

May 1, 2023

Via Regulations.gov

Elizabeth Klein  
Director  
Bureau of Ocean Energy Management  
1849 C Street, NW  
Washington, D.C. 20240

Re: Renewable Energy Modernization Rule (BOEM-2023-0005)

Dear Director Klein:

The Coastal States Organization (CSO) respectfully submits these comments to the Bureau of Ocean Energy Management (BOEM) regarding the proposed Renewable Energy Modernization Rule. Since 1970, CSO has served as the collective voice for the nation's coastal states, commonwealths, and territories on policy issues relating to coastal, Great Lakes, and ocean management. CSO's members, governor-appointed delegates representing thirty-six state and territory coastal management programs, play a multi-faceted role in all aspects of renewable energy development and are key partners in the national goal of deploying 30 gigawatts of offshore wind generation capacity by 2030. Coastal states set renewable energy targets, invest in workforce, supply chain, and infrastructure development, and incentivize clean energy through state policy. Through the federal consistency review process under the Coastal Zone Management Act (CZMA), state and territory coastal management programs coordinate across federal and state agencies and among energy developers, coastal communities, and ocean users to ensure that renewable ocean energy projects are sited, built, and operated in ways that avoid, minimize, and mitigate adverse effects on the environment and existing uses, including commercial and recreational fishing.

CSO lauds the goals of the Renewable Energy Modernization Rule to facilitate the development of outer continental shelf (OCS) renewable energy and promote U.S. climate and renewable energy objectives in a safe and environmentally sound manner while providing a fair return to the U.S. taxpayer. As the offshore wind energy industry has rapidly evolved in the past 14 years, coastal states have developed experience in reviewing offshore renewable energy projects, and support BOEM's efforts to apply lessons learned and make the process more efficient.

CSO supports changes that protect and coordinate across multiple ocean uses, clarify information requirements, develop data with less environmental impact and cost, help states and federal agencies coordinate review processes, find opportunities for activities and reviews to be responsibly conducted in parallel rather than serially, and stay nimble to adapt to new technologies and approaches.

In particular, CSO supports the amendment to the construction and operations plan (COP) review process in which the draft National Environmental Policy Act (NEPA) analysis would be required as part of the submission from BOEM to a coastal state for CZMA federal consistency review. State

coastal programs, when provided with adequate information on the design and impacts of project proposals, have extensive experience using federal consistency to efficiently review proposals and identify effective solutions to avoid or mitigate adverse impacts on ocean and coastal uses and resources. Better aligning the CZMA and NEPA review processes by beginning federal consistency review at the time the draft NEPA analysis is available will achieve greater clarity, predictability, and efficiency for developers, federal agencies, and states.

CSO has concerns about BOEM's approach toward codifying the Project Design Envelope (PDE) approach and in particular about changes which would defer some amount of geotechnical survey work until after the COP review process. Coastal states need sufficient information through the federal consistency review process to understand the full scope of engineering decisions which may be made under a project's PDE, especially with respect to changes in foundation sites and turbine layouts. BOEM should provide more clarity on the geotechnical information required at the COP stage and ensure that adequate information is developed at this stage to understand and address key coastal effects.

CSO offers the attached detailed comments based on the experience and expertise of state and territory coastal management programs. These comments are made in conjunction with and in support of comments submitted directly by coastal states.

Thank you for the opportunity to provide feedback on this critical issue. Please direct any questions about these comments to John Ryan-Henry ([jryan-henry@coastalstates.org](mailto:jryan-henry@coastalstates.org)).

Sincerely,

A handwritten signature in black ink, appearing to read "Derek Brockbank", with a stylized flourish at the end.

Derek Brockbank  
Executive Director

## **General Comments**

**Comment 1:** CSO notes language in the preamble stating when federal consistency review is required for BOEM activities:

BOEM, in consultation with NOAA, finds that implementation of the OCS renewable energy program thus far shows that there are three potential CZMA Federal consistency reviews under BOEM's actions: (1) when BOEM conducts a lease sale and awards a lease, [right of way], or [right-of-use easement] and provides a State or States with a CZMA consistency determination under 15 CFR part 930, subpart C; (2) when an applicant submits a CZMA consistency certification to BOEM for a COP, if required by 15 CFR part 930, subpart E; and (3) when the activity is located outside a geographic location described in the State's coastal management program pursuant to 15 CFR 930.52, and an applicant, on its own accord, submits a consistency certification to a State or States through BOEM under 15 CFR part 930, subpart E.<sup>1</sup>

For any single offshore wind development project, states typically have *two* federal consistency review opportunities associated with BOEM actions: when BOEM conducts the lease sale and awards the lease, and then when BOEM reviews the COP submission.<sup>2</sup> In each case, federal consistency review jurisdiction is triggered by the “effects test” – a state has review of a federal agency action or a federally licensed or permitted activity (including OCS plans) if that activity has any reasonably foreseeable effect on any coastal use or resource of that state.<sup>3</sup>

States develop lists of federal license or permit activities, including OCS plans like the COP, which affect coastal uses or resources, as well as geographic location descriptions (GLDs) of areas where listed activities have reasonably foreseeable coastal effects.<sup>4</sup> Some states have developed GLDs for activities described in detail in COPs. Additional states are pursuing new or revised GLDs for these activities. Listed federal licenses or permits within a GLD are automatically subject to federal consistency review.<sup>5</sup>

However, even a federal license or permit outside a GLD, including an OCS plan, is subject to federal consistency review if it passes the effects test. NOAA regulations provide a process for determining whether an unlisted activity or activity outside the coastal zone or GLD is subject to review.<sup>6</sup> This process is called the unlisted activity review (UAR) request.

