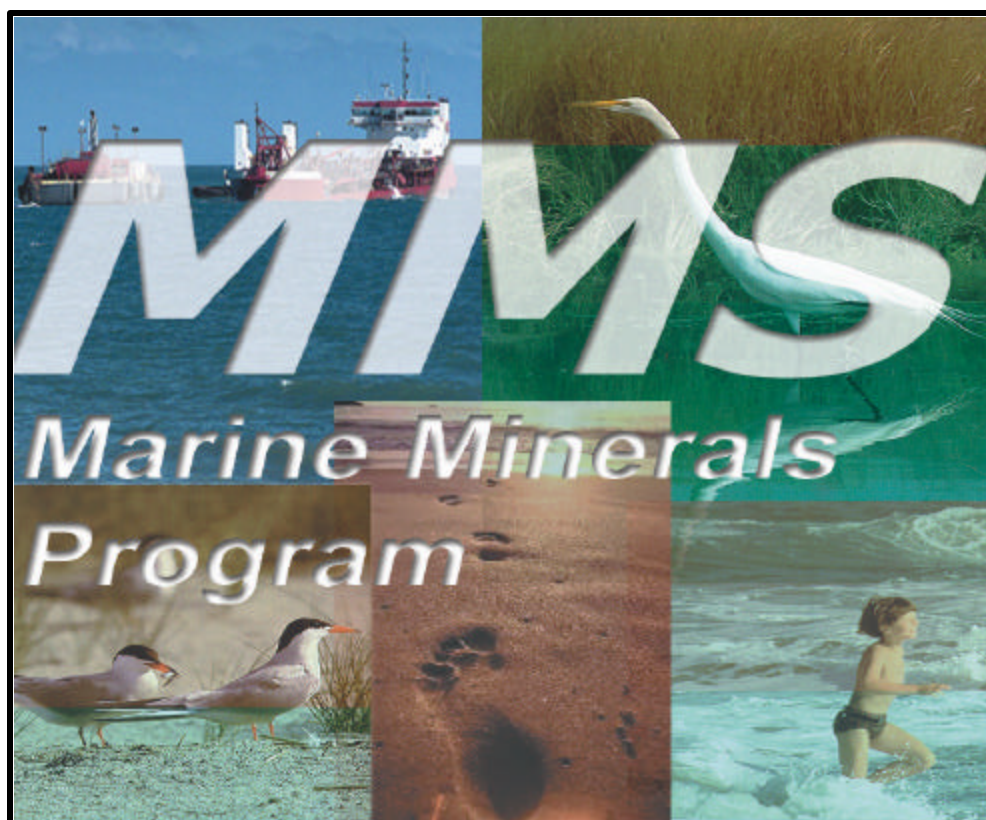


# Guidelines for Obtaining Offshore Sand for Wetlands Protection and Beach Restoration Projects



# How to Reach Us

Sand & Gravel Website

*<http://www.mms.gov/intermar/marineac.htm>*

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OCS sand is placed on Patrick Air Force Base, Florida

## Abbreviations

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<b>CEQ:</b>	- Council on Environmental Quality
<b>CFR:</b>	- Code of Federal Regulations
<b>COE:</b>	- U.S. Army Corps of Engineers
<b>DOI:</b>	- Department of the Interior
<b>EA:</b>	- Environmental Assessment
<b>EIS:</b>	- Environmental Impact Statement
<b>FWS:</b>	- Fish and Wildlife Service
<b>MMS:</b>	- Minerals Management Service
<b>NEPA:</b>	- National Environmental Policy Act
<b>NMFS:</b>	- National Marine Fisheries Service
<b>OCS:</b>	- Outer Continental Shelf
<b>OCSLA:</b>	- OCS Lands Act



## Introduction

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The Minerals Management Service (MMS) Leasing Division is charged with environmentally responsible management of Federal Outer Continental Shelf (OCS) sand and gravel resources. The OCS is a zone that generally extends from 3 miles seaward of the coastal State boundaries out to 200 miles. Public Law 102-426 (43 U.S.C. 1337(k)(2)), enacted 31 October 1994, gave MMS the authority to negotiate, on a noncompetitive basis, the rights to OCS sand, gravel, and shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or part by or authorized by the Federal government. In 1999, that law was amended to prohibit charging State and local governments a fee for using OCS sand resources, although competitive leasing and fees remain for other uses, including commercial recovery of offshore sand and gravel for use as construction aggregate.

