

# **MMS POLICY AND GUIDELINES**

## **Fees for Outer Continental Shelf Resources Used in Shore Protection and Restoration Projects**

*Note: This paper reflects comment and input from the  
“Subcommittee on OCS Hard Minerals” of the DOI’s OCS Policy Committee.  
Members of the Subcommittee include: George Banino, Chairman;  
Robert Jordan; John Wiltshire; Lisa Polak; and Lawrence Schmidt.  
A Resolution addressing the proposed guidelines was passed  
by the Policy Committee during the October 29-30, 1997 meeting  
in Galveston, Texas [see Attachment 3]*

*Minerals Management Service  
U.S. Department of the Interior  
October 1997*



## **Fees for Outer Continental Shelf Resources Used in Shore Protection and Restoration Projects**

**Introduction:** Large volumes of sand are needed to widen and nourish beaches, build protective dunes, and restore barrier islands which can protect landward wetlands. Publicly-sponsored shore protection and restoration projects generally are authorized by Congress and executed by a Federal agency, usually the U.S. Army Corps of Engineers (USACE), with State and local governments as project cosponsors and cost-sharing partners. Other Federal agencies (e.g., FEMA, the Navy) can also sponsor shore protection projects. In some cases, State and local governments (and occasionally, private communities) sponsor projects independently of the Federal Government.

A common source of sand for projects has been the nearby seabed in State-owned waters, but in some coastal areas, such sources are becoming depleted or otherwise unavailable. Use in a project of a State's own offshore sand typically will be the least expensive source because there is no purchase price for the sand, no expensive truck haulage, and dredging can be accomplished more efficiently because of the shorter distance from the sand source to the project site. Use of alternative sand sources likely will raise project costs.

Abundant sand resources are known to exist seaward of State-owned waters in the federally-managed Outer Continental Shelf (OCS), but the ocean is a challenging and costly environment in which to operate. Detailed exploration and characterization are needed to confirm that sufficient quantities of resources are available having sediment composition compatible with beaches to be nourished and which can be extracted in an affordable and environmentally-acceptable manner. Sand can be obtained from distinct deposits such as shoals, ridges, and buried channels, or as a byproduct of dredging associated with navigation projects. To help insure that sufficient quantities of sand continue to be available for publicly-beneficial projects, Congress enacted a law in October 1994 (P.L. 103-426; 43 U.S.C. 1337(k)(2)) that removed procedural obstacles for obtaining OCS sand and authorized negotiation of agreements for rights to use OCS sand, gravel, and shell for certain specified uses for a fee to be determined by the Secretary of the Interior. The Secretary has delegated to the Minerals Management Service (MMS) responsibility for managing OCS mineral resources. Now, State or local governments and other Federal agencies can negotiate directly with the MMS when OCS sand is needed for publicly-beneficial projects such as shore protection, beach and wetlands restoration, or Federally-funded or authorized construction projects. For all other uses, such as private use for commercial construction material, a competitive bidding process is still required under section 8(k)(1) of the law regulating leasing of mineral resources on the OCS (see next section below).

Although the new law modifies the process for acquiring rights to extract a mineral resource (negotiation instead of competitive bidding), it does not alter or diminish the Secretary's duties in terms of responsible resource management, including assessment of fees for removal of the resource.

An important objective of mineral leasing is to ensure that the public receives fair value for the use of public resources. OCS sand is part of the Nation's endowment of valuable mineral resources

and the law seeks to ensure that benefits of their development should accrue to all the Nation. MMS's goal in assessing fees is to provide the Nation with a fair return for use of the OCS sand and some assurance that the resources are being allocated to their most valuable use.

Consistent with provisions of the new law, the MMS fee determination will balance resource value with other public benefits from use of OCS sand so that the assessments are fair and not so burdensome as to prevent an otherwise acceptable project. Assessing fees on this basis will help ensure that coastal communities around the country will be able to continue to protect and restore their coastal environments in the future. This is consistent with the Federal Government's commitment to cooperate with State and local governments in proper ecosystem management and protection of public trust assets.

**Authority:** Authority to manage minerals on the OCS is found in the OCS Lands Act (OCSLA) (43 U.S.C. 1331, et. seq.). DOI's jurisdiction for leasing and regulating the recovery of minerals extends to the subsoil and seabed of all submerged lands underlying waters seaward of State-owned waters to the limits of the outer Continental Shelf (except where this may be modified by international law or convention or affected by the Presidential Proclamation of March 10, 1983, regarding the Exclusive Economic Zone). Section 8(k) authorizes the Secretary to convey resource development rights to any mineral on the OCS other than oil, gas, and sulphur (43 U.S.C. 1337(k)).