To date, lessees have often voluntarily submitted consistency certifications for COPs with reasonably foreseeable coastal effects on one or more states without going through the UAR process. This has simplified the process, as it acknowledges that offshore wind projects will typically have coastal effects on nearby states and coastal communities, and bypasses the need to develop extensive documentation before the review process has begun and before the bulk of NEPA analysis is complete. Coastal states will continue to coordinate with lessees and BOEM to anticipate and adapt to review needs for

---

<sup>1</sup> 88 Fed. Reg 5968, 6006.

<sup>2</sup> Coastal states may also conduct federal consistency review of federal authorization which are not described in detail in a COP. 15 C.F.R. § 930.81(a).

<sup>3</sup> 15 C.F.R. § 930.11(g).

<sup>4</sup> 15 C.F.R. § 930.53(a).

<sup>5</sup> 15 C.F.R. § 930.53(d).

<sup>6</sup> See 15 C.F.R. § 930.54.

individual projects. Nevertheless, even if a lessee does not voluntarily submit a consistency certification, any COP with reasonably foreseeable coastal effects is subject to federal consistency review.

OCS leasing is not subject to federal consistency review based on a GLD.<sup>7</sup> Instead, BOEM is obligated to work with states to identify reasonably foreseeable coastal effects and to determine which states may be affected by the lease sale. To provide clarity for this process, BOEM and NOAA should coordinate with states to provide guidance on how this determination should be made in the context of OCSLA renewable energy leasing.

CSO notes that if a lessee makes substantial changes in a proposed activity, or if significant new circumstances or information relevant to the proposed activity and the proposed activity's effects on any coastal use or resource come to light, lessees are required to prepare a supplemental consistency certification.<sup>8</sup> As discussed below (see Comment 12), BOEM's proposed rule makes significant changes to information that is reviewed under the COP vs under facility design reports (FDR) or fabrication and installation reports. BOEM should ensure that adequate information is developed through the NEPA analysis of the COP submission for states to understand and review the coastal effects of all design options, in order to maintain efficiencies within the review process and avoid the need for supplemental consistency review when final design decisions are made.

#### **§ 585.103: When may BOEM prescribe or approve departures from the regulations in this part?**

Under proposed § 585.103(a)(1), BOEM would newly be authorized to prescribe or approve deviations from its regulations when it deems its procedures impractical or unduly burdensome and the departure necessary to achieve the objectives of the renewable energy program.

Under § 585.103(b), which is not proposed to be amended, any departure from BOEM's regulations must protect the environment and the public health and safety to the same degree as if there was no approved departure from the regulations and must not impair the rights of third parties.

**Comment 2:** CSO notes that BOEM does not have the authority to prescribe or approve deviations from its own federal consistency obligations under the CZMA, nor those of leaseholders. For instance, BOEM does not have the authority to abridge the information that a leaseholder must submit for state review, to limit the rights of states to request additional information, or to reduce the time available for consistency review.

Any such deviation, in addition to being outside BOEM's statutory authority, would also impair the rights of states as third parties, and without such state participation could not guarantee protection of the environment and the public health and safety to the same degree as if there was no approved departure.

---

<sup>7</sup> Compare 15 C.F.R. § 930.31 (applying to federal agency activities) with 15 C.F.R. § 930.53(a)(1) (applying to federal licenses and permits; describing the function of GLDs). See also 15 C.F.R. § 930.51(a) ("Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.").

<sup>8</sup> 15 C.F.R. § 930.66.

**§ 585.104: Do I need a BOEM lease or other authorization to produce or support the production of electricity or other energy product from a renewable energy resource on the OCS?**

Under proposed § 585.104, site assessment activities would be explicitly exempt from the requirement to obtain a lease.

BOEM indicates that, under the amended rule, off-lease site assessment facilities, such as met buoys, would not be reviewed by BOEM and would instead be authorized under U.S. Army Corps of Engineers (USACE) permitting requirements under section 10 of the Rivers and Harbors Act. In the case of met buoys, this would typically be Nationwide Permit 5 for scientific measuring devices<sup>9</sup> or an equivalent general permit.

**Comment 3:** CSO notes that USACE’s nationwide permits are subject to regional conditions and are not used in all offshore areas. For instance, in federal waters offshore New England, nationwide permits are suspended and USACE uses state general permits. BOEM should clarify how off-lease site assessment facilities will be managed in waters off states where nationwide permits are suspended.

**Comment 4:** While USACE permits potentially afford an opportunity for federal review of off-lease site assessment facilities (for instance, though pre-construction notification for activities conducted under NWP 5 in areas where certain resource are present), coastal states may not reliably receive notice of applications or have adequate opportunity to submit a UAR request for CZMA federal consistency review.

CSO recommends that BOEM provide a grace period before implementing this provision, to align with USACE’s five-year nationwide permit renewal cycle (and corresponding state general permit renewals) and for the states to coordinate with relevant USACE districts to determine procedural needs to ensure adequate opportunity for review.

