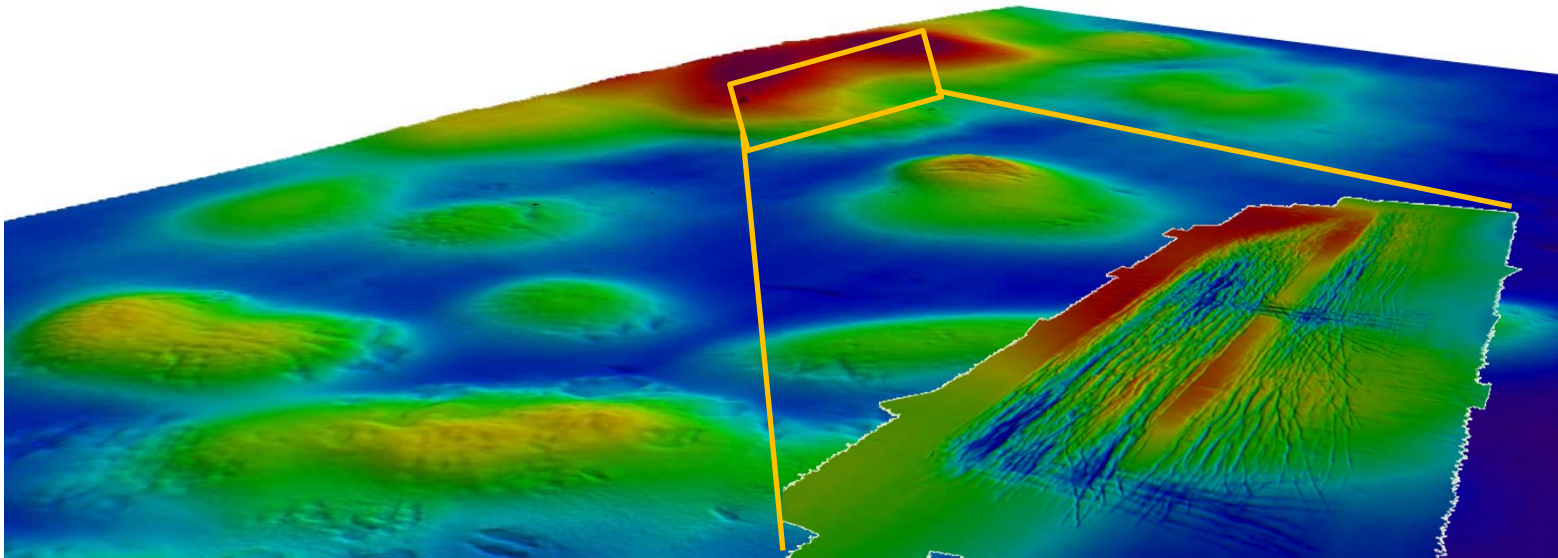


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- BOEM's authority under Outer Continental Shelf Lands Act ("OCLSA", § 8(k) as amended in 1978 and 1999)
- 30 CFR 583 was published on 10/3/17, effective as of 12/3/17.



## Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331, et. seq.)

**Public Law 103-426 (43 U.S.C. 1337(k)(2)) (1994):** Amended OCSLA to allow BOEM to negotiate, on a *noncompetitive* basis the rights to OCS sand, gravel, or shell resources for (1) beach nourishment, shore protection, wetlands restoration projects undertaken by a federal, state, or local government agency or (2) use in construction projects authorized or funded by the Federal Government

**A 1999 Amendment:** *Prohibits* BOEM from charging Federal, state, and local governments a fee for OCS sand



## 30 CFR Part 583

Creates a new part 583 (*“Negotiated Noncompetitive Agreements for the Use of Sand, Gravel, and/or Shell Resources on the Outer Continental Shelf”*) in Title 30 (*“Mineral Resources”*) of the Code of Federal Regulations (CFR) to address the use of Outer Continental Shelf (OCS) sand, gravel and shell resources



### for

- shore protection
- beach restoration, or
- coastal wetlands restoration projects

### by

- Federal,
- State, or
- local government agencies,
- ...or for use in construction projects
  - authorized by the Federal Government,
  - or funded in whole or in part by the Federal Government.