The 1994 amendment to section 8(k) of the OCSLA (43 U.S.C. 1337(k)(2)) reaffirms the authority of the Secretary with respect to OCS sand, gravel and shell and expands this authority by allowing for negotiation of agreements for certain specified uses, in lieu of competitive cash bonus bidding. See Attachment 1. [Note that most requests for negotiated agreements will be for OCS sand, but for purposes of these guidelines, gravel and shell are included in any reference to sand].

**Purpose:** Shortly after the new law was passed, all coastal States and the USACE were notified in writing, and at meetings and public conferences, about the availability of OCS sand so that requirements for obtaining sand under the new law would be fully considered in project planning. The purpose of this paper is to provide both potential users of the resource and MMS with guidelines on assessing fees for OCS resources used for shore protection, beach restoration, and coastal wetlands restoration (under OCSLA section 8(k)(2)(A)(i)). For other negotiated agreements—i.e., when OCS sand is requested for use in any other Federally funded or authorized construction project (under OCSLA section 8(k)(2)(A)(ii))—fees will also be negotiated on a case-by-case basis. For competitive leasing under section 8(k)(1), e.g., private use for commercial aggregate, MMS will establish terms and conditions at the time of offering the resources for lease.

The MMS will use these guidelines in negotiating agreements authorized in section 8(k)(2) of the OCSLA. Specific resource value estimate and fractional reductions to recognize the public interest served by promoting development of the resources are included in the guidelines, however, such figures are guidelines only and are not intended to limit or otherwise preclude the MMS from considering other information on resource value and other factors defining the public interest when negotiating specific agreements.

MMS will review these guidelines biennially and may modify them to reflect experience gained through actual practice and to respond to changing market and technological conditions. Adjustments may be made based on a review of current data and/or nationwide trends in sand prices, production costs and mineral rights payments.

### **Fees for OCS sand:**

Background Section 8(k)(2)(B) of the new law provides discretion for establishing fees. Congress did not specify an amount for the fee, but stated that the Secretary [of the Interior] determines the fee based on the value of the sand and the public interest served by developing the OCS resource:

*(2)(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against an agency of the Federal Government.*

Representative Gerry Studds, Chairman of the Committee on Merchant Marine and Fisheries, summed up the intent of the law regarding fees in this way:

*The bill accomplishes two important things. First, it makes OCS hard minerals available for public projects without requiring that the State, local, or Federal agency seeking use of the resource participate in a competitive lease sale. Under current law, these resources could only be made available to State and local governments through such a lease sale, which is too costly and too cumbersome. However, the minerals are not to be given away. The bill authorizes fees to be charged based on the value of the resources and the public interest served in developing them.*

The subparagraph (2)(B) specifically provides that a fee may not be assessed directly or indirectly against a Federal agency. Therefore, when OCS sand is used for protection of Federally-owned land (e.g., for military bases; national parks, and refuges), a fee would not be assessed. This will avoid needless transfers of money between agencies, and there is no change in resource ownership when sand is transferred from the OCS to Federally-managed property. Additionally, the law provides that a Federal agency may not bear the indirect cost of any fee. This situation could arise for example if a State were to include the amount of any fee paid pursuant to the subparagraph (2)(B) as part of the State's portion of a cost sharing agreement with the Federal Government. Congress intended that no person, State, or local government entity be allowed to pass back to the Federal Government (e.g., through a cost-sharing agreement with the USACE) the expense of fees paid under this law.

Since the 1994 amendment, the MMS has received a number of requests for rights to use OCS sand primarily in support of government-sponsored beach and wetlands restoration projects. A fee was not assessed for the first two requests for OCS sand for shore protection projects sponsored by the USACE—in Duval County, FL (4/95) and Myrtle Beach, SC (6/96). For these two cases, project planning, design, and financing had been underway for many years and/or planned

construction imminent before the new law was passed and MMS became involved. Another request to use OCS sand was for a shore restoration project at a Navy installation in Dam Neck, VA. Because the sand was conveyed to another Federal agency to protect Federal property, it was conveyed under an MOA (5/96) with no fee as provided by the new law.

Consistent with congressional intent, future requests for use of OCS sand will include fee assessments by MMS as part of the negotiated terms. An agreement will be negotiated with a project sponsor to authorize removal of a specified quantity of sand for an established fee during a time period designated as the current phase of project construction.

The new law provides that the Secretary *may* assess a fee. This affords discretion not to assess a fee on a case-specific basis. It is expected that this would occur only for limited circumstances for example, if the Secretary determines that there is a substantial public benefit from using the OCS sand in a project that is not reflected in the fee adjustments in the schedule outlined below. This could occur for example if OCS sand were needed for emergency disaster assistance operations. The precise cases (for which a fee would not be assessed) cannot be defined in advance because it requires judgement about what constitutes substantial public benefit based on the circumstances of each individual situation. However, consistent application of the fee guidelines is essential and MMS will avoid, wherever possible, any special treatment in the form of exceptions.

