



## MEMORANDUM OF UNDERSTANDING

FOR

**PERMITTING OFFSHORE AQUACULTURE ACTIVITIES IN FEDERAL WATERS OF THE GULF OF MEXICO**

BETWEEN THE

**BUREAU OF OCEAN ENERGY MANAGEMENT**

Gulf of Mexico Region

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT**

Gulf of Mexico Region

**NATIONAL MARINE FISHERIES SERVICE**

Southeast Region

**UNITED STATES ARMY CORPS OF ENGINEERS**

Galveston District, Jacksonville District, Mobile District, New Orleans District

**UNITED STATES COAST GUARD**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Region 4 and Region 6

**UNITED STATES FISH AND WILDLIFE SERVICE**

Southwest Region and Southeast Region

## **I. PURPOSE**

This memorandum of understanding (MOU) is between the Federal Agencies involved in the evaluation of offshore aquaculture operations in Federal waters in the Gulf of Mexico (GOM)<sup>1</sup> including those with permitting, consultation, and evaluation roles under a number of statutory authorities. The purpose of this MOU is to improve coordination among the Agencies and streamline the regulatory permitting process for aquaculture operations in Federal waters of the GOM in accordance with the legal authorities and mandates of the Agencies. The signatories to the MOU are the United States Coast Guard (USCG) and the regional and district offices of the Bureau of Ocean Energy Management (BOEM), Bureau of Safety and Environmental Enforcement (BSEE), National Marine Fisheries Service (NMFS), the United States Army Corps of Engineers (USACE), the United States Environmental Protection Agency (EPA), and the United States Fish and Wildlife Service (USFWS), hereafter, referred to by their acronyms or collectively as the Agencies.

## **II. BACKGROUND**

The National Aquaculture Act of 1980 contains the national policy that encourages the development of aquaculture in the United States. The National Aquaculture Act of 1980 and its subsequent amendments established the Interagency Working Group on Aquaculture (IWG-A) to implement an effective and efficient process for the coordination of Federal aquaculture research, technology transfer, and technology assistance programs.

In January 2014, an Aquaculture Regulatory Task Force (Task Force) was established under the IWG-A. The Task Force membership included the Agencies identified in this MOU as well as the United States Department of Agriculture and organizations in the Executive Office of the President. The objective of the Task Force is to develop an effective and efficient federal permitting and regulatory process that will provide protection for the ocean environment and increase the coordination, consistency, transparency, and predictability in making permit decisions.

## **III. GOAL AND OBJECTIVES**

In accordance with the Task Force's objectives, this MOU establishes a cooperative agreement between the Agencies and reflects a shared commitment to streamline the permitting process for marine aquaculture operations in Federal waters of the GOM. The goal of this MOU is to facilitate efficient, effective, and synchronized interagency reviews of permit applications that will reduce the time required to render permit decisions on proposed offshore aquaculture operations while minimizing environmental impacts and ensuring a transparent permitting process for the offshore GOM aquaculture industry. In furtherance of the goals of this MOU, the Agencies have established the following objectives:

1. Work cooperatively with each other and interested stakeholders to facilitate awareness of each Agency's respective statutory and regulatory requirements and applicable timeframes, and share relevant information with each other to inform their decision-making processes within those timeframes. The Agencies will ensure a regionally consistent coordination process that allows flexibility to address site-specific issues.
2. Periodically update the Permit Applicant Guide and develop other interagency products or additional tools and procedures, as appropriate, to inform and improve Federal permitting processes, including interagency environmental review and consultations.

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<sup>1</sup> The GOM collaboration area for this MOU is the United States jurisdictional waters (Federal waters) that extend from the three-mile seaward boundary of each GOM coastal state (or nine miles in the case of the Florida and Texas Gulf coast) to 200 miles offshore.

3. The relevant Agencies will coordinate and participate in the pre-application and application processes, as appropriate, and discuss measures for minimizing or avoiding impacts of proposed projects on resources such as endangered species, habitat areas of particular concern, historic properties, and other protected areas, to the extent practicable.
4. Use the best available scientific information and technological tools, when appropriate, to facilitate effective review of applications and permitting decisions.
5. Coordinate public comment periods, public hearings, facility inspections, and other permitting requirements to the extent appropriate and practicable.

#### **IV. AGENCY AUTHORITIES**

The Agencies party to this MOU have either a permitting or authorization role for aquaculture operations in Federal waters of the GOM. The authority of each Agency is described below.

