MEMORANDUM OF UNDERSTANDING
BETWEEN

THE U.S. ENVIRONMENTAL PROTECTION AGENCY

AND

THE U.S. DEPARTMENT OF THE INTERIOR

CONCERNING THE COORDINATION OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT ISSUANCE AND ENFORCEMENT WITH OUTER CONTINENTAL SHELF ACTIVITES

I. Purpose and Programs

In 1984, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Interior (DOI) signed a memorandum of understanding (MOU) entitled, "Concerning the Coordination of NPDES Permit Issuance with the Outer Continental Shelf Oil and Gas Lease Program." That MOU was intended to facilitate improved coordination between the agencies regarding oil and gas lease activities on the Outer Continental Shelf (OCS) and National Pollutant Discharge Elimination System (NPDES) permitting and compliance.

This revised MOU supersedes the 1984 memorandum and is intended to facilitate continued cooperation and coordination among the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE) (both within DOI), and the EPA (hereinafter collectively referred to as the "Participants") under the authorities of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331 *et seq.*, the Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*, and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*

In accordance with this MOU, the Participants intend to rely on the others' expertise to increase the effectiveness of each Participant and help to protect human health and the environment by

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fostering communication, coordination, cooperation, and collaboration among the Participants. The Participants will rely on this MOU to coordinate monitoring, inspection, and enforcement of the OCSLA, CWA, and other relevant statutes, implementing regulations, and conditions of plans and permits issued under those authorities.

II. Missions of the Participating Agencies

The BOEM's mission is to manage development of OCS energy and mineral resources in an environmentally and economically responsible way. The BOEM evaluates resources on the OCS; issues leases; and reviews and approves plans of exploration, development, and production. The BOEM prepares and oversees environmental reviews, including National Environmental Policy Act (NEPA) analyses in support of this offshore energy and mineral leasing and planning. In addition, BOEM develops, funds, and manages scientific research to inform policy decisions regarding the leasing and development of energy and mineral resources on the OCS.

The BSEE's mission is to promote safety, protect the environment, and conserve OCS resources through vigorous regulatory oversight and enforcement. The BSEE exercises safety and environmental enforcement authorities related to OCS facilities, including, but not limited to, inspections, investigations, penalty assessments, suspensions of activities, and preventing pollution.

The EPA's mission is to protect human health and the environment. As part of this mission, EPA is responsible for implementing and enforcing the CWA. Under the NPDES, EPA issues permits that conditionally authorize discharges from oil and gas operations on the OCS. The EPA has authority to investigate and enforce against NPDES permit violations and unpermitted discharges.

III. Definitions

The following definitions are provided to facilitate coordination and communication among the Participants. If any definition is inconsistent with that in applicable statutes and regulations, the definitions in the statutes and regulations govern.

NPDES Permit - A permit issued by EPA or an authorized State under the CWA's NPDES program. An NPDES general permit is an NPDES permit issued under 40 C.F.R. § 122.28 that authorizes a category of discharges from similar dischargers that are located in a specific geographic area. A general permit applies the same or similar conditions to all dischargers covered under the general permit. General NPDES permits may be for entire tracts, groups of tracts, whole OCS-planning areas in OCS lease offerings, or OCS facilities. An NPDES individual permit is specifically tailored to an individual facility.

Outer Continental Shelf (OCS) - All submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2(a) of the Submerged Lands Act, 43 U.S.C. §1301(a), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

OCS Activity - Any activity on the OCS authorized by BOEM or BSEE through a lease, permit, easement, or other agreement issued pursuant to OCSLA.

OCS Facility - Any artificial island, installation, or other device identified in a NPDES permit and for which BOEM and BSEE have regulatory jurisdiction.

