



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
WASHINGTON, DC 20240-0001

Decision Memorandum

To: Amanda Lefton
Director, Bureau of Ocean Energy Management

From: James F. Bennett
Chief, Office of Renewable Energy Programs

Subject: New York Bight Final Sale Notice

1. Purpose

This memorandum documents the analysis and rationale used to develop recommendations for the lease areas to be included in the Final Sale Notice (FSN) for the New York Bight (NY Bight). BOEM has made significant efforts to deconflict the lease areas to be offered as part of this sale; however, we recognize use conflicts remain. As such, this document also serves to identify remaining conflicts and recommend lease stipulations to decrease the likelihood and magnitude of those conflicts.

2. Decision Summary

As described in Table 1 and depicted in Figure 1, the recommended lease areas for the NY Bight FSN consist of 488,201 total acres.

Table 1: NY Bight FSN Lease Area Descriptive Statistics

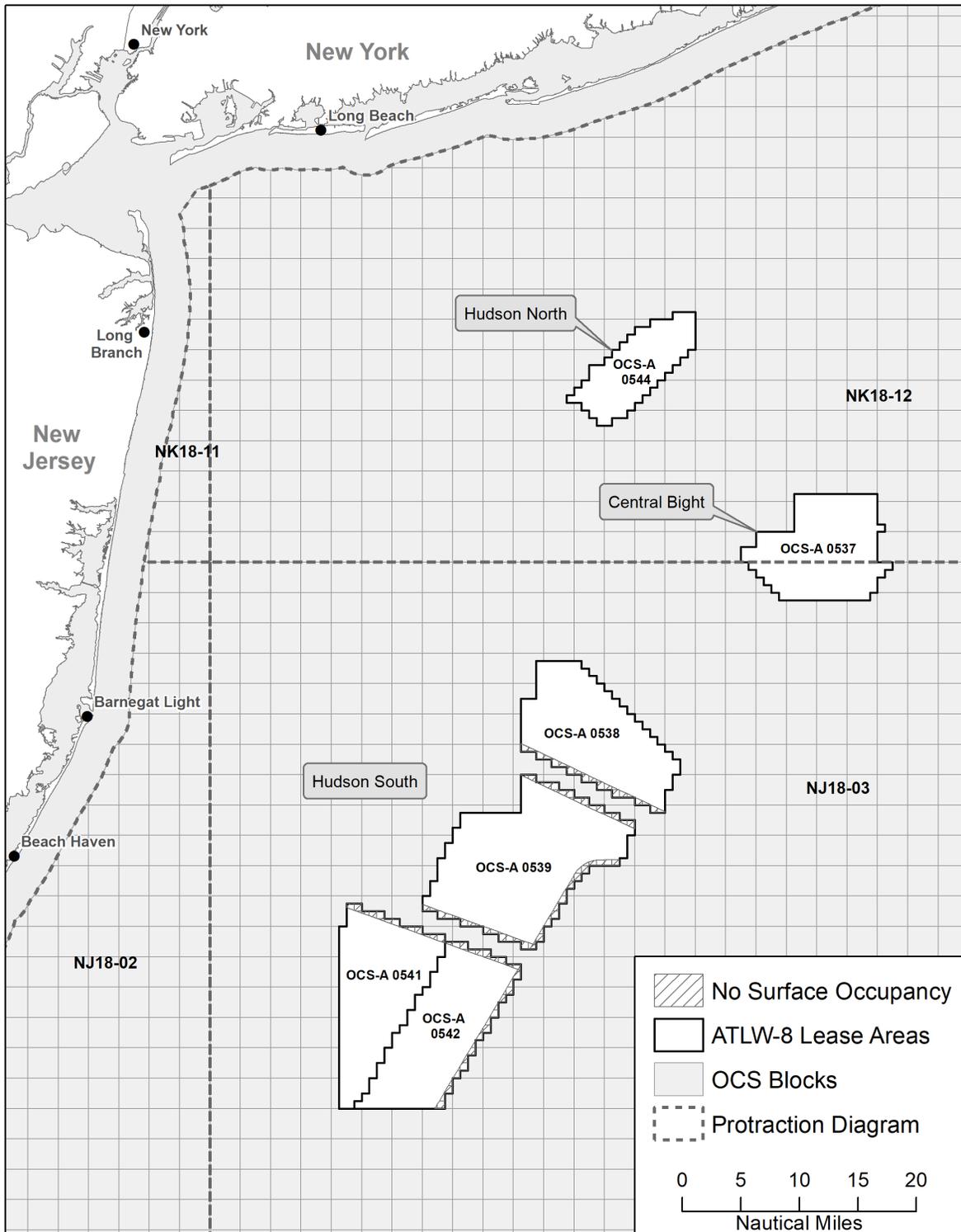
	OCS-A 0537	OCS-A 0538	OCS-A 0539	OCS-A 0541	OCS-A 0542	OCS-A 0544	Total
<i>Acres</i>	71,522	84,332	125,964	79,351	83,976	43,056	488,201
<i>Developable Acres</i>	71,522	79,438	114,277	76,139	76,894	43,056	461,326
<i>Installation Capacity (MW)¹</i>	868	964	1,387	924	934	523	5,601
<i>Homes powered²</i>	303,911	337,548	485,586	323,530	326,738	182,954	1,960,268
<i>Power Production (MWh/yr)³</i>	3,042,588	3,379,340	4,861,411	3,238,998	3,271,116	1,831,628	19,625,081
<i>Max Depth (meters[m])</i>	61	63	51	51	54	46	--
<i>Min Depth (m)</i>	50	37	31	31	32	40	--
<i>Closest distance to NY (nautical mile [nmi])</i>	38	47	56	65	69	20	--
<i>Closest distance to NJ (nmi)</i>	53	36	32	27	35	36	--

¹ Megawatts (MW) based upon 3MW/sqkm

² Based upon 350 homes per MW

³ Megawatt hours per year (MWh/yr) Formula = Capacity (MW) * 8760 (hrs/yr) * 0.4 (capacity factor)

ATLW-8 Lease Areas



OREP-2021-1042

3. Legal Standard

Pursuant to subsection 8(p)(1)(C) of the Outer Continental Shelf Lands Act (OCSLA), the Secretary of the Interior (the Secretary), in consultation with the U.S. Coast Guard (USCG) and other relevant Federal agencies, may grant a lease, easement, or right-of-way on the Outer Continental Shelf (OCS) for activities that produce or support production of energy from sources other than oil and gas (43 U.S.C. § 1337(p)(1)(C)). The Secretary must ensure that activities under this subsection are carried out in a manner that provides for 12 goals, including safety, protection of the environment, and consideration of other uses of the sea or seabed. *Id.* § 1337(p)(4)(A)–(L). These goals must be balanced, as there may be conflict or tension among the goals enumerated. The Secretary retains wide discretion to weigh those goals as an application of her technical expertise and policy judgment. *See Secretary’s Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf* (Apr. 9, 2021)⁴. BOEM has issued regulations governing the leasing process and management of offshore renewable energy projects. *See* 74 Fed. Reg. 19,638 (Apr. 29, 2009); *see also* 30 C.F.R. part 585.

