

Interpreting & Implementing BOEM's New "Marine Minerals Rule"



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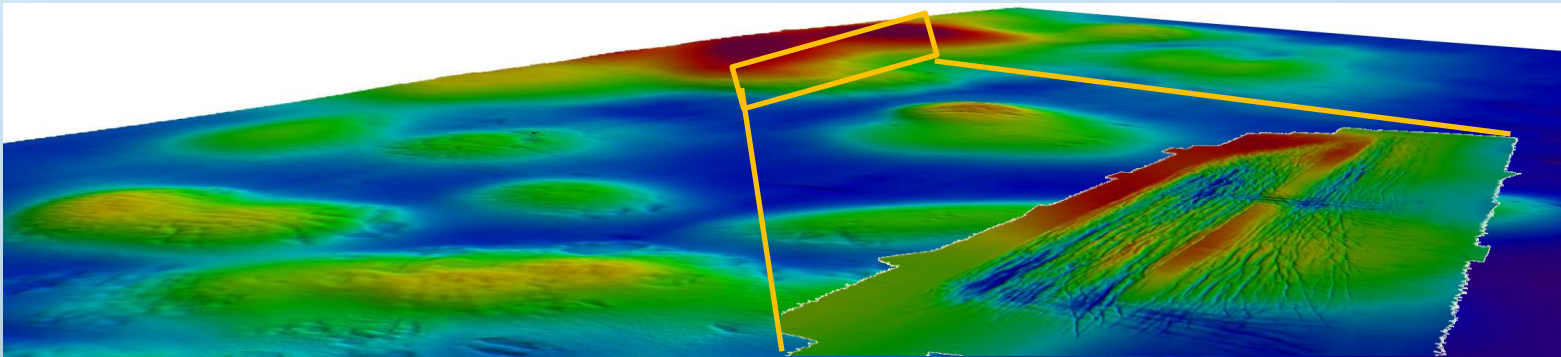
BOEM’s authority granted by Outer Continental Shelf Lands Act (“OCLSA”, 43 U.S.C. 1331, et. seq. § 8(k) as amended in 1978 and 1999)

Public Law 103-426 (43 U.S.C. 1337(k)(2)) (1994): Amended OCSLA to allow BOEM to negotiate and agreement, on a *noncompetitive* basis, for the use of OCS sand, gravel, and shell resources for (1) beach restoration, shore protection, or coastal wetlands restoration projects, or (2) use in construction projects authorized or funded by the Federal Government

A 1999 Amendment: *Prohibits* BOEM from charging Federal, state, and local governments a fee for OCS sand for the aforementioned projects



- Existing rules for commercial mineral leasing (30 CFR):
 - 280 (prospecting)
 - 281 (leasing)
 - 282 (operations)
- New rule for noncommercial sand: **30 CFR 583**
 - published on 10/3/17
 - effective as of 12/3/17



30 CFR Part 583

Creates a new part 583 (*“Negotiated Noncompetitive Agreements for the Use of Sand, Gravel, and/or Shell Resources on the Outer Continental Shelf”*) in Title 30 (*“Mineral Resources”*) of the Code of Federal Regulations (CFR) to address the use of Outer Continental Shelf (OCS) sand, gravel and shell resources



for

- shore protection
- beach restoration, or
- coastal wetlands restoration projects

by

- Federal,
- State, or
- local government agencies,
- ...or for use in construction projects
 - authorized by the Federal Government,
 - or funded in whole or in part by the Federal Government.