As the demand for sand for shoreline protection increases, OCS sand and gravel will become an increasingly important resource. Between 1995 and January 2002, MMS conveyed over 16, 00,000 cubic yards of OCS sand for thirteen projects. It should be noted that projects are initiated by the beneficiaries of the resource; MMS does not propose leases for OCS sand resources. MMS's mission is to make timely, streamlined, and environmentally sound and fiscally responsible decisions to provide access to OCS sand resources. To support our mission, we have formed cooperative agreements with ten States to identify and evaluate OCS sand resources as potential sources for future beach nourishment projects. As of 2002, MMS has provided \$4.6 million in funding to support geological and geophysical studies to identify and quantify OCS sand sources. The status of these inventory studies and copies of available reports for the ten States (Delaware, Florida, Louisiana, Maryland, New Jersey, North Carolina, South Carolina, Texas, and Virginia) are posted on the sand and gravel web site at [www.mms.gov/intermar/marineac.htm](http://www.mms.gov/intermar/marineac.htm).

MMS expects that some OCS sand resources will be long-term sources of sand borrow material for coastal erosion management because of:

- The general diminishing supply of onshore and nearshore sand;
- The renourishment cycles for beaches or coastal areas requiring quantities of sand not currently available from State sources; and
- The need for access to large sand inventories for immediate/emergency repair of beaches and coastal damage from severe coastal storms.

MMS has developed these guidelines for those interested in obtaining leases to develop OCS sand resources. As steward for these resources, MMS must ensure that any use of OCS sand resources will not adversely affect the marine, coastal, and human environments. Under the National Environmental Policy Act (NEPA), an environmental assessment or environmental impact statement (prepared by either MMS or another Federal Agency) is used to evaluate whether or not to issue a lease.

The purpose of this publication is to provide general information and guidelines for those interested in obtaining leases to access sand and gravel resources for wetlands protection and any potential beach restoration projects. We hope this publication will provide you with a better understanding of the

process for obtaining sand and gravel from the OCS.

## **Authority**

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The OCS Lands Act (OCSLA) (43 U.S.C. 1331, et. seq.) provides the authority to manage minerals on the OCS. The Department of the Interior's (DOI) jurisdiction for leasing and regulating the recovery of minerals extends to the subsoil and seabed of all submerged lands seaward of State-owned waters to the limits of the OCS (except where this may be modified by international law or convention or affected by the Presidential Proclamation of March 10, 1983, regarding the Exclusive Economic Zone). Section 8(k) authorizes the Secretary to convey resource development rights to any mineral on the OCS other than oil, gas, and sulphur (43 U.S.C. 1337(k)). The MMS has implemented regulations governing Prospecting (30 CFR 280), Leasing (30 CFR 281), and Operations (30 CFR 282) for OCS minerals other than oil, gas, and sulphur. These regulations are available on the MMS web site at [www.mms.gov/intermar/marineac.htm](http://www.mms.gov/intermar/marineac.htm).

Public Law 103-426 (43 U.S.C. 1337(k)(2)), enacted October 31, 1994 (see appendix 1), gave the MMS the authority to negotiate, on a noncompetitive basis, the rights to OCS sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or part by or authorized by the Federal Government. The Shore Protection Provisions of the Water Resource Development Act of 1999 (S. 507 as passed by Congress on August 4, 1999) amended that law by prohibiting charging State and local governments a fee for using OCS sand. For all other uses, such as private use for commercial construction material, a competitive bidding process is required under Section 8(k)(1) of the OCS Lands Act, which also provides for issuing leases competitively for hard minerals on the OCS.

**There are two basic methods for conveying OCS mineral rights:**

- ✓ **Negotiated noncompetitive agreement**
- ✓ **Competitive lease sale**

Although the MMS has the authority to convey OCS mineral rights by negotiated noncompetitive agreement or by competitive lease sale, it does not develop and maintain a schedule of offerings as it does in the Offshore Oil and Gas Program. This conveyance process must be started by request. Negotiated noncompetitive agreements are developed as described on page 9. Competitive leasing is conducted according to the regulations in 30 CFR 281 and the guidelines provided on page 14.