**§ 585.212: What is area identification?**

Under proposed § 585.212(c), BOEM would evaluate the potential effects of leasing identified areas on the human, marine, and coastal environments, and under subsection (c)(1) “may develop measures, including lease stipulations, to mitigate potential adverse impacts....” This proposal revises the current language, which states that BOEM “will consult to develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environment.”

**Comment 5:** BOEM should clearly commit to mitigating potential adverse impacts and should use the word “will” in this section. Changing “will” to “may” in this section creates ambiguity as to whether BOEM is required to develop measures to mitigate potential effects to human, marine, and coastal environments.

---

<sup>9</sup> U.S. Army Corps of Engineers, Nationwide Permit 5—Scientific Measurement Devices (2017), *available at* <https://www.swt.usace.army.mil/Portals/41/docs/missions/regulatory/NationwidePermits/Nationwide%20Permit%2005%20-%20Scientific%20Measurement%20Devices.pdf?ver=2017-03-31-150714-880>.

**§ 585.231: Will BOEM issue leases noncompetitively?**

**§ 585.306: What action will BOEM take on my request?**

Under proposed § 585.231(f), parties applying for a noncompetitive lease would be “responsible for submitting any consistency certification and necessary data and information in a timely manner to the applicable State CZMA agencies and BOEM pursuant to 15 CFR part 930, subpart D” following issuance of a determination of no competitive interest.

Under proposed § 585.306(b), parties applying for right of way (ROW) or right-of-use easement (RUE) grant, would be “responsible for submitting any required consistency certification and necessary data and information under 15 CFR part 930, subpart D, to BOEM and the applicable State CZMA agency” following issuance of a determination of no competitive interest.

**Comment 6:** BOEM should clarify the meaning of “in a timely manner” under these sections.

**§ 585.600: What plans and information must I submit to BOEM before I conduct activities on my lease or grant?**

Under proposed § 585.600(b)(4), BOEM would have discretion to waive certain information or analysis requirements in a proposed site assessment plan (SAP) if the applicant can demonstrate that, among other things, the information is not needed or required by a state's coastal management program.

Additionally, under proposed § 585.600(a)(1), a SAP would be required only for site assessment activities involving an engineered foundation. BOEM indicates that, as with off-lease site assessment activities, other on-lease site assessment facilities such as met buoys should instead be authorized USACE permitting requirements under section 10 of the Rivers and Harbors Act, typically Nationwide Permit 5 for scientific measuring devices.

**Comment 7:** CSO is concerned by proposed language which implies that BOEM can make decisions on behalf of coastal states regarding what information is sufficient for federal consistency review.

NOAA federal consistency regulations set forth the standards and processes for obtaining adequate information for federal consistency review. Coastal states develop necessary data and information lists to identify the information required to initiate federal consistency review.<sup>10</sup> The state’s review begins at the time it receives the consistency certification and necessary data and information.<sup>11</sup> If a state requires additional information beyond what the lessee submitted at the outset of the federal consistency review period to determine consistency with the enforceable policies of its coastal management program, the state may request that the applicant submit that additional information within the first three months of the review period.<sup>12</sup> If the applicant fails to supply the information required for the state agency to determine consistency, the state may object to the consistency certification on the grounds of insufficient information.<sup>13</sup>

---

<sup>10</sup> 15 C.F.R. § 930.76.

<sup>11</sup> 15 C.F.R. § 930.77(a)(1).

<sup>12</sup> 15 C.F.R. § 930.77(a)(3).

<sup>13</sup> 15 C.F.R. § 930.63(c).

BOEM does not have authority under the CZMA to waive necessary data and information requirements listed at 15 C.F.R. § 930.76 or on state necessary data and information lists, nor to prevent states from requesting additional information that it needs for review. Coastal states coordinate with lessees as a matter of routine to anticipate information needs and coordinate review processes. BOEM's regulations should promote early coordination and cooperation among BOEM, lessees, and coastal states on identifying and meeting information needs in advance of submitting these plans to BOEM.

BOEM should revise the amended language to limit the exemption provision, as applied to federal consistency review, to the necessary data and information required to initiate federal consistency review. The regulations should make explicit reference to NOAA federal consistency regulations, and involve the state in the decision-making process for waiving information requirements:

BOEM may waive certain types of information or analyses that you otherwise must provide in your proposed plan when you demonstrate that: ...

(4) The relevant coastal State has agreed that the information is ~~neither necessary nor required for a State to determine consistency with its~~ not listed as necessary data and information required under 15 CFR § 930.58 or 15 CFR § 930.76, including state-specific necessary data and information listed in the State's coastal management program.

CSO agrees with BOEM's expectation that it should be the rare case where a separate CZMA consistency review is required for a SAP.

**Comment 8:** CSO notes that USACE's nationwide permits are subject to regional conditions and are not used in all offshore areas. For instance, in federal waters offshore New England, nationwide permits are suspended and USACE uses state general permits. BOEM should clarify how off-lease site assessment facilities will be managed in waters off states where nationwide permits are suspended.