This memorandum documents BOEM’s consideration of OCSLA’s environmental factors and multiple uses at the FSN stage of its leasing process (43 U.S.C. § 1337(p)(4)(A), (B), (D), (F), (I), and (J)), as explained further in Section 4 below. The development of the FSN is not the first stage at which BOEM has considered factors under § 1337(p)(4), nor is it the final stage of decision-making under § 1337(p). Issuance of a renewable energy lease, which only authorizes the submittal of plans for BOEM’s approval, does not constitute an irretrievable and irreversible commitment of resources. BOEM will conduct further analysis under OCSLA and the National Environmental Policy Act (NEPA) if and when Construction and Operations Plans (COPs) are submitted.

4. Description of the BOEM Competitive Lease Award Process

4.1. Call for Information and Nominations to Area Identification

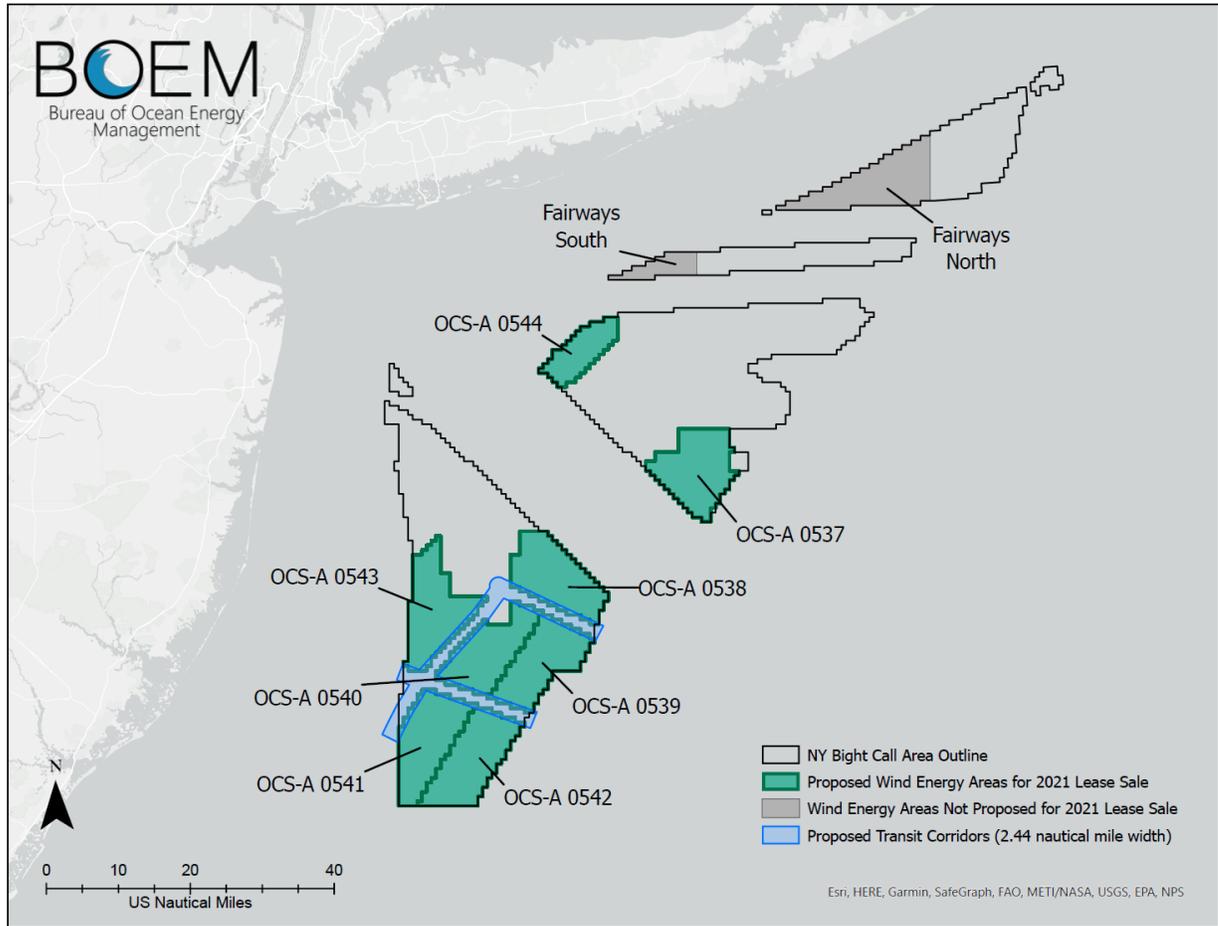
Please see the [Memorandum for Area Identification in the New York Bight](#), dated March 26, 2021, for a description of the BOEM competitive lease award process from the Call for Information and Nominations (Call) to Area Identification.

4.2. Proposed Sale Notice

On June 24, 2021, BOEM published a Proposed Sale Notice (PSN) for the NY Bight.⁵ The PSN provided detailed information about potential areas that could be available for leasing, possible lease provisions and conditions, auction details (e.g., criteria for evaluating competing bids and award procedures), and lease execution. The PSN included up to eight lease areas in the NY Bight for commercial wind energy development. The PSN’s lease areas have the potential to generate over 7 gigawatts of offshore wind energy, which would power over 2.6 million homes and support thousands of new jobs. A map of the proposed lease areas is depicted in Figure 2.

⁴ <https://www.doi.gov/sites/doi.gov/files/m-37067.pdf>

⁵ <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/86-FR-31524.pdf>



4.3. Final Sale Notice

The Final Sale Notice (FSN) is the last step, before the sale itself, in the competitive lease award process. *See* 30 C.F.R. § 585.211(d). The FSN contains information pertaining to the areas available for commercial wind energy leasing on the OCS in the New York Bight. Specifically, this FSN includes details regarding certain provisions and conditions of the leases, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM will offer six leases: Lease OCS-A 0537, Lease OCS-A 0538, Lease OCS-A 0539, Lease OCS-A 0541, Lease OCS-A 0542, and Lease OCS-A 0544 (Lease Areas). These final lease areas have the potential to generate more than 5.6 gigawatts of offshore wind energy, which would power over 1.9 million homes and support thousands of new jobs. The issuance of any lease resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, if submitted by the lessee, would be subject to subsequent environmental, technical, and public reviews prior to a decision on whether the proposed development should be authorized. *See* Figure 1 for a map of the final lease areas.

5. Rationale for FSN Lease Areas

The competitive leasing process for the New York Bight started with the issuance of the Call in April of 2018. Through analysis of the information received in response to that public notice, New York Bight Intergovernmental Task Force engagement, and robust public outreach, BOEM published notice of the final Wind Energy Areas (WEAs) in March 2021. At the same time, an Environmental Assessment (EA) was initiated to assess the reasonably foreseeable impacts from site assessment and site characterization of the WEAs that would likely take place following lease issuance. The Draft EA was made available for public review and comment on August 10, 2021. Based on these comments, BOEM has revised the EA and issued a Finding of No Significant Impact for its decision to offer these areas for lease. These areas were further refined through the publication of the PSN in March 2021, which included a 60-day public comment period. All the information gained through these processes, including the comments received on the PSN and Draft EA, culminates in the FSN. The FSN for the NY Bight includes 488,201 acres available for lease, a 72% reduction of the area included in the Call and a 22% reduction from the areas included in the PSN.