## Marine Minerals Program

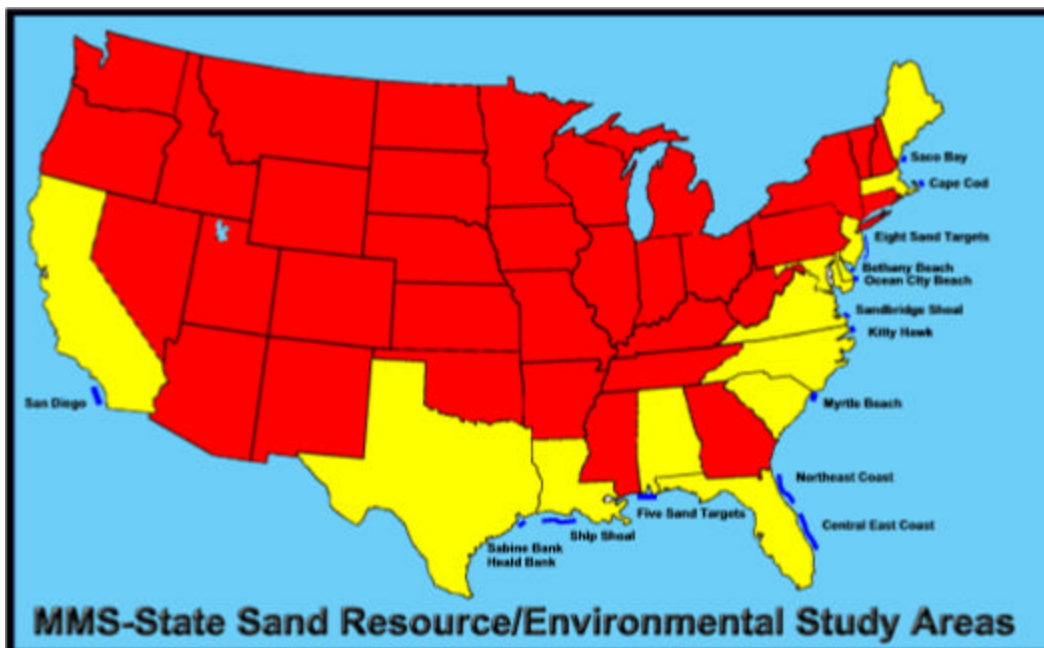
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To date, the Marine Minerals Program has focused on identifying OCS sand and gravel resources, since some portions of the U.S. coastline are severely eroding, threatening the property and livelihoods of coastal communities. Federal offshore sand resources, which are primarily used for beach nourishment projects, are needed to manage erosion problems.

Coastal shoreline protection and beach nourishment are significant issues for coastal States. In some areas, there is a critical need to identify suitable sources of compatible clean sand for possible use in public works projects for shore protection. The Leasing Division is focusing on integrating both geologic and environmental information, developed through partnerships with coastal States and contracted studies, to identify such OCS sand deposits. This comprehensive analysis will provide the basis for decisions regarding the use of Federal sand for future beach nourishment activities.

The following map depicts the location of MMS partnerships with ten coastal States and MMS-State offshore sand resource and environmental study areas.

### Cooperative Efforts with States



Many coastal regions need large volumes of sand to widen and nourish beaches, build protective dunes, and restore barrier islands that can protect coastal areas and wetlands. Congress authorizes many publicly sponsored shore protection and restoration projects performed by a Federal agency, usually the U.S. Army Corps of Engineers (COE), with State and local governments as project co-sponsors and cost-sharing partners. Other Federal agencies (e.g., FEMA, the Navy) can also sponsor shore

protection projects. In some cases, State and local governments (and occasionally, private communities) undertake projects independently

There are abundant sand deposits in some areas of the OCS, but the ocean is a challenging and costly environment in which to operate. Exploration and characterization are needed to confirm the availability of sufficient quantities of resources having sediment composition (grain size, shape, etc.) compatible with the beaches to be nourished and to determine whether these resources can be extracted in an affordable and environmentally acceptable manner. The resources include distinct deposits such as shoals, ridges, and buried channels, or dredging byproducts associated with navigation projects. In general, some of the better sand deposits straddle the 3-mile Federal-State boundary line. Economically viable use of these sand resources depends on many factors, including:

- Quality (beach compatible sand)
- Quantity (sufficient volume of sand source)
- Location (distance from shore)
- Environmental consideration

Most of the research to identify OCS sand resources has focused on bathymetric highs, described as sand shoals, ridges, and banks. It appears that, because of their distance from shore (3 miles for most states) and water depth (typically 30-60 feet), these features appear to be isolated from the sediment budget of the littoral system by large distances and muddy areas (the latter indicating the absence of a sand transport pathway), though this will not always be the case. Their isolation from the active littoral system reduces the possibility of interrupting a sediment supply pathway to the shoreline, but it also prevents replacement of sand removed during dredging. OCS sand can be considered as a potentially non-renewable resource that needs careful management so that it is used appropriately.



