Memorandum of Understanding on Coordination and Collaboration Regarding Outer Continental Shelf Energy Development and Environmental Stewardship

between the
U.S. Department of the Interior and U.S. Department of Commerce

May 19, 2011

A. PURPOSE: This Memorandum of Understanding (MOU) establishes an agreement between the Department of the Interior (DOI), Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and the Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA). The intent of this document is to establish a formal and lasting agreement between BOEMRE and NOAA regarding coordination and collaboration between the agencies to ensure that decision-making relating to the development of outer continental shelf (OCS) energy resources is based on the relevant scientific information and expertise of both agencies in order to fulfill the stewardship and conservation of living marine resources and ecosystems responsibilities that fall under the agencies' respective authorities.

This MOU describes how BOEMRE and NOAA will cooperate and coordinate, including at the early stages in certain OCS energy-related processes, by:

1. Defining specific processes to ensure effective and timely communication of agency priorities and upcoming activities;
2. Identifying and undertaking critical environmental studies and analyses, including the sharing of information, and making specific scientific efforts to significantly improve products and demonstrate efficient governance and sound stewardship of the Nation's marine ecosystems, resources, and coastal communities[1];
3. Collaborating on scientific, environmental, and technical issues related to the development and deployment of environmentally sound and sustainable offshore wind and marine and hydrokinetic (MHK) renewable energy technologies; and
4. Increasing coordination and collaboration on public announcements related to OCS activities, including with respect to research and scientific priorities.

[1] The agencies recognize there is a need to collaborate on environmental review documents to permit the adoption of analyses that support each agency's permitting responsibilities, including, for example, the adoption of Environmental Impact Statements or Environmental Assessments to the maximum extent possible.

B. AUTHORITIES: The DOI and DOC authorities relevant to this agreement include but are not limited to:

1. Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 *et seq.;*
2. National Marine Sanctuaries Act (NMSA) 16 U.S.C. §§ 1431 *et seq.*;
3. Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. §§ 1801 *et seq.*;
4. The Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361 *et seq.*;
5. Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451 *et seq* ;
6. Integrated Coastal and Ocean Observing Systems Act (ICOOS), 33 U.S.C. §§ 3601 *et seq*;
7. The Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.*;
8. The Oil Pollution Act (OPA), 33 U.S.C. §§2701 *et seq.*;
9. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347;
10. Executive Order 13547 (July 19, 2010) -- Stewardship of the Ocean, Our Coasts, and the Great Lakes;
11. The Coast and Geodetic Survey Act, 33 U.S.C. §§883a *et seq*; and
12. The National Weather Service Organic Act, 15 U.S.C. §313.

This MOU does not modify existing agency authorities and does not reduce, expand, or transfer any of the statutory or regulatory authorities and responsibilities of the signatory agencies.

C. BACKGROUND: Stewardship of the marine and coastal environment is mandated by OCSLA, NEPA, and other related Federal environmental and socioeconomic laws (including, for example, ESA, CAA, Executive Order 12898). DOI's mission, as the manager of energy-related activities on OCS Federal lands, includes ensuring that OCS resources are made available for development in a timely and efficient manner while protecting the environment and ensuring that those offshore energy and mineral resources are developed safely. DOI must also ensure that leases, easements, and rights of way for energy and marine minerals-related purposes, including the development of renewable energy, are issued and overseen in a manner that, among other things, affords environmental protection and involves appropriate consultation with relevant Federal agencies. Further, DOI funds ocean research through the Environmental Studies Program to provide scientific information in support of policy and management decisions.

NOAA's mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. NOAA is responsible for a variety of activities in marine and coastal ecosystems as mandated by several statutes and authorities. These activities include managing protected species, managing commercial and recreational fisheries, protecting marine and coastal habitats, managing development of the coastal zone, and designating and protecting marine areas of special significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. These activities are conducted pursuant to the

ESA, CZMA, MMPA, MSA, NMSA and other relevant statutes and involve appropriate consultation with relevant Federal agencies.

