



**MEMORANDUM OF AGREEMENT
BETWEEN THE
BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND
ENFORCEMENT — U.S. DEPARTMENT OF THE INTERIOR
AND THE
U.S. COAST GUARD — U.S. DEPARTMENT OF HOMELAND SECURITY**

BOEMRE/USCG MOA: OCS-06

Effective Date: 27 July 2011

**SUBJECT: OFFSHORE RENEWABLE ENERGY INSTALLATIONS ON THE
OUTER CONTINENTAL SHELF**

A. PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to identify and clarify the roles and responsibilities of the parties to this MOA, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and the U.S. Coast Guard (USCG) (“participating agencies”), for the issuance of leases and approval of Site Assessment Plans (SAPs), General Activity Plans (GAPs) and Construction and Operations Plans (COPs) for offshore renewable energy installations (OREIs)¹ on the Outer Continental Shelf (OCS). For the purposes of this MOA, an OREI is a facility located on the OCS that produces or supports the production, transportation, or transmission of energy from sources other than oil and gas (43 United States Code (U.S.C.) § 1337(p)(1)(C)).

For alternate use projects that involve the re-use of existing OCS facilities for renewable energy purposes, the applicability of this MOA will be determined on a case-by-case basis by BOEMRE and the USCG, depending on the nature and extent of the modifications being proposed to the existing OCS facility or facilities.

Implementation of this MOA will be in accordance with Section J, “*Memorandum of Agreements - Development and Implementation*” of the Memorandum of Understanding (MOU) between the Minerals Management Service (MMS), and the USCG dated September 30, 2004, which is available at <http://www.boemre.gov/MOU/PDFs/MOU-MMSUSCG-30September2004.pdf> .

¹ For hydrokinetic projects, BOEMRE is responsible for lease issuance, but the Federal Energy Regulatory Commission (FERC) is responsible for issuing the operating license. See Memorandum of Understanding Between the U.S. Department of the Interior and the Federal Energy Regulatory Commission, April 9, 2009, which is available at <http://www.ferc.gov/legal/maj-ord-reg/mou/mou-doi.pdf> .

The participating agencies will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOA.

B. STATUTORY AUTHORITIES

BOEMRE enters into this agreement pursuant to the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 – 1356a. Applicable BOEMRE regulations are found in 30 Code of Federal Regulations (CFR) Part 285, “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf” (REAU regulations).

The USCG enters into this agreement pursuant to 14 U.S.C. §§ 93(a)(20) and 141, as well as OCSLA, 43 U.S.C. § 1331 – 1356a. Applicable USCG regulations are found under parts of Titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the CFR.

Secretarial Order No. 3302, issued by the Secretary of the Interior on June 18, 2010, changed the name of the MMS to BOEMRE and stated that BOEMRE shall exercise all authorities previously vested in the MMS.

C. JURISDICTION

The Energy Policy Act of 2005, Pub. L. No. 109-58 (August 8, 2005), amended the OCSLA to grant the Secretary of the Interior, in consultation with the Secretary of the Department of Homeland Security (DHS) and other relevant departments and agencies, the authority to issue leases, easements, or rights-of-way (ROWs) for previously unauthorized activities that: (1) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (2) use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCSLA (43 U.S.C. § 1337(p)(1)(C)). On March 20, 2006, the Secretary delegated to BOEMRE this authority. On April 29, 2009, BOEMRE promulgated the REAU regulations (74 FR 19638) to carry out these responsibilities. The REAU regulations, codified at 30 CFR Part 285, provide for the orderly, safe, and environmentally responsible development of renewable energy resources on the OCS.

The USCG, within DHS, is jointly responsible with BOEMRE for enforcing the safety and environmental regulations applicable to facilities on the OCS (*see* OCSLA). Pursuant to Title 46 of the U.S.C. as well as other authorities, the USCG regulates OCS facilities, mobile offshore drilling units (MODUs) and vessels engaged in OCS energy and mineral development activities, including, but not limited to, tank vessels, offshore supply vessels, and other vessels involved in the transfer of certain cargoes.