## Environmental Assessment



Whether the MMS is considering a negotiated noncompetitive agreement to use OCS sand for beach nourishment/restoration or whether to hold a competitive sale for offshore material, the MMS must ensure that any such actions will not adversely affect the marine, coastal, and human environments. The National Environmental Policy Act (NEPA) is the Nation's charter for protection of the environment; it establishes policy and sets goals by which Federal agencies ensure that activities do not harm the environment. The implementing regulations of the Council on Environmental Quality (CEQ) outline the guidelines by which Federal agencies conduct their environmental analyses.

As part of ensuring environmentally sound and acceptable decisions for marine mineral operations, the MMS prepares an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) to determine any possible environmental consequences of OCS marine mineral development. These documents assess the full range of possible impacts. In general, there is a description of the proposed scenario/project for recovery and transport of the resource material from the identified borrow or lease areas, along with a discussion of any possible alternatives to the proposed action. The analysis also evaluates the potential environmental impacts of each alternative examined and identifies mitigating measures and stipulations to such possible impacts.

The technical background and impact analysis contained in the document includes the following:

- Benthic Marine Biology
- Physical Oceanography
- Meteorology
- Water Quality
- Fishery Biology
- Archaeology and Cultural Resources
- Wildlife Biology/Endangered Species
- Socioeconomics
- Geology
- Petroleum Infrastructure
- Onshore and Inland Biological and Physical Resources
- Wetlands Impacts

MMS has taken an active role in identifying the potential environmental impacts of dredging OCS sand by conducting baseline studies of selected OCS regions and funding research on specific areas of concern. The following table lists the studies funded by MMS under this program; the studies are available at [www.mms.gov/intermar/environmentalstudiespage.htm](http://www.mms.gov/intermar/environmentalstudiespage.htm).

**Environmental studies on OCS sand resource issues funded or supported by MMS.**

<b>Site-Specific Environmental Baseline Studies</b>
Environmental Surveys of Potential Borrow Areas Offshore Northern New Jersey and Southern New York and the Environmental Implications of Sand Removal for Coastal and Beach Restoration. Draft report Spring 2003. Final Report Winter 2003
Environmental Surveys of Potential Borrow Areas on the East Florida Shelf and the Environmental Implications of Sand Removal for Coastal and Beach Restoration. Final Report May 2002
Collection of Environmental Data within Sand Resource Areas Offshore North Carolina and the Environmental Implications of Sand Removal for Coastal and Beach Restoration. Final Report Winter 2001
Surveys of Sand Resource Areas Offshore Maryland/Delaware and the Environmental Implications of Sand Removal for Beach Restoration Projects. OCS Study MMS 2000-055
Environmental Surveys of OCS Sand Resources Offshore New Jersey. OCS Study MMS 2000-052
Environmental Survey of Identified Sand Resource Areas Offshore Alabama. OCS Study MMS 99-0052
Use of Federal Sand Resources for Beach and Coastal Restoration in New Jersey, Maryland, Delaware and Virginia. OCS Study MMS 99-0036
Environmental Studies Relative to Potential Sand Mining in the Vicinity of the City of Virginia Beach, Virginia. OCS Study MMS 97-0025
<b>Wave Modeling/Shoreline Erosion</b>
A Numerical Modeling Examination of the Cumulative Physical Effects of Offshore Sand Dredging for Beach Nourishment – New Jersey, Virginia, North Carolina, Florida. Final Report Winter 2001
Wave Climate and Bottom Boundary Layer Dynamics with Implications for Offshore Sand Mining and Barrier Island Replenishment, South-Central Louisiana. OCS Study MMS 2000-053
Wave Climate Modeling and Evaluation Relative to Sand Mining on Ship Shoal, Offshore LA, for Coastal and Barrier Islands Restoration. OCS Study MMS 96-0059
A Methodology and Criteria to Assess the Impact of Sand Volume Removed in Federal Waters on the Offshore Wave Climate. OCS Study MMS 99-0046
<b>Generic Studies Applicable to all Offshore Marine Mineral Efforts</b>
Model Development or Modification for Analysis of Benthic and Surface Plume Generation and Extent During Offshore Dredging Operations. Final Report 2002
Integrated Study of the Biological and Physical Effects of Marine Aggregate Dredging. Final Report Fall 2001
Study of the Cumulative Effects of Marine Aggregate Dredging. OCS Study MMS 99-0030
Marine Aggregate Mining Benthic and Surface Plume Study. OCS Study MMS 99-0029
Impacts and Direct Effects of Sand Dredging for Beach Renourishment on the Benthic Organisms and Geology of the West Florida Shelf. OCS Report MMS 95-0005
Marine Mining Technologies and Mitigation Techniques. A Detailed Analysis with Respect to the Mining of Specific Offshore Mineral Commodities. OCS Report MMS 95-0003
Synthesis and Analysis of Existing Information Regarding Environmental Effects of Marine Mining. OCS Report MMS 93-0006

