



Bureau of Ocean Energy
Management

California

Pacific Wind Lease Sale (PACW-1)

Final Sale Notice (FSN)

Response to Comments

October 2022

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Acronyms and Abbreviations

Acronym	Definition
ACP	Agency Communication Plan
AIS	Automatic Information System
BFF	Bidder's Financial Form
BMP	Best Management Practice
BOEM	Bureau of Ocean Energy Management
CBA	Community Benefit Agreement
CBFC	Community Benefits Flex Credit
CCLME	California Current Large Marine Ecosystem
CEC	California Energy Commission
CHNMS	Chumash Heritage National Marine Sanctuary
CMECS	Coastal Marine Ecological Classification Standard
COP	Construction and Operations Plan
CZMA	Coastal Zone Management Act
DoD	Department of Defense
DOI	Department of Interior
EA	Environmental Assessment
EFH	Essential Fish Habitat
EFHCA	Essential Fish Habitat Conservation Areas
EIS	Environmental Impact Statement
EJ	Environmental Justice
EO	Executive Order
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
FCBA	Fishing Community Benefit Agreement
FCP	Fisheries Communications Plan
FDR	Facility Design Report
FOIA	Freedom of Information Act
FOSW	Floating offshore wind
FSN	Final Sale Notice
HAPC	Habitat Areas of Particular Concern
HRG	High-Resolution Geophysical
IRP	Integrated Resource Plan
MBC	Mutual Benefits Corporation
MPA	Marine Protected Area
MBNMS	Monterey Bay National Marine Sanctuary
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MW	Megawatts
NATCP	Native American Tribes Communications Plan
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration

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Acronym	Definition
NS	National Standards
NSC	Navigational Safety Corridors
NSRA	Navigational Safety Risk Assessment
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
ONRR	Office of Natural Resources Revenue
OSW	Offshore wind
PAC- PARS	Pacific Coast Port Access Route Study
PEIS	Programmatic Environmental Impact Statement
PFMC	Pacific Fishery Management Council
PLA	Project Labor Agreement
PSN	Proposed Sale Notice
RCEA	Redwood Coast Energy Authority
SAP	Site Assessment Plan
USCG	U.S. Coast Guard
USEP	U.S. Employment Plan
USFWS	U.S. Fish and Wildlife Service
WEA	Wind Energy Area

Introduction

The Bureau of Ocean Energy Management's (BOEM's) mission, as well as its governing statute, the Outer Continental Shelf Lands Act (OCSLA), calls for expeditious and orderly development of the OCS, while also safeguarding the environment and its existing uses. On May 31, 2022, BOEM published a *Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Proposed Sale Notice (PSN)*. The PSN public comment period closed on August 1, 2022. BOEM received a total of 89 public comment submissions. Of the total 89 public submissions received, 84 were identified as unique, none were part of a form letter campaign, and 5 were identified as duplicates or withdrawn. The comments were received from a variety of governments and stakeholders and represent a wide range of views and perspectives, which were very informative to BOEM's decision-making process.

Taking these mandates and comments into account, BOEM made revisions to the lease terms, conditions and stipulations, auction format and procedures, and other documents related to the PACW-1 Final Sale Notice (FSN). BOEM appreciates the time and energy put into the comment development and has afforded careful consideration of all comments received. Given the volume and density of the comments, BOEM has provided a summary of the comments received and associated responses.

Section 1. Number, Size, Orientation, and Location of the Proposed Lease Areas

Summary of Comments:

BOEM solicited comments in the PSN regarding the number, size, orientation, and location of the five Proposed Lease Areas detailed in the PSN. BOEM received numerous comments in response to this topic. Several commenters expressed support for the number, size, and location of the five Proposed Lease Areas as detailed in the PSN.

California State agencies expressed support for the multiple lease areas as it promotes competition among bidders in the auction and among the eventual lessees, which is important for minimizing the cost of offshore wind (OSW) energy for California's ratepayers. A few OSW industry commenters remarked that the Morro Bay Wind Energy Area (WEA) should be partitioned into four lease areas instead of three to increase competition and diversity in the market.

The U.S. Coast Guard (USCG) requested that BOEM remove portions of the lease areas that overlap with port access routes traditionally followed from the high seas to minimize obstructions to ports for vessels operating seaward of the WEAs. However, no specific areas of overlap within the WEAs were identified.

Regarding orientation, the National Marine Fisheries Service (NMFS) requested that the lease areas be re-oriented in an east-west direction to allow survey sampling and vessel transit.

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Commenters also recommended BOEM re-orient the lease areas in the Morro Bay WEA in a north-westerly direction according to the prevailing wind direction to increase energy production.

Commenters also recommended the use of smaller “pilot” projects for the lease areas and for BOEM to subdivide the lease areas according to production potential first, and then by all other characteristics second, to maximize auction value and protect ratepayer value.

BOEM Response:

The number, size, orientation, and location of the lease areas were retained from the Proposed Lease Areas in the PSN to the areas offered for leasing in the FSN. BOEM weighed numerous variables in deciding to offer for lease five areas totaling 373,268 acres. BOEM’s delineation of the lease areas was informed in part by a BOEM-funded assessment by the National Renewable Energy Laboratory (NREL).¹ NREL’s analysis incorporated physical site characteristics including prevailing wind direction, different possible mooring technologies, and different possible turbine layouts to delineate the WEAs into lease areas of nominally equal value. NREL assessed energy generation potential with consideration of wake losses and provided recommendations for lease area delineations. BOEM adopted the lease area delineations that maximize total energy generation for each WEA, achieve equal commercial viability among the leases within each WEA, and have approximately equal-sized lease areas within each WEA.

The USCG announced the availability of the draft Pacific Coast Port Access Route Study (PAC-PARS) on August 25, 2022.² The PAC-PARS evaluates safe access routes for the movement of vessel traffic proceeding to or from ports or places along the western seaboard of the United States and aims to determine whether a Shipping Safety Fairway and/or routing measures should be established, adjusted, or modified. The recommendation found in the Draft PAC-PARS calls for the establishment of voluntary fairways to coordinate the flow of vessel traffic along several USCG districts in California to Washington. The Draft PAC-PARS recommends offshore fairways traverse near the Humboldt and Morro Bay Lease Areas. These recommended fairway routes allow for the continued flow of vessel traffic without interference from wind energy leasing activities. There are no portions of the Proposed Lease Areas that overlap with the recommended fairways. BOEM is coordinating closely with the USCG to address potential maritime impacts from any future OSW development in the lease areas.

The issuance of any lease resulting from this sale would not constitute an approval of project-specific plans to develop OSW energy. The size and generating capacity of wind energy projects will be identified in lessees’ Construction and Operations Plans (COPs).

¹ Cooperman, Aubryn, Patrick Duffy, Matt Hall, Ericka Lozon, Matt Shields, and Walter Musial. 2022. Assessment of Offshore Wind Energy Leasing Areas for Humboldt and Morro Bay Wind Energy Areas, California. Golden, CO: National Renewable Energy Laboratory. NREL/TP-5000-82341. <https://www.nrel.gov/docs/fy22osti/82341.pdf>.

² www.regulations.gov, docket USCG-2021-0345.