D. AGENCY RESPONSIBILITIES

1. COMMUNICATIONS AND CONTACTS

- (a) The participating agencies will identify, in writing, appropriate representatives (see chart below) for the purposes of keeping each other timely informed of issues, relevant applications, and routine policy determinations; and to coordinate joint activities. For the USCG, the Assistant Commandant for Marine Safety, Security and Stewardship is responsible for identifying that representative. For BOEMRE, the Associate Director of Offshore Energy and Minerals Management is responsible for identifying that representative.
- (b) The headquarters representatives of the participating agencies will maintain an accurate and updated list of contacts for their respective agency and will notify their counterpart of any changes to agency representatives.
- (c) The participating agencies will, to the extent practicable, share with one another the information gathered, considered, and relied upon by each of them for making decisions related to OREI applications, plans, grants, or leases.

Designation of agency representatives:

	USCG	BOEMRE
Headquarters	The Commandant (CG-55) / Director of Marine Transportation Systems Management will be the agency's primary point of contact.	The Program Manager of BOEMRE's Office of Offshore Alternative Energy Programs (OAEP), located in Herndon, Virginia, will be the agency's primary point of contact.
USCG District Offices / BOEMRE Region Offices	<p><u>New England:</u> D1 Chief of Prevention</p> <p><u>Mid-Atlantic:</u> D5 Chief of Prevention</p> <p><u>South East:</u> D7 Chief of Prevention</p> <p><u>Gulf of Mexico (GOM):</u> D8 Chief of Prevention</p> <p><u>California:</u> D11 Chief of Prevention</p> <p><u>Washington & Oregon:</u> D13 Chief of Prevention</p> <p><u>Hawaii:</u> D14 Chief of Prevention</p> <p><u>Alaska:</u> D17 Chief of Prevention</p>	<p>OAEP will determine if BOEMRE involvement is needed at its Region and District offices. BOEMRE's Region offices are located as follows:</p> <p><u>GOM OCS Region:</u> New Orleans, LA</p> <p><u>Pacific OCS Region:</u> Camarillo, CA</p> <p><u>Alaska OCS Region:</u> Anchorage, AK</p>

2. BOEMRE AND USCG COOPERATION

- (a) BOEMRE is responsible for issuing leases, easements, and ROWs for activities on the OCS that produce or support production, transportation, or transmission of energy sources other than oil and gas (43 U.S.C. § 1337(p)(1)(C)). As the lead agency pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, BOEMRE is responsible for the development and preparation of appropriate NEPA documentation for such activities on the OCS. BOEMRE will utilize the USCG's expertise during the NEPA process and invite the USCG to be a cooperating agency during the preparation of NEPA documentation. The USCG will participate in the NEPA process as a subject matter expert for maritime safety, maritime security, maritime mobility (management of maritime traffic, commerce, and navigation), national defense, and protection of the marine environment. During BOEMRE's preparation of NEPA documentation, the USCG should participate at the earliest possible time, particularly during the scoping process (see 40 CFR 1501.7).
- (b) BOEMRE will invite the USCG to participate in BOEMRE/State Renewable Energy Task Forces as they are established. The USCG will provide subject matter expertise on maritime safety, maritime security, maritime mobility (management of maritime traffic, commerce, and navigation), national defense, and protection of the marine environment during the development of any Request for Interest (RFI), Call for Information and Nominations (Call), other planning notices prepared by BOEMRE, or during BOEMRE's review of any unsolicited lease or grant requests (see 30 CFR. 285.210-214).
- (c) The USCG and BOEMRE recognize the important role that risk management strategies play in ensuring the safe, secure, and environmentally responsible construction and operation of a renewable energy facility. Vessel, facility, and waterway navigational safety and security assessments are a key component of the risk management process. Accordingly, the USCG and BOEMRE have agreed to collaborate in assessing the navigational risks that may be posed by renewable energy development. This includes collaboration on the use of navigational safety risk assessments for evaluating renewable energy development activities on the OCS. Such assessments may provide useful information for assessing navigation and maritime concerns associated with renewable energy development on the OCS.
- (d) When BOEMRE receives or begins consideration of a proposed lease, easement, or ROW, the assigned representative for each agency will establish communications with each other as soon as possible. The goal is for both parties to carry out their respective processes on a concurrent rather than a sequential basis, with the objective of avoiding unnecessary delay.