To date, the MMS has entered into several negotiated noncompetitive agreements for the use of OCS sand to restore or renourish coastal beaches. In some of those instances, the COE or another Federal agency has completed environmental analyses required under NEPA. In others, the MMS has prepared an EA to supplement a prior analysis or has prepared its own EIS.

## **What is the Difference Between an EA and an EIS?**

An EA is a concise public document in which a Federal agency (1) briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or (2) determines that the proposed action poses no significant environmental risk.

An EIS is a detailed document that thoroughly analyzes the proposed action. An EIS is prepared when the Federal agency has determined that a major Federal action is being considered and that it is environmentally significant in scope and magnitude such that the potential impacts must be examined in greater detail.

For either a noncompetitive negotiated agreement or a competitive lease sale, an environmental analysis will be necessary under NEPA. In cases of NEPA significance, the lead agency may prepare an in-depth, areawide, programmatic EIS examining the environmental effects of dredging in identified borrow sites in specific geographic areas. The purpose of this analysis is to support future negotiated agreements. A project-specific EIS might also be prepared.

After completing an initial areawide document, the lead agency would prepare EA's to support noncompetitive leases.

An EA will also be prepared by the lead agency when a previous NEPA analysis, which adequately covers the potential for impacts in the same area or is considered tierable under the NEPA regulations, is complete. In certain cases, the previous document can be adopted in whole, and the present decision can be based on the prior analysis.

## **Guidelines for Prospecting and Scientific Research Activities on the OCS**

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### **What is a Prospecting Permit?**

A prospecting permit is issued by the MMS to allow for the collection of Geological and Geophysical data (G&G) on the OCS to determine the feasibility of the commercial recovery of offshore minerals including sand and gravel. Commercial recovery is defined as an activity whose objective is to determine the quality, quantity, and location of an OCS mineral deposit.

### **Who needs to apply for a Prospecting Permit?**

Any private, public or municipal corporation, State or local government proposing to conduct any prospecting activities on the OCS of any marine mineral resources requires an approved G&G permit issued by the MMS. Currently, one of the conditions for receiving a permit is that all data collected as a result of the permit be shared with MMS at the expense of the permittee.

### **Where must I send my Application or Notification for a Prospecting Permit?**

You must apply for a permit or file a notice at one of the following locations:

For the OCS off the ...	Apply to ...
(1) State of Alaska	Regional Supervisor for Resource Evaluation Minerals Management Service Alaska OCS Region 949 East 36 <sup>th</sup> Avenue Anchorage, AK 99508-4363
(2) Atlantic Coast, Gulf of Mexico, Puerto Rico, or U.S. territories in the Caribbean Sea	Regional Supervisor for Resource Evaluation Minerals Management Service Gulf of Mexico OCS Region 1201 Elmwood Park Boulevard New Orleans, LA 70123-2394

(3) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean	Regional Supervisor for Resource Evaluation Minerals Management Service Pacific OCS Region 770 Paseo Camarillo Camarillo, CA 93010-6064
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### **What is the duration of a Prospecting Permit?**

Permits are issued for a term of three years and can be extended if approved by MMS for an additional two-year period.