In addition, Executive Order 13547 on Stewardship of the Ocean, Our Coasts, and the Great Lakes that established our National Ocean Policy (NOP) further highlights the need for close and regular coordination and collaboration between Federal agencies regarding oversight of Federal waters and addresses a number of priority objectives that directly relate to the issues and work outlined in this MOU. The NOP emphasizes, among other things: the use of the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes; the enhancement of our capacity to understand, respond to, and adapt to a changing global environment; and support for sustainable, safe, secure, and productive access to and uses of the ocean, our coasts, and the Great Lakes. Further, the Final Recommendations of the Interagency Ocean Policy Task Force call for the use of Coastal and Marine Spatial Planning (CMSP) as a key element for implementing those elements of the National Ocean Policy.

D. RESPONSIBILITIES AND PROCEDURES:

1. General Provisions

i. Where BOEMRE and NOAA are considering the potential effects of oil and gas and renewable energy-related activities under their respective authorities, the agencies agree to work cooperatively with each other and relevant private parties to ensure awareness of each agency's statutory and regulatory timeframes and requirements, and to provide sufficient information to the other agency to inform their decision-making processes within those timeframes. It will remain the responsibility of parties seeking to conduct activities on the OCS to manage their projects in compliance with BOEMRE's and NOAA's statutory and regulatory requirements.

ii. BOEMRE and NOAA will keep each other apprised of the status of their regulatory processes and respective reviews to ensure that both agencies are provided any information needed to support their decision making processes and determinations.

iii. BOEMRE and NOAA will develop potential ways to appropriately align their regulatory and decision making processes and endeavor, where appropriate, to create consistent procedures for monitoring and mitigation measures.

iv. BOEMRE and NOAA will meet regularly to identify the best available science to support future regulatory decisions and to identify any additional studies that may be relevant to informing the agencies' decision making processes.

v. BOEMRE and NOAA will engage early in their respective processes in order to improve coordination and to identify issues that should be raised at critical stages, such as, for example, prior to solicitation of public comments or issuance of a Request for Information. Specifically, BOEMRE and

NOAA will advise each other of matters of particular interest or concern, which will help guide collaboration between the agencies through the stages and processes described below, and allow, as appropriate, for each agency to rely on or incorporate the other's NEPA documents.

2. **NOAA involvement in BOEMRE OCS energy-related programs and environmental analyses.**

i. **OCSLA process.** NOAA may designate an official to be involved in and coordinate with BOEMRE in connection with the development of the relevant program documents and other information to support the decision-making process related to the oversight of offshore oil and gas activities at the following stages.

- **5-Year Oil and Gas Leasing Program and Lease Sale stages.** As coordinated with an official to be designated by NOAA, BOEMRE and NOAA will communicate early in the 5 year planning and lease sale processes, including at least 2 weeks prior to solicitation of comments and to identify issues that should be raised in Requests for Information or Interest. NOAA will submit written comments in connection with the Requests for Information as BOEMRE develops options for a new 5-Year Oil and Gas Leasing Program. Specifically, NOAA will state all areas of particular interest or concern to help guide collaboration between the agencies through the stages and processes described below.
- **Relative Environmental Sensitivity Analysis.** As coordinated by an official to be designated by NOAA, NOAA will participate in the development of environmental sensitivity analyses.
- **Geological and Geophysical (G&G) Permits, Exploration Plans (EP) and Development and Production Plans (DPP), and Development Operations Coordination Documents (DOCD).** Through an official to be designated by NOAA, upon receipt of a G&G permit application, EP, DPP, or DOCD, BOEMRE will notify NOAA of the submission of the material and, if requested by NOAA, transmit the material to NOAA and schedule a meeting for the purpose of discussing the material. As part of this meeting, BOEMRE and NOAA personnel will identify any areas of concern raised by the material and discuss each agency's regulatory process and timelines. BOEMRE will notify NOAA of any EP, DPP, or DOCD that might be subject to a Categorical Exclusion Review, and NOAA will have the opportunity to review and comment on the EP, DPP, or DOCD within a reasonable timeframe that is consistent with BOEMRE's statutory and regulatory responsibilities and timelines.