Section 2. Uniform Layouts

Summary of Comments:

BOEM solicited comments in the PSN regarding potential uniform and aligned turbine layouts in the lease areas. Comments received expressed both support and opposition to uniform and aligned turbine layouts. BOEM received several comments supporting the use of uniform turbine spacing and layouts to facilitate navigational safety for fishing and maritime communities. The USCG recommended common turbine spacing and layout throughout all adjoining wind projects to facilitate navigation safety and emergency response to mariners. One commenter suggested lessees establish agreements with neighboring lessees and stakeholders to adopt uniform spacing, similar to requirements applicable to BOEM lessees in New England. Comments also suggested BOEM engage with the fishing and maritime industries to understand prevailing weather conditions in the Proposed Lease Areas and orient future windfarm layouts to reduce risk to maritime workers or vessels. Many commenters opposed the use of uniform and aligned turbine layouts, stating it would be premature at the leasing stage without first evaluating the environmental conditions of the lease area. Most OSW developer comments were opposed to uniform and aligned turbine layouts due to potential constraints for siting flexibility and the complexities that influence layout decisions, including water depth, floating systems, stakeholder input, prevailing site conditions, and navigability. One commenter noted that there is no operational comparison to be made between different spacing layouts used in the Atlantic OCS and in Europe and their resulting wildlife impacts.

BOEM Response:

BOEM has not prescribed uniform layouts for the PACW-1 leases to preserve flexibility for lessees to design appropriate layouts at the COP phase, when survey and site assessment data are available to inform the design and coordination between neighboring lessees and stakeholders. BOEM included a lease stipulation on surface structure layout and orientation that requires lessees with shared lease boundaries to endeavor to design a structure layout that contains two common lines of orientation across the adjacent leases, as described in USCG's Marine Planning Guidelines detailed in Navigation and Vessel Inspection Circular (NVIC) 01-19, Guidance on the Coast Guard's Roles and Responsibilities for Offshore Renewable Energy Installations (OREI). Several other stipulations in the final leases Addendum "C" require or encourage lessees to work with ocean users, agencies, and other regional lessees on their project designs:

- 3.1.1 Engagement
- 3.1.3 Agency Communications Plan (ACP)
- 3.1.4 Coordinated Engagement
- 5.1.4 Safe Navigation
- 6.1 Minimizing Conflicts
- 6.1 Fisheries Communications Plan (FCP)

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Additionally, each lessee should prepare Navigation Safety Risk Assessment (NSRA) to satisfy the COP information requirements of 30 CFR 585.627(a)(8).³ BOEM will rely on the USCG to review the NSRA and advise BOEM on its adequacy and the adequacy of any proposed navigational safety mitigation measures.⁴

Section 3. Industry Standards for Environmental Protection

Summary of Comments:

BOEM solicited comments in the PSN regarding new industry standards for environmental protection that BOEM should consider. An OSW industry commenter stated that pre-determining requirements for industry standards for environmental protection may limit an OSW project's ability to utilize the best commercially available technology aligned with any phase of development. Standards for environmental protection recommended in the comments included Best Achievable Technologies (not only Best Available Technologies), the Mandate for True Nature-Based Solutions, vessel quieting technology, and the Coastal Marine Ecological Classification Standard (CMECS) codes for interpretation of all seafloor data. One commenter stated that all seafloor data should be merged into an updated seafloor habitat map to provide the best available information for ecological and technical analyses, Area Identification, and leasing decisions. An advocacy group stated BOEM should require lessees to incorporate new technologies to promote environmental protections. Another advocacy group stated that BOEM is required by law to protect the environment when administering the OSW leasing program, including when specifying lease stipulations. A Tribal government stated that there should be increased measures to strengthen environmental protections, including provisions for Tribal monitoring and research, data transparency, and data access, among others.

BOEM Response:

BOEM has included several standard operating conditions and lease stipulations that address minimizing impacts to the environment, including conditions of the California Coastal Commission's conditional concurrence with BOEM's consistency determinations under the Coastal Zone Management Act. Additionally, BOEM requires environmental protections measures in its Site Assessment Plan requirements.⁵ For example, lessees shall use the best available mooring systems using buoys, lines (chains, cables, or coated rope systems), swivels, shackles, and anchors that prevent any potential entanglement or entrainment of marine mammals and sea turtles while ensuring the safety and integrity of the structure or device. BOEM Atlantic guidelines for benthic habitat surveys and spatial data submission include the

³ 30 CFR 585.627(a)(8) (requiring that a COP describe coastal and marine uses, including military activities, vessel traffic, and energy and nonenergy mineral exploration or development, that could affect or be affected by the activities proposed in the COP).

⁴ Information Guidelines for a Renewable Energy Construction and Operations Plan (COP). Version 4.0. May 27, 2020. See <https://www.boem.gov/sites/default/files/documents/about-boem/COP%20Guidelines.pdf>.

⁵ Guidelines for Information Requirements for a Renewable Energy Site Assessment Plan (SAP). June 2019. See <https://www.boem.gov/sites/default/files/renewable-energy-program/BOEM-Renewable-SAP-Guidelines.pdf>.

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use of CMECS codes for seafloor data. Though those guidelines are specific to the Atlantic, BOEM anticipates consistency in guidance for lessees in the Pacific region.

BOEM has included several lease stipulations that address data access for plan review and coordination and for archaeological surveys, subject to the limitations of the Freedom of Information Act (FOIA).

It is important to note that, at the COP stage, BOEM will prepare an environmental impact statement (EIS) which will address impacts to the environment from lease development and that BOEM can include conditions in its COP approval to try to address these, and other, impacts.

Section 4. Vessel Transit

Summary of Comments:

BOEM solicited comments in the PSN regarding measures to facilitate vessel transit and continuance of existing uses within the lease areas.

Several comments stated that currently available Automatic Information System (AIS) data indicate that routing measures are needed for safe navigation. Comments expressed disagreement with the statement in the PSN that “information currently available does not indicate that vessel routing mitigation measures are warranted....” According to one commenter, the Proposed Lease Areas are in the middle of traditional towing and deep draft vessel routes. One commenter referred to COMDTINST 16003.2B-appendix E for routing guidance as the draft USCG routing recommendations are currently unknown. Some comments stated that vessel routing measures within the lease areas are unnecessary because these areas are smaller than lease areas of other projects that did not require transit lanes. Many comments expressed need for vessel routing measures to ensure navigational safety and increased coordination with the USCG on the PAC-PARS. Many comments from the maritime industry recommended clarity on the alignment of BOEM’s OSW energy leasing process and the USCG’s PAC-PARS process to provide certainty to lessees and ocean users on how both agencies would address vessel navigation and safety. Several comments requested a more definitive response from BOEM and USCG on how existing vessel traffic may be affected by development in the lease areas. Some commenters supported coordination with the USCG and BOEM on the PAC-PARS prior to the FSN.

Several comments included recommendations to create transit corridors and/or buffer zones (of various sizes and widths) near and within lease areas to reduce risk and increase navigational safety. Commenters suggested these could be designed to accommodate multiple vessels to facilitate safe vessel transit near and within the lease areas. Comments also recommended the inclusion of a setback in the WEA lease areas of five miles. The Pacific Fishery Management Council (PFMC) recommended BOEM establish, or require lessees to establish, corridors of sufficient size to accommodate fishing and research vessels. According to the commenters, corridors would protect ongoing scientific stock surveys to prevent scientific uncertainty that

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may lead to reduced fishery quotas. Additionally, NMFS recommended corridors four nautical miles wide distributed throughout the lease areas to accommodate scientific surveys for fisheries.

Several commenters, including state agencies and the PFMC, supported BOEM consideration to require areas of no surface occupancy. Comments discussed minimum cable depths, and similar below-sea surface infrastructure for areas of no surface occupancy. One commenter discussed negative impacts of areas of no surface occupancy including increased costs and loss of energy production. Another commenter stated BOEM should consider designing lease areas so that there is enough unleased space between leases where “no surface occupancy” is mandated to eliminate the need for formally designated transit areas.

