MEMORANDUM OF UNDERSTANDING

Among

THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY, THE U.S. DEPARTMENT OF ENERGY, THE U.S. DEPARTMENT OF DEFENSE, THE U.S. DEPARTMENT OF THE ARMY, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE U.S. COAST GUARD, THE U.S. ENVIRONMENTAL PROTECTION AGENCY, THE U.S. FISH AND WILDLIFE SERVICE, THE FEDERAL AVIATION ADMINISTRATION, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

THE COMMONWEALTH OF PENNSYLVANIA

And

THE STATES OF

ILLINOIS
MICHIGAN
MINNESOTA
NEW YORK

To

CREATE A GREAT LAKES OFFSHORE WIND ENERGY CONSORTIUM TO COORDINATE ISSUES OF REGIONAL APPLICABILITY FOR THE PURPOSE OF PROMOTING THE EFFICIENT, EXPEDITIOUS, ORDERLY AND RESPONSIBLE EVALUATION OF OFFSHORE WIND POWER PROJECTS IN THE GREAT LAKES

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to support the efficient, expeditious, orderly and responsible review of proposed offshore wind energy projects in the Great Lakes by enhancing coordination among federal and Great Lakes state regulatory agencies (collectively, "Participants").

The Participants that hereby enter into an MOU are the following Great Lakes states: the Commonwealth of Pennsylvania, and the States of Illinois, Michigan, Minnesota and New York; and the White House Council on Environmental Quality (CEQ) along with the following federal agencies: the U.S. Department of Energy (DOE), the U.S. Department of Defense (DOD), the U.S. Department of the Army (DA), the Advisory Council on Historic Preservation (ACHP), the U.S. Coast Guard (USCG), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the Federal Aviation Administration (FAA), and the National Oceanic and Atmospheric Administration (NOAA).

II. Background

Great Lakes offshore wind energy resources present a significant opportunity to stimulate economic revitalization of key sectors of the economy, to enhance our national security by accelerating energy independence efforts, and to diversify the region's energy supply. Federal offshore wind resource data for the Great Lakes indicates a gross resource of more than 700 gigawatts, representing a substantial portion of the nation's total gross offshore wind resource. However, offshore wind ventures must be evaluated against potential social or environmental, safety and security impacts and fully considered by the appropriate Federal and State regulatory and resource agencies. Because the bottomlands of the Great Lakes are owned by each State within its respective boundary and both Federal and State regulatory authorities apply, proposals to develop offshore wind in the Great Lakes require consideration and decisions by a number of Federal and State entities, including each of the Participants.

III. Responsibilities of Participants

In order to ensure successful collaborative implementation of this MOU, it is the intent of all participants to:

1. Commit to provide staffing and resources, including attendance at periodic meetings, to implement the provisions of the MOU and resulting agreements, to the extent resources allow;

2. Work together to create a regulatory roadmap – a document that describes the regulatory review process and identifies current and anticipated data needed to inform efficient review of proposed offshore wind energy facilities in the Great Lakes. The roadmap should also set forth a clear process to efficiently coordinate data collection and dissemination and reviews undertaken by the Participants that will include anticipated processing times for review, to the extent possible, and decision-making associated with each type of permit. The roadmap will remain consistent with Participants' existing authorities. The Participants will complete and publish the roadmap within 15 months of the effective date of this MOU;

3. Participate in pre-application consultations and joint reviews of applications for offshore wind development, consistent with Participants' jurisdiction and authorities, to the extent resources allow;

4. Discuss, document and apply lessons learned during implementation of this MOU when evaluating existing and future proposed offshore wind energy facilities;

5. Designate one or more appropriate points of contact to coordinate implementation of this MOU. The points of contact will (1) assist with identifying and assigning appropriate personnel and resources; and (2) assist in ensuring that responsibilities are met;

6. Attempt to resolve issues arising under this MOU expeditiously; and

7. Agree that the White House Council on Environmental Quality can serve as a single Federal point of contact for communications under this MOU, as authorized by the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et. seq.) to ensure federal responsiveness to state inquiries concerning this MOU and that nothing in this MOU shall preclude a state from working directly with individual Federal agencies.

IV. Mission and Statutory Authority

Each of the participants asserts their authorities and responsibilities as follows:

CEQ – The CEQ has authority to enter into this MOU under NEPA. NEPA assigns CEQ the task of ensuring that federal agencies meet their obligations under the Act. Its principal purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment and to coordinate federal agency actions in order to advance those policies. The CEQ Chair is also a co-chair of the National Ocean Council. Efforts undertaken by the Participants to fulfill the responsibilities of this MOU will inform implementation of the National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes, including the process for collaborative, regional coastal and marine spatial planning.

DOE – DOE has authority to enter into this MOU under Section 646 of the Department of Energy Organization Act (Pub. L. 95-91), as amended (42 U.S.C. § 7256). DOE's Office of Energy Efficiency and Renewable Energy (EERE) mission is to enhance energy efficiency and production, to protect the environment, and to bring clean, reliable, and affordable energy technologies to the marketplace. EERE's Wind Program focuses on advancing the offshore wind industry in the United States.

DOD – DOD has authority to enter into this MOU under powers and authorities contained in 10 U.S.C. 113. Consistent with its national defense mission, the DOD reviews and comments upon whether proposed offshore wind energy facilities will adversely affect Defense activities and will work with the Participants to identify possible measures to mitigate those impacts.

DA – The U.S. Army Corps of Engineers (USACE), a branch of the DA, has authority to enter into this MOU pursuant to its responsibilities for administering laws for the protection and wise use of waters of the United States, pursuant to the requirements of Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. § 403), Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344) and Section 14 of the RHA (33 U.S.C. § 408). Under Section 10 of the RHA, the USACE may authorize work and/or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States, which include the U.S. side of the binational Great Lakes, their connecting channels, and adjacent wetlands. Under Section 404 of the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the United States, including wetlands, where the USACE determines that the proposed action is not contrary to the public interest and is in compliance with the Clean Water Act 404(b)(1) Guidelines (40 CFR 230). If any proposal would require alteration or modification to an existing Corps project and/or structure, an additional authorization must be received from the Secretary of the Army (delegated to the Chief of Engineers) in accordance with Section 14 of the RHA, or under 33

U.S.C. § 408. The USACE review is also subject to compliance with NEPA and several other applicable federal laws.

ACHP – The ACHP has authority to enter into this MOU under Section 202 of the National Historic Preservation Act (NHPA) (16 U.S.C. §§ 470 et seq.). The mission of the ACHP is to promote the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advise the President and the Congress on national historic preservation policy. Sections 106 and 110 of the NHPA require that federal agencies act as responsible stewards for our nation's historic resources. When their undertakings affect historic properties, which can include tribal historic and cultural resources, Section 106 requires federal agencies to take into account the effects of their undertakings (which include issuance of leases, permits, and licenses), on historic properties, and afford the ACHP a reasonable opportunity to comment on such undertakings. The ACHP's regulations (36 CFR Part 800) set forth this process, involving consultation with the State and Tribal Historic Preservation Officers and others, as appropriate, to determine if the undertaking will affect an historic property, and if so, what measures might be appropriate to avoid, minimize, or mitigate adverse effects.

USCG – The USCG has authority to enter into this MOU under 14 U.S.C. § 93(a)(20), which allows the Commandant of the USCG to enter into cooperative agreements with other government agencies. The Secretary of the Department of Homeland Security delegated to the USCG her authority under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. § 1221 et seq.) to prevent damage to structures on or in the navigable waters of the United States and to protect the navigable waters of the United States and the resources therein. The USCG has safety and regulatory jurisdiction over projects located in navigable waters of the United States and is responsible for granting permits for private aids to navigation (see 33 C.F.R. Part 66). The USCG, in coordination with the U.S. Department of Homeland Security, is a cooperating agency for NEPA purposes and will provide recommendations to the lead federal agency responsible for approving the proposed action on matters over which the USCG has jurisdiction by law or subject matter expertise, to include, but not be limited to, issues related to safety of navigation, OREI security, or to minimize potential impacts on other USCG missions.

EPA – The EPA has authority to enter into this MOU under a wide range of environmental laws, including Sections 104 and 118 of the Clean Water Act (CWA, 33 U.S.C. §§ 1254 and 1268) and Section 103 of the Clean Air Act (CAA, 42 U.S.C. § 7403). The EPA also has authority to carry out the commitments contained in this MOU under a wide range of environmental laws, including Sections 402 and 404 of the CWA (33 U.S.C. §§ 1342 and 1344) and section 309 of the Clean Air Act (CAA, 42 U.S.C. § 7609). The EPA has responsibilities relevant to the siting of offshore wind facilities, including participation in the CWA Section 404 permit process and restriction, in certain circumstances, of the use of specific disposal sites for dredged or fill material pursuant to Section 404(c). The EPA also has responsibilities related to activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System, established under Section 402 of the CWA. Pursuant to Section 309 of the CAA, EPA is required to review and comment on environmental impact statements (EISs) for proposed actions of other federal agencies in accordance with NEPA and to make those reviews public. EPA also has the discretion to review and comment on other documents prepared under NEPA. EPA is also the lead federal agency on the U.S. side for implementation of the binational

Great Lakes Water Quality Agreement under 33 U.S.C. § 1268. The Agreement, first signed in 1972 and revised in 1978 and 1987, expresses the commitment of the U.S. and Canada to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem and includes a number of objectives and guidelines to achieve these goals. It also reaffirms the rights and obligations of Canada and the United States under the Boundary Waters Treaty of 1909.

FWS – The FWS has authority to enter into this MOU under the Endangered Species Act (ESA, 16 U.S.C. § 1531et seq.), NEPA, the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742(a)-742d & 742e-742j-2), the Fish and Wildlife Coordination Act ("FWCA") of March 10, 1934 (16 U.S.C. § 661 et seq.), the Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), and Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds*. The mission of the FWS is to work with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. With respect to migratory birds, the Service's goals are to ensure long-term ecological sustainability of all migratory bird populations, increase socioeconomic benefits, improve hunting and birdwatching and other outdoor bird-related experiences, and increase awareness of the value of migratory birds and their habitats for their intrinsic, ecological, recreational and economic significance.

FAA – The FAA has authority to enter this MOU under 49 USC § 40103, and 44718. 49 USC § 40103, *Sovereignty and use of airspace*, vests the FAA with broad authority to regulate the safe and efficient use of navigable airspace. 49 USC § 44718, *Structures interfering with airspace*, provides that that if the construction or alteration of a structure may result in an obstruction of the navigable airspace or interference with air navigation facilities and equipment, the FAA shall "conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of airspace, facilities, or equipment."

Section § 44718 requires a person to give notice of the construction, alteration or expansion (or the proposed construction, alteration or expansion) when the notice will promote safety in air commerce and the efficient use and preservation of the navigable airspace. Additionally, § 44718 requires an aeronautical study if the construction will result in an obstruction of the navigable airspace. Based on the study findings, the FAA decides whether and to what extent a structure will adversely impact on the safe and efficient use of the airspace, facilities or equipment. The FAA decision is set forth in either a determination of no hazard or a determination of hazard.

Title 14 of the Code of Federal Regulations part 77, *Objects affecting navigable airspace*, was promulgated under the authority in the two above-referenced sections of Title 49 of the United States Code. Part 77 sets out the specific requirements and procedures for the submission of a notice and FAA review and decision making based on the notice. Part 77 requirements apply for all structures affecting navigable airspace, including wind turbines.

NOAA – NOAA has authority to enter this MOU under the National Marine Sanctuaries Act (NMSA, 16 U.S.C. §§ 1431 – 1445c-1) and the Coastal Zone Management Act (CZMA, 16 U.S.C. §§ 1451-1464). NOAA has responsibilities under several statutes including NEPA, the

Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742(a)-742d & 742e-742j-2), FWCA, the NMSA, and the CZMA. Before permits for offshore wind facilities are issued, NOAA consults on impacts to NOAA trust resources under the FWCA, and if appropriate NMSA, and makes recommendations to avoid, minimize or mitigate impacts. The NMSA prohibits the destruction, loss of, or injury to a Sanctuary resource and activities affecting a Sanctuary resource may be subject to permits by the Secretary of Commerce. In addition, the Secretary of Commerce, through NOAA, approves state coastal management programs under the CZMA. State coastal management programs must have appropriate processes for siting energy facilities in their coastal zones that consider the national interest in energy production as well as the national interest in protecting coastal resources. All eight Great Lakes states have federally-approved coastal management programs. NOAA's National Weather Service (NWS) uses a national radar network to provide weather forecasts and warnings for the United States and adjacent waters for the protection of life and property (15 U.S.C. § 313), and for meteorological services necessary for the safe and efficient movement of aircraft in air commerce (49 U.S.C. § 44720). The NWS has a process to determine whether proposed wind energy facilities will adversely affect the radar network and actively seeks mitigation of adverse impacts from wind facility developers. The NWS also is involved in cooperative efforts to improve the basic wind forecast for all users, including wind power. In addition to statutorily mandated regulatory responsibilities, the mission related responsibilities of NOAA include the provision of scientific and policy expertise, products, and services many of which are necessary for offshore energy facility development and operations.

The States of Illinois, Michigan, Minnesota, and New York and the Commonwealth of Pennsylvania have the authority to enter into this MOU under their respective laws and constitutions and under the Submerged Lands Act (43 U.S.C. §§ 1301-1315). Specifically, the Submerged Lands Act recognized and confirmed to the States the title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, along with the authority to manage, administer, lease, develop, and use such lands and natural resources. The nature of this authority is described by applicable State and Federal law and the Public Trust Doctrine.

V. Administrative Provisions

1. Nothing in this MOU is intended to or will be construed to limit or affect in any way the authority or legal responsibilities of the Participants. This MOU neither expands nor limits those powers and authorities vested in the Participants by applicable law or regulation, including preliminary and final action on leases, permits, licenses, or any other matter requiring official decision, and nothing in this MOU should be interpreted to preempt, abridge or supersede the rights of each State to manage the respective submerged lands within the boundaries of each State in accordance with the laws, directives and policies of each State. If a section or term of this MOU is inconsistent with the authority or legal responsibilities of the Participants, that section or term shall be invalid, but the remaining sections and terms of this MOU shall remain in full force and effect.
2. Nothing in this MOU may be construed to obligate the Participants to any current or future expenditure of resources.

3. The mission requirements, funding, personnel, and other priorities of the Participants may affect their ability to fully implement all the provisions of this MOU.
4. Nothing in this MOU is intended to, or will be, construed to restrict the Participants from participating in any other activities or arrangements with other public or private agencies, organizations, or individuals.
5. This MOU is intended only to enhance and strengthen the working relationships of the Participants in connection to offshore wind energy proposals in the Great Lakes region and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States or any State, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
6. No Participant will make an official statement on behalf of any other Participant in connection with this agreement.
7. Information furnished between the Participants under this MOU may be subject to the Freedom of Information Act, 5 U.S.C. § 552, et seq. (FOIA), and, for participating State agencies, a relevant State Freedom of Information Act. Determinations regarding the release of federal agency information exchanged pursuant to this MOU that is responsive to a valid request under FOIA will be made by the agency from which the information originated. Absent express Congressional authorization, federal Participants will not disclose to the other Participants any privileged or confidential trade secret, commercial or financial information obtained from a third party, or other information protected by law, unless the owner of such information expressly consents to such disclosure in writing. Documents furnished to States under this MOU may be subject to applicable state information handling and disclosure requirements.

VI. Contacts

All notices, communications and coordination will involve, at a minimum, the following individuals, their successors and/or designees as follows:

White House Council on Environmental Quality:	Deputy Director
U.S. Department of Energy:	Senior Advisor to the Assistant Secretary Office of Energy Efficiency & Renewable Energy
U.S. Department of Defense:	Executive Director, Siting Clearinghouse
U.S. Department of the Army:	Regulatory Program Manager Army Corps of Engineers Headquarters, Great Lakes & Ohio River Division, Mississippi Valley Division
Advisory Council on Historic Preservation:	Director Office of Federal Agency Programs
U.S. Coast Guard:	Chief, Navigation Standards Division
U.S. Environmental Protection Agency:	Great Lakes National Program Manager Region 5 Regional Administrator
U.S. Fish and Wildlife Service:	Senior Advisor to the Director
Federal Aviation Administration:	Manager, Obstruction Evaluation Group
National Oceanic and Atmospheric Administration:	Director of Policy
State of Illinois:	Deputy Director Illinois Department of Commerce
State of Michigan:	Director, Office of the Great Lakes
State of Minnesota:	Deputy Commissioner Minnesota Department of Commerce
State of New York:	Commissioner, New York State Department of Environmental Conservation
	President & CEO, New York Power Authority
Commonwealth of Pennsylvania:	Energy Executive Office of the Governor

VII. Effective Date, Modification, and Termination

1. This MOU is effective as of the date the last Participant executes the MOU and expires five (5) years from that date, at which time the MOU will be subject to renewal or expiration. When effective, the MOU will not be modified except through written agreement executed by all Participants.
2. Any Participant may terminate participation in this MOU 120 days after providing written notice to the other Participants.

VIII. Signatories

2-22-12

NANCY SUTLEY, CHAIR
WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

STEVEN CHU, SECRETARY
U.S. DEPARTMENT OF ENERGY

FRANK KENDALL, ~~ACTING~~ UNDERSECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
U.S. DEPARTMENT OF DEFENSE

JO-ELLEN DARCY, ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)
U.S. DEPARTMENT OF THE ARMY

MILFORD WAYNE DONALDSON, CHAIRMAN
ADVISORY COUNCIL ON HISTORIC PRESERVATION

VADM, USCG, Deputy Commandant for Operations, for.

ADMIRAL ROBERT PAPP, JR., COMMANDANT
U.S. COAST GUARD

LISA JACKSON, ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

DAN ASHE, DIRECTOR
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MARK DAYTON, GOVERNOR
STATE OF MINNESOTA

ANDREW CUOMO, GOVERNOR
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TOM CORBETT, GOVERNOR
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