## 3 Types of Agreements Are Used to Convey Sand and Gravel Noncompetitively

- **2-Party Memorandum of Agreement (MOA)**



- An Agreement negotiated between Another Federal Agency and BOEM

- **3-Party Memorandum of Agreement (MOA)**

- An Agreement negotiated between a Locality (State, county, city, parish etc.), Another Federal Agency (typically USACE) and BOEM. USACE Civil Works.

- **2-Party Lease**

- An Agreement negotiated between a Locality (State, county, city, parish etc.) and BOEM. USACE Regulatory involvement (e.g., CWA 404).

*Each project is unique, having different parties involved, different environmental and leasing concerns, because of this each Agreement is for a one-time use. Typically for three years. Extensions may be granted*



- Agreements are negotiated on a case-by-case basis and specify, at a minimum:
  - Who may use the OCS sand/gravel/shell
  - Terms, conditions, and stipulations
  - Location, type, and volume of OCS resources
- Agreements are not exclusive
- Typically issued for 2 or 3 years
- Can be amended



- Requests ***must***:
  - Be written
  - Describe the applicants and contact information
  - Provide a detailed project description
  - Explain how it qualifies
  - Include description and maps of borrow area and placement site...many specific items
  - Potential conflicts
  - Environmental information and plan
  - Timeline
  - List required permits and status
  - Describe potential CZM/state/local/statutory inconsistencies
  - Explain authorization and funding



- The BOEM Marine Minerals Division will determine if the application is complete within 15 business days of receipt (if not, MMD will request additional information)
- BOEM will provide written notice of qualification
- BOEM next evaluates project
  - Federal/state/local/tribal coordination
  - Technical and NEPA adequacy





- If BOEM decides to enter into a Negotiated Noncompetitive Agreement (NNA)
  - Terms and conditions will be negotiated with applicant
  - Draft NNA will be reviewed by applicant
  - BOEM considers comments and suggestions
  - NNA is finalized (“surnamed”)
  - Applicants sign NNA, then BOEM countersigns to execute
  - Applicant will receive copy of NNA
- If BOEM decides not to enter into an NNA, reason will be given and applicant may ask BOEM Director for reconsideration



- NNAs must include, at a minimum:
  - Agreement number
  - Purpose and authorities
  - Designated and delineated borrow area
  - Project description and timeframe
  - Terms and conditions, reporting requirements, environmental mitigations, operating parameters
  - Obligations of all parties
  - Signatures of authorized individuals



- NNA becomes effective on the date that the last party (BOEM) signs
- NNA terminates when
  - Time stipulated in agreement expires
  - Project is terminated by BOEM
  - Written notification that sufficient OCS resources have been obtained
- Terms are normally 3 years
  - Not longer than 5 absent extraordinary circumstances
  - Can be extended by amendment



- BOEM isn't obligated to extend or modify agreements
- Request amendments 180 days in advance
  - BOEM responds within 30 days
  - Similar process to NNA
- Minor modifications may not need amendment; letter from BOEM may suffice
  - Includes <30 day extension



- BOEM's Director may suspend or terminate agreements for a variety of reasons:
  - Obtained by fraud or misrepresentation
  - Noncompliance with NNA terms
  - National security
  - Threat of serious harm to natural or cultural resources, life, property, environment



**Can typically be executed within 12 to 18 months of the initial request, subject to:**

- Completion of a NEPA review (EA or EIS) and decision document (Finding of No Significant Impact (FONSI) or Record of Decision (ROD))
- Presence of major environmental or multiple-use conflicts
- Regulatory issues
- **Completion of the necessary environmental consultations (e.g., Sec. 7 NMFS consultation)**
- Project deadlines
- MMP workload commitments

Project scheduling and deadlines are cooperatively developed by BOEM and the Applicant.