BOEM Response:

As described in Section 1 above, the USCG announced the availability of the Draft PAC-PARS on August 25, 2022. The Draft PAC-PARS recommends offshore fairways traverse near the Humboldt and Morro Bay Lease Areas that allow for the continued flow of vessel traffic without interference from wind energy leasing activities. There are no portions of the Proposed Lease Areas that overlap with the recommended fairways. The Draft PAC-PARS includes references to the Commandant Instruction 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy, and to NVIC 01-19, Guidance on the Coast Guard’s Roles and Responsibilities for OREI.

BOEM is coordinating closely with the USCG to address potential maritime impacts from any future OSW development in the lease areas, including lessees’ development of NSRAs to satisfy COP information requirements as described in Section 2 above. BOEM defers to the USCG’s authority and expertise regarding vessel transit and navigation safety and is not prescribing vessel routing measures at the leasing stage beyond a lease stipulation on surface structure layout and orientation that requires lessees with shared lease boundaries to endeavor to design a structure layout that contains two common lines of orientation across the adjacent leases as described in NVIC 01-19.

BOEM’s OSW leasing activities in the New York Bight revealed that the term “transit corridor” is not defined or recognized in law, regulation, or international convention. As such, BOEM does not use the term for the PACW-1 lease sale or other actions.

BOEM has not included buffers, setbacks, or areas of no surface occupancy in the final lease areas or lease stipulations in order to maintain the size of the lease areas offered and to preserve flexibility for lessees to design appropriate layouts at the COP stage, when survey and site assessment data are available to inform the design, coordination between neighboring lessees and among stakeholders has been undertaken, and NSRAs have been developed.

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BOEM has included a Research Access lease stipulation which provides a basis for some types of survey activities. Additionally, language in the FSN reflects the expectation that lessees must communicate and coordinate with NMFS (and other entities) to address concerns.

At the COP stage, BOEM may consider designating portions of the lease areas as areas of no surface occupancy to facilitate vessel transit and continuance of existing uses. Potential future restrictions to ensure navigational safety are described in the FSN (Section VII.(a)). The lease stipulations requiring engagement and an Agency Communications Plan (ACP), Fisheries Communications Plan (FCP), and Native American Tribes Communications Plan (NATCP) will facilitate the lessees' design and implementation of projects that minimize, mitigate, and/or redress the projects' adverse effects.

Section 5. Bidding Credits

Summary of Comments:

BOEM solicited comments in the PSN regarding proposed bidding credits to potential bidders in a multiple-factor auction format. The PSN posed numerous questions about bidding credits and BOEM received numerous comments in response to this topic, and for the purposes of response development, they have been broken down into sub-categories in this section.

General comments

A joint submission from OSW industry commenters expressed support for “the multi-factor bidding structure” and for BOEM’s proposal of the two credits. A few commenters generally discussed bidding credits as incentives with some commenters stating that the credits are “too low to incentivize developers to enter...legally binding agreements prior to the auction.” A joint submission from OSW industry commenters opposed increasing the bidding credit package above 22.5%. An OSW industry commenter supported bidding credits of at least 22.5%. Various industry, advocacy, and Tribal government commenters recommended that BOEM increase the total bidding credit from 22.5%. Of those, an advocacy group and Tribal government said the Community Benefit Agreement (CBA) credit should be increased to be equal to or greater than the supply chain/workforce bidding credit, and a Tribal government and several advocacy groups recommended a 50% bidding credit package. One of the advocacy groups specified that the 50% should be divided so that 15% is allocated to CBAs and 35% is allocated to supply chain/workforce training programs.

Some commenters expressed concerns that the current CBA scheme does not “provide means for compensatory mitigation,” and an individual commenter urged the prevention of agreements that do little to nothing to mitigate impacts of WEA development. Several Tribal governments urged BOEM to address infrastructure challenges and mitigate other impacts with a “well-funded community-driven bid credit package.”

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State agencies requested that BOEM consider “requiring bidders to propose bidding credits as a prerequisite” to the lease auction and a union added that additional qualifications, such as the requisition of a code of conduct, should be added to bidding credit rewards. An industry group also requested that BOEM “provide more flexibility in designating a bidding credit” to accelerate the development process. A union also requested that BOEM make workforce training and supply chain development “a requirement for potential bidders,” not just an incentive.

Some commenters encouraged the implementation of bidding credits focused on commitments that involve benefits to underserved and environmental justice (EJ) communities. Specifically, an OSW industry commenter said that such commitments might involve ensuring that these communities are “engaged early and often throughout the wind energy development process,” and an advocacy group added that rewarding investments in these communities would “further BOEM’s goals under OCSLA.” Another advocacy group asserted that activities supporting disadvantaged businesses “should be prioritized.” A Tribal government and an advocacy group added that specific opportunities should be expanded to support Tribal nations, especially for mitigating the disproportionate impact of OSW development on these communities.

Some advocacy groups suggested that BOEM add a stipulation granting bidding credits to bidders that support a research fund, with a particular focus on environmental monitoring and research. Similarly, another advocacy group asserted that bidding credits be extended for developers that agree to “operational curtailment for wildlife protection.” The same advocacy group also urged BOEM to “incentivize energy storage” through bidding credits for developers that use energy storage as part of their lease process.

BOEM Response:

BOEM considered all submitted comments before finalizing its FSN, and decided to offer three bidding credits in this sale for a total of 30 percent of the cash component of a bid. These credits will target developing a floating OSW workforce and/or supply chain and to reduce impacts on impacted communities. The workforce training/supply chain credit will be valued at 20 percent of a bidder’s cash component. Two CBA bidding credits will be valued at 5 percent of the cash component each (for a total of 10 percent). These values were chosen, as an exercise of BOEM’s discretion and technical expertise, to balance the substantive recommendations suggested by commenters against BOEM’s obligation to obtain fair market value of the lease areas. Specific requirements as to types of contributions, requirements for earning the credits and enforcement mechanisms for these bidding credits are included in the lease and Bidder’s Financial Form (BFF) Addendum.

The two CBA provisions allow for compensatory mitigation in lieu of or in addition to a CBA. Specifically, the CBA bidding credits will allow bidders to either provide monetary benefits to an impacted community or make investments benefiting the impacted community. The Lease Area Use CBA may include payments into a special purpose fund. The new General CBA may include contributions to a community benefit fund whose purpose is to provide funds to mitigate

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impacts to communities from the Lessee's project. The CBA bidding credits are provided to help mitigate potential impacts of lease development on affected communities. However, any benefits provided to the impacted community should not duplicate benefits or mitigation measures imposed on the Lessee through, or pursuant to, statutes other than OCSLA.

In an effort to support EJ goals, BOEM has explored many avenues for enhancing benefits to disadvantaged communities. BOEM has limited authority to "encourage" investments towards underserved communities. BOEM lacks the authority to direct lessees to invest in, or hire, specific parties. BOEM has the authority to include lease stipulations encouraging lessees to "identify and engage with underserved communities, including those described in Executive Order 12898 on EJ that may be disproportionately impacted by the Lessee's activities on the Outer Continental Shelf (OCS), in order to avoid, minimize, and mitigate potential adverse effects by, for example, investing in these communities," and the new bidding credit for General CBAs with communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. Further, BOEM has included "workforce diversity, training, and development, including within underserved communities and Tribes" and "ensuring equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses" in the description of possible investments for the supply chain Statement of Goals lease requirement for lessees; and has included disadvantaged businesses among the Contributions to domestic supply chain development.