*Explanation of terms:* For purposes of these guidelines, discussion of the following terms is provided to explain the relationship between resource value and MMS's sand fee:

“Value of the Resource” — Ownership of OCS minerals is vested in the Federal Government to manage on behalf of the public. Most sales or leases of mineral development rights include requirements for some form of payment to compensate the resource owner for the removal of minerals from the property. Different types of payments include royalties, cash bonuses, rentals, severance taxes, work commitments, etc. These revenue generating payments attempt to garner all or a portion of the resource value for the mineral owner. For OCS sand used in governmental projects, Congress has provided for assessment of a fee (except against a Federal agency), that in part is based on the value of the sand, which will serve to compensate the public as resource owner for removal and use of OCS sand resources.

The amount of payments due the mineral owner typically is based on an assessment of the in place “value of the resource.” The value of the resource in place is not the value of the mineral eventually discovered and produced, but the value of the right to explore, and if there is a discovery, develop and produce, subject to a wide array of constraints. This value can be ascertained by determining the expected mineral economic rent associated with the sand deposit—the economic rent can be thought of as any return expected over that necessary to produce and supply the market. For OCS sand conveyed directly for use in a public works project, there is no commercial sales price on which to base a direct calculation of the mineral economic rent in order to derive resource value for a particular sand deposit. However, it is possible to derive an estimate of mineral economic rent and resource value by examining the terms of other mineral property transactions and identifying analogous resource payments currently prevailing for sand property transactions. Using a market valuation approach, MMS can rely directly on information

from the plentiful examples of compensation being paid for sand development rights in other situations—i.e., to determine market-based estimates of the landowners’ share of resource value.

“Fees for OCS Sand” — The new law authorizes assessment of fees for OCS sand which will be based in part on the *value of the resource* and the public interest served. Therefore, under the approach developed in these guidelines, assessment of fees first will require a determination of the in place resource value. But, by requiring that public interest served by the project be considered in the fee determination, Congress is allowing for a tradeoff of some resource value in the form of a financial return in order to promote development of OCS sand resources for publicly-beneficial shore protection and other public projects.

To support public works projects, like government-sponsored beach nourishment, the mineral rights conveyance will provide OCS sand for a single purpose, limited end use market—with no commercial market profit motive. Because the new negotiated agreement authority provides a noncompetitive process (for a one-time removal and noncommercial end use of OCS sand), there will be no up-front cash bonus bids, production royalty payments, rentals, or tax receipts from sale of the mineral. Instead any fees assessed under authority in the new law, would constitute the only payment made to compensate the public for its share of value of the sand removed from the OCS [but, note that the public would also realize “value” from any other benefits (e.g., storm damage reduction, recreation improvements) of using OCS sand in a project.]

The MMS sand fee will be the total money paid for the right to extract sand from the OCS and will be a lump sum assessment calculated by applying a per-unit charge to each cubic yard of sand authorized for removal. Although the fee may in part compensate the public for its "royalty interest" (as landowner) in the sand removed from the OCS, it is not the same as a royalty typically seen in mineral transactions which is paid as production occurs over the life of an operation.

*Sample Schedule of Fee Estimates:* For cost comparisons of potential sand sources and government budget purposes, project sponsors need to have information on and an idea about the potential amount of OCS sand fees early in their planning process. Therefore, MMS has developed a schedule that would provide guidance and advanced notification of how MMS may negotiate sand fees. The fee schedule is based on an estimated sand value with possible allowable reductions. This approach is recommended to comply with congressional direction about assessment of a fee which suggests that the fee be based on a balancing test weighing the value of the sand with the public interests that will be served by developing the resource. The schedule of fees in Table 1 reflects both elements of the fee assessment as discussed below:

- (1) *Estimated Value of OCS resources:* The estimated value of an OCS resource and the determination of an appropriate fee will be made by MMS at the time of negotiating an agreement. However, State and local governments may need an earlier idea of potential costs of using OCS resources in order to compare various alternatives and/or obtain funds. To assist in planning, MMS has developed a general estimate of value for the rights to develop OCS sand, gravel, and shell (see also response to question four in Attachment 2). For project planning purposes, a value of \$0.50 per cubic yard could be assumed to apply across-the-board to all OCS deposits, for all regions. Any changes in the general estimate

of value based on project-specific factors (e.g., location, costs, and competing resources) will be determined based on an assessment made at the time of negotiating any agreement.

