UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management Office of Renewable Energy Programs

April 2023

Draft Guidelines and Instructions for Progress Report Required by BOEM New York Bight Leases (OCS-A 0537-0544) and Carolina Long Bay Leases (OCS-A 0545-0546)

Guidance Disclaimer

This guidance document is not a rule, regulation, or other legally binding instrument, and the recommendations it contains may not apply to a particular situation, depending on case-specific facts and circumstances. Nothing in this document is intended to modify or amend any Federal statutes, regulations, permits, or leases, nor create any rights or cause of action or trust obligation that any person or party may enforce through litigation or otherwise against the United States Government or any of its employees or officers. This document is not legally enforceable. To the extent that there is any inconsistency between the provisions of this document and any Federal statutes, regulations, leases, or permits, the statutes, regulations, leases, or permits will control.

Purpose

This document provides guidance for the Lessees of the New York Bight (NYB) Leases (OCS-A 0537–0544) and Carolina Long Bay (CLB) Leases (OCS-A 0545–0546) (hereafter referred to as Lessees) on the stipulations that require the development of semi-annual Progress Reports to be submitted to the Bureau of Ocean Energy Management (BOEM), the Lessor. This guidance document, which includes the Progress Report template, provides recommendations for how Lessees may best contribute to the enhanced engagement goals of increased accountability and transparency in the development process. The Progress Reports should be supported by, and should provide evidence of implementation of, the Lessee's Native American Tribes Communication Plan, Agency Communication Plan, and Fisheries Communication Plan. Collectively, these plans outline how the Lessee should strategically engage with potentially affected federally recognized Indian Tribes (Tribes) and parties to design a project that is reflective of the communities it may affect. The Progress Reports should provide updates on the progress of communication efforts as outlined in each plan. This document is intended to provide

¹ The lease stipulation requiring development of Progress Reports can be found within Addendum C, Section 3.1. For an example of a lease containing progress reporting requirements, see https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Lease%20OCS-A%200537_0.pdf. Based on the lessons learned implementing this draft guidance document, BOEM intends to develop additional regional or national guidance to support Lessees in implementing their leases.

recommendations and guidance for the Progress Reports and does not include any new requirements for the Lessee or Lessor.

Progress Reports are intended to provide interested members of the public with a clear understanding of the Lessees' engagement efforts to avoid, minimize, and mitigate possible adverse effects to potentially affected Tribes and parties (see "Potentially Affected Tribes and Parties" section) over each reporting period. The Lessee should demonstrate how input from engagement activities influenced project development, including the project design presented in its Construction and Operations Plan (COP) for National Environmental Policy Act review and documentation.

Potentially Affected Tribes and Parties

In accordance with the lease stipulation 3.1.1, the Lessee must make reasonable efforts to consult with Tribes and other parties and implement the project in a manner that avoids, minimizes, mitigates, and/or redresses the project's adverse effects, if any, on those potentially affected by the project activities. Tribes and other parties include, but are not limited to, the following:

- Coastal communities
- Commercial and recreational fishing industries
- Educational and research institutions
- Environmental and public interest non-governmental organizations
- Federal, state, and local agencies
- Federally recognized Tribes with cultural and/or historical ties to and an interest in the lease area²
- Mariners and the maritime industry
- Ocean users
- Submarine cable operators
- Underserved communities, as defined in Section 2 of Executive Order 13985³

Potential impacts may be common across multiple projects. Lessees should pursue coordinated engagement when it can improve efficiency and effectiveness for all parties. In accordance with lease stipulation 3.1.2.4 (NYB leases) or 3.1.3 (CLB leases), to the maximum extent practicable, the Lessee must coordinate engagement activities with other regional Lessees to reduce the communication and consultation burden on Tribes and other parties.

² A list of Tribes is included in lease stipulation 5.3.3 (for NYB leases) or 5.3.4 (for CLB leases), which may be expanded upon in the Native American Tribes Communication Plan.

³ According to Executive Order No. 13985, 86 Fed. Reg. 14 (Jan 25, 2021), "[t]he term underserved communities refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life... [This list includes populations] such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality."

