

Obtaining a Lease for Sand, Gravel, and Other Non-energy Minerals

There are two types of lease conveyances for obtaining sand and gravel and other non-energy minerals from the OCS. These are by a negotiated noncompetitive agreement, which can only be used for obtaining sand and gravel for public works projects funded in part or whole by a federal, state, or local government agency, and by a competitive lease sale in which any qualified person may submit a bid.

Conveyance of a Lease for Sand and Gravel by Negotiated (Noncompetitive) Agreement

What is a negotiated (noncompetitive) agreement?

Under Public Law 103-426, enacted October 31, 1994 (see appendix 2), the MMS may negotiate, noncompetitively, the access to OCS sand, gravel, or shell resources for shore protection, beach or wetlands restoration, or use in construction projects funded in whole or part by, or authorized by, the Federal Government.

Who can request a negotiated (noncompetitive) agreement for a mineral lease?

The MMS can negotiate with any person (federal, state, or local government agency or delegated party) an agreement for OCS sand, gravel, and shell resources for use in any shore protection, beach restoration, or coastal wetlands restoration project undertaken by any federal, state, or local government agency.

What kind of coastal restoration projects qualify for negotiated (noncompetitive) agreements?

The MMS defines coastal restoration as the rebuilding of eroding shoreline segments,

such as beaches and dunes, barrier islands, and wetlands, to forestall further erosion and/or to provide protection from hurricanes, storms, and normal coastal erosion for sensitive landward wetland areas. Restoration is typically accomplished by placing sand directly on the beach (or updrift and allowing longshore processes to redistribute the material along the beach) to form, and subsequently maintain, an adequately protected beach.

What happens if the Federal sand is being used for a U.S. Army Corps of Engineers (USACE) or other Federal Agency authorized project?

Under Public Law 103-426, the MMS and the USACE are required to enter into a Memorandum of Agreement (MOA) that addresses potential uses of OCS sand and gravel resources. The MOA describes the project and procedures that will be followed and identifies environmental and administrative requirements that must be met.

Application Process for a Negotiated (Noncompetitive) Agreement for Sand and Gravel

Where to apply?

Send your written request to:

Associate Director for Offshore Minerals Management, Minerals Management Service, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 4000, Washington, DC 20240.

What to include?

- Describe in detail the proposed project for which the OCS resource will be used including the offshore borrow sites and the sites that would be nourished.
- Provide maps and coordinates depicting the location of the desired sand resources and the sites that would be nourished. These should include:
 - Detailed hard-copy maps with coordinates and navigation features of the desired borrow area;
 - Geo-referenced spatial and tabular data in digital format of the borrow area with all features observed and measured of the borrow area according to the MMS database specifications.
- Describe environmental documents that have been completed or are being prepared that cover any offshore or onshore components of the project.

- Describe the status of federal, state, or local permits required for the project and describe any potential conflicts with state or local coastal zone management plans.
- State whether the project is federally funded in whole or in part by, or authorized by the Federal Government.
- Specify when the resource is needed.
- Provide the name, mailing address, telephone, and email address of the primary point of contact.

What will the MMS do with the request?

The MMS will determine whether the request qualifies for a negotiated (noncompetitive) agreement and will respond to the requestor as soon as possible.

What are the environmental considerations and requirements under the National Environmental Policy Act (NEPA)?

The lease applicant must provide the required environmental analyses and documents. The MMS will determine the type of environmental analysis required under NEPA on a case-by-case basis. If a request is found to be qualified under the negotiated agreement provisions, the MMS will then determine if an environmental impact statement (EIS) or environmental assessment (EA) is necessary before issuing a lease. The differences between an EIS and an EA are discussed in appendix 1.

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Submission of required environmental analyses is a two-tier process. In the first tier, the applicant submits the basic information about the project listed above under “What to Include.” Once the request has been determined to qualify for a negotiated agreement, additional environmental information may be required, including but not limited to:

- a literature survey of the benthic biological character of the borrow site;
- a seafloor sediment transport analysis of the site;
- a numerical wave model of the site, to determine potential impacts of sand removal on the adjacent coastline; and
- the data or information enabling MMS to comply with other agency requirements for permitting or coordination.

How long does a negotiated agreement take to prepare and execute?

A negotiated agreement can typically be executed within 7 to 9 months, if no major environmental, multiple use conflicts, or regulatory issues are encountered and MMS consultations with the U.S. Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) on threatened and endangered species and essential fish habitat (EFH) can be completed in a timely manner.

What are the steps involved in preparation of a negotiated agreement?

- Applicant submits request to MMS to obtain an OCS lease.