When uses of low-unit-valued mineral materials (like sand) are for a short term and specified amount, payments are typically based on a simple, flat cents per cubic yard or ton. Unit-of-production payments are a fixed amount per unit of production and are more simple to administer and are typically used when mineral rents are expected to be small and/or mineral prices are relatively stable, like with short term sand and gravel contracts. For example, in granting rights to remove a specified, limited quantity of sand from onshore community pits on public lands, the Bureau of Land Management establishes per-unit values for the rights to remove material based on a generic appraisal of the area which can remain applicable for up to two years. On the other hand, payments based on a percent of gross or net sales price are commonly used for longer term contractual arrangements for the rights to develop a mineral deposit. They have the advantage of providing a mechanism for sharing of the risks and rewards over the life of an operation between the original mineral owner and the buyer.

- (2) *Possible Public Interest Adjustments:* In determining an appropriate fee for use of these resources, Congress has directed that the public interest served by promoting development of the resource be considered. Because OCS sand is owned by the Nation, it is reasonable to forego some financial returns for the value of the sand because other benefits would be realized by the Nation from use of OCS sand in a project. MMS will consider adjustments to the *estimated value of OCS resources* described in paragraph (1) above which would in effect reflect a “Federal contribution” of sand value in recognition of the other public benefits to the Nation that could be realized from development of the OCS resource.

There is no easy method to quantify expected public benefits. The public interest which justifies construction of shore protection or restoration projects can include storm protection, protection from upland flooding, reduction of loss of land to property owners (which can reflect expected reductions in Federal outlays for disaster assistance and flood insurance), preservation of endangered and threatened ecosystems or species, and/or maintaining a recreational ocean area. When Congress authorizes Federal participation in and funding for shore protection projects, the Federal interest is conditioned by the ownership of land or facilities adjacent to the shore by public entities, or from public access to a recreational resource, and the measure of national economic development benefits. Proposals for water projects typically undergo extensive analysis of expected public benefits and costs prior to congressional authorization.

For various types of project “purposes,” Congress has provided for Federal cost sharing by establishing the percent of project construction costs for each category which appropriately should be borne by the Federal Government (see response to question five in Attachment 2). Therefore, when Congress and/or another Federal agency has made a determination about what types of projects provide national public benefit and what percent of costs will be borne by the Federal Government, MMS will consider this information as the preferred method for accounting for public interest in the fee determination when OCS sand is



needed in a project. In other words, for determining what amount constitutes an appropriate adjustment (i.e., the percent reduction in estimated value), the MMS may use, when available, the level of Federal cost share assigned for project construction to represent the national public interest component of the fee assessment for any OCS sand used in the same project. [If Congress or a Federal agency modifies cost share percentages or the types of projects authorized for Federal cost sharing, MMS will revise the fee table to reflect the changes.]

Although MMS is proposing to rely on cost-sharing determinations applicable for Federally-sponsored projects, the law does not limit consideration of public interest in the sand fee determinations to only projects which receive Federal funding for construction. There may be projects needing OCS sand which do not get authorized for Federal sponsorship and funding. There also may be cases where a State and/or local government chooses to sponsor shore protection and restoration projects independently of the Federal Government and the public interest may be served by using OCS sand even if Congress has not provided for cost sharing for project construction. If OCS sand is requested for use in projects which do not have Federal cosponsorship or cost sharing, MMS may look at the specifics of the project to see if a public benefit adjustment is warranted in the fee determination. MMS would consider the same level of reductions shown in Table 1 for sand fee assessments when a sponsor demonstrates that the project will result in public benefits comparable to those identified for Federally-sponsored and funded projects.

*Estimating Sand Fees Payable:* The sample schedule in Table 1 will be used by MMS as guidelines when assessing fees in negotiating specific agreements.

The “Fees Payable” column in Table 1 reflects MMS’s current estimate of OCS sand value (\$0.50 per cubic yard) as modified by possible types of public interest adjustments. These adjustments (shown as percent reductions) reflect various categories of cost sharing established by Congress for construction of water resources projects. The percent reductions reflect the mandated Federal share. The precise cost share percentages applicable for a given project are determined by the Federal agency sponsor during project planning (percentages may differ from those shown in the table depending on shore ownership and type of project for each separable element of the project). The cost share percentages assigned to the project would be readily available for application in MMS’s fee determinations.

Authorized Federal cost shares for water resources projects can range from 50 to 100%, depending on the type of project and shore ownership. For example, the congressionally-determined Federal cost share is 65% for projects for hurricane and storm damage reduction; 75% for projects for wetlands and habitat protection and/or ecosystem restoration; and 50% for the incremental costs of placing on or near beaches sand dredged to construct or maintain Federal navigation projects. These cost share percent reductions may be used to represent public interest considerations in the fee assessment, are reflected in Table 1, items (a) - (c), and would result in fees for OCS sand in the range of \$0.13 to \$0.25 per cubic yard.