In addition to the lease stipulations requiring lessees to "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," and inclusion of Tribal Fisheries Departments in the Commercial Fishing lease stipulations, BOEM has included:

- A lease stipulation strongly encouraging lessees to develop specific efforts to increase groups' capacity to participate in the engagement activities described in this lease, for example, by creating working groups or formal agreements to monitor community impacts and implement community benefits;
- Tribes and Tribal businesses among the entities eligible to receive Contributions for workforce training and/or supply chain development;
- Tribes and Tribal businesses among the entities that may provide workforce training funded by lessees; Tribes and Tribal businesses among the entities eligible to enter into a Lease Area Use CBA;
- "Mitigating potential impacts to cultural viewsheds or potential impacts on marine and land species that are of significance to Tribal culture or impacted communities" in the description of benefits that could be included in a General CBA under the new bidding credit provision; and

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- “Contributions toward Tribal workforce development programs or training for employees of wholly owned Tribal corporations that lead to the expeditious and orderly development of floating offshore wind energy projects” among the Contributions to workforce training.

Section 5.1. Bidding Credit for Workforce Training and/or Supply Chain Development

Summary of Comments:

Many commenters expressed general support for bidding credits for workforce training and supply chain development, including Tribal governments, OSW industry groups, advocacy groups, and a local government.

A few commenters urged BOEM to prioritize investments and hiring in nearby communities.

An OSW industry group recommended that bidders be allowed to choose the amount of bidding credits they devote to the supply chain and workforce and asked that BOEM provide more clarity to “what and where the credit can be applied” in order to strengthen incentives. An individual commenter said that eligibility for bidding credits should be restricted due to the relatively novel technology of OSW. An advocacy group recommended that BOEM “strengthen the definition of training programs and workforce investments” and only credit certain investments in workforce development, like those with a focus on equity.

An advocacy group offered several considerations for BOEM in terms of workforce training and supply chain development credits. These included coordinating with Federal agencies to focus on domestic development, ensuring fair return to the United States and an effective deployment timeline, and strengthening national security through secure supply chains. Another advocacy group also stated that investments in a strong domestic supply chain would help “protect the national security interest,” which is BOEM’s responsibility.

An OSW industry group commented that the proposed COP submittal deadline for supply chain investments is an unrealistic benchmark for developers “to be able to make well-considered investments in an industry-wide supply chain, especially given that the West Coast market that is an emerging one with little existing offshore wind infrastructure.”

BOEM Response:

BOEM has included a lease stipulation requiring lessees to “make every reasonable effort to enter a Project Labor Agreement(s) (PLA) that covers the construction stage of any project proposed for the leased area, and that applies to all contractors.” 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. PLAs typically include prevailing wages provisions, no-strike clauses, dispute resolution procedures, and safety and training provisions.

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BOEM has also included a lease stipulation requiring lessees to submit a Statement of Goals that must include the Lessee's plans for investments in supply chain improvements, if any, to support the OSW industry. The supply chain Statement of Goals is required regardless of whether the Lessee received the Workforce Training and/or Supply Chain Development bidding credit.

BOEM's workforce training/supply chain bidding credit targets training and components required for *floating* OSW farms. By focusing investments on floating technologies, BOEM is incentivizing investments that would be most beneficial to development of lease(s) granted in this sale and any future sales BOEM may hold in the Pacific region. BOEM decided to set the bidding credit at 20 percent to allow ample capital, while still granting bidders the flexibility to contribute funds to either workforce training or supply chain development, depending on market needs. BOEM lacks the authority to direct lessees to invest in, or hire, specific parties. BOEM has designed the PLA, supply chain Statement of Goals, and workforce training/supply chain bidding credit stipulations to work hand in hand. A PLA is likely to contain provisions designed to establish and maintain a well-trained OSW workforce. The supply chain Statement of Goals targets the need to build and maintain domestic sources of supply for floating OSW development. The workforce training/supply chain development bidding credit is designed to enhance the floating OSW workforce and/or stand-up the domestic supply chain for floating OSW manufacturing, assembly, or services.

The revised workforce training/supply chain development bidding credit lease stipulation and revised BFF Addendum include specific requirements, restrictions, and Contribution options to provide clarity on how the bidding credit can be applied.

The OSW industry is one element of the Nation's diverse energy sector. This sector is critical to the national security interests of the United States, powering transportation, communications, finance, and government infrastructure. Pursuant to OCSLA, OSW leasing must be carried out in a manner that provides for 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 OSW industry, including the floating OSW 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.

In response to comments on the deadline for lessees' workforce training/supply chain development investments to satisfy their bidding credit commitments, BOEM revised the deadline and the amount of the Contribution due (see Section 5.1.2 below).

Section 5.1.1. Is the proposed 20% bidding credit the optimal percentage to support workforce training and supply chain development?

Summary of Comments:

Support for 20% credit

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Several commenters expressed support for the proposed 20% bidding credit. A joint submission from OSW industry commenters that expressed general support for the bidding credit also encouraged BOEM to “limit the magnitude” of the percentage in order to ensure that “capital is not misallocated.”

Recommendations to increase credit

Several commenters asked for an increase as high as 50%. Several commenters recommended that the bidding credit be split into separate percentages for workforce training and supply chain development.

An industry group that expressed general support for increasing the bidding credit did caution against a significant increase past 30%, stating that such a change would “create uncertainty and divergence among bidders” and “inefficient outcomes on auction day.”

Recommendations to decrease credit

Some commenters asked for a reduction of the bidding credit. Specifically, one trade association recommended that it be reduced to 15%, while another trade association recommended that the “percentage for supply chain/workforce credit” be lowered while the CBA credit is raised.

Other comments

A union commenter neither supported nor opposed the 20% bidding credit but rather discussed ways that BOEM might arrive at the “optimal bidding credit” and best allocation of contributions, including a requirement that “all lessees...co-ordinate their strategies” to optimize use of the bidding credit. Similarly, a Tribal government offered neither support for nor opposition to the proposed bidding credit amount but cited sections of their comment submission for ways to adjust the workforce training and supply chain development credit to “more properly include Tribes and Tribal members” affected by WEA development.

A few commenters, some in support of the 20% bidding credit and some asking for changes to the proposed bidding credit, addressed the need to provide a “fair return” to the United States. Specifically, a trade association stated that leaving the proposed credit at 20% would be “inconsistent” with the fair return requirement, a union commenter stated that the “optimal bidding credit” would fit well with the fair return requirement, and an industry group generally discussed importance of the fair return requirement in the context of the proposed bidding credit.

A trade association reasoned that developers would have to “develop a skilled workforce with or without a credit.”

BOEM Response:

BOEM has retained the proposal in the PSN for a bidding credit of 20% of the cash component of the bid in exchange for financial commitments to a floating OSW workforce training program and/or to the development of a floating OSW domestic supply chain. When deciding to maintain

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the credit value of 20% of the cash component, BOEM exercised its discretion and technical expertise to balance commenters' input, market needs, and fair return from the Lease Areas. BOEM determined that 20% of the cash component should be sufficient to encourage potential lessees to invest in creating a domestic supply chain or to train a potential domestic workforce. Further, it is unlikely to oversaturate the market for workforce training or developing a domestic supply chain. Given the great need for a domestic OSW workforce and domestic supply chain, as well as the expense and time required to develop them, BOEM finds that setting the bid credit for floating OSW workforce training or supply chain development at 20 percent of the monetary component is reasonable to encourage expeditious and orderly development.

Section 5.1.2. Whether BOEM should choose a financial Contribution threshold other than 80%, or eliminate this contribution discount on the bidding credit value.