Progress Report Requirements

Progress Report requirements are stated in the lease stipulations and generally described in this section of the guidelines.⁴

<u>Lease stipulation 3.1</u> The Lessee must submit to the Lessor a Progress Report every six months (unless BOEM directs otherwise) through the duration of the site assessment term that includes a brief narrative of the overall progress since the last Progress Report. Additionally, the Lessor may request the Lessee modify the Progress Report to address any comments the Lessor submits to the Lessee on the contents of the document.

<u>Lease stipulation 3.1.1</u> The Progress Report must:

- Identify Tribes and other parties relevant to the project (NYB leases) or with whom the Lessee made reasonable efforts to engage (CLB leases)
- Document, and update for subsequent reports, engagement with Tribes and other parties since the previous reporting period
- Document potential adverse effects from the Lessee's project to the interests of Tribes and other parties
- Document how, if at all, the design or implementation of the project has been informed by or altered to address these potential effects (including by investing in, or directing benefits to Tribes and other parties)
- Include a description of any anticipated or scheduled engagement activities for the next reporting period
- Include feedback from engagement with Tribes and other parties regarding transmission planning, prior to proposing any export cable route
- Provide information that can be made available to the public and posted on the BOEM website

<u>Lease stipulation 3.1.2</u> Communication Plans: The Progress Report must include a section with plan(s) on how the Lessee will communicate with fisheries, federally recognized Tribes, and agencies. In addition to the plans, each Progress Report should provide updates on the progress of communication efforts with those and other affected stakeholder or ocean user groups during the reporting period.

<u>Lease stipulation 3.1.2.4 (NYB leases) or 3.1.3 (CLB leases)</u> Coordinated Engagement: To the maximum extent practicable, the Lessee must coordinate engagement activities with other regional Lessees to reduce the communication and consultation burden on Tribes and other parties.

<u>Lease stipulation 3.1.3 (NYB leases) or 3.1.4 (CLB leases)</u> Survey Plans: The Progress Report must include an update regarding progress in executing the activities included in the survey

⁴ Please refer to your lease for the complete and precise language establishing these requirements.

plan(s) and include as an enclosure an updated survey plan(s) accounting for any modifications in schedule.

Reporting Instructions

As required by the lease (lease stipulation 3.1), the Lessee must submit a Progress Report to BOEM every six months, unless directed otherwise, until the approval of a COP. The Progress Report should be submitted as a Microsoft Word and PDF document via email to the project's assigned BOEM Project and Coordination Branch (PCB) Project Coordinator.

Progress Report filenames should use the following format: [Progress Report submission date "YYYYMMDD" revision date "rYYYYMMDD"]_OCS-A 05XX [Lessee Name] Progress Report.

Examples:

Original submission: 20221101 OCS-A 0536 Windy Wind Progress Report

Revision: 20221101 r20230130 OCS-A 0536 Windy Wind Progress Report

Any revised reports should be submitted in Microsoft Word (in two versions, one with tracked changes, and one with changes accepted) and PDF format (clean version only).

All Progress Reports must be Section 508 compliant to be considered final.⁵ A full Section 508 compliance report of the PDF document should be submitted to BOEM with each submission.

To increase transparency during project development, BOEM will post complete Progress Reports to its website to make them publicly available. Submission of privileged and confidential information is not needed to meet the Progress Report requirements.

Progress Report Review and Revision Process

BOEM will implement the following Progress Report review process:

- 1. BOEM will confirm receipt of a submitted Progress Report via email to the Lessee.
- 2. Within 60 calendar days from receipt, BOEM will conduct a review of the Progress Report to ensure it addresses the requirements of the lease stipulation. BOEM may provide comments on the report.
- 3. If BOEM provides comments that require revision to the report, BOEM will likely request the Lessee revise the report within 30 days. As stated in the lease, BOEM's comments must be addressed by the Lessee in a manner deemed satisfactory by BOEM. If the Lessee does not address the comments in a manner deemed satisfactory by BOEM,

⁵ Section 508 of the Rehabilitation Action of 1973 requires federal agencies to make their electronic and information technology accessible to people with disabilities, including federal webpages. More information on content creation and testing for accessibility can be found at https://www.section508.gov/.