In deciding whether to remove areas from leasing consideration, BOEM’s charge is to balance all the factors in 43 U.S.C. 1337(p)(4). No one factor or comment determined the outcome of the final sale areas; rather, areas were altered in locations where multiple factors weighed in favor of a change, there was evidence supporting the application of those factors, and the changes were supported by the comments. Specifically, in response to the commercial fishing industry BOEM excluded area adjacent to the scallop access area, included a buffer between select leases and removed areas of high value and benthic diversity. Should circumstances change, BOEM may reconsider areas within the WEAs and offer them in a future sale.

Table 2: NY Bight Leasing Area Milestones

Leasing Step	Date	Acres	% of Call Area Removed
<i>Call</i>	April 11, 2018	1,735,154	N/A
<i>WEAs/NOA</i>	March 29, 2021	807,383	53%
<i>PSN</i>	June 14, 2021	627,331	64%
<i>FSN</i>	TBA	488,201	72%

This leasing process was initiated, in part, due to requests from the States of New York and New Jersey for additional lease areas necessary to meet their state goals for offshore wind procurement. As described in an October 13, 2021, briefing to the BOEM Director, BOEM calculated the outstanding capacity that could not be met by existing lease areas to be approximately 3,800 MW.

The States’ strategy for procurement involves creating competition through competitive solicitation. As such, from the States’ perspective, it is necessary for BOEM to offer not only the acreage necessary to meet their stated goals, but excess acreage to ensure each procurement is competitive and, thus, yields the lowest reasonable cost and greatest benefits to each state.

The lease areas proposed in the FSN (Table 1) total 488,201 acres, 461,326 of which will be developable and without any lease-imposed surface occupancy restrictions. Using a conservative

power ratio of 3MW per kilometer squared, 461,326 acres would yield approximately 5.6 GW of power.

As part of BOEM's determination, we consulted with New York State Energy Research and Development Authority (NYSERDA), which expressed interest in ~568,400 acres to facilitate healthy competition as part of their solicitation process. BOEM acknowledges that the 461,326 acres we propose to offer does not meet NYSERDA's specific request; however, we believe that this figure represents a reasonable compromise between making sufficient area available and reducing conflicts with existing and future uses of the OCS.

The lease areas in the FSN represent a balance of existing and future uses with the need for expeditious and orderly development of renewable energy. BOEM recognizes that known conflicts still exist with the lease areas, and new user conflicts may arise as the areas are offered for sale and projects are proposed. Specifically, BOEM is implementing new reporting requirements, discussed below, which are designed to increase and improve communication between future lessees and Tribes, ocean users, underserved communities, Federal partners, and other stakeholders. It is BOEM's intent to have these reporting requirements, which include communication on transmission planning, establish and maintain a new foundation of communication and accountability that will help inform project design early in the process to minimize future conflicts.

In addition to the reporting requirement, BOEM is updating an existing lease stipulation on surface structure layout and orientation to facilitate existing uses and is adding several stipulations aimed at catalyzing domestic supply chain development and encouraging the use of project labor agreements. These latter efforts advance OCSLA's goals such as orderly and expeditious development, national security, and safety. Please see Appendix 1 of this Memo for additional information.

5.1. Lease Areas

5.1.1. Fairways North and South WEAs

The Fairways North and South WEAs are not being offered for leasing at this time due, in part, to conflicts with a proposed U.S. Coast Guard (USCG) fairway, maritime traffic concerns, commercial fisheries, State preferences, marine protected species, and commercial viability. Additional detail on our analysis of these WEAs and potential conflicts can be found in the [Memorandum for Area Identification in the New York Bight](#),⁶ dated March 26, 2021, pursuant to 30 CFR 585.211(b) (see pages 28–32). Fairways North and South WEAs may, however, be considered for a future sale and have been analyzed in the EA.

5.1.2. Hudson North WEA

The Hudson North WEA and the area offered as Lease OCS-A 0544 remain as described in the PSN. The PSN identified a potential conflict in the Hudson North area with a new shipping safety fairway designation as proposed by the USCG to accommodate vessel traffic travelling across the NY Bight from the Delaware Bay area to east of Montauk. The USCG and BOEM have been working to mitigate this conflict since the beginning of this

⁶ Available at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/Memorandum%20for%20Area%20ID%20in%20the%20NY%20Bight.pdf>

leasing effort. BOEM anticipates that the USCG will publish a final Port Access Route Study by the end of 2021 that proposed an adjusted fairway route that avoids this conflict.

This lease area abuts an existing lease (OCS-A 0512) held by Equinor/bp for the Empire Wind 1 & 2 projects. BOEM is aware of potential safety considerations and space use conflicts that may arise should the layouts of these adjacent lease areas not maintain two common lines of orientation per the Navigation and Vessel Inspection Circular 01-19. As such, BOEM has included requirements in the lease related to consistent orientation of surface structures, or implementation of a buffer distance between the two projects.

5.1.3. Central Bight WEA

The entire Central Bight WEA was included in the PSN, however, the area of Lease OCS-A 0537 in the FSN was reduced by approximately 13,000 acres in the southern portion of the WEA to reduce impacts on all the following:

- Fish Habitat
 - o National Marine Fisheries Service (NMFS) recommended using New Jersey’s Department of Environmental Protection’s ‘Prime Fishing Areas’ dataset as a proxy for fish habitat as the dataset includes “features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell and tubeworms, slough areas and offshore canyons (N.J.A.C 7:7-9.2).” NMFS strongly recommended that lease block areas overlapping Prime Fishing Areas be removed from consideration for leasing.
- Scallop, surfclam, and pelagic fishing activity
 - o Based on information on fishing activity, including vessel monitoring system data, vessel trip reports, and automatic identification system data, BOEM learned that the area that overlapped with the fish habitat data above was used by several fisheries. The removal would reduce the overall cumulative ex-vessel fisheries value exposed to offshore wind energy development in the proposed lease area. According to NMFS data from 2008-2019, of the Lease Areas in the PSN, the Central Bight had the second highest overall cumulative ex-vessel fisheries revenue (\$49 million) and the highest overall fishery landings (24 million lbs.).
- Maritime Traffic
 - o Traffic patterns in the region tend to show a notable “spreading” trend wherein vessels tend to stay within Traffic Separation Scheme (TSS) lanes but veer off towards their destination once they have exited. This creates a fan-like effect at the exits to each of the TSS lanes in the region.

BOEM recognizes that lease area OCS-A 0537 proposed in the FSN encompasses an area that has historically been used by several fisheries, including the scallop, surfclam, and pelagic (herring, mackerel, squid) fisheries. The reporting requirements and enhanced engagement discussed below were developed, in part, to increase communication and accountability among the parties to design a project reflective of the current and future uses of the OCS. Further options for mitigating potential impacts to fishing and fish habitat in

this area can be identified and considered if and when a detailed proposal (i.e., COP) has been submitted for BOEM’s consideration and approval.

5.1.4. Hudson South WEA

The Hudson South WEA was reduced to six lease areas in the PSN, which was subdivided so that each lease area:

- was of roughly equal commercial viability and size;
- includes space between lease areas to account for vessel traffic patterns, fisheries, and the Department of Defense (DoD) concerns;
- was laid out in a manner to reduce wake effect; and
- facilitates fair return to the Federal Government pursuant to the OCS Lands Act through robust competition for commercially viable lease areas.