- (e) The USCG will provide recommendations on the matters identified in paragraphs (a) and (b) above to BOEMRE in a timely manner that will allow BOEMRE to develop its NEPA documents, and to determine whether to issue leases, easements, or ROWs in a reasonable timeframe. BOEMRE will not issue leases, easements, or ROWs that are conditioned on future USCG actions.

3. BOEMRE PROCESS

In order for BOEMRE and the USCG to effectively interact throughout the process of issuing a lease or grant and approving the plans for an OREI, it is important that both agencies understand their respective roles regarding how the agencies will work together through the process as put forth by BOEMRE's regulations (30 CFR Part 285). The USCG and BOEMRE will work together to identify all the key steps in the process at which information exchanges and cooperative engagement is most appropriate.

4. REGULATION OF VESSELS

BOEMRE and the USCG agree to work cooperatively to avoid overlapping and duplicative regulatory regimes with regard to vessels involved with, or servicing, OREIs.

For vessels inspected and certificated by the USCG, the participating agencies agree that the safety of vessel-related systems and equipment on those vessels will be regulated by the USCG if the USCG has an applicable regulation. If BOEMRE has a regulation or safety management system requirement applicable to a vessel system for which there is no USCG regulation, the participating agencies agree that BOEMRE regulation or safety management system requirement will apply unless the USCG objects to such application. In cases where the USCG objects, BOEMRE and the USCG agree to coordinate and collaborate on any regulatory amendments necessary to ensure vessel safety. The parties agree to collaborate early on in the OREI project review process to identify which vessels involved in the construction, operation, and maintenance of the OREI will be inspected and certificated by the USCG, and which ones will not.

E. IMPLEMENTATION

The following steps will be initiated once BOEMRE lease or grant issuance process has been initiated:

BOEMRE will:

1. Advise the USCG, specifically Commandant (CG-55), of the receipt of any unsolicited lease or grant request, or the proposed issuance of a RFI, Call, or other planning notice.
2. Forward the lease or grant request, or appropriate parts of it, or the draft RFI, Call, or other planning notice to Commandant (CG-55).
3. Inform the Commandant (CG-55) that BOEMRE has advised any applicants of the availability of the USCG's current Navigation and Vessel Inspection Circular (NVIC) on "Guidance on the Coast Guard's Roles and Responsibilities for Offshore Renewable Energy Installations (OREIs)" and the contact information for the appropriate USCG point of contact at Commandant (CG-55).

USCG (Commandant (CG-55)) will:

1. Acknowledge receipt of the lease or grant request or draft RFI, Call, or other planning notice from BOEMRE.
2. Forward a copy of the lease or grant request or draft RFI, Call, or other planning notice to the appropriate USCG office within whose area of responsibility the OREI may be located.
3. Provide BOEMRE with the name of the USCG's Point of Contact (POC) and authorize direct liaison between that POC and BOEMRE.
4. Provide a final package containing the USCG's recommendations to BOEMRE at each phase of the process where such input is appropriate.

F. GENERAL PROVISION

Nothing in this MOA alters, amends, or affects in any way the statutory and/or regulatory authority of BOEMRE and DOI or the USCG and DHS. This MOA cannot be used to obligate or commit funds or as the basis for the transfer of funds. All provisions in this MOA are subject to the availability of personnel and funds. The MOA is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOA neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable law. If a term of this agreement is unlawful or inconsistent with authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect provided the remaining portion of the MOA can be read coherently and understood by both parties.

G. AMENDMENTS TO THE MOA

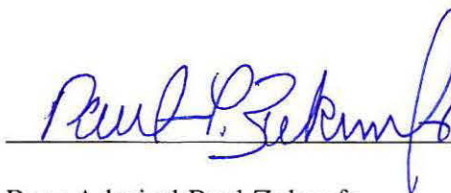
This MOA may only be amended by mutual written agreement of the participating agencies as described in Section J of the MMS/USCG MOU dated September 30, 2004.

H. TERMINATION

This MOA remains in effect until terminated. The MOA may be terminated upon a 30-day advance written notification by either party to this agreement.



Robert P. LaBelle
Acting Associate Director for Offshore
Energy and Minerals Management
Bureau of Ocean Energy Management,
Regulation and Enforcement
U.S. Department of the Interior



Rear Admiral Paul Zukunft
Assistant Commandant for Marine
Safety, Security and Stewardship
U.S. Coast Guard
U.S. Department of Homeland Security