Area of Biological Concern - For the purpose of issuing NPDES permits, an area of biological concern is a portion of the OCS identified by EPA, in consultation with DOI, as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

IV. Statutory Authorities

This MOU is entered into under the authority of:

1. The OCSLA (including 43 U.S.C. §§ 1334 and 1350, which authorize the DOI to enforce OCSLA, and 43 U.S.C. § 1348, which authorizes the Secretary of the Interior to, by agreement, utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of DOI regulations), any regulations promulgated under OCSLA and codified in Title 30 (Mineral Resources) of

the Code of Federal Regulations (including parts 250 and 550), and OCSLA permit terms;

2. The CWA and its implementing regulations codified in Title 40 (Protection of Environment) of the Code of Federal Regulations, including sections 104(a) and (b) of the CWA, 33 U.S.C. §§ 1254(a) and (b) which authorize the EPA to, among other things, cooperate with other Federal, State, and local agencies to conduct and promote the coordination and acceleration of investigations, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

3. Section 501 of the CWA, 33 U.S.C. § 1361, which authorizes the Administrator of EPA, with the consent of the head of any other agency of the United States, to utilize such officers and employees of such an agency as may be found necessary to assist in carrying out the purposes of the CWA.

4. Section 102(2)(G) of NEPA, 42 U.S.C. § 4332(2)(G), which authorizes Federal agencies to make available advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

V. Designation of Representatives

Within 30 days of execution of this MOU, each Participant will identify, in writing, Designated Representatives to serve as the primary points of contact for implementing this MOU. The Designated Representatives are responsible for the timely exchange of information among the Participants regarding issues, applications, and the routine policy determinations that are relevant to implement this MOU. For BOEM, the Chief Environmental Officer is responsible for identifying the Designated Representative. For BSEE, the Director is responsible for identifying the Designated Representative. For EPA, the Director of the Office of Wastewater Management, the Director of the Office of Compliance, and the Director of the Office of Civil Enforcement or their designees are responsible for identifying the Designated Representatives. The Designated Representatives for each Participant will develop and maintain an accurate and updated list of

individual contacts for their respective agency based on locality, expertise, and areas of responsibility within each agency.

The Designated Representatives for the Participants, and additional staff as appropriate, will endeavor to meet at least once annually to discuss issues of mutual concern. During the first annual meeting following execution of this MOU, the Designated Representatives will establish procedures for sharing key information within the scope of this MOU with appropriate individuals at each level of the Participants.

VI. Provisions for Coordination of NPDES Permit Issuance with Activities Authorized by BOEM or BSEE

This MOU establishes the following provisions regarding the types and timing of NPDES permit issuance with regard to OCS activities and the necessary development and exchange of information between the Participants. The Participants recognize that the types and timing of NPDES permits are dependent upon the development and exchange of information sufficient to address the CWA section 403(c) Ocean Discharge Criteria, 33 U.S.C. § 1343(c). Each Participant will assume the responsibility for communicating this information to its regional and field offices to ensure that this MOU will be implemented consistently nationwide.

A. Types of NPDES Permits

1. The EPA will, as appropriate, issue general NPDES permits for OCS Activities authorized by BOEM or BSEE for which a NPDES permit may be required. These permits are typically effective for terms not to exceed five (5) years.

2. The EPA will, as appropriate, issue general NPDES permits for areas of biological concern. These general permits may impose different or additional requirements than those imposed for the surrounding or adjacent areas.

3. The EPA will determine the geographic areas to be covered by NPDES permits in reference to OCS Protraction Diagrams and the lease blocks indicated on such diagrams, in reference to planning areas identified in the National OCS Oil and Gas Leasing

Program approved by the Secretary of the Interior, or in reference to other adequate descriptions.

B. Timing of NPDES Permits for OCS Lease Sale Areas

When an EPA Regional Administrator determines that a general permit is appropriate for an OCS lease sale area, the Regional Administrator will issue a project decision schedule that provides for the issuance of a final general permit no later than the Final Notice of Sale for the lease offering as projected by DOI (see 40 C.F.R. § 122.28(c)(2)). In cases where petitions for judicial review are filed during the lease sale process potentially affecting permit terms and conditions, the permit process may be stayed and permit terms and conditions reevaluated following final judicial decision.