The inclusion of the lease areas offered in the FSN were informed by the comments received in response to the PSN and consultation with Federal agencies. The eventual lease area delineation is the result of considering multiple factors. Some of the key factors include:

- Commercial fisheries comments and activities;
- DoD and USCG considerations and coordination; and
- Existing and projected future maritime traffic and transit.

5.1.4.1. Commercial and Recreational Fisheries and Habitat

BOEM received comments requesting a 5 nmi buffer between lease areas and the scallop access area southeast of Hudson South. BOEM subject matter experts reviewed the information provided and the best available science, such as the BOEM-funded hydrodynamic modeling study of the wind energy areas offshore Rhode Island and Massachusetts,⁷ and determined that offshore wind energy facilities may alter the spatial distribution of scallops within the existing access area, but would not have significant impacts to the scallop population as a whole within the access area. There is insufficient evidence to support a conclusion that installation of an offshore wind facility located in the Hudson South WEA would change broadscale scallop distribution within 5 nmi of a facility and that a 5 nmi buffer would reduce potential spatial redistribution within the scallop access area. Consequently, BOEM does not believe that there is sufficient justification to show that scallops would be re-distributed outside of the existing scallop access area due to hydrodynamic impacts from future offshore wind energy infrastructure near the border of the scallop access area. Prior to BOEM approval of the installation of an offshore wind facility in the Hudson South lease areas, BOEM will evaluate project specific impacts based on the proposed facility design and layout before issuing a record of decision. For these reasons, no changes were made to the proposed lease areas based on speculative impacts to physical oceanography.

⁷ https://espis.boem.gov/final%20reports/BOEM_2021-049.pdf

However, BOEM did identify the presence of fish habitat and active commercial fishing adjacent to the scallop rotational area. BOEM withdrew portions of the Hudson South WEA from leasing consideration in the areas in which this activity occurs. Specifically, the area between the lease areas proposed in the PSN and the border of the scallop access area, which overlaps with portions of the mid-shelf scarp (an area NMFS asked to be removed from consideration for future development due to potential impacts to this physical habitat feature), fish habitat identified in the NJ Prime Fishing Areas dataset (see discussion above under the Central Bight), and areas of scallop fishing activity as represented through NOAA Vessel Monitoring System data, including years when the scallop access area was closed (e.g., 2010, 2014). From 2008-2019, Lease Area OCS-A 0542 was the third highest overall cumulative ex-vessel fisheries revenue of the areas in the PSN (\$41 million), a total driven primarily by scallop landings.

As a result of BOEM's consideration of these factors, a 2.5 nmi buffer was chosen between the lease areas and the scallop access area. This reduction allows fishing activity within and adjacent to the scallop access area, reduces the cumulative fisheries revenue exposed to offshore wind development, and retains a viable size lease area for commercially feasible offshore wind projects.

In addition, at this time, BOEM decided to remove from leasing consideration the entirety of Lease Area OCS-A 0543, and a portion of OCS-A 0540. Of the Lease Areas identified in the PSN, NMFS identified these two lease areas as having the highest landings and revenue for the surfclam fishery, including up to 5% of surfclam revenue coming from Lease Area OCS-A 0543. NMFS also noted that the two areas had significant overlap with fish habitat identified through the Prime Fishing Areas dataset and would, therefore, be sensitive to impacts from offshore wind facility construction. The removal of area from OCS-A 0540 reduced its viability as a standalone Lease Area. Therefore, BOEM expanded OCS-A 0539 to the west and removed OCS-A 0540. The removal of OCS-A 0543 also negated the justification for the area formerly called a 'transit corridor' (running southwest by northeast) between what was previously OCS-A 0543 and OCS-A 0540. The removal of this 'transit corridor' allowed for a westward expansion of OCS-A 0541 and OCS-A 0542, as depicted in Figure 1.

5.1.4.2. DoD and USCG

BOEM has worked with DoD and USCG since the beginning of this leasing effort to understand their equities and to identify lease areas of least conflict. DoD has worked with BOEM to refine its analysis, culminating in a June 2021 analysis updating its December 15, 2020, letter to BOEM identifying a specific area within the Hudson South WEA to avoid.⁸ The FSN lease areas avoid this area.

As discussed in Section 5.1.2, proposed lease area OCS-A 0543 was in proximity to a new shipping safety fairway designation as proposed by the USCG to accommodate vessel traffic travelling across the NY Bight from the Delaware Bay area to east of Montauk. Avoidance of leasing in this area reduces Hudson South and deconflicts any outstanding USCG uses and the proposed fairway.

⁸ <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/DoD-Response-New-York-Bight-Offshore-Call-Areas.pdf>

5.1.4.3. *Maritime Transit*

In the PSN, BOEM proposed ‘transit corridors’, which were informed by a report based on a workshop convened by NYSEDA, New York State Department of Environmental Conservation, and the Responsible Offshore Development Alliance (RODA). The workshop focused on an analysis of fishing vessels transit and traffic patterns. The width of the proposed corridors was 2.44 nmi. Comments received in response to the PSN were supportive of the proposed transit corridors, thus, the width and general location of these areas were maintained in the FSN.

6. Lease Stipulations

BOEM has developed a series of lease stipulations for the leases offered in this sale to mitigate existing use conflicts and enhance the development process for all parties involved. Please see Appendix 1, *Documentation of Outer Continental Shelf Lands Act (OCSLA) Rationale for Certain Provisions of the New York (NY) Bight Final Sale Notice (FSN) for Atlantic Wind Lease Sale (ATLW-8)*, for a more detailed discussion of the connection between several of the more novel lease stipulations and OCSLA.

6.1. Reporting Requirements

BOEM is building upon a previously used lease stipulation to require a semi-annual progress report and require early and regular engagement with affected Tribes, ocean users, and other stakeholders, as well as to encourage regular engagement with and investment in affected underserved communities. Within the progress report, lessees will be required to identify Tribes, ocean users, underserved communities, and other stakeholders (collectively “parties”) potentially affected by proposed activities. The report will provide updates on engagement activities, challenges or impacts to the parties due to the proposed activities, and how, if at all, a project has been informed or altered to address those challenges or impacts, as well as any planned engagement activities during the next reporting period.

Acknowledging that there is an existing and growing consultation burden placed on many affected Tribes and parties, the stipulation also requires, to the maximum extent practicable, that lessees coordinate with one another on engagement activities.

In addition, the stipulation requires that the progress report incorporate separate lease requirements for the development of communication plans for fisheries, which include specific requirements requested by the New York Department of State through the Coastal Zone Management Act process, (Fisheries Communication Plan, FCP), Tribes (Native American Tribes Communication Plan, NATCP), and agencies (Agency Communication Plan, ACP), which serve to guide engagement activities with those groups. Consistent with current practice, the FCP is a requirement of the lease; however, BOEM has added additional elements to include in the FCP based on comments received. Lastly, the progress report must also include an update on activities executed under lessee survey plan(s).

Implementation of this stipulation will increase communication and accountability between the lessees, affected parties, Tribes and BOEM. The details of how this stipulation will be enforced will be informed by a subsequent guidance document to be developed with input from affected parties.