#### **§ 585.612: How will my SAP be processed for Federal consistency under the Coastal Zone Management Act?**

Under proposed § 585.612(b), a lessee would be required to submit a consistency certification for a SAP under 15 C.F.R. part 930, subpart E, only if BOEM has not previously submitted a consistency determination to that state under 15 C.F.R. part 930, subpart C, that covered the proposed site assessment activities, as opposed to always providing the submittal as described in the current regulations.

**Comment 9:** CSO agrees that the proposed amendment to not require a consistency certification for a SAP, unless the proposed activities mark a change from those reviewed for the lease sale, conforms to current practice.

Should activities not reviewed under the federal consistency review for the lease sale be proposed, a new consistency certification or supplemental consistency review may be necessary.

**Comment 10:** Coastal states often request that federal agencies submit a draft consistency determination before beginning federal consistency review so that the federal agency and coastal program can coordinate on information needs. Past coordination between BOEM and coastal states on lease sales has helped identify issues, confirm information needs, and make the federal consistency review process more efficient and predictable. BOEM should coordinate with coastal states early in and consistently throughout the leasing process, including through submission of a draft consistency determination during the development of the proposed sale notice.

**Comment 11:** CSO notes that, should a SAP be submitted prior to lease issuance, the SAP would be subject to federal consistency review under 15 C.F.R. part 930, subpart D, not subpart E. Likewise, noncompetitive lease sales are reviewed under 15 C.F.R. part 930, subpart D, not subpart C. To avoid ambiguity, BOEM should consider clarifying the language at § 585.612 to account for these edge cases.

### **§ 585.626: What must I include in my COP?**

Under proposed § 585.626(b)(1), the requirements for a COP submission would include geotechnical data sufficient to “ground truth the geophysical surveys; support development of a geological model; assess potential geological hazards that could impact the proposed project; and provide geotechnical data for preliminary design of the facility, including type and approximate dimensions of the foundation.”

This amendment would eliminate the requirement for the lessee to submit “[t]he results of adequate *in situ* testing, boring, and sampling at each foundation location” and “[t]he results of a minimum of one deep boring (with soil sampling and testing) at each edge of the project area.” It also would remove most geotechnical survey requirements from the COP process and instead defer them to the engineering assessment of the proposed turbine foundations provided under the FDR. The proposed rule would allow for geotechnical data (e.g., boreholes, vibracores, grab samplers, cone penetrometer tests and other penetrative methods) to be provided after COP approval but before construction.

Under the proposed rule, coastal states generally would have opportunity to review only geotechnical data developed at the COP stage through CZMA federal consistency review, and would not have opportunity to review data deferred to the FDR stage.

**Comment 12:** BOEM should continue to require geophysical and geotechnical data collection for the COP adequate to provide sufficient detail to site and design turbine layouts, foundation types, cable routes, and appurtenant facilities within a reasonably defined PDE.

To be successful, the PDE approach must specify the range of project parameters with enough specificity for the “permitting agency to then analyze the maximum impacts that could occur from the range of design parameters.”<sup>14</sup>

---

<sup>14</sup> Office of Renewable Energy, Bureau of Ocean Energy Mgmt., Phased Approaches to Offshore Wind Developments and Use of Project Design Envelope, Final Technical Report (2017), *available at* <https://www.boem.gov/Phased-Approaches-to-Offshore-Wind-Developments-and-Use-of-Project-Design-Envelope/>.



The proposed language sets out a list of factors for which adequate geotechnical data must be attained (“ground truth the geophysical surveys...”), but does not provide specific standards. Elsewhere, BOEM indicates that the majority of geotechnical survey requirements can be deferred to the FDR stage after COP review. When striking the balance of what to require at during COP review vs. after COP review, BOEM must ensure that adequate geotechnical data are available during COP review to analyze the maximum impacts that could occur from the PDE’s range of design parameters – including by anticipating changes to facility design and layout that can intensify or redirect impacts.

Certain geotechnical survey data are necessary for states to adequately understand and review impacts on coastal uses and resources, especially with regard to anticipating constraints on turbine foundations which will affect turbine layouts and cable routing. Turbine layout and cable routing determine many of the significant coastal effects most relevant to federal consistency review, including impacts on fishery transit routes, shipping lanes, migration corridors, and sensitive habitats. Geotechnical data are also necessary to assess the adequacy of proposed cable burial techniques and the scope of potential impacts to complex benthic habitat for which existing mapping is outdated and imprecise. Without adequate information to anticipate the complete range of engineering decisions which will be made within the PDE and their real impacts, significant components of project designs are likely to change after COP review has concluded, resulting in supplemental environmental reviews, consultations, and delays.

For example, a recent project had originally proposed under its PDE to position turbines on a one-by-one nautical mile grid, but has evolved to adapt that plan to respond to geotechnical data, implicating new impacts. For foundations sites where geotechnical data have indicated that site-specific conditions are unfavorable for foundation siting, the design has been modified to remove the foundations at those sites, reducing overall impacts and staying within impacts originally assessed under the PDE. However, the network of inter-array cables will most likely not reflect a grid pattern and will be micro-sited around complex bottom habitats (i.e. glacial moraine and boulder fields), potentially creating impacts not originally assessed under the PDE.