C. Development and Exchange of Information

To implement the types and timing of NPDES permits described above, and to foster cost effective development of the information needed to determine appropriate permit limitations and conditions, the Participants agree to the following:

1. The EPA may identify information needs for establishing the terms and conditions of NPDES permits throughout the BOEM OCS leasing process or OCS Activities. To be most effective, these information needs should be identified as early as possible.
2. The EPA Regional Administrators will provide information needed to the appropriate BOEM Regional Managers through the Designated Representative and to the BOEM Environmental Studies Program (ESP) through the EPA Director of the Office of Wastewater Management during BOEM's annual information request for the ESP Studies Development Plans. Participants will, to the extent possible, identify information to assist each agency's NEPA process, including, but not limited to, scoping at the regional and national levels.
3. Participants will coordinate how information about studies is shared, including that from monitoring programs related to discharges and impacts associated with OCS Activities, to

avoid duplication of effort and facilitate use of existing groups and processes to the maximum extent feasible.

4. The EPA, in coordination with BOEM, intends to coordinate the assessment of the vulnerability of OCS lease areas to the discharges associated with OCS Activities. If needed, the Agencies will develop criteria for this assessment as new lease areas open. If criteria are developed, the EPA intends to submit working drafts to BOEM, BSEE, and any other appropriate agencies for review and comment. The Participants may use these criteria to suggest appropriate NPDES permit conditions, to assess information needs and plan studies that would help to evaluate the appropriateness of NPDES permit conditions.

VII. COORDINATION OF NEPA ACTIVITIES

The EPA conducts NEPA analyses when issuing NPDES permits for new source oil and gas facilities, renewable energy, or other activities. EPA intends to coordinate its NEPA processes with existing BOEM NEPA processes, to the extent that doing so does not jeopardize or delay individual lease sales or issuance of NPDES permits.

The major focus of cooperation will be to rely on and supplement, where appropriate, existing information from BOEM's ESP and other scientific information available to BOEM, BSEE, or EPA so that the maximum number of permit decisions can be made by the time of the Final Notice of Sale. Council on Environmental Quality (CEQ) regulations authorize EPA to adopt or tier from Environmental Impact Statements (EIS) prepared by BOEM for lease sales or other activities to the extent they address NEPA's requirements for those activities. If there are significant issues that cannot be resolved before issuance of a Record of Decision (ROD) or final EIS, both BOEM's and EPA's views will be noted in the ROD or final EIS. If any NPDES permits are issued after a lease sale or other action addressed in a final EIS and ROD occurs, the NEPA process for those permits will rely on the existing NEPA documents to the extent necessary and appropriate, with any needed modification or supplementation.

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VIII. POST-LEASE MONITORING, INSPECTION, AND ENFORCEMENT

Because BSEE is responsible for permitting OCS activities and carries out inspections of OCS facilities, this MOU establishes that:

1. The BSEE establishes and maintains requirements for pollution prevention and control procedures and equipment during OCS Activities. The Participants will coordinate to confirm that such requirements are consistent with EPA's NPDES effluent limitations and permit conditions. The EPA intends to provide BSEE with appropriate recommendations to promote such consistency.
2. Specific agreements between the BSEE Regional Director(s) and the EPA Regional Administrator(s), or their designees, implementing monitoring, compliance assistance, inspection, and enforcement under this MOU may be set forth in Memoranda of Agreement (MOAs). The MOAs may also be developed between the BSEE Director and the EPA Director of the Office of Compliance or the EPA Director of the Office of Civil Enforcement, or their designees. The MOAs will promote joint inspections, coordinated investigations, and joint enforcement efforts, where appropriate. Existing MOAs created in accordance with the 1984 memorandum remain in effect unless modified by the applicable BSEE Regional Directors and the EPA Regional Administrators under this MOU.
3. The BSEE will endeavor to conduct any compliance sampling in accordance with EPA's national compliance sampling procedures and protocols. The EPA will endeavor to provide BSEE with guidance and training on these procedures and protocols.
4. The BSEE will routinely monitor and inspect OCS facilities for compliance with NPDES permits pursuant to MOAs issued under this MOU. An EPA Regional Administrator may request that BSEE inspect an OCS facility based on a written request. The EPA retains the right to conduct any inspections authorized under the CWA and other statutes, including compliance inspections. When EPA requires transportation to an OCS facility that is provided by BSEE, EPA intends to submit its request to BSEE at least 10 days in advance so that such transportation can be coordinated with routine BSEE inspection