6.2. Transmission Planning

In partnership with the Department of Energy, BOEM is continuing efforts to use a planned approach to transmission and is evaluating broader policy options for such an approach, including the use of cable corridors, regional transmission systems, meshed systems, and other mechanisms. BOEM is considering conditioning COP approvals on the incorporation of such methods, where appropriate. In the FSN, BOEM encourages lessees to engage in early coordination with adjacent lessees, states, Tribal Nations, and other ocean users to identify ways to minimize impacts from transmission. In addition, BOEM is modifying the lease stipulations concerning communication with fisheries, Tribes, and other stakeholders, to explicitly seek input and discussion surrounding transmission easements prior to proposing such easements. Overall, a more efficient transmission system will decrease impacts to the ocean and coastal environment.

6.3. Project Labor Agreements and Supply Chain

BOEM is committed to establishing a durable domestic supply chain that can sustain the U.S. offshore wind industry and to safe, expeditious and orderly development in the OCS. To advance this vision, BOEM has included the following three lease stipulations in the FSN:

- The first stipulation requires the lessee to establish a statement of goals in which the lessee will describe its plans for contributing to the creation of a robust and resilient U.S.-based offshore wind supply chain. The lessee must provide regular progress updates to BOEM, and BOEM will make these updates publicly available.
- The second stipulation would incentivize the lessee to procure major offshore wind components domestically through operating fee credits.
- Finally, BOEM has included a lease stipulation encouraging lessees to make every reasonable effort to enter into Project Labor Agreement(s) (PLAs) covering the construction stage of any project proposed for the leased area. Offshore wind projects are large complex construction efforts and are well suited for PLAs.

6.4. Surface Structure Layout and Orientation

To facilitate a lessee's full enjoyment of the lease and allow for a structure layout that contains two common lines of orientation across the adjacent leases (as described in Navigation and Vessel Inspection Circular 01-19), BOEM has included an updated lease stipulation. Where one lease abuts a neighboring BOEM lease area, each lessee must endeavor to implement a layout of surface structures that contains two common lines of orientation. Where such a design cannot be agreed upon among adjacent lessees, each lessee will be required to incorporate a 1 nmi setback from the boundary with the neighboring lease where no surface structures will be permitted (a total of 2 nmi separation between surface structures on the leases).

For Hudson North, OCS-A 0544, the neighboring lessee is subject to an existing lease that does not contain a setback provision. As such, the lease for OCS-A 0544 includes a revised stipulation, which calls for the establishment of a 2 nmi buffer between its proposed surface structure occupancy and the border of the neighboring BOEM lease area in order for BOEM to accept the COP submission. This would effectively establish the 2 nmi buffer recommended by the USCG without obstructing the existing lease area.

6.5. Endangered Species Act Programmatic Consultation

BOEM has completed a programmatic consultation with NMFS under section 7 of the Endangered Species Act (ESA). Federal partners that were co-action agencies on the programmatic consultation include the Bureau of Safety and Environmental Enforcement, U.S. Army Corp of Engineers, and the U.S. Environmental Protection Agency. On June 29, 2021, NMFS issued a Letter of Concurrence under the ESA (<https://www.boem.gov/renewable-energy/final-nlaa-osw-programmatic>) that covers site characterization (high resolution geophysical (HRG), geotechnical, and biological surveys) and site assessment/data collection (deployment, operation, and retrieval of meteorological and oceanographic data buoys) activities associated with Atlantic OCS leases. As a result of this consultation, Project Design Criteria (PDCs) and Best Management Practices (BMPs) associated with the mitigation, monitoring, and reporting conditions have been developed for those data collection activities covered in the consultation. The PDCs and BMPs pertain to mitigation, monitoring, and reporting conditions for reducing noise exposure to protected species from HRG surveys, avoiding vessel interactions with protected species, and mooring design and marine debris requirements to avoid entanglement of listed species. Similar to the requirements for threatened and endangered species and critical habitat under the ESA, BOEM requires mitigation, monitoring, and reporting conditions for all marine mammals. These PDCs and BMPs will become provisions of all leases issued for the New York Bight and are found in the document *Project Design Criteria and Best Management Practices for Data Collection Associated with Atlantic Offshore Wind Leases* found at <https://www.boem.gov/renewable-energy/nmfs-esa-consultations>.

7. Auction Format

For the New York Bight auction, BOEM has elected to utilize a single-variable, cash-only auction format. Bidders are limited to winning a maximum of one lease area. In addition, affiliated entities are not permitted to bid against one another. In the case of two or more affiliated entities qualifying for the auction, only one will be permitted to participate.

Minor changes to the fiscal terms for this lease sale are explained in Appendix 2. Specifically, BOEM is simplifying the rental calculation language and simplifying the operating fee calculation. All leases issued under this auction will utilize the NYISO NYC J pricing hub for operating payments.

Director Concurrence

_____ Yes

_____ No

Amanda Lefton
Director, Bureau of Ocean Energy Management

Date



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
WASHINGTON, DC 20240-0001

Information Memorandum

To: Amanda Lefton
Director, Bureau of Ocean Energy Management

From: James F. Bennett
Chief, Office of Renewable Energy Programs

Subject: Documentation of Outer Continental Shelf Lands Act (OCSLA) Rationale for Certain Provisions of the New York (NY) Bight Final Sale Notice (FSN) for Atlantic Wind Lease Sale (ATLW-8)

I. Purpose

This memorandum documents the Bureau of Ocean Energy Management's (BOEM) authority under the OCSLA to include certain stipulations in the leases that will be offered for sale at BOEM's ATLW-8 for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS), as described in the NY Bight FSN.

II. Project Labor Agreements

A. Proposed Lease Stipulation

6 PROJECT LABOR AGREEMENTS

The Lessee must make every reasonable effort to enter a Project Labor Agreement(s) (PLA) covering the construction stage of any project proposed for the leased area.

B. Discussion

Stipulation 6.1 would encourage the use, by offshore wind developers, of Project Labor Agreements (PLA) during the construction of their projects. BOEM has concluded that the use of PLAs when developing the leases at issue will facilitate construction of the projects and potentially help achieve several of OCSLA's stated goals.

If used, the PLAs would require all contractors working on the construction stage of a project to adhere to collectively bargained terms and conditions of employment, whether the contractors are union or nonunion contractors. PLA conditions typically

include prevailing wages, no-strike clauses, dispute resolution procedures, and safety and training provisions.¹

Pursuant to 43 U.S.C. § 1332(6), operations on the OCS should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent occurrences that may cause damage to the environment or to property or endanger life or health. The construction of offshore wind projects requires workers with specialized training to meet these objectives due to the unique nature of construction work offshore. Because the offshore wind industry is relatively new to the United States (U.S.) and is rapidly growing, BOEM has determined that it is in the best interest of the U.S. to encourage the development of an adequate domestic pool of well-trained personnel to construct, and support construction of, offshore wind projects on the OCS. In addition, the development of this specialized workforce will help to support the stated goals of OCSLA §1332(3) by facilitating expeditious and orderly development of the offshore wind industry, subject to environmental safeguards.

