

MEMORANDUM OF AGREEMENT
between
Minerals Management Service Alaska Region (MMS)
and the
Aleutians East Borough (AEB)
for the
Development of an EIS for Proposed OCS Lease Sale 214

- A. Parties.** This Memorandum of Agreement (MOA) is hereby entered into by and between the Minerals Management Service, Alaska Outer Continental Shelf Region (MMS), a bureau within the United States Department of Interior, and the Aleutians East Borough (AEB), a political subdivision within the State of Alaska.
- B. Purpose.** This MOA is established to provide a framework for coordination, communication, collaboration and the exchange of ideas and information between the MMS and the AEB, pursuant to the provisions of the National Environmental Policy Act (NEPA) [40 Code of Federal Regulations Parts 1500-1508], Part 516 of the Departmental Manual (516DM) and the Outer Continental Shelf Lands Act of 1953 (OCSLA). This MOA establishes the Aleutians East Borough as a Cooperating Agency, as described in 40 CFR Sections 1501.6 and 1508.5, in the preparation of an Environmental Impact Statement (EIS) for the proposed North Aleutian Basin OCS Lease Sale 214, identified in the 2007 – 2012 five-year OCS Leasing Program. The AEB is the local governmental agency responsible for the area adjacent to the North Aleutian Basin Planning Area. This Borough has substantial potential for onshore support, processes, storage and transportation facilities, which may serve any future oil and gas exploration or development activities resulting from proposed leasing. The public residing in the AEB utilizes the offshore area and surrounding waters for both commercial activities and subsistence activities. Therefore, the AEB and its residents may incur direct and indirect effects (both adverse and beneficial) from

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the proposed activities. In particular, the MMS, as lead agency, requests the cooperation of the AEB in the areas of fisheries protection, socio-economic analysis and public involvement. While the MMS recognizes the expertise of the AEB in the above-enumerated areas, this MOA does not preclude the AEB from submitting other information, comments and/or data pertaining to the proposed action, including but not limited to preparation of alternatives.

C. Authority. This MOA is subject to 40 CFR Parts 1500-1508 and the provisions outlined in the Department of the Interior Manual Part 516. The MMS is the agency responsible for the administration of mineral leasing, exploration and development of the OCS and associated NEPA compliance. The MMS is authorized to enter into this MOA pursuant to NEPA regulations at 40 CFR 1508.5, which states that federal agencies responsible for preparing NEPA analysis and documentation do so "in cooperation with state and local governments" and other agencies with jurisdiction by law and special expertise. The AEB enters into this MOA pursuant to its responsibilities under Title 29 of the Alaska Statutes and various provisions of the Aleutians East Borough Code, including but not limited to Title 45, 45.10.010(b). This Memorandum of Agreement expresses the respective responsibilities, assignment of issues, schedules and staff commitments of the MMS and the AEB to assure that each party will provide the resources necessary to support scheduling critical processes and information-driven milestones.

D. Responsibilities of Lead Agency. The MMS is the lead federal agency responsible for the OCS Sale 214 EIS and is responsible for NEPA compliance. MMS retains responsibility for EIS preparation and all other related NEPA requirements. While the MMS is ultimately responsible for assuring compliance with the requirements of NEPA, it is the objective of this MOA, and it is in the interest of the Department of the Interior and beneficial to the

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MMS and the public, for the AEB and MMS to work cooperatively, share expertise and avoid duplication in this preparation of the OCS Sale 214 EIS.

To assure successful collaboration with the AEB, the MMS will:

1. Work with the AEB to establish mutually-agreed-upon critical action dates and mutually-agreed-upon milestones for the preparation of the EIS and other related documents. The AEB shall have the opportunity to review and suggest modifications to the schedule, and shall not unreasonably withhold its agreement to critical action dates and milestones.
2. Identify a NEPA Products Manager whose responsibility will be to track, accept or reject cooperating agency assignments and deliverables (see Attachment B to this MOA). Table 1 will be jointly completed by the MMS and the AEB, with the understanding that Table 1 may be revised periodically as the parties proceed through the NEPA process.
3. Forward to the AEB copies of all comments received during the preparation of the EIS and other related documents arising out of the scoping process, public meetings, government-to-government meetings, and circulation of the EIS for public review.
4. Review and consider AEB input and concerns on regulatory and/or relevant environmental issues and mitigation associated with the proposed actions when such input is provided consistent with critical action dates established jointly by the MMS and the AEB.
5. Consult with the AEB on developing the EIS alternatives, assessing environmental impacts, and developing mitigation measures, but will retain sole responsibility for determination of

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which alternative(s) and mitigating measure(s) are selected for inclusion in the EIS, and Notice of Sale and seismic survey permits.