The inclusion of a case of a 100% reduction in Table 1, item (d), for projects or portions of projects protecting or restoring Federal property reflects congressional direction in OCSLA section 8(k)(2)(B) that no fee will be charged against a Federal agency.

For some shore protection and restoration projects, all or a portion of the OCS sand might be needed to nourish beachfront lands managed by State and local governmental units for the public (e.g., parks and conservation areas, historic landmarks). For such cases, MMS will consider reducing the estimated value by 50%, to \$0.25 per cubic yard (for any applicable portion(s) of the project), to reflect an equal sharing in the public interest of protecting public property (see Table 1, item (e)). Although Federal participation in the costs of civil works construction for such projects is currently limited by budget constraints and agency policy, Congress has authorized cost sharing for such projects at 50% Federal, 50% non-Federal, so MMS may reflect in the fee assessment, the public interest from using OCS sand for improved recreation.

Unless it can be demonstrated otherwise, if a project or a portion of a project protects private undeveloped property or privately-owned shores like beach clubs and hotels (i.e., where public access is restricted), MMS will determine that there is no public interest from use of OCS sand and therefore the fee assessed for use of any OCS sand would be based on the full estimated value of the resource (e.g., \$0.50 per cubic yard), with no reductions (see Table 1, item (f)). Thus, the fee for use of OCS sand, like the costs of constructing such projects, would be borne directly by those benefitting from the project.

**Frequently asked questions:** See Attachment 2.

**Table 1**  
**Sample Schedule of Fee Estimates**  
**OCS sand, gravel and shell used for Shore Protection and Restoration Projects**

Fee Assessment Elements:	Percent Reductions from Estimated Value	Fees Payable [\$ per cubic yard]
<b>(1) Estimated Value of OCS Resource</b>	--	\$0.50
<b>(2) Types of Public Interest Adjustments</b> [for projects or separable portions of projects]	<u>examples:*</u> (a) Benefits from hurricane and storm damage reduction. (b) Benefits from wetlands and habitat protection/restoration and ecosystem restoration improvements. (c) Benefits from use of OCS sand dredged from Federal navigation projects for beach nourishment. (d) Benefits from protection/restoration of Federally-owned land.** (e) Benefits from protection/restoration of non-Federal governmental lands (parks, landmarks). (f) Benefits from protection/restoration of private undeveloped lands or private developed lands without public access.	<u>examples:*</u> -65%      \$0.18 -75%      \$0.13 -50%      \$0.25 -100%     -- -50%      \$0.25 0          \$0.50

\* Note: exact percentages used for a particular project may differ depending on authorizing legislation, purpose and type of project (for each segment of the project) and shore ownership. Each request for OCS sand will be examined on a case-by-case basis. The percentages shown are for example only and are not intended to cover every situation. If Congress or the Federal agency sponsor modifies cost share percentages or the types of projects authorized for Federal cost sharing, MMS will revise this table accordingly.

\*\*Note: Section 8(k)(2)(B) provides that no fee can be charged directly against a Federal agency, so for these cases the Table shows no fee. For protection or restoration of Federally-owned property, an agency of the Federal Government will sponsor the project, with no State or local government co-sponsorship or shared funding.

**For Further Information Contact:**

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PUBLIC LAW 103-426—OCT. 31, 1994

108 STAT. 4371

Public Law 103-426  
103d Congress

## An Act

To authorize the Secretary of the Interior to negotiate agreements for the use  
of Outer Continental Shelf sand, gravel, and shell resources.

Oct. 31, 1994  
[H.R. 3678]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. AMENDMENTS.

(a) SECTION 8 AMENDMENTS.—Section 8(k) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(k)) is amended—

(1) by inserting "(1)" after "(k)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources—

"(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

"(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or part by or authorized by the Federal Government.

"(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against an agency of the Federal Government.

"(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), that promote the policy set forth in section 303 of that Act (16 U.S.C. 1452).

"(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this Act shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources."

(b) SECTION 20 AMENDMENTS.—Section 20(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(a)) is amended—

(1) in paragraph (l)—

(A) by inserting "or other lease" after "any oil and gas lease sale"; and

(B) by inserting "or other mineral" after "affected by oil and gas"; and,

(2) in paragraph (2), by inserting "In the case of an agreement under section 8(k)(2), each study required by paragraph (1) of this subsection shall be commenced not later than 6 months prior to commencing negotiations for such agreement or the entering into the memorandum of agreement as the case may be." after "scheduled before such date of enactment."