One way to promote the expansion of a workforce of well-trained personnel that is ready to construct offshore wind projects is through PLAs. These agreements, between a developer and its workers, may contain provisions requiring training or apprenticeships, may establish training or apprenticeship programs, or may contain other provisions encouraging or supporting workforce training. PLA provisions are expected to supplement other offshore wind training programs by providing both supplemental on-the-job training for workers and training opportunities for new apprentices. Even after the project to which the PLA pertains is fully constructed, the workers trained pursuant to the PLA's provisions may move on to other offshore projects, where they could apply their newly acquired skills. Therefore, PLAs—by requiring a certain level of training and/or making such training available—will help to establish, in a reasonable timeframe, a pool of well-trained individuals with the skills required for construction work in the offshore wind industry.

The existence of such a pool of well-trained personnel would provide developers with confidence in U.S. workers, helping to both create jobs and facilitate the growth of the offshore wind industry, consistent with OCSLA's goal of expeditious and orderly development on the OCS.

Well-trained personnel are also necessary to meet the requirement of OCSLA § 8(p)(4)(A) that OCS activities are carried out in a manner that provides for safety. Offshore operations are complex and can be hazardous. PLAs typically contain provisions directly addressing safety, along with requiring training as to both the substantive aspects of a job and the management of the safety aspects of a job.²

¹ Belman, Dale and Bodah, Matthew. Building Better: A Look at Best Practices for the Design of Project Labor Agreements. Economic Policy Institute Briefing Paper #274, August 11, 2010.

² Belman, Dale (Michigan State University), Bodah, Matthew (University of Rhode Island), and Philips, Peter (University of Utah). *Project Labor Agreements*. ELECTRI International, February 2007, pp. 15, 29, 32.

State offshore wind procurements often require awardees to enter into PLAs, and the use of PLAs could also promote the standardization of training and safety protocols for offshore work. Developers and project contractors are likely to negotiate PLA provisions similar to those that have shown to be successful during the construction of previous offshore wind projects. Such standardization could allow for consistency of expectations among projects, leading to increased safety. The first PLA for an industrial-scale offshore wind project in the United States was signed between Vineyard Wind, its contractors, and local unions.³

The greater certainty provided by PLAs' no-strike components and established dispute resolution procedures may facilitate the timely completion of large offshore construction projects.^{4,5} A project may come online more quickly than it would in the absence of a PLA because the no-strike and standardized dispute resolution provisions decrease the time to resolve disputes. PLAs may also result in a more coordinated workforce among contractors. These, and perhaps other beneficial effects of a PLA, could result in a shorter construction period, furthering OCSLA's goal of "ma[king] [the OCS] available for expeditious and orderly development" (43 U.S.C § 1332(3)).

The Congressional Research Service (CRS) evaluated many studies and determined the impact of PLAs on construction project cost was inconclusive. The studies (some of which found higher costs for PLA projects) evaluated by the CRS did not always consider the quality of construction, whether projects were finished on time, or the safety records of different projects.⁶ Based on the CRS study synthesis and other studies, BOEM does not believe PLAs are likely to result in negative cost impacts to offshore wind projects. PLAs have been used in the construction industry for many years and could be one key to aiding the safe growth of the offshore wind industry.^{7,8} Stipulation 6.1 would not mandate their use, but would require that lessees make every reasonable effort to use them during construction phases of an offshore wind project. If PLAs are used, they should help lessees, BOEM, and the U.S. achieve OCSLA's goals of safe offshore wind development using well-trained personnel.

³ Chesto, Jon. Vineyard Wind developers sign deal with unions to build \$2.8b project. Boston Globe, July 16,2021; <https://www.bostonglobe.com/2021/07/16/business/vineyard-wind-developers-sign-deal-with-unions-build-28b-project/>

⁴Belman, Dale and Bodah, Matthew. Building Better: A Look at Best Practices for the Design of Project Labor Agreements. Economic Policy Institute Briefing Paper #274, August 11, 2010.

⁵ Dale Belman, Matthew M. Bodah, and Peter Philips, Project Labor Agreements, ELECTRI International, 2007 <https://electri.org/>

⁶Project Labor Agreements, June 28, 2012; Congressional Research Service <https://www.everycrsreport.com/reports/R41310.html>

⁷ Commonwealth of Massachusetts Special Commission Report on the Use of Project Labor Agreements in Road, Bridge and Rail Projects, Analysis and Key Findings, December 31, 2014.

⁸ Belman, Dale and Bodah, Matthew. Building Better: A Look at Best Practices for the Design of Project Labor Agreements. Economic Policy Institute Briefing Paper #274, August 11, 2010.

III. Community Engagement

A. Proposed Lease Stipulation

3.1.1 Engagement: The Lessee shall make reasonable efforts to consult with “Tribes and parties,” that may be potentially affected by the project activities on the OCS, which include, but are not limited to:

- 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 (see **Error! Reference source not found.**)
- Mariners and the Maritime Industry
- Ocean Users
- Submarine Cable Operators
- Underserved Communities, as defined in Section 2 of Executive Order 13985

The Lessee shall make reasonable efforts to implement the project in a manner that minimizes, mitigates, and/or redresses the project’s adverse effects, if any, on Tribes and parties. To facilitate consultation under this section, the Lessee should work collaboratively with federal, state, and local governments, community organizations, and Tribes.

The Progress Report must:

- Identify Tribes and parties applicable to the project;
- Document, and update for subsequent reports, engagement with Tribes and parties since the previous reporting period;
- Document potential adverse effects from the Lessee’s project to the interests of Tribes and 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 parties).
- The report must also include a description of any anticipated or scheduled engagement activities for the next reporting period.
- The report must also include feedback from engagement with Tribes and parties regarding transmission planning, prior to proposing any export cable route.
- The report must provide information that can be made available to the public and posted on the BOEM website.

The intent of this requirement is to improve Lessee communication and transparency with Tribes, parties, and the general public, and to encourage lessees to identify and engage with underserved communities, including environmental justice communities that may be disproportionately impacted by the Project's OCS activities, in order to avoid, minimize, and mitigate potential adverse effects by, for example, investing in these communities.

BOEM will protect privileged or confidential information that you submit, as required by the Freedom of Information Act (FOIA) and 30 CFR 585.113. Exemption 4 of FOIA applies to "trade secrets and commercial or financial information that you submit that is privileged or confidential." 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it "Contains Privileged or Confidential Information" and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise nonconfidential information.

B. Discussion

OCSLA requires that offshore wind developments are carried out in a manner that is safe and protects the environment (43 U.S.C. § 8(p)(4)(A) and (B)). OCSLA defines the "human environment" as: "physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS." (43 U.S.C. § 1331(i)). It is at least possible that an offshore wind project may cause adverse impacts to the human environment of communities, including underserved communities.⁹ Stipulation 3.1.2 would help BOEM meet the OCSLA requirements of maintaining safety and protecting the human environment by encouraging developers to work with potentially impacted communities to reduce possible adverse effects from BOEM-authorized actions.¹⁰

⁹ Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government defines underserved communities as "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." As examples, the E.O. lists "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 persons (LGBTQ+); persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequity." See <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

¹⁰ Stipulation 3.1.2 would also help BOEM achieve the goals set forth in Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and Executive Order 13895, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, which essentially make environmental justice part of BOEM's mission.