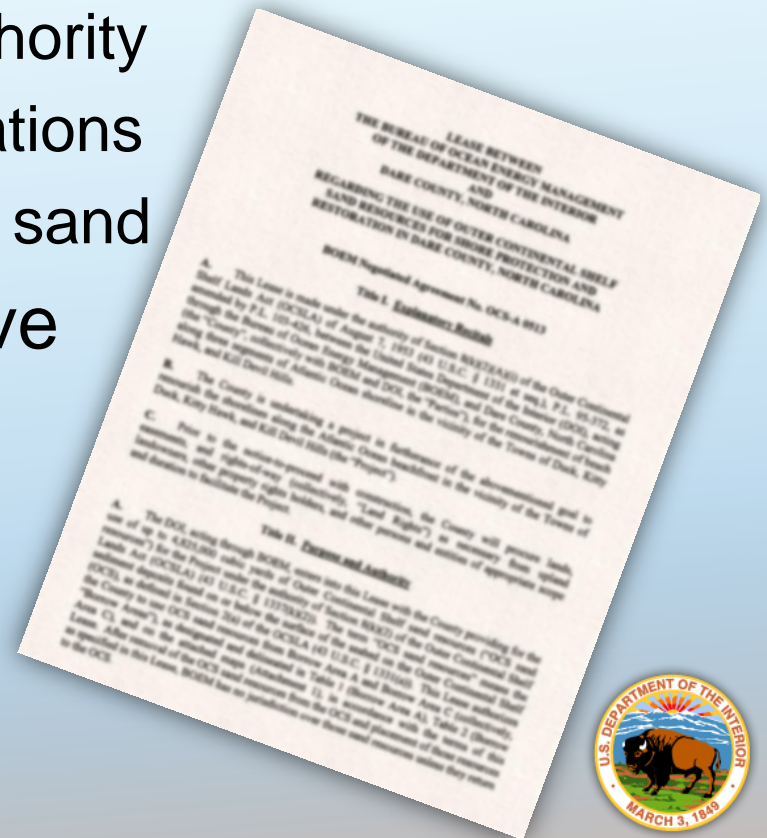
3 Types of Agreements Are Used to Convey Sand and Gravel Noncompetitively



- **2-Party Lease**
 - An Agreement negotiated between a Locality (State, county, city, parish etc.) and BOEM. USACE Regulatory involvement (e.g., CWA 404).
- **3-Party Memorandum of Agreement (MOA)**
 - An Agreement negotiated between a Locality (State, county, city, parish etc.), Another Federal Agency (typically USACE) and BOEM. USACE Civil Works.
- **2-Party Memorandum of Agreement (MOA)**
 - An Agreement negotiated between Another Federal Agency and BOEM



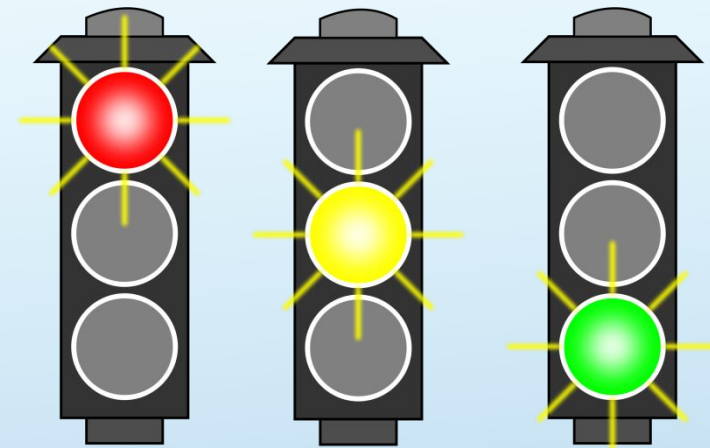
- Agreements are negotiated on a case-by-case basis and specify, at a minimum:
 - Who may use the OCS sand/gravel/shell
 - Project purpose and legal authority
 - Terms, conditions, and stipulations
 - Location, type, and volume of sand
- Agreements are not exclusive
- Typically issued for 3 years
- Can be amended



- Requests ***must***:
 - Be written
 - Describe the applicants and contact information
 - Provide a detailed project description
 - Explain how the project qualifies
 - Include descriptions and maps of borrow area(s) and placement site(s). See rule for the specific requirements
 - Identify potential conflicts
 - Provide environmental information and plan
 - Projected timeline
 - List all required permits and their status
 - Describe potential CZM/state/local/statutory inconsistencies
 - 7 – Explain authorization and funding