Approved October 31, 1994.

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LEGISLATIVE HISTORY—H.R. 3678:

HOUSE REPORTS: No 103-817, Pt. 1, (Comm. on Natural Resources).

CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 3, considered and passed House

Oct. 6, considered and passed Senate.



## Frequently Asked Questions

### **Fees for Outer Continental Shelf Resources Used in Shore Protection and Restoration Projects**

#### ***1) What are the benefits or cost savings that project sponsors can realize from use of OCS sand?***

Whether or not offshore sand is proposed for use in a shore protection project in a given location will depend upon a number of factors, which often relate to cost. Offshore sand is comparatively more costly to produce because investment in and operating the dredge can be much higher than the cost of mining onshore. Additionally, dredging costs can increase with distance from the shore because of increased transit time to and from the sand borrow site and the need for larger and more sophisticated dredging vessels. However, the transportation of sand from the seabed to the shore can be much shorter than from the nearest onshore source, so that when comparing delivered costs, offshore sand can be significantly more cost effective for some cases. Not only can use of offshore sand save coastal communities significant costs when compared to transporting sand from more distant land-based sources, but it may also be a more environmentally-preferable source.

Sand resources from offshore—and in particular from the OCS—may, in some respects, be more environmentally preferable to develop in terms of potential physical impacts to the local environment. When such benefits are expected, using offshore sand sources may be warranted even at higher delivered costs. It could take some pressure off valuable and fragile beach, wetland and dune systems as sources. In some cases, major damage has been done to the shores and beaches of the U.S. by removing sand from dunes, beaches, and rivers, both in terms of removing the natural protection from storms and contributing to sand supply deficits in the long run throughout the affected beach system. Development of sand sources farther from the shore, e.g., from the OCS, may also avoid adverse impacts from the creation of pits and burrows near the shore which can cause erosion by altering the local current and wave regime.

OCS sand also may be sought by State and local governments to avoid disputes between local coastal communities over rights to the nearby State-owned sand, or to conserve State-owned sand resources for other purposes.

**2) *Why is a fee assessed when the sand is a public good which can be used for a public benefit?***

MMS is authorized to assess a fee for OCS sand under the OCSLA and by doing so is recognizing the value of OCS resources so that they are not exploited or wasted. OCS sand is part of the Nation's endowment of valuable mineral resources and citizens from all the 50 States should realize a return on those resources. The sand resources do not belong to adjacent coastal States, but to the whole Nation. When State-owned offshore sand is used in a project, there is typically no transfer of ownership—State sand is being moved onto State or local government-managed beaches.

When rights to develop federally-owned minerals are leased or sold, the government traditionally collects some form of royalty payment along with any cash bonus bids (when the minerals are leased competitively) to compensate the public for the value of the mineral rights. For example, OCS oil and gas is leased using competitive bidding with requirements for royalty payments typically at 12½ % or 16 2/3 % of the gross value of minerals produced.

Congress generally requires that Federally-sponsored shore protection projects contain some State or local dollar contributions. Shore protection and restoration bestows substantial local and regional economic benefits and in more recent years environmental benefit to some segments of society. These beneficiaries are expected to share in the cost of providing the benefits. In most cases the citizens of a coastal State derive the most economic benefit from its sandy beaches and should therefore pay for its preservation. It is therefore reasonable and fair for some State and local revenue from taxes, bond issues, or special assessments to be invested back into preserving beaches, including payment of MMS fees to provide some compensation to the Nation for any sand removed from the OCS and used in the project.

**3) *Why is a fee assessed when another Federal agency is a partner in the project?***

Construction of some shore protection projects is authorized by Congress when National benefits can be demonstrated (usually hurricane and storm damage reduction or wetlands/habitat protection). These projects can have significant Federal involvement and can receive substantial Federal funding. Congress has in effect, through its authorizations of water projects (in biennial Water Resource Development acts) and appropriations (Energy and Water Resource Development acts), determined that approved projects provide National benefits and warrant Federal resources devoted to their construction (e.g., typically through the civil works program of the USACE).

Congressional authorization to conduct specific shore protection projects and share costs does not automatically imply authorization to use OCS sand resources, or that OCS resources will be supplied at no or reduced cost. The intent of Congress is that non-Federal sponsors share in part of the costs of shore protection projects. Likewise, with any fee assessed under the OCSLA, the non-Federal sponsor would be contributing to at least part of the value of the OCS sand used in the project (see also response to question 6).



**4) *How was the estimated sand value determined?***

For use of OCS sand in shore protection projects, the mineral conveyance is for a single-purpose, one-time removal and noncommercial end use. Because there are no other financial terms, it constitutes the full public share of value of the sand removed.