Early and open communication between the offshore wind developer and potentially impacted communities can also increase the likelihood of success of the developer's project, furthering OCSLA's goal of expeditious and orderly development on the OCS. Research demonstrates that community support for offshore wind projects increases when there is ongoing community engagement and transparent communication.^{11,12}

Stipulation 3.1.2 therefore would require collaboration with stakeholders, including underserved communities that may be impacted by offshore wind development. The Stipulation would foster engagement with impacted stakeholders early in the offshore wind project development process, and evidence from case studies and projects around the world demonstrates that such early engagement improves social acceptance of projects, which can in turn facilitate their development.^{13,14,15,16}

The mitigation of impacts to communities, as contemplated by Stipulation 3.2.1, could also help improve the social acceptance of wind power projects. Community engagement may include informational meetings and participatory involvement during the project development process, though a lessee may also elect to extend benefits to an impacted community.^{17 18}

¹¹ The World Bank & International Finance Corporation. *Improving the Investment Climate for Renewable Energy Through Benefit Sharing, Risk Management and Local Community Engagement*, at 10-11.

¹² Walker, Benjamin J.A. et al. *Community benefits, framing and the social acceptance of offshore wind farms: An experimental study in England*. Energy Research & Social Science, Vol. 3, September 2014.

¹³ Walker, Benjamin J.A. et al. *Community benefits, framing and the social acceptance of offshore wind farms: An experimental study in England*. Energy Research & Social Science, Vol. 3, September 2014.

¹⁴ *Delivering community benefits from wind energy development: A Toolkit*. A report for the Renewables Advisory Board. July 2009, at 5.

¹⁵ The World Bank & International Finance Corporation. *Improving the Investment Climate for Renewable Energy Through Benefit Sharing, Risk Management and Local Community Engagement*, at 10-11.

¹⁶ The World Bank & International Finance Corporation. *Improving the Investment Climate for Renewable Energy Through Benefit Sharing, Risk Management and Local Community Engagement*, at 8-10. Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/32748/Improving-the-Investment-Climate-for-Renewable-Energy-Through-Benefit-Sharing-Risk-Management-and-Local-Community-Engagement.pdf?sequence=1&isAllowed=y>

¹⁷ Justice40 is a whole-of-government effort to ensure that Federal agencies work with states and local communities to deliver at least 40 percent of the overall benefits from Federal investments in climate and clean energy to disadvantaged communities. Examples of investment benefits for covered programs, including clean energy, are included in the Interim Implementation Guidance for the Justice40 Initiative, available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

¹⁸ *Id.* at 10.

IV. Supply Chains

A. Proposed Lease Stipulations

7 SUPPLY CHAIN

7.1 **Supply Chain Statement of Goals:** The Lessee must submit to the Lessor a statement of goals in which the Lessee will describe any plans by Lessee for contributing to the creation of a robust and resilient US-based offshore wind supply chain. The Statement of Goals must include the Lessee's plans for investments in supply chain improvements, if any, to support the offshore wind industry, including investments in:

- Installation, downpipe, survey and other vessels,
- Port infrastructure,
- Grid upgrades,
- Research & development,
- Manufacturing of components and facilities,
- Supply chain architecture like fabrication and assembly halls, port storage, laydown areas,
- Dry docks and navigation channels,
- Onshore and offshore docking and refueling stations for autonomous vehicles,
- Workforce diversity, training, and development, and
- Ensuring equal access to contracting opportunities.

Annually following COP approval, the Lessee must send updates to the Lessor on the Supply Chain Statement of Goals, and the Lessee's progress in meeting those goals. This information may be provided as part of the certification of compliance statement pursuant to 30 CFR 585.633(b).

The Lessee must submit an evaluation of the Lessee's success in meeting these goals no later than the last required Fabrication and Installation Report submission. The Lessee must submit a version of the Statement of Goals, updates, and final report that do not contain confidential information, so that BOEM can make them publicly available.

7.2 **Supply Chain Operating Fee Credit:** To promote the development of the United States' offshore wind supply chain, the Lessee is encouraged to procure major offshore wind components domestically. The Lessee may be eligible for an operating fee rate of 1% for a period of five years. To qualify, the Lessee must satisfy four or more of the following conditions:

- All nacelles for the project are assembled in the United States;
- All turbine blades are manufactured in the United States;
- All towers are manufactured in the United States;
- All foundations are manufactured in the United States;
- All transition pieces are manufactured in the United States;

- All inter-array cables are manufactured in the United States;
- All export cables are manufactured in the United States;
- The offshore substations are manufactured in the United States.

The domestic assembly and manufacturing conditions described above must be meaningful and substantial, as determined by BOEM. For example, a nacelle that is assembled abroad with minor components added in the United States would not satisfy the requirement.

To qualify for the operating fee credit, Lessees must request the credit and must provide to BOEM evidence that four or more of the above-listed conditions were met. Upon BOEM's review and determination that the requesting Lessee has met the criteria to earn the operating fee rate adjustment, the operating fee rate starting in the year after the completion of the review and determination will be 0.01 for five years.

B. Discussion

Stipulations 7.1 and 7.2 are intended to target the need to establish and maintain U.S.-based sources of supply for offshore wind development. The U.S. offshore wind industry is currently highly dependent on international supply chains. Most components of wind facilities that are planned for offshore the U.S. must be manufactured overseas and shipped to the U.S.¹⁹ This introduces uncertainty and risk in the construction and operation of U.S. offshore wind facilities. Foreign suppliers may be subject to impediments within their own countries, such as work stoppages, taxing or legal constraints, or effects of political disruptions, and must ship their products long distances to the U.S., potentially resulting in increased costs or delays. Further complicating matters, Europe has its own aggressive offshore wind targets (450 gigawatts [GW] by 2050²⁰), in addition to those of the U.S. (30 GW by 2030), which could potentially strain the international supply chain.²¹ Foreign suppliers may have trouble meeting the demand from both European and U.S. developers, and/or may choose to, or be required to, provide their goods to developers in their own countries.

Reliance on foreign providers of offshore wind project components creates vulnerability for the U.S. because the offshore wind industry is one element of the nation's diverse energy sector, which is critical to the national security interests of the United States,²² powering transportation, communications, finance, and government infrastructure. Pursuant to OCSLA § 8(p)(4)(F) (43 USC 1337 (p)(4)(F)), offshore wind leasing must be carried out in a manner that provides for

¹⁹ National Renewable Energy Laboratory (NREL). 2021. Offshore Wind Market Report.

²⁰ Wind Europe. 2021. Overview. <https://windeurope.org/about-wind/reports/our-energy-our-future/>. Last Accessed. November 2021.

²¹ National Renewable Energy Laboratory. 30 GW by 2030. A Supply Chain Roadmap for Offshore Wind in the United States. Part 1: The Demand for a Domestic Supply Chain. Draft 2021.

²² Pub. L. No. 96-294, Title I, § 100, 94 Stat. 616, June 30, 1980 Stat. 616.

protection of the national security interests of the U.S. To help protect the national and energy security of the U.S., it is important to ensure that the offshore wind industry can access the materials it needs without having to rely on foreign suppliers because of the risks of disruption, delay, and increased expense that come with such reliance. The offshore wind industry can make significant contributions to the U.S.'s energy security and help ensure a secure and reliable flow of energy to the nation, thereby enhancing the national energy portfolio. Enhancing domestic production of offshore wind project components serves to protect the offshore wind industry from international supply chain risks, allowing it to provide the nation with critically needed energy which, in turn, protects U.S. national security.