In another recent project, geotechnical analyses have again revealed subsurface geological complexities which rule out some originally proposed turbine foundations. To accommodate these restrictions, the lessee may reduce total turbine numbers, leading to a modified or irregular turbine layout not directly assessed under the PDE to maximize effective use of the lease area. These new layouts will necessitate more complicated lighting and marking plans, affect lines of orientation needed for safe navigation, and introduce uncertainties about user impacts not originally assessed under the PDE.

These knock-on effects cannot be adequately anticipated and reviewed until sufficient geotechnical information is available to ascertain the geological constraints driving layout changes and related engineering decisions.

Greater uncertainty in site conditions at the COP review could also incentivize lessees to initially propose expanded PDEs to provide themselves more optionality. CSO is concerned that the proposed rule continues a trend toward requiring insufficient geotechnical data early enough to adequately anticipate the full range of engineering decisions under the PDE and assess their impacts. While coastal states have demonstrated their ability to adapt to the PDE approach, if PDEs trend toward overly broad, conceptual, and ill-defined project designs, it will strain states’ ability to provide efficient and timely reviews.

To avoid this uncertainty, BOEM should provide more specific guidance about what geotechnical data are required at each of:

- 1) The COP submission stage to meet the factor test at proposed § 585.626(b)(1),
- 2) The draft NEPA analysis stage when federal consistency review will begin under proposed § 585.628, and
- 3) The FDR stage at proposed § 585.701(a)(10).

CSO notes that states are able to list certain geotechnical data as necessary data and information for COP reviews and project authorizations under CZMA.<sup>15</sup> BOEM should work with states to provide specific guidance to determine what geotechnical data are adequate to meet state necessary data and information requirements, to avoid unnecessary delays and ensure that the proposed rule efficiently and predictably accomplishes its intended timeline for geotechnical data development.

**Comment 13:** If BOEM determines that it will proceed with deferring most geotechnical data and information until after COP approval, then it should explore ways to limit substantive design changes and/or guarantee supplemental federal consistency reviews to relevant coastal states when criteria necessitating a COP revision are met.<sup>16</sup> Currently, BOEM initiates supplemental federal consistency review only in narrow circumstances such as when BOEM determines there is a significant change in impacts.<sup>17</sup>

**§ 585.627: What information and certifications must I submit with my COP to assist BOEM in complying with NEPA and other applicable laws?**

Under proposed § 585.627(b), the list of information requirements for the COP submission would be amended to clarify that the consistency certification must certify that “proposed activities described in detail in [the COP] comply with the enforceable policies of the applicable States’ approved coastal management programs and will be conducted in a manner that is consistent with such programs.”

**Comment 14:** CSO agrees that the amended wording referring to “the enforceable policies of the applicable States’ approved coastal management programs” accurately reflects the requirements of the CZMA.

In light of the amendment at proposed § 585.628(c), discussed below, BOEM should consider amending this section with a cross reference to § 585.628(c) indicating that the lessee or grant holder would not be expected to develop the consistency certification until the draft NEPA analysis is complete.

**Comment 15:** CSO agrees with the statement in the preamble to the proposed rule that, under the amendments to § 585.628(c), the start of the 30-day time period for a state to submit a UAR request to NOAA under 15 C.F.R. § 930.54 should begin when BOEM publishes the draft NEPA analysis.<sup>18</sup>

---

<sup>15</sup> 15 C.F.R. § 930.76; *see* 15 C.F.R. § 930.58(a)(2).

<sup>16</sup> 30 C.F.R. § 585.634(c).

<sup>17</sup> 30 C.F.R. § 585.634(d).

<sup>18</sup> 88 Fed. Reg 5968, 6008.

As discussed in Comment 1, above, lessees for projects offshore from states that do not have GLDs often voluntarily submit consistency certifications because reasonably foreseeable coastal effects are readily apparent and the documentation process of the UAR request is not needed. However, if a lessee does not voluntarily submit a consistency certification for a project with reasonably foreseeable coastal effects, the state will need to begin a UAR request at the time BOEM publishes the draft NEPA analysis.

In order to provide clarity and efficiency, BOEM should outline an appropriate notification process for states to know ahead of time whether a lessee intends to voluntarily submit a consistency certification. This information should typically be available when the lessee first submits the COP to BOEM. BOEM should direct the lessee to include in its COP submission a list of states for which it intends to provide a consistency certification and the basis for each, including a list of states consulted and pertinent issues identified.

**Comment 16:** Coastal states often request that applicants submit a draft consistency certification before beginning federal consistency review so that the program and applicant can coordinate on information needs. BOEM should provide guidance to lessees to coordinate early with coastal states, including optionally through submission of a draft consistency certification at the time it submits its COP submission to BOEM, prior to the compilation of all necessary data and information.

#### **§ 585.628: How will BOEM process my COP?**

Under proposed § 585.628(c), the timing for the lessee to submit a consistency certification and associated data and information to the applicable state coastal management program for a COP submission would be changed. Rather than requiring the lessee to submit the consistency certification and associated data and information at the time it provides the COP submission to BOEM, as under the current rule, the lessee would instead submit that material after all information requirements for the COP are met and the draft NEPA analysis (typically draft environmental impact statement) has been published.

Under NOAA’s federal consistency regulations for OCS plans at 15 C.F.R. part 930, subpart E, the six-month federal consistency review period begins when the consistency certification and necessary data and information are received by the state. The proposed rule would require that the draft NEPA analysis be included in the federal consistency submission that BOEM submits to the state, and would effectively establish that the federal consistency review period begins when the draft NEPA analysis is published.