The OCS sand value represents an estimate of the in-place value of the resource. The value of the resource in place is not the value in the lessee's stockpile, but its value in the ground, prior to severance from the ground. It was derived using a "market valuation approach"—a market-based estimate of value determined by reference to mineral rights payments (e.g., contract sales, royalties) applying elsewhere. Currently prevailing values can be observed in the market by examining recent terms of sales from sand and gravel production on Federal, State, Indian, and private lands. They may not directly reflect resource values specific to the geographic area of any given shore protection project and some may not represent complete financial terms of the sale. But, the sand and gravel transactions are plentiful and will give general indications of contract sales prices or royalty rates currently prevailing for rights to develop sand and gravel.

The mineral rights payments to landowners for sand and gravel around the country generally ranged from about \$0.15 to \$0.90 per cubic yard. Values around \$0.50 per cubic yard were common, often reflecting the average of contract sales or royalty rates. Where higher rates were seen, \$0.50 per cubic yard was typically at the lower end of the range. Thus, a resource value estimate of \$0.50 would be consistent with values seen in the market, representing a moderate, fair estimate of value for use of OCS sand.

**5) *MMS may rely on existing Federal cost share mandates when available. Why are there different Federal project cost shares for different categories of projects?***

The costs of shore protection projects are shared between Federal and non-Federal interests in accordance with: (1) provisions of water resource development and other laws, (2) the specific requirements of the acts authorizing the projects in some cases, and (3) administrative instructions. Legislative authorizations have defined general rules for cost sharing, or have prescribed percentages of costs required by non-Federal entities. Prescribed percentages were traditionally developed on the basis of analogous precedents or from a sense of equity. Congress has sought to maintain a reasonable balance between the responsibilities assumed by the Federal Government and those left with the states and other non-Federal entities. With congressional acceptance and approval of recommendations for projects proposed on such basis, these rules became established policy. Enactment of the Water Resources Development Act of 1986, produced the first comprehensive treatment of cost sharing, with formulas for all water resources purposes.

Under existing laws, Congress has authorized Federal participation (through the USACE) in the cost of restoring and protecting the shore to prevent storm and wave damage to Federal

and public property and facilities (land and publicly owned facilities such as highways, buildings, parks, boardwalks), and developed private property and facilities. Public access is a requirement for all approved projects. Benefits from prevention of damages to transportation facilities are considered as storm damage reduction benefits.

If a proposed shore protection and restoration project protects primarily undeveloped private property and/or is determined to be primarily recreational (i.e., does not provide sufficient National benefit from expected storm damage reduction or environmental enhancement); or when expected project costs would exceed National benefits, Federal funds generally will not be used for cost sharing of construction. Additionally, there is no Federal participation in the costs of projects or portions of projects which benefit privately-owned shores where the use of such shores is limited to private interests (e.g., projects must provide for public access and sufficient nearby parking). Although prevention of recreational land losses is a recognized incidental public benefit from projects constructed for other purposes, current Federal policy precludes civil works funding of separable recreation features at shore protection projects.

**6) *Can the MMS sand fee be counted as part of the State's or local sponsor's share of total project costs when another Federal agency is a project cosponsor and cost sharing partner in a congressionally-authorized shore protection project?***

No, the new law (under section 8(k)(2)(B)) specifically provides that the fee cannot be assessed directly or indirectly against a Federal agency. The language precluding indirect fees means that Congress does not intend that any person, State, or local government entity be allowed to pass back to the Federal Government (e.g., through a cost-sharing agreement with the USACE) the expense of fees paid under this law. It should be noted however, to account for expected public benefits from the shore protection project in the fee schedule, MMS has provided for the same percent reduction in OCS sand value as Congress has authorized to be the Federal share of the rest of project costs in a Federally-sponsored project. The amount of the fee reduction effectively constitutes a Federal in-kind contribution to the project and the non-Federal sponsor would be paying a reduced fee representing only what its share would have been if the value of sand were fully accounted for in total project costs under the terms of the project's cost-sharing agreement.

**7) *When should MMS be contacted?***

When a project sponsor is undertaking its sand search and considering using OCS sand, it should contact the MMS to plan for any studies and coordination that may be needed for a negotiated agreement. For cost comparisons and planning purposes, the sponsor can use the schedule of fee estimates presented in Table 1.

Any Federal agency proposing to use OCS resources also should contact the MMS. The OCSLA (43 U.S.C. 1334(h)) requires that any Federal agency who takes any action which has a direct and significant effect on the OCS or its development shall promptly notify the Secretary of the Interior. When a Federal agency proposes to use OCS sand, gravel, or shell

resources under the 1994 amendment, a Memorandum of Agreement will be prepared concerning the potential use of the resources.