ii. **NEPA analyses.** BOEMRE will be the lead agency with respect to any NEPA analysis related to offshore activity within BOEMRE's jurisdiction or authority. With regard to EISs and EAs for which BOEMRE is the lead agency, BOEMRE will invite NOAA to be a cooperating agency on the

development of the EIS or EA to support BOEMRE's decision-making. If NOAA elects to participate as a cooperating agency, BOEMRE will retain decision-making responsibility for direction and oversight of the EIS or EA, and BOEMRE will consult with and involve participating NOAA personnel in contractor selection, methodology evaluation, scoping, development of alternatives, drafting, and review of draft and final products, as appropriate and consistent with BOEMRE's statutory and regulatory responsibilities and timelines.

iii. **Renewable energy or alternate use activities.**

- Intergovernmental Task Forces: BOEMRE will invite NOAA to participate in any current and future Intergovernmental Task Forces or other intergovernmental vehicles and initiatives established to consult and coordinate on renewable or alternative energy or alternate use activities (including, for example, Smart from the Start). NOAA will provide appropriate personnel to participate in these consultation and coordination efforts, and provide data and information to support these efforts, consistent with their purpose and the directives of Executive Order 13547.
- Environmental review: As the lead agency, BOEMRE will invite NOAA to participate in the development and review of its EISs or EAs related to renewable energy projects and alternate use of OCS facilities for energy-related or other marine-related purposes, as authorized by sections 8(p)(1)(C) and (D) of OCSLA, as amended. BOEMRE procedures for authorizing renewable energy and alternate use activities are set forth in regulation at 30 CFR 285.
- BOEMRE will consult with and involve participating NOAA experts in methodology evaluation, scoping, development of alternatives, drafting, and review of draft and final products, as appropriate and consistent with BOEMRE's statutory and regulatory responsibilities and timelines.
- BOEMRE will provide NOAA with the necessary information to inform and facilitate NOAA's participation as a cooperating agency in environmental reviews.
- BOEMRE and NOAA shall coordinate, as appropriate under the terms of this agreement, on the agreement between DOI and DOE on the coordinated deployment of Offshore Wind/MHK technologies, and on the agreement between NOAA and DOE on Weather-dependent and Oceanic Renewable Energy Resources in order to promote tri-agency collaboration and to eliminate duplication of effort on offshore wind energy and MHK technology development. The Interagency Working Group on Resource Assessment and Design Conditions may be utilized to support this objective.

iv. **Responses.** For all activities described in Section D.2, NOAA agrees to respond within a mutually-agreeable timeframe. If NOAA does not provide comments within the agreed-upon timeframe, then BOEMRE may record that NOAA has identified no significant issues or has provided "no

comment." Where activities in Section D.2 that are linked to mandated statutory or regulatory timeframes (for example, ESA consultations and MMPA permitting), NOAA will respond within these timeframes or within a timeframe agreed upon between NOAA and BOEMRE. In addition:

- Within 10 working days of receipt of the invitation to participate, NOAA will notify BOEMRE of its decision to accept or decline and assume the roles and responsibilities described above.
- NOAA may notify BOEMRE that it intends to respond outside the determined timeframe and provide draft comments for consideration, or request a one-time, 5 working day extension of the comment deadline.
- BOEMRE will, as appropriate, accept NOAA's comments on activities described in Section D.2 (e.g., development of draft or final NEPA documents or relative environmental sensitivity analysis). BOEMRE will document and explain in writing any decision not to incorporate a comment by NOAA and NOAA will have an opportunity to respond, if possible, prior to the finalization of the relevant document.

