

Annex to BOEM-NOAA Memorandum of Understanding

Topic: Proactive Coordination and Issue Identification

Updated: 10/21/2024

I. PARTIES

This Annex [No.1] to the Memorandum of Understanding (MOU) between the Bureau of Ocean Energy Management (BOEM), U.S. Department of the Interior, and the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, signed by the NOAA Administrator and the BOEM Director on January 12, 2022, is entered into by BOEM and the National Marine Fisheries Service (NMFS), referred to herein as “the Parties.”

BOEM’s mission is to manage development of U.S. Outer Continental Shelf (OCS) energy, mineral, and geological resources in an environmentally and economically responsible way. BOEM is responsible for offshore renewable energy development in Federal waters. NMFS is responsible for the stewardship of the Nation’s ocean resources and their habitat. NMFS provides science-based conservation and management for sustainable fisheries and aquaculture, fisheries resources, marine mammals, endangered species, and the habitats/ecosystems on which these resources depend.

II. SCOPE OF ANNEX

This Annex outlines best practices for coordination of the Parties in:

- Effective early and ongoing communication and engagement during the planning and analysis, leasing, construction, and operations phases of the offshore wind energy process¹; and
- Early identification of potential issues that may affect the planning or environmental review processes and potential pathways to collaboratively resolve issues among the Parties, when feasible.

The scope of this Annex is intended to be inclusive of all relevant offices and regions of BOEM and NMFS. The Parties will implement the best practices in this Annex to the extent practicable and feasible given timing and resource constraints, internal agency processes, and specific circumstances. The Parties recognize that flexibility in approaches may be necessary to address the unique resources of a region, organizational differences, and differences in offshore wind energy technology and resulting impacts.

¹ While intended to broadly cover interagency engagement during the offshore wind energy process, this Annex does not cover processes related to decommissioning. The decommissioning phase may be addressed in future updates to this Annex or subsequent agreements.

In the context of this Annex, the term “resolution” means that the Parties reach a shared understanding of a planned path forward on an issue that has been raised by either party. This could mean reaching mutual agreement or mutual recognition of differences in opinion and a shared awareness of how any such differences might be reflected in each of the Parties’ processes. This includes a shared understanding of how the resolution will be notified to leadership (as necessary).

This Annex incorporates the terms and conditions of the January 12, 2022, BOEM-NOAA MOU. Consistent with the January 12, 2022, BOEM-NOAA MOU, this Annex does not constitute a legally binding agreement and activities under this Annex are subject to the applicable laws, regulations, and policies for each Party. This Annex does not modify or supersede existing agency authorities and does not reduce, expand, or transfer any of the statutory or regulatory authorities and responsibilities of the Parties. Nothing in this Annex is intended to or will be construed to affect in any way (limit or increase) the authority or legal responsibilities of the Parties.

III. BEST PRACTICES FOR EFFECTIVE COMMUNICATION AND COLLABORATION AMONG THE PARTIES

This section establishes the general best practices of the Parties in implementing early and ongoing engagement during the planning and analysis, leasing, construction, and operations phases of the offshore wind energy process.

A. Information Sharing

- a. The Parties will strive for open dialogue when engaging in any of the processes covered by this Annex. This includes commitments to: actively engage early and often at the appropriate staff level to identify priority issues for resolution when they arise; resolve all disagreements at the lowest level possible; and strive for shared understanding of those issues.
- b. The Parties will coordinate across science and regulatory programs to share knowledge and expertise at the staff and leadership levels.
- c. The Parties will share information with each other through participation in workshops, meetings, informal dialogue, and similar means to address potential issues as early as practicable and to collaborate on reaching resolution of any outstanding issues.

B. Providing Technical Expertise and Feedback

- a. When providing written feedback during document reviews² or in response to published notices for comment during the area identification and leasing processes,³ the Parties will:
 - i. Provide a consolidated set of comments reflecting input from all relevant offices and regions.
 - ii. Provide specific recommended changes to analyses or descriptions for consideration.

² For example: Environmental impact statements for COP reviews, environmental assessments for site assessment activities, programmatic NEPA documents.

³ For example: Publication of call areas, draft wind energy areas, or proposed sales notices.

- iii. When necessary, schedule meetings to discuss the input provided in order to facilitate a shared understanding and to resolve concerns or questions from either Party.
 - 1. Depending on the urgency of the action or topic, this conversation would occur during an existing interagency forum (i.e., a topic-specific working group, or a project-specific standing meeting).
 - 2. Alternatively, the Parties could convene a one-off discussion with a lead point of contact from NMFS and BOEM and representatives from additional offices with relevant expertise or permitting responsibilities, as needed.
- iv. After consideration of written feedback provided on published notices or during document reviews, the relevant Party will provide feedback to the other Party about how comments were addressed, including those not incorporated in the agency's decision or product. This feedback could take the form of documentation via a comment-response matrix or a written summary, and may consist of oral feedback where appropriate.
- b. If either Party has major concerns with a proposal, the Parties will strive to discuss these major issues or concerns and attempt to identify a pathway(s) to resolve any issues or information needs prior to sending formal written feedback.