**Comment 17:** CSO strongly supports this proposed amendment.

BOEM is correct that “submitting the COP to the States for Federal consistency review prior to the publication of a draft NEPA analysis would be premature because the States would not have all the relevant information at their disposal to make a State's consistency decision.”<sup>19</sup> To date, coastal states and lessees have entered into stay agreements, typically multiple consecutive agreements for a single project, so that adequate design and impact information for federal consistency review can be developed through the NEPA analysis process. This *ad hoc* practice has created inefficiency, vulnerability, and

---

<sup>19</sup> *Id.*

uncertainty for both lessees and coastal states and has impaired the ability of coastal states to use federal consistency as a platform to reach a shared understanding between states, lessees, and other ocean users.

The amended regulation takes the correct approach by making the draft NEPA analysis available for review at the start of the federal consistency review process, effectively beginning the federal consistency review process for COP submissions at the time the draft NEPA analysis is completed. This change will codify the *de facto* outcome of current practice while providing clarity, predictability, and efficiency to lessees, coastal states, and BOEM.

For accuracy, CSO suggests that BOEM clarify the preamble by stating that it will make the draft NEPA analysis available at the same time as the submission of NDI for CZMA review, and that the draft NEPA analysis functions as NDI in the review process.<sup>20</sup>

**Comment 18:** BOEM should clarify how this change in the federal consistency timeline will apply to existing offshore wind projects currently at different stages in the planning and review process. CSO maintains that, while codifying this practice in regulation will create lasting clarity on this issue for future projects, BOEM has adequate authority and flexibility under its current regulations to implement this federal consistency timeline for existing projects. For instance, CSO has recommended that BOEM include a similar provision in its proposed “NOI Checklist” guidance.<sup>21</sup>

A number of OCS renewable energy projects are already working their way through the review pipeline on an expedited basis. Applying this timeline on an interim basis under existing regulations would avoid confusion and simplify review for existing projects, helping meet BOEM’s and coastal states’ shared goals to effectively manage the rapidly developing offshore wind industry.

**Comment 19:** BOEM should revise the amended language at § 585.628(c) to apply to pre- and post-lease COPs. As written, proposed § 585.628(c) applies only to a COP that is submitted after lease issuance and subject to federal consistency review under Subpart E of NOAA’s CZMA regulations (applying to OCS plans). Under proposed § 585.627(a)(9)(i), a COP submitted before issuance of a lease is instead reviewed under Subpart D of NOAA’s CZMA regulations (applying to federal licenses and permits); therefore the amendment to § 585.628(c) would arguably not apply to these projects.

The information requirements and reasonably foreseeable impacts of activities described in a COP would be the same regardless of whether the COP is submitted pre- or post-lease. All of the same reasons that federal consistency review should begin at publication of the draft NEPA analysis apply to both scenarios. In order to provide clarity and predictability, BOEM should revise the amendment to eliminate the stipulation that it applies only to post-lease submissions, and include explicit reference to both subparts D and E of the CZMA regulations.

---

<sup>20</sup> See 30 C.F.R. § 930.58(a)(1)(ii)) (establishing that NDI must include “a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal.”); 30 C.F.R. § 930.76.

<sup>21</sup> Bureau of Ocean Energy Mgmt., Draft Information Needed for Issuance of a Notice of Intent (NOI) Under the National Environmental Policy Act (NEPA) for a Construction and Operations Plan (COP) (NOI Checklist) (Oct. 24, 2022), *available at* <https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20BOEM%20NOI%20Checklist%20FDMS%20BOEM%202022-0056.pdf>

Proposed text:

~~“(c) If your COP is submitted after lease issuance, and [I]f your COP is subject to Federal consistency review under subparts D or E of the CZMA regulations at 15 CFR part 930, subpart E, you must submit your COP, consistency certification, and necessary associated data and information under CZMA to BOEM after all information requirements for the COP are met, and the appropriate environmental assessment or draft environmental impact statement, if required, has been published. If your COP is submitted after lease issuance, BOEM will forward the COP, consistency certification, draft NEPA analysis, and necessary associated data and information to the applicable State CZMA agencies. If your COP is submitted before lease issuance, you will submit the COP, consistency certification, draft NEPA analysis, and necessary data and information to the applicable state CZMA agencies.”~~

CSO expects that it should be the rare case where an applicant submits a COP prior to issuance of a lease.

**Comment 20:** In the preamble to the proposed rule, BOEM states that the amendment “would change the date on which a COP is considered an ‘active application’ under 15 C.F.R. § 930.51(f). Therefore, the CZMA review period (or the start of the 30-day time period for a State to submit an unlisted activity review request to NOAA under 15 C.F.R. § 930.54) would start on the date BOEM issues the notice of availability for the draft NEPA analysis instead of the date BOEM issues the notice of intent to publish a draft NEPA analysis.”<sup>22</sup>

CSO agrees that the amendment would implicate the “active application” provision at 15 C.F.R. § 930.51(f), and therefore that if BOEM stays or terminates its review of a COP, the associated federal consistency review would automatically be stayed or terminated as well.