3. **BOEMRE involvement in NOAA OCS energy-related environmental analyses.** NOAA will invite BOEMRE to be a cooperating agency for any matter that NOAA has under its jurisdiction relating to OCS energy development. NOAA will be the lead agency on such matters. The roles of each agency are described below for each document.

   i. **NEPA Analyses.** As lead agency, NOAA will invite BOEMRE to be a cooperating agency on the development of relevant NEPA analyses to support NOAA's decisions that could relate to OCS energy activities. If BOEMRE elects to participate as a cooperating agency, NOAA will retain decision-making responsibility for direction and oversight of the EIS or EA, but will consult with and involve participating BOEMRE personnel in group/contractor selection, methodology evaluation, scoping, development of alternatives, drafting, and review of draft and final products, as appropriate and consistent with NOAA's statutory and regulatory responsibilities and timelines.

   ii. **Responses.** For all activities described in Section D.3, BOEMRE agrees to respond within a mutually-agreeable timeframe. If BOEMRE does not provide comments within the agreed-upon timeframe, then NOAA may record that BOEMRE has identified no significant issues or has provided "no comment." Where activities in Section D.3 are linked to mandated statutory or regulatory timeframes (for example, ESA consultations and MMPA permitting), BOEMRE will respond within these timeframes or within a timeframe agreed upon between BOEMRE and NOAA.

   - Within 10 working days of receipt of the invitation to participate, BOEMRE will notify NOAA of its decision to accept or decline the invitation to participate and assume the roles and responsibilities described above.

- BOEMRE may notify NOAA that it intends to respond outside the determined timeframe and provide draft comments for consideration, or request a one-time, 5 working day extension of the comment deadline.
- NOAA will, as appropriate, accept BOEMRE's comments on activities described in Section D.3 (including, for example, development of EAs or draft and final EISs). NOAA will document and explain in writing any decision not to incorporate a comment by BOEMRE, and BOEMRE will have an opportunity to respond, if possible, prior to the finalization of the document.

4. **Environmental studies and scientific collaboration.** BOEMRE has partnered with Federal scientists from NOAA throughout the history of the offshore energy program. BOEMRE and NOAA have had many significant and successful partnerships related to scientific research and studies projects, including those conducted under the auspices of the National Oceanographic Partnership Program. These partnerships have resulted in the achievement of the agencies' research objectives with a substantial cost savings to each agency. OCSLA requires, to the maximum extent practicable, DOI to enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce for Outer Continental Shelf environmental studies.[2]

i. To support and promote the environmental studies partnership, BOEMRE will:
- Invite NOAA to be an ex officio member of its OCS Scientific Committee and to participate in the Committee's meetings;
- Consider NOAA's official comments on the draft National Studies List (NSL), presented at the OCS Scientific committee meetings, and discussions of potential joint priority research areas, when prioritizing studies for the current fiscal year; and
- Identify and discuss upcoming studies that NOAA could perform for BOEMRE, or where inter-agency collaboration is warranted.

ii. To support and promote the environmental studies partnership, NOAA will:
- Invite BOEMRE, as appropriate, to be a member of any NOAA Scientific Advisory Board Working Groups related to OCS activities or marine minerals;
- Provide the information necessary to establish mutually agreeable timelines for meeting both agencies' statutory requirements and the timely completion of environmental studies;
- Provide historical and current scientific data for ongoing and planned studies and other information to assist in planning and decision-making relating to ongoing or future environmental studies; and
- Notify BOEMRE on an annual basis of the availability of NOAA scientists to assist in the planning process for the conduct of environmental studies outlined above.

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[2] 43 U.S.C. § 1346(f).

iii. To support and promote scientific collaboration, BOEMRE and NOAA will:
   - Where feasible, provide funding assistance and, where possible, participate in scientific projects and environmental studies outlined in any future reimbursable service agreements under this umbrella MOU; and
   - Notify each other of planned scientific projects or studies relevant to OCS or related activities to see if there is potential for collaboration or coordination (including, for example, undersea transmission line research).