Comment Summary:

Some commenters expressed general support for the 80% financial Contribution threshold. The commenters included multiple advocacy groups and industry groups. One advocacy group requested that BOEM encourage the cash value for the training program “[occur] in coordination with the State of California’s High Road Training Partnership program.”

A trade association suggested that the contribution discount be eliminated on the basis that they also recommended that the bidding credit be reduced to 15%.

An advocacy group recommended that the minimum financial Contribution threshold be raised to 90%, stating that such a move would “result in further support of underserved and EJ communities.”

Several OSW industry commenters recommended that the Contribution deadline proposed in the PSN (25% due no later than the Lessee’s submission of its first COP and the remainder due no later than the Lessee’s submission of its first Facility Design Report (FDR)) was problematic because of the lack of domestic infrastructure and capacity for floating OSW, and the deadline would result in sub-optimal investments. Commenters recommended that deferring Contributions until there is greater certainty in the projects to be built is more likely to result in well-considered investments and the greatest potential to expedite or facilitate the orderly development of floating OSW off the Pacific Coast.

BOEM Response:

In the revised leases and BFF Addendum, BOEM specifies that the Contribution for workforce training and/or domestic supply chain development can be made in support of existing programs, or for the establishment of new programs or incentives associated with the planning, design, construction, operation, maintenance, or decommissioning of U.S. floating OSW energy projects, or manufacturing or assembling of their components, in the United States. Thus, existing

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programs such as the State of California’s High Road Training Partnership program could be eligible workforce training programs to which the Lessee could contribute.

In the FSN, BOEM has decided to revise the financial Contribution threshold to 100% of the bidding credit value and revise the due date of the Contribution. BOEM has determined that the financial Contribution for the workforce training/supply chain bidding credit should be due entirely no later than the submission of the Lessee’s first FDR. This revision from 80 to 100 percent removes the financial commitment discount incentive, but given the time between lease acquisition and FDR, BOEM believes that the time value of money provides sufficient financial incentive for lessees to partake in this credit. Lessees receive the benefit of the credit in the auction (in the non-monetary component of their bid) and do not have to fund the Contribution for several years; the delay provides value and incentive for lessees. Second, BOEM removed the discount to ensure that the maximum amount of funds are invested in supply chain and workforce development. Given these considerations, BOEM found that removing the discount and revising the due date were appropriate.

Section 5.1.3. Other activities that should qualify for a bidding credit to best support a sustained and robust U.S. OSW supply chain (including floating wind supply chain)

Comment Summary:

Several commenters reasoned that bidding credits should be offered to developers that generally commit to improving the OSW industry in a number of ways. A joint submission from OSW industry commenters urged BOEM to “recognize other state and local spending” on benefits to the OSW industry as part of a “lessee’s monetary contribution amounts.” State agencies requested that BOEM offer credits to lessees that focus investments on a “domestic floating offshore wind industry” in particular, and a joint submission from unions echoed this sentiment with their call for incentives that “[lead] to the creation of an in-state supply chain.” Similarly, an advocacy group suggested that BOEM add language to the bidding credits like “floating platform” and “lease area” to “increase the likelihood that workforce development funds are invested within the state.” Another OSW industry group supported an expanded bidding credit allowing developers to “leverage larger investments,” especially general facilities investments, into the domestic OSW supply chain. A trade association and an advocacy group suggested that incentives to maximize to use of recycled materials be added to qualifying activities for bidding credit. An OSW industry group recommended that BOEM establish an additional bidding credit for domestic developers and discussed possible thresholds for measuring developers’ participation, including the creation of American jobs, having a certain percentage of employees in the armed forces and based in the U.S., and investing a certain amount into local U.S. communities, among other criteria.

A few commenters identified port and transmission upgrades as activities that should earn bidding credit to support a U.S. OSW supply chain. These included OSW industry groups and state agencies, most of whom went on to identify reasons for and benefits of port and

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transmission upgrades. One of the OSW industry groups discussed in detail the need for port upgrades to support a domestic OSW supply chain, asserting that, due to the “large and heavy dimensions of supply chain materials,” easily accessible port facilities are needed in higher numbers. The group also addressed the need to improve the onshore transmission grid as a necessary infrastructure requirement for OSW development. State agencies added that improvements to ports and waterfront facilities are “required to assemble and deploy floating offshore wind.”

An OSW industry group suggested that credits be strengthened by allowing “training necessary for port operations as an eligible expense” and detailed how BOEM might use this training to support workforce development, especially for EJ or underserved communities.

A trade association and an advocacy group suggested that incentives to maximize the use of recycled materials be added to qualifying activities for bidding credit.

An advocacy group expressed support for BOEM’s “inclusion of maritime training” for bidding credits and added that business education should be “an allowable contribution to a sustainable supply chain” under the bidding credit scheme.

BOEM Response:

Bidding credits for supply chain and workforce training are focused on investments related to floating technology applicable to development of the lease(s) granted in this sale. The intent of the bidding credit is to provide incentives for investments that would not otherwise happen. The Contribution to workforce training will result in a better trained, larger domestic floating OSW workforce that would allow for more efficient operations via increasing the supply of fully trained personnel. The Contribution to domestic supply chain development will result in a more robust domestic floating OSW supply chain by reducing the upfront capital or certification cost for manufacturing OSW components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities. The term “floating” was specifically added to the FSN as it will target the specific needs of these Lease Areas.

The workforce training and/or supply chain development bidding credit lease stipulation and the BFF Addendum list the types of Contributions that will be eligible for the bidding credit. The lists include “Contributions to port infrastructure related to floating OSW component manufacturing and preparation of quayside manufacturing and assembly areas for the construction and deployment of floating foundations for, or other components of, offshore wind turbines,” and “Other Contributions to supply chain development efforts that the Lessee can demonstrate further the manufacture of floating offshore wind components or subassemblies, or the provision of floating offshore wind services, in the United States.” These determinations of eligibility were made to best build and expand the domestic supply chain for projects such as those that could be built on the lease areas.

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The lists of eligible Contributions to workforce training include “training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects on the United States OCS,” “Contributions toward maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of floating offshore wind energy projects on the United States OCS,” and “Contributions toward training in any other job skills that the Lessee can demonstrate are necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects on the United States OCS.” BOEM will permit Contributions to state and local agencies, provided the agencies would otherwise qualify under the terms of the bidding credit. These workforce training Contribution options address comments on training necessary for port operations, maritime training, and potentially business education if the Lessee can demonstrate that the Contribution meets the workforce training bidding credit requirements. EJ and underserved communities may be supported through the workforce training development Contribution, should the Contribution meet the bidding credit requirements

Section 5.1.4. Should the sale encompass a bidding credit for a bidder who proposes that its financial commitment include entering into a long-term contract for components needed to build or maintain its project that will also benefit the offshore wind industry as a whole, such as the construction of new manufacturing capacity or investment in expanding or re-tooling existing capacity? Are other effects of such contracts conducive to development of renewable energy on the OCS? How might the bidder document that its contract facilitated such development? Should BOEM require the manufacturer or bidder to demonstrate that the new or expanded capacity also be used to fulfill contracts with other developers? How much of the value of such a contract should count toward any potential credit, and why?

Comment Summary:

Some commenters expressed general support for providing credits to bidders that enter long-term contracts for components related to building the OSW industry. These included industry groups, advocacy groups, and a union. One of the industry groups showed support for these long-term contracts but urged BOEM to “avoid a prescriptive approach” to allocation, recommending that “no financial commitments be required before FDR” in order to ensure a bidding credit is allocated effectively towards long-term contracts. The union commenter also recommended that a credit be added for bidders that work to “establish manufacturing capacity” through a commitment or contract.