schedules. Special or emergency requests for transportation that are not coordinated with BSEE inspection schedules shall be at the discretion of the BSEE Regional Director.

5. The EPA is responsible for the enforcement of all NPDES permit conditions. The BSEE is responsible for the enforcement of its pollution prevention and control regulations and other BSEE permit conditions. The MOAs issued pursuant to this MOU may identify a process for BSEE to refer potential violations of NPDES permit conditions to EPA for review and potential enforcement.
6. Participants agree to cooperate on requests from each other for available information, documents, inspection information, technical expertise, or testimony that may be useful in carrying out their responsibilities, including, for the purpose of facilitating joint or collaborative enforcement actions, information gathered regarding the compliance status of an OCS Facility that is being investigated or evaluated by the other agency, as authorized by law. Participants agree to support the exchange of information that each Participant maintains in databases, information systems, clearing houses, and other means. Participants also agree to cooperate on requests for regulatory interpretations of their respective authorities and agree not to independently interpret laws, regulations, or policies within the other Participant's responsibility.

IX. TRAINING

The Participants will endeavor to establish and promote mechanisms for cross-training BSEE and EPA personnel regarding offshore pollution prevention requirements and enforcement protocols, including inspection procedures, and sampling and chain-of-custody protocols. The Participants will endeavor to work cooperatively to develop any necessary reports, instructions, checklists, and training materials.

X. AGENCY CONTACTS

Inquiries regarding the provisions of this MOU, its implementation, or disagreements over any of its provisions should be directed to:

Bureau of Ocean Energy Management, Department of the Interior
Chief Environmental Officer

Bureau of Safety and Environmental Enforcement, Department of the Interior,
Director

Environmental Protection Agency
Director, Office of Wastewater Management
(Parts VI and VII)

Environmental Protection Agency
Director, Office of Compliance
(Parts VIII and IX)

XI. SPECIAL UNDERSTANDINGS

1. This MOU is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. Any transaction involving transfer of funds between parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

2. Nothing in this MOU alters, amends, or affects in any way the statutory authorities of the EPA or DOI.

3. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not parties to this MOU, against the Participants, their officers or employees, or any other person. This MOU does not apply to any person outside of the Participants.

4. All commitments made by the parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU may be construed to require BOEM, BSEE, EPA, or the United States to obligate or expend funds in advance or in excess of the available appropriations from Congress. Nor does this MOU obligate

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BOEM, BSEE, EPA, or the United States to obligate or expend funds on any particular project or purpose, even if the funds are available.

5. To the extent permissible by each Participant's applicable Freedom of Information Act (FOIA) regulations, in the event a Participant receives a FOIA request for records related to the subject of this MOU, the agency receiving the request will: (a) consult with the other Participant before disclosing any responsive records to the requester when the other Participant has a substantial interest in the responsive records; and (b) refer the responsive records to the other Participant for processing when the responsive records originated with the Participant.

XII. EFFECTIVE DATE AND LENGTH OF AGREEMENT

This MOU will become effective upon signature by all Participants. It will continue to be effective until it is terminated by any Participant.

This MOU may be modified or amended by written agreement of all Participants.

Any Participant may terminate its participation in this MOU at any time by providing written notice to the other Participants at least 30 days in advance of the termination date.

David L. Bernhardt
Secretary of the Interior

Date

Andrew R. Wheeler
Administrator of the Environmental Protection Agency

1/20/2021
Date