C. Identifying Information Needs and Collaboration Opportunities

- a. The Parties will strive to collaborate on scientific and environmental topics related to the development and deployment of offshore wind energy technologies.
- b. The Parties will meet regularly to discuss or identify areas of uncertainty or information needs that may be relevant to their decision-making processes.
- c. The Parties will include in these conversations representatives from relevant offices in policy, project review, and science teams who have relevant experience or expertise to contribute. The Parties will regularly share contact information with each other in order to facilitate collaboration and issue resolution.
- d. If the Parties mutually identify an issue, area of uncertainty, or information need that is a priority for resolution they will mutually evaluate and select a pathway to collaborate on potential solutions, and jointly develop and implement a plan to make progress on addressing this need within an agreed upon timeline.
- e. The Parties will strive to provide adequate time for collaboration and issue resolution while meeting timelines.

D. Potential Pathways for Collaboration on Issue Resolution

- a. The Parties will consider the following available pathways as options that could be used to resolve an issue or to address an information need:
 - i. Assign the issue for discussion and action to an existing staff-level or higher-level forum. This pathway may be appropriate for topics that:
 - 1. Need urgent attention or
 - 2. Fit within the scope of an existing forum (i.e. a routine meeting on a specific offshore wind project, or a working group on NEPA process improvements).
 - ii. Convene a new interagency, one-off discussion (if an appropriate forum does not already exist). This pathway may be appropriate for topics that:

1. Need urgent attention,
 2. Are isolated to a specific project or agency action,
 3. Relate to implementation of a process-related coordination document, or
 4. Are outside of the scope of an existing forum.
- iii. Convene a new interagency working group (if an appropriate forum does not already exist).
1. A new working group will:
 - a. Report to and provide regular updates to the Executive Working Group (or other governance body as appropriate).
 - b. Include only the members necessary to resolve the issue at hand with the presumption that respective technical subject matter experts will play a primary role.
 2. This pathway may be appropriate for topics that:
 - a. Require additional time to make progress on resolution,
 - b. Are new or emerging topics,
 - c. Are recurring or programmatic across multiple projects or planning processes, or
 - d. Are outside of the scope of an existing forum.
- iv. Mutually agree to seek external scientific expertise outside of NMFS and BOEM, consistent with each agency's policies, and jointly implement any such external engagement. This pathway may be appropriate for topics that:
1. Require additional time to make progress on resolution,
 2. Are programmatic in nature, or
 3. Involve mutually agreed upon areas of uncertainty or information needs relevant to an environmental impact analysis.
- b. The Parties will follow appropriate internal notification pathways to update agency leadership on issues under resolution, progress, and outcomes. The Parties will strive to provide these notifications simultaneously.

VII. COMMITMENTS AND LIMITATIONS

Nothing herein is intended to conflict with current Department of Commerce or Department of the Interior directives. If any terms of this Annex are inconsistent with Parties' directives, the portions of this Annex that are determined to be inconsistent will be invalid, but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect. Any applicable statutory authorities, including any dispute resolution processes established under such authorities take precedence over the procedures outlined in this Annex. Detailed procedures related to actions covered in this Annex may also be developed where necessary and appropriate, including procedures inclusive of additional parties.

VIII. DURATION OF ANNEX, AMENDMENTS, OR TERMINATION

This Annex will become effective upon the date of the last signature and remain in force and effect through January 12, 2032. The Parties will review this Annex at least once every five (5) years to determine whether it should be amended or terminated. The Annex may be amended or

extended at any time through the mutual consent of the Parties. Amendments shall be executed in writing and signed by both parties. This Annex may be terminated by (1) mutual written consent; or (2) six (6) months advance written notice of either Party. Termination of this Annex will not affect the completion of any ongoing or future projects or activities.

IX. PROTECTION OF THE DELIBERATIVE PROCESS

The materials produced in the course of implementing this Annex may be subject to disclosure under FOIA, except to the extent they are subject to an applicable FOIA exemption. Materials may be covered by the “deliberative process privilege” if the draft documents contain substantive discussions implementing the Annex.

X. SIGNATURES

Walter D. Cruickshank
Deputy Director
BOEM

Date

Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
NOAA

Date