BOEM reserves the right to require specific mitigation, such as third-party verification/mediation at the Lessee's expense, adjustment of required reporting frequency, or designation that the lease is not in good standing.

- 4. BOEM will review the revised report within 10 business days to ensure that BOEM's comments were addressed.
- 5. BOEM will post an approved Progress Report to the BOEM website, along with the BOEM Project Coordinator and Lessee contact information.
- 6. The Lessee should track any feedback received and work with the BOEM Project Coordinator to ensure feedback is addressed appropriately.

Progress Report Template

This Progress Report template is intended to clarify the progress reporting requirements and provides a report structure.

1 Cover Page

The Lessee should provide the following information on the cover page:

- Progress Report for [OCS-A 05##] [Lessee name on current qualification card]
- Time Period Covered by Report: [MM/DD/YYYY to MM/DD/YYYY]
- Original Submission Date: [MM/DD/YYYY]
- Revision Submission Date (if applicable): [MM/DD/YYYY]
- Version [#] (0 is the first submission, 1 is a revision, etc.)
- Prepared Pursuant to Lease Addendum C Section 3
- Prepared by: [Company name and contact, if applicable]

2 Executive Summary

The Lessee should provide a brief narrative of the overall progress since the last Progress Report, including engagement activities with potentially affected Tribes and parties.

- 3 Table of Contents, List of Figures and Tables, List of Acronyms and Abbreviations
- 4 Purpose and Background

4.1 Purpose

The Lessee should reiterate the purpose of the Progress Report as a tool to document overall progress and engagement that has occurred over the reporting period. These reports are intended to support project transparency and accountability and to document how, if at all, the project has been designed to address potential adverse and beneficial effects.

4.2 Lessee Information

The Lessee should include information about their company, project, and lease area. The Lessee should consistently refer to the lease area by its renewable energy lease number and legal company name currently on file with BOEM, i.e., OCS-A 05## - legal name of Lessee.

4.3 <u>Lease Description</u>

The Lessee is encouraged to provide a written and visual (e.g., map(s)) description of the lease area and links to any additional online information describing the lease. This section could include a description of the lease in relation to other leases, major ocean features (e.g., ledges, holes, diving area, shelf edge), and land features (e.g., ports, harbors, land masses). The Lessee should provide links to updated or more detailed information about the project as it becomes available.

5 Tribal Engagement

This section should report on engagement with potentially affected federally recognized Tribes. The Lessee should identify relevant Tribes in Appendix A. The Progress Report should provide evidence of implementation of the Native American Tribes Communication Plan, which details the strategy for early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions. Information about the Lessee's Tribal point of contact and a link to the Native American Tribes Communication Plan should be included in Appendix B and C, respectively.

BOEM recognizes the unique legal relationship between the United States and federally recognized Tribes as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Federal recognition signifies that the U.S. Government acknowledges the political sovereignty and Indian identity of a Tribe, and from that recognition flows the obligation to conduct dealings with that Tribe's leadership on a government-to-government basis. In recognition of this special relationship, BOEM acknowledges the agency's trust responsibilities with all federally recognized Tribes and remains responsible for all government-to-government consultations. If a Tribe indicates to a Lessee that it prefers government-to-government consultation and states that the Tribe does not want to engage with the Lessee, the Lessee should notify BOEM.

5.1 Overall Tribal Engagement Progress Since Last Report

The Lessee must describe overall progress on engagement with Native American Tribes since the last report (lease stipulation 3.1). In addition to the [communication] plans, each Progress Report should provide updates on the progress of communication efforts (lease stipulation 3.1.2).

The Progress Report should include, at a high level, the approach used, key takeaways, major topics or concerns raised, and outcomes achieved. The Progress Report should note if Tribes raised topics that are not applicable to the project.

It should be clear how the Lessee has engaged with Tribes within this reporting period. Engagement activities should be consistent with the strategies described in the Lessee's Native American Tribes Communications Plan (e.g., frequency of engagement, information sharing, workshop, notification).

To the maximum extent practicable, the Lessee must coordinate engagement activities with other regional Lessees to reduce the communication and consultation burden on Tribes (lease stipulation 3.1.2.4 for NYB leases or 3.1.3 for CLB leases).

