

Memorandum of Understanding

Between the

Bureau of Ocean Energy Management and the State of Alaska

On Coordination and Collaboration Regarding Outer Continental Shelf Oil and Gas
Development and Environmental Stewardship

A. PURPOSE

This Memorandum of Understanding (MOU) documents an understanding between the U.S. Department of the Interior, 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 oil and gas 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 large scale projects on the OCS such as oil and gas leasing, exploration, and development and production, by:

1. Describing specific processes to ensure effective and timely communication of agency priorities and upcoming activities;
2. Sharing of information regarding the marine ecosystems, resources, and coastal communities; and
3. Describing specific collaborative processes related to decision-making on OCS oil and gas 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. Executive Order 13212 (May 18, 2001)--Actions to Expedite Energy-Related Projects;
9. Executive Order 13514 (October 5, 2009), Federal Leadership in Environmental, Energy, and Economic Performance;
10. Executive Order 13547 (July 19, 2010)--Stewardship of the Ocean, Our Coasts, and Great Lakes;
11. Executive Order 13580 (July 12, 2011), Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska;

12. Executive Order 13604 (March 28, 2012) -- Improving Performance of Federal Permitting and Review of Infrastructure Projects; and
13. Executive Order 13653 (November 1, 2013), Preparing the United States for Impacts of Climate Change

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, sec. 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--OCS OIL and GAS ACTIVITIES

1. **Notification of OCS Oil and Gas Activities Offshore Alaska – Lease Sales, Ancillary Activities, Exploration Plans, Development and Production Plans, and Geological and Geophysical Permits.** BOEM will notify the State of Alaska of all OCS lease sales planned by BOEM and all industry requests received by BOEM to conduct OCS exploration or development activities. BOEM will notify the State on Geological and Geophysical permit applications that include both the OCS and areas offshore the State of Alaska. BOEM will engage the state early in the OCS lease sale planning process.
2. **National Environmental Policy Act (NEPA) Process.** Where BOEM is the lead agency with respect to NEPA analysis (i.e., for proposed actions 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, and technical assistance, as appropriate and pursuant 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 Department of the Interior's (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 an appendix in a lease sale EIS or in a development and production plan EIS and, if so, what level of assessment is appropriate.
- vi. Include a copy of this MOU in the appendices of Regional and National environmental documents developed with State of Alaska participation as a cooperating agency.
- vii. Provide the State of Alaska with a summary of all comments received during preparation of an EA and EIS developed with State of Alaska participation as a cooperating agency.
- viii. 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. 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. If requested by BOEM, prepare a Health Impact Assessment (HIA) to be an appendix in a lease sale EIS or in a development and production plan EIS. The State of Alaska will invite BOEM to participate in any public meetings to be held by the State of Alaska regarding such HIA.
- iv. Participate as appropriate in scoping meetings and public hearings.
- v. Provide BOEM a brief description of the State of Alaska's cooperating role, for inclusion in any EA or EIS that includes State of Alaska's participation as a cooperating agency. The description will describe the State of Alaska's cooperating status and summarize the reasons the State of Alaska is a cooperating agency for an EA or EIS.
- vi. Review the EA or EIS and provide comments to BOEM.
- vii. Comply with the EA and EIS preparation schedule, most particularly concerning review and comment periods.
- 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 would include shipwrecks.
4. **Air Emissions and Air Quality Monitoring.** BOEM has jurisdiction over air emissions from OCS facilities 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 to meet periodically during the year 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 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 operations.

The Parties agree to organize a workgroup 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.** Under the OPA, the BOEM is responsible for implementing the provisions of OPA for all offshore waters, including those above state submerged lands offshore Alaska within the three miles of the coastline; therefore, these waters are subject to both certain BOEM and State of Alaska regulatory requirements.

7. **Scientific Research.** BOEM and the State of Alaska will work collaboratively to support research endeavors addressing issues of mutual concern.
8. **Quarterly Senior Leadership Meetings.** BOEM Alaska Region and State of Alaska senior leadership representatives will strive to meet on a quarterly basis to discuss relevant OCS oil and gas activities and this MOU. The purpose of these meetings will be to, among other things:
 - a. Discuss any issues arising under this MOU;
 - 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 oil and gas 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 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 to 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 prior approval from BOEM of press releases, published advertisements or other statements intended for the public that refer to this MOU or to 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 as set forth in law, pre-decisional documents may be shared between the Parties as needed to accomplish cooperation under this MOU. The Parties agree to consult with each other in the event of a request for documents produced by the other prior to the responding to such a request. The Parties will respond to requests for documents and records that include pre-decisional documents or other documents produced in connection with this MOU pursuant to applicable law, such as the Freedom of Information Act (FOIA) and relevant Executive Orders. The provisions of this paragraph apply to all communications, including e-mail messages, "note(s) to the file," meeting notes, letters, reviews, evaluations, drafts, and to all documents or records created or shared as part of the collaborative process established by this MOU. The duties described in this paragraph will survive termination of this MOU.
 7. The State of Alaska agrees that none of the documents, records, or information provided by BOEM pursuant to the MOU will be disclosed or otherwise provided to attorneys representing the State of Alaska, or experts retained for litigation support against the United States or otherwise used in litigation or preparation for litigation against the United States. This provision does not otherwise restrict the use of such documents, records or information if acquired by the State of Alaska not pursuant to the MOU.
 8. The provisions in the 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. The MOU will be reviewed at least annually 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 thirty-days 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 the MOU.

Topic	BOEM Alaska Region, unless otherwise noted	State of Alaska
Quarterly Leadership Meetings	Regional Director Deputy Regional Director Regional Supervisor, Environment Regional Supervisor, Leasing and Plans Regional Supervisor, Resource Evaluation	Commissioner, Department of Natural Resources Commissioner, Department of Environmental Conservation Director, Office of Management & Permitting
National Environmental 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 DEC, Office of the Commissioner
Regional Environmental Analyses	Regional Director Regional Deputy Director Regional Supervisor, Environment	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting DEC, Office of the Commissioner
Regional OCS Activities – leasing; exploration; development and production	Regional Director Regional Deputy Director Regional Supervisor, Leasing and Plans Regional Supervisor, Resource Evaluation	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting DEC, 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 and Plans Chief, Plans Section	Director, Office of Project Management & Permitting, Large Project Coordinator, Office of Project Management & Permitting DEC, Office of the Commissioner
Announcements	Public Affairs Officer	Governor's Press Secretary

Signatures: The parties hereto have executed this agreement:



Bill Walker
Governor of Alaska

7-29-15

Date



Abigail Hopper Ross, Esq.
Director, Bureau of Ocean Energy Management

7-29-15

Date