However, CSO notes that the relevant provision of the CZMA regulations for establishing the starting date of the federal consistency review period is instead 15 C.F.R. § 930.60(a): “The State agency's six-month review period (see § 930.62(a)) of an applicant's consistency certification begins on the date the State agency receives the consistency certification required by § 930.57 and all the necessary data and information required by § 930.58(a).” We recommend including a cross reference to this provision in the final rule’s guidance.

**Comment 21:** The federal consistency application materials forwarded to the state should include the consistency certification, draft NEPA analysis, and all necessary data and information. The consistency certification should clearly address each relevant enforceable policy of the state coastal management program and explain how the project, under all design alternatives under consideration, is consistent with each. The necessary data and information should include all information listed at 15 C.F.R. § 930.76 (incorporating by reference the list at 15 C.F.R. § 930.58) and all necessary data and information listed in the state’s coastal management program documents, including survey data and interpretations relevant to the alternatives and mitigation measures detailed in the COP. The information provided to the state should be complete, up-to-date, and encompass all design alternatives under consideration at that point in the review process.

---

<sup>22</sup> *Id.*

**Comment 22:** The proposed amendment specifies that the lessee will be required to submit the consistency certification and necessary data and information under CZMA only if the “COP is subject to Federal consistency review....” While CSO agrees that this is an accurate statement of the law, we clarify that OCS renewable energy projects offshore from a given coastal state will typically have reasonably foreseeable effects on the uses and resources of that state’s coastal zone, and only in exceptional cases would not be subject to federal consistency review.

**Comment 23:** CSO recommends that NOAA update its federal consistency regulations at 15 C.F.R. part 930 to mirror BOEM’s rulemaking. In particular, NOAA should amend 15 C.F.R. § 930.58 to specify that the draft NEPA analysis is necessary data and information for COPs. This amendment should be made at § 930.58 (under subpart D for federal licenses/permits) rather than § 930.76 (under subpart E for OCS plans) to account for COPs submitted prior to lease issuance and subject to federal consistency review under subpart D.

#### **§ 585.647: How will my GAP be processed for Federal consistency under the Coastal Zone Management Act?**

**Comment 24:** The modifications at § 585.628(c) specifying that the draft NEPA analysis be submitted to the relevant coastal states at the same time as the consistency certification and necessary data and information and should be mirrored in the requirements for general activity plans.

Proposed text:

- (a) Before lease or grant issuance ....

You will furnish a copy of your GAP, consistency certification, draft NEPA analysis, and necessary data and information to the applicable State CZMA agencies if required by 15 CFR part 930, subpart D. Submit a copy to BOEM pursuant to § 585.110.

- (b) After lease or grant issuance ....

You will submit a copy of your GAP, consistency certification, and necessary data and information to BOEM if required by 15 CFR part 930, subpart E. BOEM will forward to the applicable State CZMA agency or agencies one copy of your GAP, consistency certification, draft NEPA analysis, and necessary data and information required under 15 CFR part 930, subpart E, after BOEM has determined that all information requirements for the GAP are met.

#### **§ 585.821 Will BOEM conduct scheduled and unscheduled inspections?**

Under proposed §§ 585.820 and 585.821, BSEE<sup>23</sup> would no longer be required to conduct annual inspections of OCS facilities. Instead, such inspections would be “optional.” BOEM states that these

---

<sup>23</sup> Under the terms of the Department of the Interior’s recent rulemaking transferring certain functions from BOEM to the Bureau of Safety and Environmental Enforcement (BSEE), §§ 585.820, 585.821, and 585.824 are removed from BOEM’s regulations at 30 C.F.R. part 585 and included in BSEE’s regulations at 30 C.F.R. part 285. Reorganization of Title 30-

changes are intended to provide “flexibility in conducting the annual onsite inspection required under the OCS Lands Act by allowing [BSEE] to rely upon the lessee’s self-inspection to fulfill this requirement in the event [BSEE] does not inspect a particular facility in a given year” and are paired with proposed amendments to § 585.824 which provide more stringent requirements for industry self-inspections.

**Comment 25:** While the preamble language discussing the proposed rules appears to indicate that BSEE will continue to conduct regular inspections, as written the proposed rules do not require BSEE to do so. BSEE regulations should provide some minimum frequency for conducting onsite inspections to ensure adequate oversight of OCS facilities.

**§ 585.902: What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP?**

Under proposed § 585.902(a), BSEE<sup>24</sup> would have the authority to order decommissioning of facilities earlier than 2 years following lease termination if the facilities are no longer useful for operations. BOEM solicits comments on the meaning of the term “no longer useful for operations” and whether this is the best or most appropriate standard for BSEE to use to describe facilities that should be required to be decommissioned.

**Comment 26:** One option is for BSEE to tie the definition of no longer useful for operations to the cessation of construction or commercial operations. For example, in New York, decommissioning of offshore wind transmission facilities occurs when either the project’s construction has halted for a period of 12 continuous months, or when a project in commercial operation has not generated electricity for a period of 12 continuous months, with allowances for *force majeure*, repairs, and/or upgrades.

**Request for Comment: Bidding Credits**

BOEM requests comment on what factors in proposed § 585.216(b) should qualify for bidding credits, particularly the policy-based factors described in § 585.216(b)(5), and how such factors could best be quantified for the purpose of calculating their value as part of the auction process.