- MMS initiates informal Endangered Species Act (ESA) and EFH consultations with NMFS and the FWS.
- MMS and National Oceanic & Atmospheric Administration (NOAA) sign MOA, if applicable.
- Applicant conducts an archaeological survey to MMS’s requirements.
- MMS conducts Air Quality Conformity Determination (for Non-Attainment Zone).
- MMS completes draft EA. If the EA finds that there may be significant impacts on the environment, an EIS will be prepared in lieu of continued work on the EA.
- MMS, if required, initiates formal ESA and EFH consultations with the FWS and NMFS using the draft EA.
- MMS receives Biological Opinion and EFH Conservation Recommendations from FWS and NMFS (MMS incorporates any mitigation measures/terms and conditions identified during informal consultation into EA and as Terms and Conditions within the Lease).
- MMS prepares final EA.
- MMS sends draft lease with terms and conditions to applicant for comment.
- MMS receives applicant comments on draft lease.

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- MMS sends signed copy of final Lease Agreement to applicant.
- MMS sends letter to Congressional committees as required by P.L.103-426.

Will the MMS charge any fee for use of the mineral resource?

No. A provision of the Water Resources Development Act of 1999 amended section 8(k)(1)(B) of the OCSLA to prohibit the MMS from charging fees to state and local governments for shore protection projects. The agency sponsoring the project will incur the cost to provide the data and information necessary to complete the NEPA evaluation. The MMS will assess a fee for use of federal sand for private projects.

Are there any special provisions for other federal agency requests?

Yes. All federal agencies must enter into a MOA with the MMS concerning the potential use of the resource. To date, the MMS has entered into MOA's with the USACE, National Park Service, and the U.S. Navy for sand resources. The requesting federal agency may prepare the required NEPA documents or the MMS may become a cooperating agency under NEPA guidelines. The MMS will not issue a lease until all applicable federal requirements have been appropriately satisfied.

Are there special requirements for gathering information during the dredging operation?

Yes. Electronic positioning information and sand production and volume data are required to be submitted to the MMS. In addition, a post dredging hydrographic survey will be

required to be conducted. Specific requirements will be described in the terms and conditions of the lease.

Use of Electronic Positioning System and Transmittal of Location Information to MMS.

In order to ensure the accuracy of the dredge relative to the borrow area specifications denoted in this lease agreement, during all phases of the offshore operation conducted within the borrow area, the Lessee will ensure that the dredge is equipped with an on-board differential global positioning system capable of maintaining and recording the location of the dredge cutting head within an accuracy range of no more than plus or minus 3 meters. The specific system will be approved by the MMS prior to the conduct of any dredge procedures within the borrow area.

Location information (latitude and longitude) in NAD83 must be supplied to the Chief, MMS Marine Minerals Branch on a daily basis. The information should be sent to the following email address: dredgeinfo@mms.gov.

Submittal of Production and Volume Information to MMS.

The Lessee has a legal responsibility to ensure the accuracy of cut depths and widths, cut slopes and site production (sand volumes removed) within the borrow area as specified in the project's operational plan and this lease agreement. This information is routinely collected continuously throughout the period of dredge operation at a borrow site. The Lessor shall retain all access rights to all operational data at any time during which

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dredging is occurring within the designated federal borrow area.

The Lessee shall submit a “certified” summary of all operational, production, and survey activity data to the Chief, MMS Marine Minerals Branch on a weekly basis, in a format and method agreed to between the Lessor, the Lessee, and the dredge operator prior to the commencement of operations at the borrow site. Any maps and/or profiles submitted to the Lessor will be provided in digital spatial format compatible with ArcGIS. Information pertaining to the volume of material removed must be provided with explanatory text outlining each preceding day’s activities and production values.

Following completion of all activities within the lease area, the Lessee, in cooperation with the dredge operator, shall submit to the Lessor, a “certified” copy of the complete operational data set (dredgehead tracklines, cut slope angles, cut depth, etc.), outlining any deviations from the original operational design plan. This report should be emailed to: dredgeinfo@mms.gov.

Pipelines and cables. If pipelines, well head appurtenances, platform infrastructure, or

communications cables are in the vicinity of the operation, a setback will be established. The actual setback will be determined by the type of substrate the dredge will be operating in (fine-grained sediment versus sand or gravel).

Shipboard observers. If it is determined through the consultation process on endangered species with the FWS or with NOAA Fisheries concerning EFH that shipboard observers are needed, it will be listed as a requirement in the lease.

Are there post-dredging monitoring requirements for the monitoring site?

Yes. The type of post-dredging survey required may vary from area to area and will also depend upon whether the site is expected to be a long-term source of material for future projects. Surveys might include benthic or fish sampling on regular intervals to monitor dredging effects, or some type of physical monitoring to ensure that no physical changes are occurring. A report listing the protocols for post-dredging monitoring may be downloaded at: <http://www.mms.gov/itd/pubs/2001/2001-089.pdf>.



Aerial view of the Patrick Air Force Base, Florida beach nourishment project