A joint submission from industry commenters expressed support for contracts and provided examples of different contracts, such as those for “the construction and delivery of support and operations vessels,” “the fabrication of project components,” and “construction and staging ports.” The commenters addressed how each example would support the broader wind industry

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and asserted that bidders could “describe the factors it would use” for its contract in order to prove that spending on the contract was providing “broader benefits to the industry.”

An industry commenter suggested that the FSN require bidders to prove that their expenditures related to workforce and supply chain development had direct relevance to and benefits for the 2022 BOEM California projects after expressing concern that developers might be awarded bidding credits for expenditures on other projects or contracts not directly benefiting the California lease areas.

An advocacy group expressed their support for long-term contracts and asserted that these contracts should be evaluated through reporting and transparency requirements.

Another advocacy group discussed their creation of the U.S. Employment Plan (USEP), an index of manufacturers intended to “encourage the creation of family- supporting jobs.” The group discussed the possibility that the USEP be used as a “rebate structure” and urged BOEM to evaluate developer plans for job creation and “publicly disclose the developer’s USEP commitments” as a way of increased transparency reporting on simultaneous contracts. If the developer were to renege or not follow through on these commitments, the commenter asked BOEM to “reassess the lease or rescind any initiatives” earned through the USEP contract.

BOEM Response:

BOEM agrees to refrain from being overly prescriptive in the types of Contribution. The BFF Addendum provides the purpose, qualifications, types of Contribution, and requirements and restrictions for the workforce training and/or supply chain development bidding credit. Many, if not all, of these Contributions will be long-term contracts by definition. Purchase orders and training will need to occur in advance of the construction of the project and will often need significant lead time. In addition, documentation for BOEM to objectively verify compliance is required for bidders to receive the bidding credit. The bidding credit offered in the PACW-1 is designed to enhance, through training, the floating OSW workforce and/or stand-up the domestic supply chain for floating OSW manufacturing, assembly, or services, including floating technology. The Contribution is required to benefit the floating OSW supply chain for all potential purchasers of OSW services, components, or subassemblies, not solely the Lessee’s project. The term “floating” was specifically added to the FSN as it will target the specific needs of these Lease Areas.

Section 5.2. Bidding Credit(s) for a Community Benefit Agreement(s)

Summary of Comments:

BOEM solicited comments in the PSN regarding general questions relevant to CBAs and associated bidding credits. The questions were relevant to the proposed Lease Area Use CBA bidding credit as described in the PSN and to a potential additional bidding credit for a CBA

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addressing impacts attributable to potential OSW development not covered under the contemplated Lease Area Use CBA bidding credit.

Specific comments to this question were similar to comments already discussed in Section 5.1 above, including support for CBA credits, recommendations that CBA credits be increased, and expanding the types of communities eligible to enter into CBAs.

A trade association asked BOEM to clarify the language of the PSN about who is eligible to enter a CBA. The association said BOEM should rename the Lease Area Use CBA to “Fishing Community Benefit Agreement (FCBA),” since the current CBA is intended to benefit fishermen, fishing businesses, and fishing-dependent communities. The commenter stated that this would not prevent other groups from obtaining separate CBAs.

An industry group addressed the formation of a Mutual Benefits Corporation (MBC) in 2018, urged BOEM to “recognize payments into the fund among factors that qualify” for bidding credit, and asserted that more participation in the MBC would “provide meaningful and intangible values” to OSW development.

A joint submission from OSW industry commenters suggested that BOEM’s objectives would be best accomplished by replacing its two proposed bidding credits with a single “Community Benefits Flex Credit” (“CBFC”) that allows each auction winner latitude to allocate funds where they are most needed, at a time when such spending would be most beneficial. The CBFC would absorb both of the credits BOEM was contemplating in the PSN, and would expand the allowable uses to include benefits to Tribal and other EJ communities.

An OSW industry group asserted that BOEM should credit “enforceable commitments to address impacts” of OSW development on stakeholders and local communities.

BOEM Response:

BOEM retained the Lease Area Use CBA bidding credit from the PSN which is intended to address impacts to communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee’s potential OSW development. The bidding credit structure provides flexibility in the types of impacted communities with whom a Lessee may enter into a Lease Area Use CBA. Fishing and fishing-related industries are potential beneficiaries of the Lease Area Use CBA, and, as such, a specific FCBA as described by commenters was not added as a bidding credit. The Lease Area Use CBA must specify how the impacted community’s uses of the Lease Area or use of resources harvested from the geographic space of the Lease Area is expected to be impacted by the Lessee’s potential OSW development. The benefits provided through the Lease Area Use CBA may include payments into a special purpose fund.

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As described in Section 5.1 above, BOEM has added a new bidding credit in the FSN for a General CBA with communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. BOEM provides flexibility in the types of impacted communities with whom a Lessee may enter into a General CBA. The General CBA must specify how the impacted community is likely to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development.

The Lease Area Use CBA may include payments into a special purpose fund, such as payments to support gear changes, navigation technology improvements, and other efforts to improve safety and navigation, or to compensate the fishing and related industries and Tribes whose use of the geographic space of the Lease Area is impacted by the Lessee's potential OSW development. Benefits provided to the impacted community under a General CBA could include contributions to a community benefit fund whose purpose is to provide funds for infrastructure to impacted communities to alleviate impacts from the Lessee's project.

For the PACW-1, BOEM will offer these two CBA bidding credits. Research has shown that CBAs are a useful tool for both communities and developers, and in the comments on the PSN, there was overwhelming support for the use of CBAs as a means to help mitigate potential impacts from potential OSW development. BOEM has provided the purpose, requirements, restrictions, and enforcement in the lease for any potential bidding credit and has offered as much flexibility as it deems feasible with the Lease Area Use CBA and General CBA credits.

Section 5.2.1. What goals of OCSLA would be furthered by a CBA?

Comment Summary:

Authority and compliance

Multiple commenters provided comments on BOEM's authority to offer CBA bidding credits under OCSLA and discretion in balancing the factors in OCSLA subsection 8(p)(4). An advocacy group discussed the president's authority to use Executive Orders (EO) to direct the terms of leases entered under OCSLA, discussing multiple recent EOs that are relevant to BOEM. A Tribal government commented that subsection 8(p)(4) of OCSLA would allow BOEM to utilize an additional CBA, specifically a Tribal CBA. An advocacy group said that under subsection 8(p), the Secretary of the Interior can "apply a 50% community focused bid credit package" to incentivize investments in local communities. The group quoted subsection 8(p)(4)(H) on the fair return on investments to the United States and said this goal should be broadly interpreted to include revenues for underserved regions hosting the development. The group also discussed BOEM's authority to grant leases to the "highest responsible qualified bidder," and explained how bidding credits ensure BOEM grants leases to "responsible" bidders.

OCSLA Goals (43 U.S.C § 1337 (8)(P)(4)(A-L))

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(A) Safety

A Tribal government said a CBA with the Tribe could address safety issues.

(B) Protection of the environment

Several advocacy groups, a Tribal government, and an OSW industry commenter discussed this goal. The commenters said that a CBA package with community-centered stipulations, bidding credits for research on environmental impacts, and a credit for Tribal or EJ groups would support this goal.

(C) Prevention of waste

A Tribal government said a CBA with the Tribe could prevent wasted resources, delays, and litigation.

(D) Conservation of natural resources of the Outer Continental Shelf

A Tribal government said a CBA with the Tribe could facilitate conservation and restoration activities.

(E) Coordination with relevant agencies

No relevant comments.

(F) Protection of national security

Several commenters said bidding credits will help BOEM achieve this OCSLA goal. An advocacy group discussed community-centered stipulations and a 50% bidding credit package. The group also referenced sources that link climate resiliency and national security. An industry commenter linked domestic supply chains and national security.