**Comment 27:** CSO supports the use of multiple factor auctions through the use of bidding credits to allow the competitive lease award process to take into consideration federal and state policy priorities.

Factors which BOEM should consider for eligible bidding credits at § 585.216(b) include bidder commitments to measures to:

- A. Ensure that local affected communities, including underserved, disadvantaged and overburdened communities, are prepared for offshore development via shoreside infrastructure, workforce development, supply chain, community benefits, and resilience measures for fishing industries;

---

Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 88 Fed. Reg. 6376, 6392 (effective Jan. 31, 2023).

<sup>24</sup> Under the recent rulemaking transferring certain functions from BOEM to BSEE, § 585.902 is removed from BOEM’s regulations at 30 C.F.R. part 585 and included in BSEE’s regulations at 30 C.F.R. part 285. *Id.*

- B. Consult with and address specific concerns of Tribal nations;
- C. Ensure sustainable access for non-energy ocean uses of the lease area, including fisheries; and
- D. Provide necessary fisheries compensatory mitigation (although CSO notes that offshore renewable energy development should first avoid and minimize impacts to fisheries before turning to mitigation of unavoidable impacts).

### **Request for Comment: Potential New Permit Requirement for Conducting Geological and Geophysical Surveys for Renewable Energy Activities**

BOEM asks whether it should establish a permit-based mechanism to regulate how, when (pre-lease, post-lease), and where (on- and off-lease) geological and geophysical surveys are conducted.

**Comment 28:** CSO believes that a permit-based mechanism to regulate geological and geophysical survey activities would provide BOEM an important mechanism to track where and what survey activities are being conducted on the OCS, improve transparency, and promote coordination with other OCS lessees. CSO is also supportive of BOEM improving procedures for reporting and reimbursement of any party that may be harmed by OCS survey activities. While recent lease stipulations, such as those for the NY Bight Leases, afford stakeholders increased protections from potential impacts resulting from survey activities (e.g., early stakeholder coordination, gear loss protections), we agree that this proposed permitting program could aid in the confirmation of any damage to fishing gear, establishing shared gear loss procedures, as well as the identification of responsible parties for any such damage from survey activities. This mechanism also provides an opportunity to be proactive and minimize potential gear loss and “ghost gear” that can affect fish, marine mammals, habitat, safety, etc.

Under this new mechanism, developers should submit a survey plan or site characterization plan for BOEM review and approval. Where applicable, the plan should contain coastal consistency certifications to affected states in accordance with the relevant federal consistency review procedures. CSO notes that not all survey activities may require consistency review.

BOEM should coordinate with relevant USACE districts to understand applicable permitting requirements and minimize duplicative regulatory requirements, should any exist.

CSO recommends that any permit-based mechanism mandate outreach & notification through a comprehensive mariner notification program. The components of an effective communication plan could include:

- Coordinating in-water activities to avoid and minimize disruptions;
- At least 90 days prior to commencing in-water activities in any season, consultation with stakeholders on an approximate schedule of activities and existing uses within the Project area. Make good faith efforts to accommodate those existing uses. The results of these good faith consultations can be summarized in a report and submitted to the federal agency(ies) prior to the start of each season;
- Status reports with specific information on activities and locations for upcoming activities in the next 1-2 weeks;
- A Project website posting all above notices, with a mechanism to opt-in to alerts.



## **Request for Comment: Potential Revisions to Regulations Governing Transmission**

BOEM seeks comment on the types of regulatory changes that would be appropriate to better accommodate options for shared transmission solutions and to minimize impacts to environmental, natural, and cultural resources.

**Comment 29:** CSO supports BOEM’s efforts to explore a coordinated approach to transmission, especially the shared use of cable corridors, including the suggested methods of regional transmission systems, meshed systems, and the development of an offshore grid.

CSO recommends amending § 585.200(b) as follows:

A lease issued under this part confers on the lessee the right to one or more project easements without further competition for the purpose of installing gathering, transmission, and distribution cables; pipelines; and appurtenances on the OCS as necessary.... This use is not exclusive, and the lessee accepts such lease subject to future shared use of any subsequently approved cable or pipeline corridors, including, if available and if environmental impacts are minimized, a regional transmission system, meshed system, and/or as part of the development of an eventual offshore grid.

CSO further recommends amending § 585.301 to specify that a ROW is not exclusive, and amending § 585.302(b) to specify that ROWs are subject to shared transmission solution uses and conditions.

**Comment 30:** CSO urges BOEM to carefully review the ROW/RUE leasing and GAP review processes to ensure these are clear and nimble to accommodate both near-term and long-term intra- and inter-regional transmission typologies options currently under consideration across the US by developers, states, and the Department of Energy National Renewable Energy Laboratory under the Offshore Wind Atlantic Transmission Study.<sup>25</sup> For example, current regulations require the lessee or grant holder to submit a GAP no later than 12 months after the date of lease or grant issuance. This strict timeline could deter developers from considering meshing transmission systems later in the lease term.

---

<sup>25</sup> See Nat’l Renewable Energy Lab., “Atlantic Offshore Wind Transmission Study,” available at <https://www.nrel.gov/wind/atlantic-offshore-wind-transmission-study.html>.