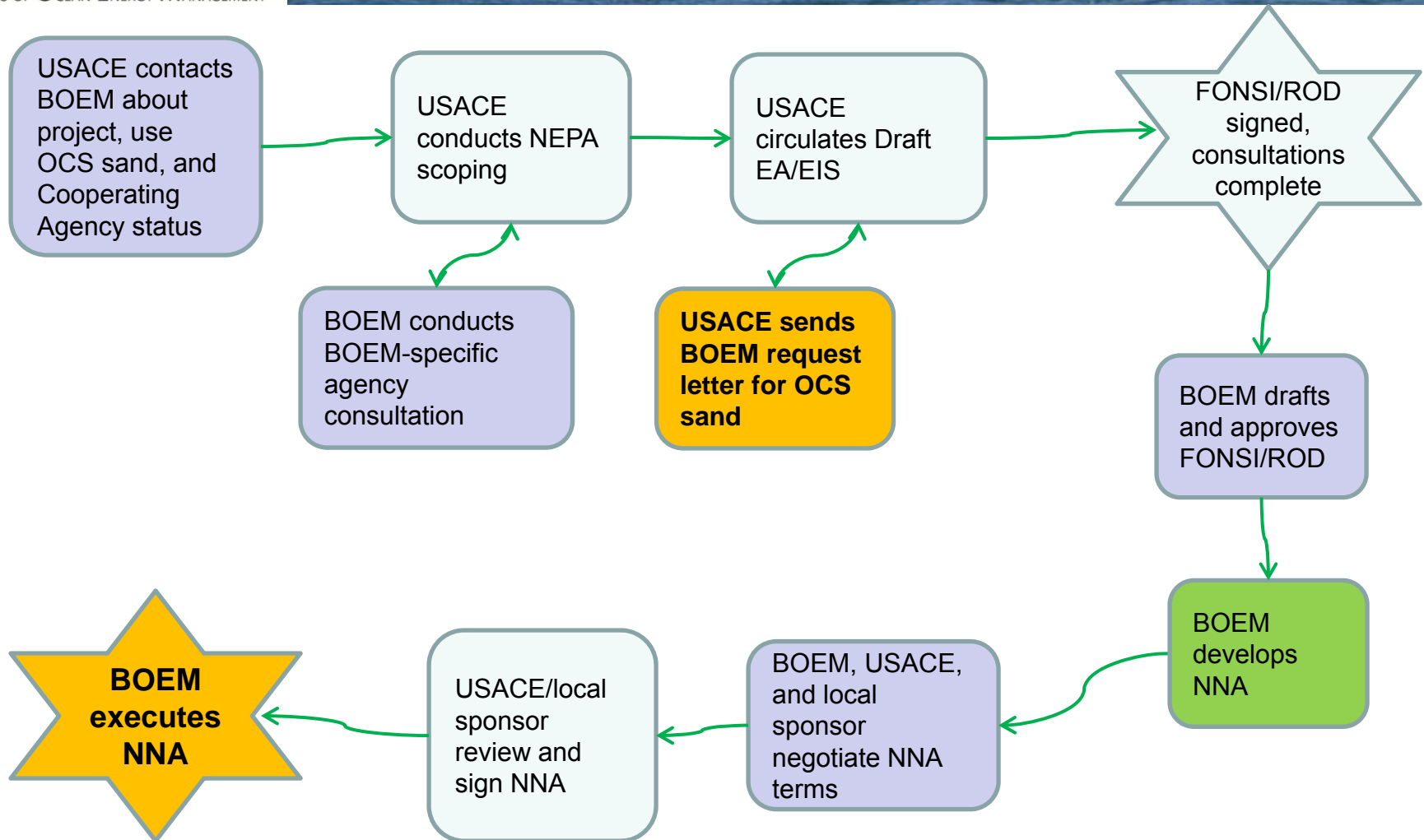
# Marine Minerals Program

**Thank You!**



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# Process for Locality to Obtain a Lease (USACE Regulatory Program)