5. **Quarterly leadership meetings.** BOEMRE and NOAA senior leadership will meet on a quarterly basis to discuss topics relevant to OCS energy and marine mineral development and this MOU. These meetings will alternate between BOEMRE and NOAA headquarters offices. Specifically, the purpose of these meetings will be to, among other things:

   i. Discuss any issues arising under this MOU;
   ii. Discuss emerging issues and facilitate resolution of any issues related to cooperation and coordination among the agencies on matters related to OCS energy development and oversight;
   iii. Make both agencies aware of relevant upcoming programmatic and policy decisions;
   iv. On at least an annual basis evaluate the implementation of this agreement and activity and progress related to National Ocean Policy objectives, including in particular CMSP; and
   v. Discuss coordination and cooperation with regard to oil spill research and preparedness.

6. **Offshore Safety and Oil Spill Response.** NOAA has responsibilities related to the response to and restoration following oil spills in coastal and marine environments. Under the National Contingency Plan, NOAA is required to provide "expertise in environmental chemistry, oil slick tracking, pollutant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management." To fulfill this requirement, NOAA has established and maintains a scientific support team with considerable expertise and experience in all these areas of environmental response and restoration.

   BOEMRE requires that every OCS operator prepare and submit for approval an Oil Spill Response Plan (OSRP) for each of its offshore facilities. These OSRPs must describe in detail the actions that an operator's spill management team will take should an oil spill occur. Included in the response plan is a "worst case" discharge response scenario, as well as contingency plans for less severe spills or emergencies. As part of the BOEMRE review of this document, BOEMRE verifies, among other things, that the operator has a contract with an approved Oil-Spill Removal Organization that is capable of providing qualified personnel and sufficient equipment to respond to their worst case discharge spill volume.

i. **Ocean Energy Safety Advisory Committee (OESC).** BOEMRE's Ocean Energy Safety Advisory Committee provides a forum for representatives from industry, government, non-governmental organizations, national laboratories, and the academic community to exchange information and ideas, share best practices, and develop cross-organizational expertise. The OESC will facilitate the identification, prioritization and definition of research and development projects in the areas of drilling and workplace safety, containment, and oil spill response.

- NOAA has and will continue to designate a representative to serve on the OESC.
- In addition to participating in the OESC, BOEMRE and NOAA will participate, along with other relevant parties, in an oil spill response working group or other technical working groups, as appropriate, to develop recommendations, hold workshops and focus on issues relating to improved skimming and shoreline protection equipment, as well as other advancements in oil spill cleanup and response technologies.

ii. **Oil Spill Response Plans**.

- BOEMRE will notify NOAA upon receipt of an operator OSRP. Upon request by NOAA, BOEMRE will provide NOAA a meaningful opportunity to review operator OSRPs to ensure that they adequately address living marine resources issues.

iii. **Oil Spill Exercises.**

- BOEMRE will notify NOAA of all unannounced oil spill drills conducted in the Gulf, Pacific, and Alaska OCS Regions and coordinate the participation of designated NOAA personnel in the drills.
- When possible, designated NOAA personnel will participate in BOEMRE unannounced drills and provide input into evaluation of the performance of the operator.

7. **Announcements.** NOAA and BOEMRE will work to coordinate all press releases, published advertisements, or other statements intended for the public that relate to OCS activities covered by this MOU where inter-agency collaboration was utilized to develop or complete the document or activity detailed in the announcement.

8. **BOEMRE Reorganization.** Upon the completion of BOEMRE's reorganization process, all responsibilities and processes outlined in this document will remain in effect and be immediately transferred to the relevant new agency (Bureau of Ocean Energy Management (BOEM), or Bureau of Safety and Environmental Enforcement (BSEE)), until such time as this agreement can be officially updated to reflect the new organizational structure within DOI.