The Lessee should describe efforts to coordinate engagement with other Lessees and Tribes during the reporting period. Potential impacts may be common across multiple projects. Lessees should pursue coordinated engagement when it can improve efficiency and effectiveness for Lessees and Tribes. Coordinated engagement does not need to include all Lessees in a region but could involve a subset of those Lessees.

The Lessee may wish to present this information as a summary or in a table. An example table is provided in Table 1.

Focus of Discussion or Engagement	Tribe(s)	Follow-up Actions, Activities, Outcomes	Coordinated Engagement with Other Lessees
Scope of planned survey activities	[Name of Tribe]	Project group will share data for surveys when available	N/A
Career training	[Name of Tribe]	Exploration of funding support	Meeting included six

Table 1. Tribal engagement during reporting period

opportunities

5.2 <u>Identification of Potential Project Effects Related to Tribal Interests</u>

The Progress Report must document effects, including potential adverse effects, from the Lessee's project related to the interests of Tribes and must document how, if at all, the design or implementation of the project has been informed by or altered to address these potential effects (including by investing in or directing benefits to Tribes) (lease stipulation 3.1).

for career training opportunities

NYB Lessees

This section details the potential project effects identified through the engagement activities described in Section 5.1. When complying with this stipulation, Lessees should discuss and document potential adverse effects early in the process so that they can be considered in the project's design. Where appropriate, Lessees should describe potential beneficial effects. Lessees should include how, if at all, the potential effects informed the design or implementation of the project. BOEM does not expect that all potential effects can be addressed within one reporting period. The Lessee may include this information in a summary or table. An example table is provided in Table 2.

Table 2. Potential effects and Tribal input on project design or implementation during reporting period

Potential Effect	Affected Tribe	Efforts to Address Potential Effect and/or How the Project Design or Implementation Has Been Informed
Culturally significant resource on seafloor may be impacted by project activities	[Name of Tribe]	 Planned surveys, meetings to share results Project plans will be designed to avoid, minimize, mitigate, or compensate for impacts to identified resource Further discussion with [Name of Tribe] following survey results

5.3 Tribal Feedback on Transmission Planning

The report must also include feedback from engagement with Tribes regarding transmission planning, prior to proposing any export cable route (lease stipulation 3.1.1).

This stipulation requires Lessees to engage at the beginning of transmission planning, while the Lessee explores potential route(s) for a cable corridor(s), cable landfall, and points of interconnection. BOEM encourages Lessees to engage with Tribes early to understand key siting issues and Tribes' concerns that may influence the cable design, cable landfall, and corridor/export cable route.

5.4 Anticipated or Scheduled Tribal Engagement Activities

The report must include a description of any anticipated or scheduled engagement activities for the next reporting period (lease stipulation 3.1.1). The Progress Report must include a section with [communication] plan(s) on how the Lessee will communicate with Tribes (lease stipulation 3.1.2).

This section should include planned, anticipated, and scheduled activities expected in the next six-month reporting period. The Lessee should describe efforts to coordinate engagement with other Lessees and Tribes for the next reporting period. The Lessee may include this information in a summary or table. An example table is provided in Table 3.

Table 3. Anticipated Tribal engagement activities for the next reporting period

Anticipated Focus of Discussion or Engagement	Tribe(s)	Anticipated Coordinated Engagement with Other Lessees
Proposed cable landfall	[Name of Tribe, Name of Tribe, Name of Tribe]	Meeting with representatives of three Tribes and two Lessees [Name of Lessee, Name of Lessee] to review four cable landfall options

6 Engagement with Potentially Affected Parties

The Lessee must make reasonable efforts to consult with Tribes and other parties that may be potentially affected by the project activities on the OCS, which include, but are not limited to, the following (lease stipulation 3.1.1):

- Coastal communities
- Commercial and recreational fishing industries

- Educational and research institutions
- Environmental and public interest non-governmental organizations
- Federal, state, and local agencies
- Federally recognized Tribes
- Mariners and the maritime industry
- Ocean users
- Submarine cable operators
- Underserved communities, as defined in Section 2 of Executive Order 13985

The Lessee should identify parties applicable to the project in Appendix A. The Progress Report should include evidence of implementation of the Fisheries and Agencies Communication Plans, which details the strategy for early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions. The Lessee liaison contact information and communication plans should be included in Appendix B and C, respectively.