(G) Protection of correlative rights in the Outer Continental Shelf

A Tribal government said a CBA with the Tribe could protect the Tribe's correlative rights.

(H) A fair return to the United States

Comments on this are discussed in this section under 'Authority and Compliance' above and in Section 5.3.3 of this document.

(I) Prevention of interference with reasonable uses...

A Tribal government said lease activities directly interfere with the Tribe's reasonable use of the area and harvested resources. The commenter said a CBA could prevent this interference. A Federal agency recommended that CBAs also support the goals of other statutes related to and impacted by development in United States Federal waters.

(J) Consideration of...the location...schedule...other uses

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No relevant comments.

(K) Public notice and comment...

No relevant comments.

(L) Oversight, inspection, research, monitoring, and enforcement relating to lease...

A Tribal government said a CBA, among other proposed edits, should promote collaboration between the lessee and the Tribe in support of this goal.

BOEM Response:

BOEM appreciates the diligent comments provided on how CBAs can further OCSLA goals. BOEM has retained the Lease Area Use CBA in the FSN and considered the comments provided to include a broader General CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. Additional discussion on the CBA bidding credits and OCSLA goals and factors can be found in the BOEM Decision Memorandum on the California FSN. Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added.

Section 5.2.2. What benefits could be promoted by a more general CBA?

Comment Summary:

Commenters discussed various bidding credit amounts and groups that could be targeted with a more general CBA, each providing different benefits to the different groups.

Comments described the following types of benefits that could be promoted by a general CBA: “opportunities for transformational change” through targeted community funds and environmental research/monitoring funds; domestic job creation; educational opportunities/pathways; community resiliency; national security benefits from increased investment in underfunded regional economies, energy independence, and the resulting community resiliency; community engagement; equity for underserved communities; and “intangible benefits” to developers like community support for the project that reduces risk to the developer.

An industry commenter said flexibility to determine credit allocations would promote more engagement than strict predetermined levels. An advocacy group suggested including a broader range of impacted groups outside of those directly impacted by this specific lease. This would increase the range of benefits to include multiple EJ communities.

BOEM Response:

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BOEM considered the comments provided to include a broader CBA and decided to include a bidding credit for a General CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. The General CBA bidding credit aims to mitigate potential impacts to communities impacted by potential OSW development by encouraging direct communication and cooperation between the Lessee and affected communities, as well as investments by the Lessee.

Section 5.2.3. Would a CBA be effective in promoting benefits, such as job creation, education opportunities, or increased engagement, that mitigate the potential impacts of the development of the Lease Areas?

Summary of Comments:

Comments regarding benefits such as job creation, education opportunities, or increased engagement are summarized in Section 5.2.2 above. Generally, multiple commenters advocated for increased bidding credits to mitigate impacts and promote benefits. Multiple commenters, including a Morro Bay local official, an advocacy group, a few trade associations, California State agencies, and an OSW industry commenter, said the current bidding credit of 2.5% is too small to incentivize developers. A union commenter said the 2.5% credit may not be enough to offset the costs of a CBA. A few trade associations and a Tribal government commented that the CBA bidding credits are too small compared to the supply chain credits. A trade association said this disincentivizes agreements with the seafood industry. Similarly, a Tribal government said that the current CBA is biased towards commercial fisheries since BOEM does not offer credits for Tribal fishing activities. While the Tribe expressed support for renewable energy, it voiced concern that they will face significant negative impacts from the proposed OSW activities. The commenter specified that “the CBA bidding credit is disproportionate to the impact of the proposed activities.” The Tribe proposed a Tribal-specific CBA to mitigate potential impacts to its community.

A Federal agency and a trade association supported bidding credits but said that they must not be used as substitutes for mitigation, compensation, or avoidance plans. An advocacy group sought clarification on the connection between BOEM’s CBA and [Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585].⁶ The Federal agency listed three preliminary differences between a CBA and BOEM’s Draft Mitigation Guidelines: they have different scopes, targets, and timelines. The comment noted that since there is no assurance that project-level mitigation will

⁶ BOEM Office of Renewable Energy Programs. June 23, 2022. Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585. See <https://www.boem.gov/renewable-energy/reducing-or-avoiding-impacts-offshore-wind-energy-fisheries>.

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occur at the COP review stage, CBAs during the auction provide assurance of commitment up front.

BOEM Response:

For the Lease Area Use CBA, the Lessee may execute a CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, may be impacted by the Lessee's potential OSW development. BOEM decided to include a broader General CBA bidding credit with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added.

CBA benefits to impacted communities must not be duplicative of benefits or mitigation measures imposed on lessees pursuant to statutes on the Lessee through, or pursuant to, statutes other than OCSLA. The draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries provide a framework for parties to consider the full range of mitigation responses to potential impacts to fisheries, from avoidance and minimization to all appropriate forms of mitigation, including compensatory mitigation.

BOEM has increased the Lease Area Use CBA bidding credit being offered from 2.5% to 5% and included a General CBA bidding credit at 5%.

It is also important to note that, at the COP stage, BOEM will prepare an EIS which will address impacts to the environment from lease development and that BOEM can include conditions in its COP approval to try to address these, and other, impacts.

Section 5.2.4. What potential impacts should be addressed? What quantifiable impacts will be felt by local communities associated with cultural and visual resources, the human environment, or other resources?

Summary of Comments:

A Federal agency discussed direct and indirect impacts. The agency included the impacts of development in all lease areas, to every business involved in catching, processing, and selling seafood. This also includes impacts to the shoreside infrastructure. A Morro Bay local elected official and an advocacy group wrote about onshore businesses, infrastructure, and community impacts. Commenters discussed that supply chain disruptions and labor shortages could be an issue, potential changes in housing affordability, and negative economic impacts could additionally threaten national security.

Multiple commenters wrote about impacts to the fishing industry. Trade associations listed impacts to the fishing industry including lost fishing grounds, gear, productivity, and shoreside

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infrastructure. One of them said that compensation plans must consider income loss and other capital losses like real estate, permits, and purchased quota devaluations. Another trade association wrote that CBAs cannot successfully mitigate these issues on their own, because not every CBA will be created equally, and some stakeholders might not be included in any CBAs.

Commenters also discussed environmental impacts to marine and coastal ecosystems and tourism, visual and noise impacts, and potential barriers to open space.

A Tribal government attached notes from a meeting with BOEM in response to this question.

BOEM Response:

In its decisions on CBA bidding credits, BOEM considered all comments regarding potential impacts that may be felt by local communities and that should be addressed by CBAs. The comments submitted will also be available to the public, including bidders, future lessees, and potentially impacted communities, to inform their CBA(s) development.

The Lease Area Use CBA may assist fishing and related industries (including Tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage, as well as any loss of income, or other similar potential impacts that may arise from the development of the Lease Area. The Lease Area Use CBA may include payments into a special purpose fund, such as payments to support gear changes, navigation technology improvements, and other efforts to improve safety and navigation, or to compensate the fishing and related industries whose use of the geographic space of the Lease Area is impacted by the Lessee's potential OSW development.

The General CBA may be executed with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.

The Lessee may execute a Lease Area Use CBA and/or General CBA, as appropriate, with a single entity, which may be a coalition that represents the diverse interests and inclusive needs of more than one impacted community, or multiple entities, or multiple impacted communities, and may execute more than one CBA. No CBA that makes a Lessee eligible for a bidding credit may include exclusivity or preferential clauses that prevent or disincentivize an impacted community from entering into such agreements with other lessees or potential lessees.