E. **PERIOD OF PERFORMANCE:** This MOU shall be in effect for five (5) years from the date it is signed. It shall be reviewed three (3) years after it goes into effect at a quarterly leadership meeting. Should both parties agree to extend this agreement,

the MOU will remain in effect for a further period of five (5) years, or a period determined by that review.

F. FUNDING:

1. Where appropriate, BOEMRE and NOAA will enter into project-specific reimbursable service agreements (RSAs) that will describe the specific services to be provided by DOI or DOC to the other agency. Each RSA will also describe in detail how costs will be apportioned between the Departments, and will establish a mechanism for reimbursement of such expenses.

2. Nothing in this agreement should be construed to obligate agency funds, property, or services. Nor does this agreement commit either agency to enter into any contract or binding obligation, or to spend funds on any particular project or purpose.

G. CONTACTS: The list of contacts below is designed to identify specifically the respective agency personnel responsible for implementing the various provisions of the MOU.

Topic	BOEMRE	NOAA
Quarterly leadership meetings	• Deputy Director, BOEMRE • Chief of Staff, BOEMRE • Chief of Staff, Offshore Energy and Minerals Management (OEMM)	• Principal Deputy Under Secretary, NOAA • Chief of Staff, NOAA • Director of Policy, NOAA • Assistant Administrators for NMFS and NOS
National environmental analyses	• Chief, Environmental Division • Chief, Environmental Assessment Branch • Chief, Renewable Energy (As appropriate) • Chief of Staff, OEMM	• Chief Scientist, NOAA • Chief Scientist, NOAA/NMFS • Director of Office of Response and Restoration, NOAA/NOS • Director of Office of Protected Resources, NOAA
Studies and science	• Chief, Environmental Division • Chief, Environmental Sciences Branch • Chief of Staff, OEMM	• Chief Scientist, NOAA • Chief Scientist, NOAA/NMFS • Director of Office of Response and Restoration, NOAA/NOS • Director of Office of Protected Resources, NOAA • Director, Office of Science and Technology, NOAA/NWS • Director, Earth Systems Research Laboratory, NOAA/OAR

Regional environmental analysis	• Chief, Environmental Division • Chief, Environmental Assessment Branch • Appropriate Deputy Regional Director • Appropriate Regional Supervisor, Leasing and Environment • Chief, Appropriate Regional Environmental Assessment Section (or equivalent) • Chief, Renewable Energy (As appropriate) • Chief of Staff, OEMM	• Appropriate Regional Administrator, NMFS • Appropriate Regional Science Center Director, NMFS • Appropriate Regional Director of Office of Response and Restoration, NOAA/NOS • Appropriate Assistant Regional Administrators for Protected Resources and Habitat Conservation, NMFS
Announcements	• Primary contact for applicable project/issue • Chief, Public Affairs	• Primary contact for applicable project/issue • Director, Office of Communications and Public Affairs

H. MODIFICATIONS, INTERPRETATIONS, AND TERMINATIONS: Changes and/or modifications to the agreement may be made at any time upon mutual written consent of the parties. No oral statement by any person, and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this agreement by both parties.

Either party may terminate this agreement with thirty (30) calendar days advance written notice.

I. RESOLUTION OF DISAGREEMENTS: BOEMRE and NOAA will consult with one another to resolve issues at staff levels and elevate disputes through the respective organizational levels only if necessary. Notification of potential areas of disagreement by either agency should be in writing. If there is no resolution at this level, either agency may elevate the issue to the appropriate officials within each agency or Department.

J. SIGNATURES

Michael R. Bromwich
Director
Bureau of Ocean Energy Management, Regulation and Enforcement
U.S. Department of the Interior

Jane Lubchenco, Ph.D.
Under Secretary of Commerce for Oceans and Atmosphere
U.S. Department of Commerce