**8) *Who is responsible for paying the sand fee?***

When offshore sand is used for governmental shore protection projects, the Federal agency and/or the local project sponsor contracts with dredging companies to remove and place the sand. The dredging company is paid for its service; it obtains no ownership rights to the sand—its profit is from the dredge contract bid, not from investment in the minerals. Instead, the State or local government receiving the sand for its beach is the entity accruing the benefit from access to the sand and is, for MMS's purpose, responsible for any fees to be paid when OCS sand is used instead of State-owned resources. MMS will negotiate an agreement with either an agency of the State or the local government serving as project sponsor. Whichever entity signs the agreement with MMS is the responsible party for paying the sand fee, even if this entity ultimately split the costs with other project participants.

**9) *When are fees payable to MMS?***

The fee is part of the terms of the negotiated agreement. The fee amount due and payable to the MMS will be described in the document. The fee must be received by the MMS with the signed agreement before sand can be removed. Adjustments in the fee based on any MMS-approved changes in the amount of OCS sand removed will be made after final inspection when the exact amount of sand removed is confirmed.

**10) *Will these guidelines ever change?***

Yes, MMS will review and possibly revise these guidelines every two years to ensure that the approach still reflects current conditions, and to determine whether any revisions are needed to ensure that the public receives a fair return for the mineral rights conveyed. For sand resources, a 2-year review cycle should be sufficient because data shows that the price of sand and prevailing mineral payments have remained relatively stable over time.



**RESOLUTION ON NEGOTIATED AGREEMENTS**  
**Policy and Guidelines on Fees for OCS Resources**  
**Used in Shore Protection and Restoration Projects**

On this 29th day of OCTOBER 1997, IN CONSIDERATION of the duty of the Outer Continental Shelf Policy Committee to provide policy guidance to the Secretary of the Interior on issues related to management and development of mineral resources on the Outer Continental Shelf (OCS):

IT IS RESOLVED THAT:

WHEREAS, a substantial portion of the U.S. coastline is naturally migrating landward over time, and because beach nourishment often is the method used to forestall erosion, identification of large volumes of suitable sand sources has become a significant issue for many coastal States; and

WHEREAS, the OCS contains abundant quantities of sand which could be used to support governmental projects in coastal States to forestall erosion, protect shoreline development, provide improved recreation, and protect valuable wetlands resources; and

WHEREAS, the Congress, in enacting the 1994 amendment to the OCS Lands Act, has provided the Secretary with broad authority to negotiate agreements which will help facilitate the use of OCS sand, gravel, and shell resources in government-sponsored beach restoration, shore protection and wetlands restoration projects; and

WHEREAS, the 1994 amendment further authorizes the Secretary, in carrying out a negotiated agreement, to charge a fee for use of those resources based on an assessment of the value of the resource and the public interest served by promoting development of the resource; and

WHEREAS, the OCS Policy Committee has established a Subcommittee on OCS Hard Minerals whose purpose in part is to:

- provide support for the Secretary of the Interior for development of the principles used in negotiating agreements for the leasing, extraction and use of OCS hard minerals for private and public projects, and
- help develop policy and procedures for managing OCS hard mineral resources in consultation with Congress, coastal States, and private industry; and

WHEREAS, the Secretary of the Interior through the Minerals Management Service (MMS) requested, and the Subcommittee has so provided, assistance in the development of policy and guidelines for determining fees for OCS resources used under negotiated agreements; and

WHEREAS, the OCS Policy Committee has determined that the “Proposed Policy and Guidelines on Fees for OCS Resources Used in Shore Protection and Restoration Projects” is consistent with the 1994 amendment and provides an acceptable approach for determining fees which will balance resource value with the public interest served, so that fee assessments will provide a fair return to the Nation for use of OCS resources, but will not be so burdensome as to prevent use of these resources in otherwise acceptable projects;

BE IT THEREFORE RESOLVED THAT, the OCS Policy Committee endorses the use of a negotiated agreements process for providing access to OCS sand, gravel, and shell so that sufficient quantities of resources will be available for publicly-beneficial projects and help ensure that coastal communities around the country will be able to continue to protect and restore their coastal environments in the future.

AND BE IT FURTHER RESOLVED THAT, the OCS Policy Committee supports development of guidelines for implementing the 1994 amendment authorizing negotiated agreements, and urges MMS to adopt the “Proposed Policy and Guidelines on Fees” and make them available to the public as soon as possible in order to enhance the timely dissemination of information and assist Federal, State and local government planners in their decision making about use of OCS resources in planned future projects.

*The Committee approved the Resolution on October 29, 1997--24 in favor, 2 opposed.*



