

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
THE U.S. DEPARTMENT OF THE INTERIOR
AND
FEDERAL ENERGY REGULATORY COMMISSION

I. PURPOSE

The U.S. Department of the Interior (DOI) and the Federal Energy Regulatory Commission (Commission) (jointly, Participating Agencies) enter into this Memorandum of Understanding (MOU) to clarify jurisdictional understandings regarding renewable energy projects in offshore waters on the Outer Continental Shelf (OCS), in order to develop a cohesive, streamlined process that would help accelerate the development of wind, solar, and hydrokinetic (i.e., wave, tidal, and ocean current) energy projects.

II. COMMITMENTS OF THE PARTICIPATING AGENCIES

The Participating Agencies agree as follows:

A. The Participating Agencies recognize that: (1) the DOI's Minerals Management Service (MMS) has exclusive jurisdiction with regard to the production, transportation, or transmission of energy from non-hydrokinetic renewable energy projects on the OCS, including renewable energy sources such as wind and solar; (2) MMS has exclusive jurisdiction to issue leases, easements, and rights-of-way regarding OCS lands for hydrokinetic projects; and (3) the Commission has exclusive jurisdiction to issue licenses and exemptions for hydrokinetic projects located on the OCS.

B. MMS will issue leases, easements, and rights-of-way for hydrokinetic projects to be located on the OCS pursuant to Section 8(p) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337(p) (2006), and will conduct any necessary environmental reviews, including those under the National Environmental Policy Act (NEPA), related to those actions. The Commission may, at its discretion, choose to become a cooperating agency with respect to the MMS's preparation of an environmental document for any OCS hydrokinetic project.

C. The Commission will not issue preliminary permits for hydrokinetic projects located on the OCS.

D. The Commission will issue licenses under Part I of the Federal Power Act (FPA), 16 U.S.C. §§ 792-823a (2006), and exemptions from licensing under Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2006), for the construction and operation of hydrokinetic projects on the OCS, and will conduct any necessary analyses, including those under NEPA, related to those actions. The Commission's licensing process includes the active involvement of relevant federal land and resource agencies, including the DOI. MMS may, at its discretion, choose to become a cooperating agency with respect to the Commission's preparation of an environmental document for any OCS hydrokinetic project. If MMS becomes a

cooperating agency, it will not conduct “off-the-record” communications relevant to the merits of the Commission’s licensing or exemption proceeding, including such communications with staff of other non-cooperating DOI agencies regarding preparation of the preferred alternative or about preparation of any recommendations, terms or conditions, or prescriptions filed under Sections 4(e), 10, and 18 of the FPA (16 U.S.C. §§ 797(e), 803, and 811 (2006)). MMS’s participation as a cooperating agency in a Commission-led NEPA review for an OCS hydrokinetic project shall not preclude DOI from intervening, on the behalf of other DOI agencies including, but not limited to, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Indian Affairs, in the licensing or exemption proceeding for that project.

E. The Participating Agencies will coordinate to ensure that hydrokinetic projects meet the public interest, including the adequate protection, mitigation, and enhancement of fish, wildlife, and marine resources and other beneficial public uses. Further, the Participating Agencies will coordinate to ensure that any licenses or exemptions issued by the Commission, and all operations regulated by the Commission, with respect to a lease, easement, or right-of-way shall be consistent with the provisions of Section 8(p) of the OCSLA and other relevant provisions of that Act, the FPA, and other applicable law.

F. MMS may attach terms and conditions to leases, easements, and rights-of-way issued for hydrokinetic projects located on the OCS. The Commission will include in any license or exemption issued for such projects a requirement to comply with all terms and conditions of any OCS lease, easement, and right-of-way.

G. The Commission will not issue a license or exemption to an applicant for an OCS hydrokinetic project until the applicant has first obtained a lease, easement, or right-of-way from MMS for the site thereof.

H. MMS will provide in all leases, easements, and rights-of-way for OCS hydrokinetic projects that construction and operation of the hydrokinetic project cannot commence without a license or exemption from the Commission, except in circumstances where the Commission has notified MMS that a license or exemption is not required.

I. The Commission may inspect OCS hydrokinetic projects it authorizes to ensure compliance with the terms of its licenses or exemptions. MMS may inspect OCS hydrokinetic projects to ensure compliance with the provisions of any lease, easement, and right-of-way it issues. The Participating Agencies will coordinate inspections through the development of joint policies or regulations, as appropriate.

J. Each Participating Agency shall use its own appropriations to carry out its responsibilities under this MOU.

III. ISSUANCE OF POLICIES AND REGULATIONS

The Participating Agencies agree to work together to the extent practicable to develop policies and regulations with respect to OCS hydrokinetic projects to carry out the purposes of this MOU. This will include, among others, processes to address hybrid (wind/hydrokinetic) projects and projects that straddle the boundaries between state waters and the OCS.

IV. MISCELLANEOUS

This MOU is strictly for internal management purposes, does not expand or alter the scope of the Participating Agencies' respective authorities, and shall not be construed to create any legal obligation on the part of either agency or any private right or cause of action for or by any person or entity.

V. PRINCIPAL CONTACTS

Each party hereby designates the following as the initial principal contacts for the agency. These contacts may be changed at the Participating Agency's discretion upon written notice to the other Participating Agency.

DOI: MMS Deputy Director

Commission: Director of the Office of Energy Projects

VI. TERM OF THE AGREEMENT

This MOU shall take effect on the date of the last approving signature specified in Section VII, below. The MOU may be modified only upon the written agreement of the Participating Agencies. The MOU may be terminated 120 days after a Participating Agency provides written notice to the other Participating Agency.

VII. SIGNATORIES

U.S. Department of the Interior by:

 Ken Salazar
 Secretary

Date:

Federal Energy Regulatory Commission by:

 Jon Wellinghoff
 Chairman

Date: