

Response to Comments and Explanation of Changes from the Massachusetts Proposed Sale Notice to the Final Sale Notice

BOEM received 25 comment submissions in response to the *Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Massachusetts* (PSN) comment period that closed August 18, 2014. The submissions comprised dozens of individual comments that addressed many aspects of this lease sale, and this document was prepared in response to several of the key comments and questions. BOEM's responses to the comments are organized into five categories: (1) Auction Procedures, (2) Fiscal Terms, (3) BOEM's Leasing Procedures, (4) Lease Areas, and (5) Lease Specific Terms, Conditions, and Stipulations.

1. Comments Related to Auction Procedures

***Comment:* BOEM should consider reducing the minimum bid to less than \$2/acre.**

BOEM received one comment requesting that the minimum bid for the leases be lowered to less than \$2/acre. The commenter requested BOEM reduce the minimum bid due to the relatively large size of, and water depths associated with, the lease areas. In consideration of this comment and in recognition of the minimum bid amount provided for the South Lease Area offered in the Rhode Island/Massachusetts lease sale held in July 2013, BOEM has reduced the minimum bid to \$1/acre for each lease. The minimum bids for each lease area are as follows: \$187,523 for Lease OCS-A 0500; \$166,886 for Lease OCS-A 0501; \$248,015 for Lease OCS-A 0502; and \$140,554 for Lease OCS-A 0503.

***Comment:* BOEM should allow more than one user to log-on to the bidder's account simultaneously.**

Multiple authorized users from the same bidder are permitted to be logged in at the same time. Bidders designate up to three authorized users on the Bidder's Financial Form. These users can be logged in simultaneously. If more than one bidder submits a bid, the system will register the last bid placed before the end of the round.

The login procedures were determined in consultation with BOEM's auction services contractor and the Bureau of Safety and Environmental Enforcement's information technology security staff. Moreover, many aspects of the system's design are in place to meet security and legal requirements such as FISMA (Federal Information Security Management Act, 44 U.S.C. 3541 et. seq.).

***Comment:* BOEM should eliminate the limitation on switching between lease areas when placing bids.**

There is no limitation on switching between lease areas when placing bids *except* when the bid is uncontested. As described in the "Auction Procedures" section of the Final Sale Notice (FSN), if a bidder submits an uncontested bid consisting of one or more lease areas (LAs), and the auction continues for another round, BOEM automatically carries that same live

bid forward as a live bid into the next round, and BOEM's asking price for the LA(s) contained in the uncontested bid would remain unchanged from the previous round. If the price on any LA(s) in that bid rises later in the auction because another bidder places a live bid on one or more of those LAs, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price(s) goes up, the bidder that placed the previously carried-forward bid is free to bid on any LA at the new asking price(s).

Comment: BOEM should consider revising the definition of a Community Benefits Agreement and/or Community Based Organization.

Commenters recommended BOEM revisit the definition of a Community Benefits Agreement (CBA) and/or Community Based Organization (CBO) as proposed in the PSN. One commenter recommended limiting the definition of a CBA to only agreements with state or municipal governments. Another commenter suggested BOEM consider a CBA with a CBO like a 501-(c)(12) Rural Electric Co-op, which would provide benefits that resemble those of the Joint Development Agreement (JDA) that BOEM included for a non-monetary credit in the Rhode Island/Massachusetts auction in July 2013.

Although BOEM agrees that additional factors could be identified as outlined in the comments and included in the definition of a CBA and/or CBO, it is unclear what those factors should be, how they should be incorporated as to not be unnecessarily exclusive, and how to define them objectively in order to demonstrate their contribution to the overall success of a project. BOEM has attempted to create a balanced definition so as to give appropriate credit for CBAs with CBOs that provide tangible benefits and contribute to the success of a project and so that speculative CBAs that do not contribute to the success of a project are excluded from receiving such a credit. BOEM did not alter the definition of a CBA and/or CBO from what was included in the Massachusetts PSN.

Comment: BOEM should consider increasing the percentage credit for a Community Benefits Agreement to greater than the 5% proposed in the PSN.

Several commenters recommended BOEM increase the percentage credit that could be received by an eligible bidder seeking non-monetary credit in the auction for possessing a CBA with a CBO to greater than the 5% proposed in the Massachusetts PSN. One commenter noted that the 5% credit for a non-monetary factor for a CBA proposed in the Massachusetts PSN may not provide a meaningful enhancement to a bid. Several commenters suggest that a CBA is very similar to a JDA in that both types of agreements are incentivized through auctions for the same reason, that projects with these agreements in place have been developed in close consultation with their surrounding communities and thus have a higher probability of achieving successful completion, and that a 5% credit does not give sufficient weight to the benefits of a CBA to the local community.

Several commenters provided additional information that a CBA contributes to the ultimate success of the development of a project by helping to secure off-take arrangements and financing through future power purchase agreements with municipal aggregations or local energy co-operatives, low-interest rate loans from the U.S. Department of Agriculture (USDA) Rural

Utility Service, public-private financing structures, and demonstrated ability by a CBO to finance renewable energy projects. The commenters note that these elements related to off-take and financing can be identified in a CBA and also evaluated on a yes/no basis, in line with BOEM's criteria for defining non-monetary factors and including credits for them in a multiple-factor auction format. One commenter suggested BOEM consider a CBA with a CBO like a 501-(c)(12) Rural Electric Co-op, which would provide benefits that resemble those of the JDA.

BOEM has increased the percentage credit that can be received by an eligible bidder seeking non-monetary credit in the auction for possessing a CBA with a CBO to 10%. Given the current knowledge constraints to understanding the beneficial impacts of CBAs and their role in successful project completion, BOEM believes that a non-monetary credit of 10% is appropriate.

2. Comments Related to Fiscal Terms

***Comment:* BOEM should reduce the operating fee rate to below 2%.**

Several commenters recommended reducing the operating fee rate from 2%. Pursuant to the Outer Continental Shelf Lands Act (OCSLA), BOEM must ensure that the government receives a fair return for leases and grants issued on the OCS. BOEM has determined that a 2% operating fee rate throughout the term of the lease is appropriate for ensuring a fair return and is in accordance with the default operating fee specified in 30 CFR 585.506. According to 30 CFR 585.510, the BOEM Director may reduce or waive the operating fee or components of the operating fee, such as the fee rate or capacity factor, if the lessee submits an application and can demonstrate that continued activities would be uneconomic without the requested reduction or waiver, or a reduction or waiver is necessary to encourage additional activities.

***Comment:* BOEM should consider reducing the annual rent of the commercial leases to less than \$3/acre/year.**

Several commenters requested that BOEM consider reducing the annual rent of the commercial leases to less than \$3/acre/year. Overall, the commenters note that reducing the lease payments is in the best interest of the government so that the likelihood of development is increased and the cost to ratepayers is decreased. Pursuant to the OCSLA, BOEM must ensure that the government receives a fair return for leases and grants issued on the OCS. BOEM has determined that an annual rent amount of \$3/acre/year is appropriate for ensuring a fair return and is in accordance with the default rent specified in 30 CFR 585.503. According to 30 CFR 585.510, the BOEM Director may reduce or waive the rent if the lessee submits an application and can demonstrate that continued activities would be uneconomic without the requested reduction or waiver, or a reduction or waiver is necessary to encourage additional activities.

***Comment:* BOEM should clarify the financial assurance requirements at various project stages.**

As discussed in 30 CFR 585.517, BOEM will base the determination for the amounts of the SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations.

3. Comments Related to BOEM's Leasing Procedures

Comment: BOEM should consider auctioning one lease area per year for the next several years.

Commenters requested BOEM consider auctioning one lease area per year for the next several years so as not to overwhelm the demand for offshore wind in New England and inadvertently undermine the ability of developers to finance and construct offshore wind projects in the region. BOEM is moving forward with the auction of four lease areas offshore the Commonwealth of Massachusetts, as described in the PSN and FSN.

BOEM has worked extensively with the Commonwealth of Massachusetts, other members of the BOEM Renewable Energy Intergovernmental Task Force, and relevant stakeholders when moving forward with the commercial wind energy leasing process offshore Massachusetts. BOEM has published planning notices, gathered information about multiple uses and environmental resources, and conducted extensive public outreach that has helped to define the Wind Energy Area (WEA) identified for leasing in the Massachusetts PSN.

Given current feedback and response to the upcoming sale, BOEM feels that leasing only one area per year could undermine the competitiveness and development of offshore wind power off Massachusetts, due to an inefficient balance of too few lease areas and excess demand. . Therefore, BOEM believes that offering four lease areas is justifiable.

4. Comments Related to Lease Areas

Comment: BOEM should consider offering different lease areas than what was proposed in the PSN.

Commenters requested that BOEM consider auctioning the Massachusetts commercial leases in an alternative lease area delineation than what was proposed with the Massachusetts PSN. The commenters recommend BOEM adopt "Alternative 3" as outlined in the Department of Energy National Renewable Energy Laboratory (NREL) December 2013 delineation report, entitled "Assessment of Offshore Wind Energy Leasing Areas for the BOEM Massachusetts Wind Energy Area," which was commissioned by BOEM to inform the delineation of the Massachusetts WEA into lease areas for inclusion of the PSN. As outlined in NREL's report, Alternative 3 includes four leasing areas with an equal division of shallower water (less than 50m) and one leasing area with nearly all deeper water (greater than 50m). The commenters note this delineation in Alternative 3 is most conducive to reducing overall cost of development through dividing sites more consistently according to water depth. They suggest that offering lease areas that contain significantly different water depths such as those proposed in Alternative 1 is likely to require multiple foundation types and significantly increase the overall cost of development.

BOEM is offering the same four lease areas as what was proposed in the PSN. BOEM selected "Alternative 1" from the NREL report because it provides each lessee the maximum flexibility in

designing their wind energy project, as the total area within each lease, including the amount of “shallow” water area available to each lessee, is maximized. Additionally, as stated in its report, NREL determined that delineating the areas pursuant to Alternative 3 could allow the lessee obtaining the deepest water lease area to introduce wake effects onto three of the other four leasing areas. Finally, BOEM’s established processes accommodate for the possibility that one or more winning bidders may not wish to retain certain portions of its lease area(s) after the conclusion of the auction.

Comment: BOEM should apply a 2 nautical mile set-back from the Traffic Separation Lanes.

BOEM places a high priority on maritime safety and navigation concerns and strives to engage with the maritime community on these important issues.

BOEM’s approach has been to actively seek U.S. Coast Guard (USCG) participation as early in the planning process as possible, and continue these engagement efforts as BOEM moves forward with leasing and specific plan reviews. The USCG sits on all twelve of BOEM’s Intergovernmental Renewable Energy Task Forces, including Massachusetts, which were created to inform BOEM’s offshore renewable energy authorization processes. BOEM ensures that the USCG’s position and the information provided by maritime stakeholders are considered during the planning process, which has resulted in the reduction of several planning areas to accommodate vessel traffic. Specifically in Massachusetts, BOEM eliminated areas identified by the USCG that overlapped with the *Nantucket to Ambrose* Traffic Separation Scheme (TSS) in developing the Call for Information and Nominations, and implemented a 1-nmi set-back from the TSS in developing the Massachusetts Wind Energy Area (WEA).

At this time, BOEM believes that maintaining the 1-nmi setback from the *Nantucket to Ambrose* TSS is appropriate. However, BOEM has committed to requiring that each commercial wind Lessee submit a Navigational Safety Risk Assessment (NSRA) pursuant to USCG’s Navigation and Vessel Inspection Circular NO. 02-07 with its COP. The COP will detail the developer’s specific commercial wind development proposal, and there will be opportunity for public input during the review of each COP. Each NRSA will be closely reviewed by BOEM and USCG, and BOEM will be looking to USCG for input and analysis on potential impacts to maritime users, including recommendations as to the appropriate size of any additional necessary setback area, prior to approving, approving with modifications, or disapproving any COPs.

5. Comments Related to Lease Specific Terms, Conditions, and Stipulations

Comment: BOEM should consider extending the operations term of the commercial leases to greater than 25 years.

Several commenters request BOEM consider extending the operations term of the commercial leases proposed with the Massachusetts PSN to greater than 25 years. The commenters note that given the large size and the significant water depths associated with the Massachusetts WEA, projects may be built in phases over a multi-year period, require a longer time for development, and require an operations term sufficient to provide an economic

investment for the later phases. Several commenters noted that BOEM set a precedent when it offered an operations term of 33 years for commercial wind energy lease offered in the Virginia auction, and that the same circumstances exist in Massachusetts and therefore merit a longer operations term.

The Department of Energy National Renewable Energy Laboratory (NREL) December 2013 delineation report entitled “Assessment of Offshore Wind Energy Leasing Areas for the BOEM Massachusetts Wind Energy Area” was commissioned by BOEM to inform delineation of the Massachusetts WEA into lease areas for inclusion in the PSN. In addition to analyzing the wake effects of projects developed in each lease area, NREL also recommended and subsequently included a “more realistic, phased development strategy” in the final delineation report. NREL assumed one 500-MW project would be installed in the first 6-8 years of the lease term in shallower water, and a second 500-MW project phase would be installed in 10-16 years in deeper water. NREL developed these time periods by reviewing the nominations submitted to BOEM in response to the Massachusetts Request for Interest and Call for Information and Nominations.

Given (1) the uncertainty associated with potential development timelines within the MA WEA lease areas, and (2) that the renewal process outlined in 30 CFR 585.425-429 would allow each individual lessee the flexibility to determine whether an extension of the operations term is necessary and submit an extension request for BOEM’s consideration if applicable, BOEM has decided to retain the 25-year operations terms in the MA leases that will be offered for sale.

***Comment:* BOEM should modify the indemnification clause in Addendum C so that it applies only if the damage is caused by the Lessee, and with an exception for any negligence or misconduct of the indemnified party.**

BOEM has not modified stipulation 3.1 in Addendum C of the four commercial leases. BOEM developed this stipulation in coordination with the Department of Defense, and has included this language in commercial leases issued for areas offshore Delaware, Rhode Island/Massachusetts, and Virginia. Notably, the indemnification clause in Addendum C is applicable to a limited set of activities – the site characterization activities that a lessee conducts to support the submission of a SAP or COP. At the time BOEM receives a lessee’s SAP and/or COP for approval, it will coordinate with the Department of Defense when developing any stipulations necessary to impose during site assessment and construction and operations activities, and when doing so will be mindful of potential implications that these requirements could have on lessees.

***Comment:* BOEM should clarify the lease language to ensure other activities authorized by BOEM do not materially interfere with the Lessee’s activities.**

BOEM has not changed the lease language in Section 3(d) or in Section 7(a). BOEM has developed this language and included it as part of its lease form (BOEM form 0008). This language has been included in commercial wind energy leases issued for areas offshore Delaware, Rhode Island/Massachusetts, Massachusetts, and Virginia.

Comment: Several commenters recommended that BOEM adopt additional stipulations for the protection of North Atlantic right whales similar to those contained in a voluntary agreement for the Mid-Atlantic Wind Energy Areas.

BOEM is supportive of the collaborative efforts between environmental non-governmental organizations and offshore wind developers to pursue novel mitigation measures. The environmental stipulations in Addendum C of the leases and the terms of the environmental non-governmental organizations' voluntary agreement are similar in regard to requirements associated with sound source verification for survey equipment and vessel strike avoidance measures. In response to the comments received and in order to be consistent with BOEM's most recent consultation with the National Oceanic and Atmospheric Administration's National Marine Fisheries Services (NMFS) concluding with NMFS's July 19, 2013 Mid- and South Atlantic Geological and Geophysical (G&G) Biological Opinion, and BOEM's Virginia, Delaware and Maryland commercial leases, BOEM has updated Addendum C to include the following changes:

- BOEM has amended stipulation 4.1.1.2 to require that vessel speed restrictions apply to all project related vessels operating from November 1 through July 31. Previously, outside of Dynamic Management Areas (DMAs), vessel speed restrictions were limited to vessels 65 feet or larger, in line with 50 CFR 224.105. Considering the occurrence of North Atlantic right whales (NARWs) in the areas around the lease areas, the seasonal migratory periods identified by NMFS, and subject-matter expert recommendations, BOEM determined that the vessel speed restrictions should be broadened to include all project related vessels, regardless of size, in and outside of DMAs.
- BOEM added stipulation 4.3.6.7 requiring the Lessee to ensure that vessels cease high-resolution geophysical (HRG) survey activities within 24 hours of NMFS establishing a DMA in the Lessee's HRG survey area. HRG surveys may resume in the affected area after the DMA has expired.

The following measures in the environmental non-governmental organization's agreement have not currently been adopted by BOEM, for the reasons discussed below.

- A seasonal restriction on sub bottom profiling was proposed for January 1 through April 30. The lease stipulations relating to HRG survey activities, including sound source verification of active sound sources, are considered to be effective mitigations to reduce acoustic exposure to NARWs.
- An extension of the exclusion zone for all marine mammals to 500 m during sub bottom profiling operations. The current default 200 m exclusion zone restriction is based on acoustic propagation data for assessed electromechanical equipment and covers the 180 dB acoustic injury isopleths, since it may not be feasible to monitor the 160 dB acoustic harassment isopleths for some electromechanical equipment.
- The addition of a requirement for a minimum of two Protected Species Observers (PSOs) on board vessels, with a minimum of 1 year experience qualification

requirement. BOEM requires that all PSOs be NMFS-approved and the current lease language stipulates that one or more NMFS-approved PSOs must monitor the exclusion zone for G&G surveys. This language requires that at least one PSO be on watch at any given time, which is the intent of the proposed requirement. BOEM does not approve observer qualifications as this is deferred to NMFS. NMFS produced a Technical Memorandum (NMFS-OPR-49) on National Standards for a Protected Species Observer which discusses observer qualifications and numbers.

The measures listed above that were requested but that BOEM did not incorporate as lease stipulations are voluntary, and reflect the commitment of the offshore wind industry, in some instances, to go above and beyond existing requirements developed by BOEM in consultation with NMFS for the protection of NARWs. For any voluntary measures that may be less restrictive than those provided by BOEM in its leases, BOEM's lease stipulations must be followed.