6.1 Overall Engagement Progress Since Last Report

The Lessee must describe overall progress on engagement with affected parties since the last report (lease stipulation 3.1). In addition to the communication plans, each Progress Report should provide updates on the progress of communication efforts with those and other affected stakeholder or ocean user groups during the reporting period (lease stipulation 3.1.2).

The Progress Report should include, at a high level, the approach used, key takeaways, major topics or concerns raised, and outcomes achieved. The Progress Report should note if topics were raised that are not applicable to the project. It should be clear how the Lessee has engaged with potentially affected parties within this reporting period. Engagement activities should be defined within the strategies described in the Fisheries and Agency Communication Plans (e.g., frequency of engagement, information sharing, workshop, notification). BOEM recognizes the Lessee may have developed internal communication plans for engagement with other stakeholders.

To the maximum extent practicable, the Lessee must coordinate engagement activities with other regional Lessees to reduce the communication and consultation burden on parties (lease stipulation 3.1.2.4 for NYB leases or 3.1.3 for CLB leases).

The Lessee should describe efforts taken to coordinate engagement with other Lessees and parties during the reporting period. Potential impacts may be common across multiple projects. Lessees should pursue coordinated engagement when it can improve efficiency and effectiveness for all parties. Coordinated engagement does not need to include all Lessees in a region but could involve a subset of those Lessees.

The Lessee may include this information in a summary or table. An example table is provided in Table 4.

Table 4. Engagement with parties during reporting period

Focus of Discussion or Engagement	Party(ies)	Follow-up Actions / Activities / Outcomes	Coordinated Engagement
Planned Survey activities in and around [Name of port]	[Name of fishing community, Name of fishing group]	Provide direct communication with fisher at [Name of port] on survey days	Joint meeting with [Name of Lessee], who will also conduct surveys from [Name of port] in six months

6.2 <u>Identification of Potential Project Effects Related to Parties</u>

The Progress Report must document effects, including potential adverse effects, from the Lessee's project related to the interests of parties and must document how, if at all, the design or implementation of the project has been informed by or altered to address these potential effects (including by investing in or directing benefits to parties) (lease stipulation 3.1.1).

This section details the potential project effects identified through the Lessee's engagement activities described in Section 6.1. Early engagement by the Lessee allows discussion and documentation of potential adverse effects early in the process so that they can be considered in the project design process. Where appropriate, Lessees should describe potential beneficial effects. Lessees must also include how, if at all, the potential effects informed the design or implementation of the project. Lessees are not expected to address all effects within one reporting period. The Lessee may include this information in a summary or table. An example table is provided in Table 5.

Table 5. Potential effects and input from parties on project design or implementation

Potential Effect	Affected Party(ies)	Efforts to Address Potential Effect and/or How the Project Design or Implementation Has Been Informed
Construction of turbines in southwest corner of the lease area	[Name of Fishing Group]	[Name of Fishing Group] will provide nautical maps indicating the shift in fishing grounds for [name of fishery]

6.3 Feedback from Parties on Transmission Planning

Lessees must include feedback from their engagement activities with parties regarding transmission planning, prior to proposing any export cable route (lease stipulation 3.1.1).

The Lessee must conduct engagement at the beginning of transmission planning, while the Lessee explores potential area(s) of interest for a cable corridor(s), cable landing, and points of interconnection. BOEM encourages Lessees to engage with parties early to understand key siting issues and affected parties' concerns that may influence the cable design and route or corridor.

6.4 Anticipated or Scheduled Engagement Activities

Include a description of any of the Lessee's anticipated or scheduled engagement activities for the next reporting period (lease stipulation 3.1.1). The Progress Report must include a section with communication plan(s) on how the Lessee will communicate with fisheries and agencies (lease stipulation 3.1.2).