**Permitting Agencies** – The NMFS, USACE, and EPA have permitting responsibilities for offshore marine aquaculture operations.

National Marine Fisheries Service – The NMFS has the authority to permit aquaculture operations in Federal waters of the GOM pursuant to the Gulf of Mexico Fishery Management Council’s Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico and its implementing regulations, which were developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 (et seq)).

U.S. Army Corps of Engineers – The USACE has the authority to regulate aquaculture facilities in the GOM that are located on the seabed to the seaward limit of the Outer Continental Shelf pursuant to Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, as extended by the Outer Continental Shelf Lands Act (43 U.S.C. § 1333(e)).

U.S. Environmental Protection Agency – The EPA has the authority to permit discharges from aquaculture operations in Federal waters of the GOM pursuant to the Clean Water Act Sections 301, 318, 402, and 403, (33 U.S.C § 1251 - 1387), and subject to the regulatory requirements of 40 CFR § 122.24, 40 CFR § 122.25, and 40 CFR Part 125 subparts B and M.

**Authorization Agencies** – The BOEM, BSEE, USCG, and USFWS must review and provide certain approvals for offshore aquaculture operations. Most of these approvals will be incorporated into the relevant federal permitting agency processes.

Bureau of Ocean Energy Management – The BOEM’s authority is within the Outer Continental Shelf Lands Act (43 U.S.C. Chapter 29, Subchapter III), and further defined in 30 CFR Part 500-599. The BOEM reviews and authorizes the Right-of-Use and Easement for offshore aquaculture operations and activities that use an existing Federal Outer Continental Shelf facility in Federal waters pursuant to 30 CFR Part 585 subpart J.

Bureau of Safety and Environmental Enforcement – Pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. § 1331), and further defined under 30 CFR § 200-299, the BSEE has regulatory responsibility for oil, gas, and sulphur exploration, development, and production operations on the Federal Outer Continental Shelf. The BSEE reviews and authorizes proposed activities that utilize an existing Outer Continental Shelf

oil and gas facility to convert the existing platform at the current location for a new purpose pursuant to 30 CFR § 250.900.

U.S. Coast Guard – The USCG has the regulatory responsibility to protect maritime navigation as it relates to the establishment, maintenance, and operation of lights and other signals on fixed and floating structures in or over waters subject to U.S. jurisdiction and in the high seas for structures owned or operated by persons subject to U.S. jurisdiction (14 U.S.C. § 85).

U.S. Fish and Wildlife Service – The USFWS has the responsibility to ensure that relevant federal actions comply with the Fish and Wildlife Act (16 U.S.C. § 460); the Fish and Wildlife Conservation Act (16 U.S.C. § 2901), the Fish and Wildlife Coordination Act (16 U.S.C. § 661), the National Wildlife System Administration Act (16 U.S.C. § 668), the Endangered Species Act (16 U.S.C. Chapter 35), the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq., and the Marine Mammal Protection Act (16 U.S.C. Chapter 31).

## **V. COMPLIANCE WITH OTHER APPLICABLE FEDERAL LAWS**

Agencies with authority to make permitting decisions for aquaculture facilities that are subject to this MOU will apply the relevant and applicable provisions of the National Environmental Policy Act, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, the Coastal Zone Management Act, the Essential Fish Habitat provisions of the Magnuson Stevens Fishery Conservation and Management Act, and other applicable laws to their federal actions. Because a particular Agency may have more extensive authority and expertise concerning the activities that are subject to these regulations, that Agency (or Agencies) will generally take the lead on required evaluations or consultations in order to minimize delays and reduce potential duplication and conflict.<sup>2</sup>

## **VI. GENERAL CONDITIONS**

1. This MOU is a voluntary agreement and does not create any right or benefit, either substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the signatory Agencies of the MOU, their officers or employees. This MOU does not apply to any person outside of signatory Agencies. The MOU does not impose any legally binding requirements on Federal agencies, the regulated community, or public, and does not restrict the authorities of signatory Agencies to exercise their discretion in each case to make a regulatory decision based upon their judgment about specific facts and application of relevant statutes and regulations.
2. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the involved Agencies or relieve the Agencies of their obligations under Federal law.
3. Nothing in this MOU will be construed as indicating a financial commitment by the Agencies for the expenditure of funds except as authorized in specific appropriations.
4. Any Agency can terminate its participation in this MOU at any time by providing written notice to the Agencies and the IWG-A in advance of the desired termination date. The MOU, however, will continue to remain in effect for the other Agencies.