### **Is a permit required for Scientific Research?**

Under the current regulations G&G activities for the purposes of scientific research on the OCS don't require a permit.

However:

A permit is required if a borehole to a depth greater than 300 feet will be drilled.

A permit is required if solid or liquid explosives will be used.

In general, a permit is required to ensure:

- the proposed activity does not interfere or endanger any lease or right- of way;

- the proposed activities are conducted in an environmentally sound manner;

- the person conducting the proposed activity or who operates the vessel has consulted and coordinated with other users in the area.

## **Conveyance by Negotiated Noncompetitive Agreement**

### ***What is a negotiated noncompetitive agreement?***

Under Public Law 103-426, enacted October 31, 1994 (see appendix 1), 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 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 wetlands 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 an U.S. Army Corps of Engineers (COE) authorized project?***

Under Public Law 103-426 (see appendix 1), both agencies will sign a Memorandum of Agreement (MOA) that describes the project and procedures, ensuring environmental and administrative requirements are met.

The MOA will also indicate that the MMS is working with Federal, State, or local governments on a negotiated agreement for the sand. The MMS then will notify the appropriate party that a request for a negotiated agreement is needed.



## Application Process for Noncompetitive Agreement

### *Where to apply?*

Send your request to the 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.
- Provide any maps and coordinates depicting the location of the desired resource and intended project.
- State whether the project is federally funded or authorized in whole or in part.
- Specify when the resource is needed.
- Name a 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 about the environmental considerations and requirements under the National Environmental Policy Act (NEPA)?***

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, then the MMS determines if an environmental impact statement (EIS) or environmental assessment (EA) is necessary before issuing a lease.

The MMS will inform the requestor and estimate the time necessary to make a final decision.



### *What NEPA actions will occur?*

The NEPA is the Nation's basic charter for the protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. The regulations prepared by CEQ address the administration of the NEPA process, including preparation of EIS's for major Federal actions that significantly affect the quality of the human environment.

The Federal agency requesting a negotiated agreement for the use of Federal sand normally will conduct the required NEPA analysis.

In instances when the MMS is notified by the other Federal agency prior to initiation of the NEPA process, the MMS will request cooperating agency status and prepare sections of the EIS that pertain exclusively to the use and transportation of OCS sand. The MMS also will participate in the Endangered Species Consultation.

The Endangered Species Consultation is conducted with the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) to ensure that any Federal action has no adverse impacts to threatened and endangered species in the study area. The NMFS and FWS can preclude activities in a certain area or suggest mitigating measures to avoid impacts to any threatened or endangered species.

When another agency has prepared the NEPA analysis, whether it is an EIS or EA, the MMS will review the document in detail to determine its adequacy for supporting a negotiated agreement.

If an EIS is found to be adequate, then the NEPA regulations allow the MMS to adopt the document and announce the decision in the *Federal Register*.

When an MMS review of a Federal agency's EIS or EA indicates the analysis is not sufficient, the MMS will (if the document is a preliminary or draft) send a detailed review letter outlining the inadequacies and detailing the necessary revisions.

If the document is an EIS and is revised accordingly, the MMS will adopt the document as outlined above. If the revised EA is adequate, the MMS will prepare a concise NEPA document and combine it with the EA to support the agreement.



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

No, on August 17, 1999, President Clinton signed the Water Resources Development Act of 1999. One provision of the Act 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. However, 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 Memorandum of Agreement (MOA) with the MMS concerning the potential use of the resource. To date, the MMS has entered into MOA's with the COE, 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.



## **Conveyance by Competitive Lease Sale**

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### ***What is a competitive lease sale?***

A competitive lease sale is an auction of mineral rights for a specific lease area under specified financial terms and other conditions. It may include stipulations designed to mitigate or alleviate potential environmental consequences associated with the operation of the lease. The lease is normally granted to the person submitting the highest bid.

### ***Who can request a competitive sale?***

Any person or company may request that OCS minerals be offered for lease. The request should be sent to the Director, Minerals Management Service, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 0100, Washington, DC 20240. The Code of Federal Regulations (30 CFR 281) outlines all of the requirements and procedures regarding competitive leasing of OCS minerals. A copy of the regulations may be obtained by contacting MMS-Leasing Division at 703-787-1215 or by visiting the MMS web site at [www.mms.gov/intermar/marineac.htm](http://www.mms.gov/intermar/marineac.htm).