The BOEM Marine Minerals Branch (Division) will determine if the application is complete within 15 business days of receipt (if not, MMB will request additional information)



Once complete, BOEM will review the application and notify in writing whether the project qualifies for an agreement

To determine project qualification, BOEM will consider, among other criteria:

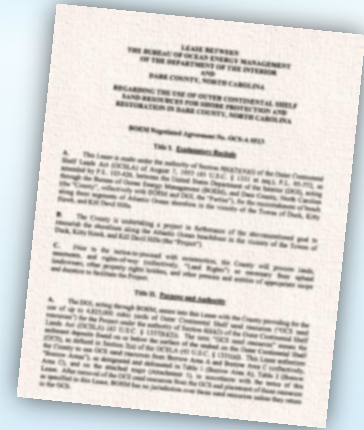
- Project purpose
- Other uses
- Funding
- Design and feasibility
- Nearby federal interests
- Stakeholder comments
- Applicant's relevant background and experience
- Stewardship impacts (environment, mineral resources)
- Consistency with applicable statutes and regulations



- If BOEM decides to enter into a Negotiated Noncompetitive Agreement (NNA)
 - Terms and conditions will be negotiated with applicant
 - Draft NNA will be reviewed by applicant
 - BOEM considers comments and suggestions
 - NNA is finalized (“surnamed”)
 - Applicants sign NNA, then BOEM countersigns to execute
 - Applicant will receive copy of NNA
- If BOEM decides not to enter into an NNA, a reason will be given and applicant may apply to BOEM Director for reconsideration



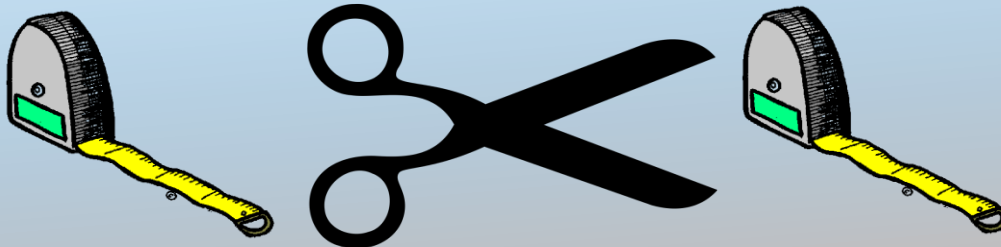
- NNAs must include, at a minimum:
 - Agreement number
 - Purpose and authorities
 - Designated and delineated borrow area
 - Project description and timeframe
 - Terms and conditions, reporting requirements, environmental mitigations, operating parameters
 - Obligations of all parties
 - Signatures of authorized individuals



- NNA becomes effective on the date that the last party (BOEM) signs
- NNA ends when
 - Time stipulated in agreement expires
 - Project is terminated by BOEM
 - Written notification that sufficient OCS resources have been obtained

- Terms are normally 3 years
 - Not longer than 5 years absent extraordinary circumstances
 - Can be extended by amendment
 - May require supplemental information

- BOEM isn't obligated to extend or modify agreements
- Request amendments 180 days in advance
 - BOEM responds within 30 days
 - Similar process to NNA
- Minor modifications may not need amendment; letter from BOEM may suffice
 - Includes <30 day extension



- BOEM's Director may suspend or terminate agreements for a variety of reasons:
 - Obtained by fraud or misrepresentation
 - Noncompliance with NNA terms
 - National security
 - Threat of serious harm to natural or cultural resources, life, property, environment



Can typically be executed within 12 to 18 months of the initial request, subject to:

- Completion of a NEPA review (EA or EIS) and decision document (Finding of No Significant Impact (FONSI) or Record of Decision (ROD))
- Presence of major environmental or multiple-use conflicts
- Regulatory issues
- Completion of the necessary environmental consultations (e.g., Sec. 7 NMFS consultation)
- Emergency or disaster response
- Project deadlines

Project scheduling and deadlines are cooperatively developed by BOEM and the applicants.



Thank You!



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