6. Provide to the AEB for review and comment copies of all relevant documents, including but not necessarily limited to the Scoping Report, preliminary draft EIS, and draft Final EIS.
 7. Provide all documents to the AEB in Microsoft Word or a similar program that can be "track changed." In general, such documents shall be delivered to the AEB by the MMS, at least thirty (30) days before the AEB's responses are due to the MMS. Documents requiring rapid turnaround will be delivered to the AEB by the MMS as expeditiously as possible to allow as much time as possible for the AEB's response.
 8. Ensure that the cover pages of the Draft EIS and the Final EIS identify the AEB as a cooperating agency and that the introduction sections of all such documents briefly describe the roles and responsibilities of the AEB as a cooperating agency.
 9. Consult with the AEB when developing alternatives to be analyzed in the Draft EIS and in the Final EIS. Further, the MMS shall consider all written comments received by the AEB and provided to the MMS as a result of the consultation.
 10. Work with the AEB to establish mutually agreeable cooperating agency work products that may be eligible for reimbursement, should funds be made available. To the extent there is a transfer of funds, property or services, the parties will enter into appropriate agreements for that purpose.
- E. Responsibilities of Cooperating Agency.** The AEB is the Cooperating Agency under this MOA, as defined in 40 CFR

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1501.6. To assure successful collaboration with the MMS, the AEB will:

1. Attend and participate in meetings necessary for the preparation of the EIS in compliance with NEPA provisions and in accordance with project schedules including critical action dates. Participation may be either by physical presence or via teleconference.
2. Invite the MMS to participate in any public meetings to be held by the AEB on the EIS which are subjects of this MOA.
3. Prepare drafts as agreed upon and conduct review and comment for draft documents, deliver data and information which the AEB deems relevant to the EIS process, and shall comply with the schedule jointly agreed upon by the AEB and the MMS.
4. Provide the MMS with copies of all AEB and other local codes, rules or ordinances relevant to the EIS.
5. Advise the MMS on statutory and regulatory responsibilities under federal and state law and AEB regulations, relevant to the scope of the EIS.
6. Assist the MMS in preparing text regarding the requirements referred to in (4) immediately above, for the inclusion of state and local regulation and law in the EIS.
7. Assist the MMS in planning, coordinating and scheduling public meetings and hearings in the communities within the boundaries of the AEB.
8. Assist the MMS in distributing information to the public and communities near the proposed sale area.

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F. Administrative:

1. Nothing in this MOA will be construed to alter the legal rights and remedies that each party would otherwise have in the absence of this agreement.
2. Nothing in this MOA will be construed to extend jurisdiction or decision-making authority to the MMS or the AEB, beyond that which exists under current law, regulations or ordinances.
3. Nothing in this MOU will be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the duly constituted authority of that party, or to require either party to assume or expend any sum in excess of available appropriations, or to obligate federal funds, supplies or services, even if funds are available.
4. The provisions in the MOA are subject to the laws and regulations of the State of Alaska, the laws of the United States, and the regulations of the Department of the Interior.
5. This MOA in no way restricts the MMS from participating in similar activities or arrangements with other agencies, organizations or individuals.

G. Principal Points of Contact. The Principal Points of Contact shall assure and facilitate information flow to their respective working components which are associated with this MOA. If necessary, the Principal Points of Contact will initiate conflict resolution processes per 1.2. of this MOA, in collaboration with the Regional Director of the Alaska OCS Region or his designated representative. The Principal Points of Contact for this MOA are:

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For the MMS:

Cleveland Cowles, Regional Supervisor, Leasing and Environment
MMS Alaska OCS Region
1801 Centerpoint Drive, Suite 500
Anchorage, AK 99503
Phone: (907) 334-5200.

For the AEB:

Robert Juettner, Administrator
Aleutians East Borough
3380 C Street, Suite 205
Anchorage, AK 99503
Phone: (907) 274-7557.

- H. MMS NEPA Products Manager.** The MMS NEPA Products Manager will work with the AEB to establish standards and schedules for draft and final products to be provided to the NEPA process by the AEB to the MMS for the NEPA review. The NEPA Products Manager will serve as the MMS authority to accept, request modification of or reject products in accordance with mutually-agreed-upon product standards and mutually-agreed-upon delivery schedules as shown in Table 1. The MMS NEPA Products Manager for this MOA is:

Deborah Cranswick, Chief, Environmental Assessment Section
Minerals Management Service Alaska OCS Region
3801 Centerpoint Drive, Suite 500
Anchorage, AK 99503
Phone: (907) 334-5200

I. Miscellaneous Provisions.

1. Obligation of funds. Nothing in this MOA shall be construed as obligating any of the parties to the expenditure of funds in excess of appropriations provided (by Congress in the case of

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the MMS or by the Borough Assembly in the case of the AEB) and authorized by law, or otherwise commit either agency to actions for which that agency lacks statutory authority. It is understood that the level of resources to be expended under this MOA will be consistent with the level of resources available to the AEB to support such efforts, should funding as described in Section D.10 not become available.

2. **Dispute resolution.** The parties agree to resolve disputes through good-faith discussions directed at obtaining consensus in the development of the EIS and preparation of related documents. If disputes cannot be resolved at the appropriate staff level, the issues shall be referred to the MMS Alaska Regional Director and the Aleutians East Borough Administrator for resolution. Should a resolution not be achieved on the scope, analysis or conclusions in the EIS, then the MMS and the AEB shall jointly determine if the differing positions should be presented in the EIS documents. The MMS has the ultimate responsibility for the content of the EIS. The MMS shall endeavor to use the environmental analyses and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency [see 40 CFR Section 1501.6(a)(2)].
3. **Press releases and public statements.** The AEB will obtain prior approval from the MMS of all press releases, published advertisements or other statements intended for the public that refer to this agreement or to the MMS, the Department of the Interior, or any employee of the Department, in connection with this agreement.
4. **Confidentiality of pre-decisional documents.** Unless constrained by other factors, such as the need to protect the confidentiality of proprietary or contractual information, pre-

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of the termination. The parties will endeavor to give 30 days written notice to the other party of such termination.

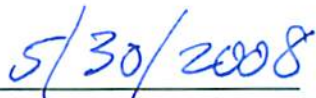
7. This MOA shall be deemed executed as of the date the last required signature is affixed to this document. Unless previously terminated in accordance with the provisions of this document, this MOA shall remain in full force and effect through June 30, 2012, at which time it shall expire unless the parties agree in writing to extend it to a date certain.

J. Signatures. The parties hereto have executed this agreement:

FOR THE DEPARTMENT OF INTERIOR, Minerals Management Service, ALASKA OCS REGION



John Goll
Regional Director
MMS Alaska OCS Region




Date

FOR THE ALEUTIANS EAST BOROUGH, ALASKA



Stanley Mack
Mayor
Aleutians East Borough



Date

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Attachment A

Cooperating Agency Confidentiality Agreement

The undersigned hereby agrees to maintain confidentiality of information and documents shared between the Aleutians East Borough (AEB) and the Minerals Management Service (MMS) pursuant to the preparation of an Environmental Impact Statement (EIS) for the North Aleutian Basin OCS oil and gas lease sale (OCS Sale 214) and all other documents generated in furtherance of cooperation under the Memorandum of Agreement (MOA) between the AEB and the MMS. These confidentiality provisions apply to all communications, including but not limited to e-mail messages, "note(s) to the file," meeting notes, letters, reviews, evaluations, and to all documents created or shared as part of the collaboration established by the MOA.

Documents generated or shared in furtherance of the MOA shall be maintained as confidential until the undersigned is advised by one or both of the parties signatory to the MOA, that the MMS has expressly waived any privilege with regard to such documents.

Name: _____
(print full name above)

Signature: _____
(affix signature)

Agency: _____
(MMS, AEB or other, as appropriate)

Date: _____
(date signature was affixed)

Sheet # _____

Attachment B
Assignments or Deliverables for Cooperating Agencies¹

Date sheet started _____

Cooperating² Agency Assignment Deliverable Item³ Deliverable Specifications⁴ Date due Recipient Comments

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

¹ It is the intent of the parties that this table will be revised and/or updated as needed, as the parties proceed through the NEPA process.

² This is the agency tasked with delivering the item.

³ For example, an item might be an EIS section, a CD, a map, pamphlet, Word document, PowerPoint presentation, etc.

⁴ Specifications might include the number of pages desired, the format of the deliverable, etc.

Attachment B

to MOA between the Minerals Management Service (MMS) and the Aleutians East Borough (AEB)
Penultimate Draft (May 30, 2008)