### ***What will happen next?***

A Request for Information and Interest (RFII) is published in the *Federal Register* to determine whether additional interest exists in obtaining leases for sand resources and to obtain other information that is relevant to the lease sale decision.

### ***What's the purpose of the RFII?***

The MMS will gather comments, information, and indications of interest from interested parties that address:

- Commercial, navigational, recreational, and multiple-use considerations; environmental concerns, including information on biological and physical resources; archaeological resources; and social and economic issues.
- Potential conflicts with approved State and local coastal management plans and steps that the MMS could take to avoid or mitigate these conflicts.
- Indications of interest from industry respondents specifying blocks or areas within the RFII area that are of particular interest for consideration in a possible OCS sand and gravel lease sale.
- The RFII will specify a comment period. During this time, the MMS may schedule public workshops to discuss the RFII and the leasing process.

### *How will MMS use responses to the RFII?*

The MMS will identify any environmental concerns and multiple-use conflicts. This information will help the MMS make a preliminary determination on whether the prelease process should continue. The next step in the process is preparing an EIS.

- Specify areas within the RFII area that are of interest for potential commercial sand and gravel leasing and development.
- Identify potential conflicts among offshore activities and State or local coastal zone management plans.
- Develop requirements to ensure safe and environmentally sound activities.

### *What NEPA actions will occur?*

For all competitive lease sales, the MMS will most likely prepare an EIS.

If an EIS or other NEPA document exists, the MMS must determine its adequacy for the new decisions to be made, if it covers the area being considered for lease, or if it can provide a base for a more detailed document.

If an EIS exists, but new environmental information that would significantly affect the decision becomes available, the MMS would prepare a new EIS.

If an existing EIS or NEPA material serves to support any new decisions, MMS would adopt the existing document or prepare a new EA to supplement or support the existing analysis.

The MMS will use the NEPA analysis to determine if the lease sale will be held or modified if mitigating measures can reduce or eliminate potential adverse impacts.

### *The Lease Sale*

Once the NEPA process is complete, a Coastal Zone Management Plan Consistency Determination will be made; a Draft Leasing Notice will be published for public comment; and a Final Leasing Notice will be published and the sale held.

The leasing regulations also specify various terms and conditions for hard minerals leasing under the competitive bidding system. For example, a sand and gravel lease can be issued to the high cash-bonus bidder for an initial term of 10 years and can continue as long as there is production. The leasing notice will include all terms and conditions, such as lease size, duration, lease stipulations including measures to mitigate potentially adverse impacts on the environment, and financial considerations (e.g., rental, royalty, and bonding requirements).

**Appendix 1**

# PUBLIC LAW 103-426—OCT. 31, 1994

108 STAT. 4371

Public Law 103-426  
103d Congress

## An Act

To authorize the Secretary of the Interior to negotiate agreements for the use  
of Outer Continental Shelf sand, gravel, and shell resources.

Oct. 31, 1994  
[H.R. 3678]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. AMENDMENTS.

(a) SECTION 8 AMENDMENTS.—Section 8(k) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(k)) is amended—

(1) by inserting "(1)" after "(k)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources—

"(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

"(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or part by or authorized by the Federal Government.

"(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against a Federal, State, or local government agency. \*

"(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), that promote the policy set forth in section 303 of that Act (16 U.S.C. 1452).

"(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this Act shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources."

(b) SECTION 20 AMENDMENTS.—Section 20(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(a)) is amended—

(1) in paragraph (1)—

(A) by inserting "or other lease" after "any oil and gas lease sale"; and

(B) by inserting "or other mineral" after "affected by oil and gas"; and,

(2) in paragraph (2), by inserting "In the case of an agreement under section 8(k)(2), each study required by paragraph (1) of this subsection shall be commenced not later than 6 months prior to commencing negotiations for such agreement or the entering into the memorandum of agreement as the case may be." after "scheduled before such date of enactment."

Approved October 31, 1994. [\*Reflects the August 17, 1999 amendment in Section 215 of P.L. 106-53, Water Resources Development Act of 1999.]

### LEGISLATIVE HISTORY—H.R. 3678:

HOUSE REPORTS: No 103-817, Pt. 1, (Comm. on Natural Resources).

CONGRESSIONAL RECORD, Vol. 140 (1994):

Oct. 3, considered and passed House

Oct. 6, considered and passed Senate.