This section should include the Lessee's planned, anticipated, and scheduled activities expected in the next six-month reporting period for potentially affected parties. The Lessee should describe efforts to coordinate engagement with other Lessees and parties for the next reporting period. The Lessee may include this information in a summary or table. An example table is provided in Table 6.

Table 6. Anticipated engagement with parties for the next reporting period

Anticipated Focus of Discussion or Engagement	Party(ies)	Anticipated Coordinated Engagement with Other Lessees
Proposed grant program for small, women-owned, and minority-owned business in August 20XX	[Names of local business bureaus, names of local authorities]	Joint proposed program with [Name of Lessee] and [Name of Lessee]

7 Survey Plan(s) Activities

The Progress Report must include an update regarding progress in executing the activities listed in the Lessee's survey plan(s) and include as an enclosure an updated survey plan(s) accounting for any modifications in schedule (lease stipulation 3.1.3 for NYB leases or 3.1.4 for CLB leases).

This stipulation requires the Lessee to provide an update on the Lessee's survey activities that have been conducted and what survey activities are planned. Additionally, the update provides an opportunity for feedback from BOEM on the Lessee's activities between BOEM's survey plan review and the COP submission to BOEM. For example, updates could include a general description of survey progress and status update of plan activities. The Lessee may include this information in a summary or in tables. Example tables are shown in Tables 7 and 8. At a minimum, include the Lessee's anticipated survey activities for the next reporting period (such as the example shown in Table 8).

Table 7. Survey plan activities under BOEM review or underway

Type of Survey	Survey Activity Date or Proposed Date	Purpose (i.e., what it will inform)	Location Description
[type]	[date]	[purpose]	[location]

Table 8. Anticipated or modified survey plan activities

Type of Survey	Anticipated Date	Purpose (i.e., what it will inform)	Location Description
[type]	[date]	[purpose]	[location]

Progress Report Template Appendices

Appendix A: Tribes and Other Parties Relevant to the Project

As directed by lease stipulation 3.1.1, the Progress Report must identify Tribes and other parties relevant to the project (NYB leases) or with whom the Lessee made reasonable efforts to engage (CLB leases).

BOEM encourages listing the names of Tribes and other parties that may be potentially affected by the Lessee's project activities, including, but not limited to, those identified in lease stipulation 3.1.1 (e.g., Table A-1 and A-2). By requiring the Lessee to identify Tribes and other parties relevant to the project BOEM is encouraging the Lessee's early and robust engagement with those who may be affected, or whose interests may be affected, to collaboratively inform the project design or implementation. Listing Tribes and other parties applicable to the project provides transparency to Tribes, agencies, and the public. These lists should be continuously updated as changes to Tribes and other parties relevant to the project are identified. There may be multiple party types for a given party.

Table A-1. Federally recognized Tribes relevant to the project

	Name of Tribe
[name of Tribe]	
[name of Tribe]	

Table A-2. Parties relevant to the project

Name of Party	Party Type(s)
[party 1]	[type 1]
[party 2]	[type 2]

Party Type:

- CC = Coastal Community
- CFish = Commercial Fishery Industry
- RFish = Recreational Fishery Industry
- ERI = Educational and Research Institutions
- NGO = Environmental and Public Interest Non-Governmental Organizations
- FA = Federal Agency
- SA = State Agency
- WG = Tribal, State, Federal, or Other Working Group or Forum
- LA = Local Agency
- NFRTribe = Non-Federally Recognized Tribe
- M = Maritime Industry/Mariners
- SCO = Submarine Cable Operators
- UC = Underserved Community, as defined in Section 2 of Executive Order 13985
- OU = Other Ocean Users
- Other

Appendix B: Lessee and Liaison Contact Information

This appendix should include the contact information for the following Lessee points of contact as identified in the communications plan(s) (Appendix C): primary point of contact with Tribes (i.e., Tribal Liaison), Fisheries Liaison, and Agency Liaison. Additionally, if there is a Lessee point of contact for other parties, it should be included in this Appendix.

Appendix C: Communications Plans

This appendix should include links to the 1) Native American Tribes Communication Plan, 2) Fisheries Communications Plan, and 3) Agency Communication Plan on the Lessee's website.