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<sup>2</sup> The *Standard Operating Procedures for Compliance with Other Applicable Federal Laws*, that is an accompaniment to this MOU, more thoroughly describes how each permitting Agency will work together to ensure efficiency and reduce duplication when applying the relevant provisions of these five laws to their federal actions.

5. The Agencies may modify this MOU, as necessary, to continuously improve the review and coordination process and incorporate any changes to national policies or regulations. Modifications to this MOU will be made by mutual agreement of all the Agencies. Modifications must be made in writing and signed by the appropriate federal Agency representative.
6. This MOU will take effect on the date of the last approving signature and will continue in effect for five years from the date of the last approving signature unless revised or extended by the Agencies.

## **VII. DETERMINATION AND SIGNATORIES**

The Agencies agree to enter into this MOU and agree to partner in this effort to streamline the permitting process for aquaculture operations in Federal waters of the GOM. The signatories below have read and agree with this MOU.



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Michael A. Celata  
Regional Director  
Gulf of Mexico Region  
Bureau of Ocean Energy Management



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Date

*Lars Herbst*

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Lars Herbst  
Gulf of Mexico Regional Director  
Bureau of Safety & Environmental Enforcement

*2/6/17*

Date



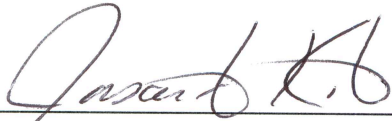


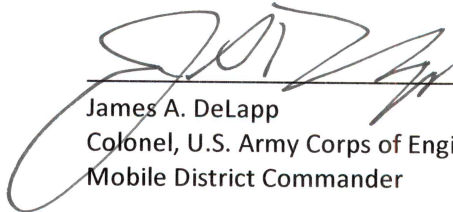
Roy E. Crabtree, Ph.D.  
Regional Administrator  
National Marine Fisheries Service Southeast Region

7/19/16  
Date



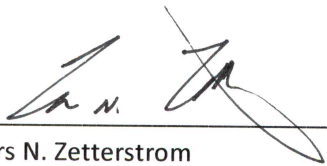


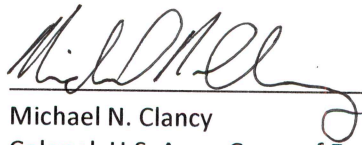
  
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Jason A. Kirk  
Colonel, U.S. Army Corps of Engineers  
Jacksonville District Commander

  
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James A. DeLapp  
Colonel, U.S. Army Corps of Engineers  
Mobile District Commander

5 AUG 16  
Date

31 AUG 16  
Date

  
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Lars N. Zetterstrom  
Colonel, U.S. Army Corps of Engineers  
Galveston District Commander

  
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Michael N. Clancy  
Colonel, U.S. Army Corps of Engineers  
New Orleans District Commander

2 AUG 16  
Date

11 Sep 16  
Date





David C. Barata  
Captain, U.S. Coast Guard  
Acting Director, Marine Transportation Systems

**JUL 21 2016**

Date

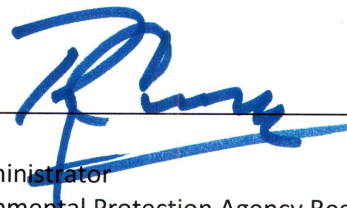




Heather McTeer-Toney  
Regional Administrator  
U.S. Environmental Protection Agency Region 4

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Date

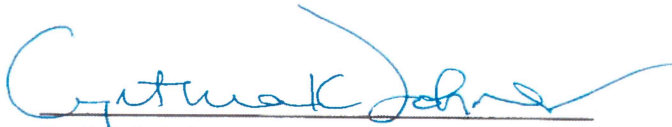


Ron Curry  
Region Administrator  
U.S. Environmental Protection Agency Region 6

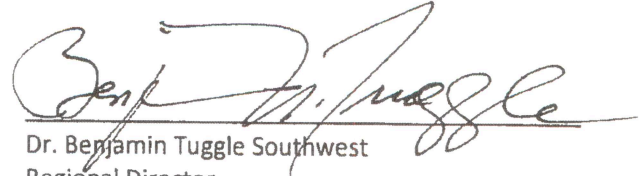
09/14/2016

Date





Cynthia K. Dohner  
Southeast Regional Director  
U.S. Fish and Wildlife Service



Dr. Benjamin Tuggle Southwest  
Regional Director  
U.S. Fish and Wildlife Service

9/29/2016  
Date

9/23/2016  
Date