Stipulation 7.1 would require a lessee to submit to BOEM a statement of its goals with respect to contributing to the creation of a robust U.S. supply chain for offshore wind project components. The lessee would also be required to annually update BOEM on the progress it has made in achieving its stated goals.

Stipulation 7.2 would incentivize lessees to domestically source major components of their wind facilities. There is already significant domestic offshore industrial manufacturing capacity and expertise that can be utilized to manufacture components of offshore wind facilities.²³ The U.S. has a well-developed offshore oil and gas energy sector, whose manufacturing expertise may be of significant help in the context of manufacturing offshore wind project components.

In order to spur an increase in domestic production of offshore wind components, Stipulation 7.2 would make available to lessees that meet certain criteria a lower operating fee rate for a period of five years. To be eligible for the lower rate, a lessee would be required to demonstrate to BOEM that it has domestically sourced four or more major components (as listed in the stipulation). The lower operating fee is intended to provide an incentive to lessees to purchase their materials/components in the U.S. BOEM intends for this incentive to lead to increased demand for domestically manufactured goods, which, in turn, should lead to more capacity for manufacturing these materials/components in the U.S., creating jobs, increasing tax revenues, and stimulating the economy. Supply chain capital investments are likely to provide the U.S. with the capability to manufacture or assemble components for future projects. Further, adding domestic options for procuring offshore wind components mitigates the risks inherent in U.S. industry depending on foreign markets that may be at capacity servicing other projects.

Stipulation 7.2 signals BOEM's commitment to the orderly and expeditious development of OCS resources by encouraging investments in the offshore wind supply chain. This stipulation could represent as much as \$67 million in supply

²³ National Renewable Energy Laboratory. 30 GW by 2030. A Supply Chain Roadmap for Offshore Wind in the United States. Part 1: The Demand for a Domestic Supply Chain. Draft 2021.

chain incentives from 2028-2038 across all six leases. In partnership with other state and Federal efforts (i.e. 30% ITC²⁴, \$350 million New Jersey Offshore Wind Tax Credit²⁵, \$200 million from New York for port investments²⁶), BOEM believes that the incentives will positively affect developer behavior and foster local supply chain development. BOEM considers a 1% incentive over five years appropriate as it balances an incentive sufficient to drive lessees to seek domestic solutions with the need to ensure the receipt of a fair return.

While Stipulation 7.2 would offer an incentive if certain items are sourced domestically, a lessee may also decide to take advantage of the incentive and invest in the domestic supply chain because a local production facility or capacity it invests in may be available to it for its future endeavors. Therefore, a lessee's investment in the domestic supply chain now could save the lessee money in the future, particularly if the lessee decides to purchase and develop future offshore wind leases. Even if a lessee does not purchase and develop future projects, other developers could benefit from the availability of domestic offshore wind components. If a lessee is considering investing in a local facility, it may be persuaded to do so by the Stipulation 7.2 incentive.

BOEM discussed the incentive set forth in Stipulation 7.2 with representatives of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy and National Renewable Energy Laboratory. In these conversations, the DOE shared research on the relative likelihood that various components could be sourced domestically on a schedule that would accommodate projects arising from the NY Bight lease sale. The DOE explained that while some components would likely be available domestically for projects that may arise from the NY Bight lease sale, other components likely will not be. DOE warned of a relatively high level of uncertainty with their predictions. For this Stipulation, BOEM selected a threshold—i.e., four of eight listed components—that a lessee must source domestically to qualify for the incentive and that we believe is potentially attainable. While there is no guarantee that any particular lessee will, because of the incentive, make a domestic investment that it otherwise would not have made, BOEM, in consultation with DOE, has crafted the threshold for earning the incentive at a level that is as likely as possible to influence decisions. As alluded to above, this is especially true when BOEM's 1% incentive is considered in the context of other incentives, such as those offered by the states.

²⁴ Congressional Research Service. (2021, April 23). The Energy Credit or Energy Investment Tax Credit (ITC). Retrieved December 8, 2021. <https://crsreports.congress.gov/product/pdf/IF/IF10479#:~:text=For%20offshore%20wind%2C%20the%20credit,and%20does%20not%20phase%20out.&text=For%20much%20of%20its%20history,associated%20with%20the%20energy%20credit.>

²⁵ Offshore wind tax credit program. NJEDA. (2021, November 24). Retrieved December 8, 2021, from <https://www.njeda.com/offshorewindtaxcredit/>.

²⁶ <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Supply-Chain-Economic-Development/Port-Infrastructure>

Appendix 2
Memorandum

To: Office of Renewable Energy Programs

From: Economics Division, Office of Strategic Resources

Subject: Changes in Fiscal Terms for the New York Bight Lease Sale

The fiscal lease terms for the New York Bight sale have been revised. This documents the rationale and fiscal effect of those changes.

A. Rent

1. The New York Bight leases include revised language to simplify the rental calculation. There is no impact on federal revenues from the changed rental language.

B. Operating Fee

1. BOEM made the changes below to the operating fee calculation to simplify and ease the administrative burden on the lessee and BOEM. The net result of these three changes may slightly advantage the lessee with lower operating fee payments but could also result in higher operating fee payments depending on the magnitude of the capacity factor adjustment in year 7.
 - a) **Eliminated the inflation adjustment to the benchmark power price.** Since the operating fee is paid in advance, further adjusting the benchmark power price by a few (1 to 11) months of inflation introduced unnecessary complexity into the operating fee calculation. This change will slightly advantage the lessee with a lower operating fee payment.
 - b) **Changed the weighting of peak/off peak hourly calculation to a simple hourly average calculation.** A simple average hourly calculation will be easier for lessees to understand and should result in fewer inconsistencies with actual market or data sources. This will provide a very slight payment reduction for the lessee compared to the peak/off-peak weighting. BOEM decided the administrative simplicity and reduced administrative burden is worth the minor loss of leasing revenues.⁹

⁹ The change from peak/off-peak to the on-the-hour average is estimated to reduce a lessees' operating payment about \$20,000 per year for an 800 MW project.

- c) **Eliminate the 10 percent adjustment limit to the periodic capacity factor adjustment.** The 10 percent adjustment limit used in prior sales had no practical purpose. A full capacity factor adjustment after the 7th year is expected to provide higher operating fee payments for years 7 to 12 and potentially also for years 12 to 17. This change will provide greater operating fee revenue to the government.

C. NYISO NYC (Zone J) as the Pricing Hub for all NY Bight Leases

1. BOEM chose to set the pricing hub in the lease rather than wait until project development to identify the pricing benchmark for the operating fee. NYC (Zone J) is the most liquid pricing zone in the NYC metropolitan area.
 - a) This change provides greater regulatory certainty for developers, simplifies the calculation since there is only the possibility of one measurement point per lease, and accommodates a transmission backbone if employed in the New York Bight.
 - b) Currently there are only minor pricing differences between hubs within the NY Bight region. The administrative simplicity and regulatory certainty provide benefits to both the lessee and government.