The lease requires Lessee engagement to allow for early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions. The Lessee is required to make reasonable efforts to engage with Tribes and parties that may be potentially affected by the Lessee's project activities on the OCS, including, but not limited to, groups identified in lease stipulation 3.1.1.

Section 5.2.5. How might a CBA lead to expeditious and orderly development or offshore wind resource in the Lease Areas?

Comment Summary:

A Tribal government stated that a Tribal-specific CBA would reduce litigation costs, create certainty, and mitigate impacts. The Tribe cited a Department of Energy guide that says CBAs create efficient and sustainable projects for developers.

BOEM Response:

As described in the BOEM Decision Memorandum on the California FSN, BOEM has determined that workforce training, domestic supply chain development, and CBAs are important components of a successful OSW industry. A safe and well-trained work force, a robust domestic supply chain, and consideration of other uses of the OCS will all foster the growth of the OSW industry. Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added.

Section 5.2.6. What types of groups or legally recognized entities should be eligible to enter into a CBA?

Comment Summary:

An individual, an advocacy group, a union, and the PFMC encouraged BOEM to make the credit available only for CBAs entered into with groups directly affected by lessees' activities. An OSW industry commenter said onshore stakeholders and local communities should be included as groups that will be impacted by development of OSW. Multiple commenters discussed underserved communities. Some of these commenters described underserved communities as low-income, rural, communities of color, and/or EJ communities. Within underserved or EJ communities, multiple commenters said that Tribes should be eligible to enter a CBA. A Tribal government suggested Tribal-specific CBAs. The Tribe also said NGOs and other entities should not be able to enter into Tribal-specific CBAs even if they are entering on behalf of an eligible Tribe. An advocacy group recommended including recreation and tourism groups that may be affected.

Several commenters discussed the details of the fishing-related CBA. The PFMC supported including related industries like processing plants, transportation, retail, and partially dependent out-of-area fishing participants. A trade association said FCBAs should be restricted to nonprofit Mutual Benefit Corporations comprised of commercial fishermen's port associations. A trade association suggested edits to BOEM's description of intended signatories to a CBA. In their suggested edits they included groups that are economically and geographically reliant on the lease area; they specified that "community" refers to "fishing community." A Federal agency recommended including "place-based communities" (defined by geography, e.g., States, cities, ports), and "communities of practice such as those based on

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fisheries gear, target species, or industry sector” to ensure inclusivity. The commenter referred BOEM to the NMFS Magnuson-Stevens Fishery Conservation and Management Act (MSA) National Standard (NS) 8 guidelines for more information on how the two categories are defined.

An advocacy group stated that they do not support including groups that do not rely on resources of the lease area. However, should BOEM include additional groups, the commenter said the percentage incentive must be significantly higher, and FCBA's must not be reduced to accommodate non-fishing-related CBAs.

Two advocacy groups proposed extending bidding credits to the following groups: local community benefit networks, intergovernmental entities inclusive of local and Tribal governments, and community-based organizations (e.g., non-profits, environmental science entities) that represent community interests related to OSW energy development and related industry and infrastructure. Additionally, one advocacy group said CBAs should be executed with a legally recognized entity that represents the interests of many other groups and that negotiates legally binding and enforceable contracts.

In response to this question, a trade association asked if BOEM has the authority to decide who can or cannot enter a CBA. Additionally, they asked BOEM to update or provide clarification on the terms and definitions in BOEM's PSN including: “directly impacted,” “transitions,” and “potential impacts,” in context below:

*“a community or stakeholder group whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is **directly impacted** by the Lessee's potential offshore wind development.”*

*“CBA is intended to mitigate potential impacts to the community or stakeholder group from renewable energy activity or structures on the Lease Area, and particularly to assist fishing and related industries to manage **transitions**, gear changes, or other similar impacts which may arise from the development of the Lease Area.”*

*“[s]pecify plans (or strategies) to mitigate **potential impacts** from the proposed development”*

BOEM Response:

In the FSN, BOEM has specified the entities with which lessees may enter into a CBA(s).

Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added. Fishing and fishing-related industries are potential beneficiaries of the Lease Area Use CBA, and, as such, a specific FCBA as described by commenters was not added as a bidding credit. The CBAs must be entered into with impacted communities as described below. A Lease Use CBA may be entered into with entities in fishing-related industries and/or communities that meet the requirements of the Lease Area Use CBA. A Lease Area Use CBA must be between the

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Lessee or its affiliated entity, or, if appropriate, its assignee(s), and one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee's potential OSW development. The Lease Area Use CBA must specify how the impacted community's use of the Lease Area or how the impacted community's use of resources harvested from the geographic space of the Lease Area is expected to be impacted by the Lessee's potential OSW development.

The Lease Area Use CBA may assist fishing and related industries (including Tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage, as well as any loss of income, or other similar potential impacts that may arise from the development of the Lease Area. The Lease Area Use CBA may include payments into a special purpose fund, such as payments to support gear changes, navigation technology improvements, and other efforts to improve safety and navigation, or to compensate the fishing and related industries whose use of the geographic space of the Lease Area is impacted by the Lessee's potential OSW development.

A General CBA must be between the Lessee or its affiliated entity, or, if appropriate, its assignee(s), and one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. The General CBA must specify how the impacted community is likely to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development.

Lessees may execute either type of CBA with a single entity, which may be a coalition that represents the diverse interests and inclusive needs of more than one impacted community, or multiple entities, or multiple impacted communities and may execute more than one CBA. The entities with whom lessees can enter into either type of CBA must be a:

- Private, public, or municipal corporation, company, association, or partnership; county, city, or town (as those terms are used in the California Government Code); or other legal entity organized under the laws of any State of the United States or the District of Columbia, the law of any federally recognized Tribe or federal law applying to Tribes, or the law of any territory or insular possession subject to U.S. jurisdiction;
- Federally recognized Tribe under 25 U.S.C. § 5131; or
- State of the United States or a political subdivision thereof.

The United States, as a lessor, has authority to impose reasonable restrictions on leases and similar transactions, and the Secretary of the Interior has specific authority under OCSLA to administer programs on the OCS in a manner that facilitate the statute's goals consistent with the principles set out in Section 8(p) of the Act. These authorities encompass BOEM's capacity to

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issue reasonable restrictions on bidding credits (which exist only by reason of the Secretary's discretion), including the terms and definitions discussed in the comments.

Regarding the specific terms and definitions cited by a commenter:

- In the final lease, the Lease Area Use CBA description was revised from "...a community or stakeholder group whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is directly impacted by the Lessee's potential offshore wind development," to "...one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee's potential offshore wind development." Per the requirements in lease stipulation 12.1, the Lease Area Use CBA must specify how the impacted community's uses of the Lease Area or how the impacted community's use of resources harvested from the geographic space of the Lease Area is expected to be impacted by the Lessee's potential OSW development. Thus, the parties to the CBA define the relevant impacts.
- In the final lease, the Lease Area Use CBA description was revised from, "...CBA is intended to mitigate potential impacts to the community or stakeholder group from renewable energy activity or structures on the Lease Area, and particularly to assist fishing and related industries to manage transitions, gear changes, or other similar impacts which may arise from the development of the Lease Area," to "The Lease Area Use CBA may assist fishing and related industries (including Tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage, as well as any loss of income, or other similar potential impacts that may arise from the development of the Lease Area." Thus, the term "transitions" was removed.
- In the final lease, the requirement that the Lease Area Use CBA must specify plans (or strategies) to mitigate potential impacts from the proposed development of the Lease Area on the impacted community was retained. As described in the first bullet above, the parties to the CBA define the relevant impacts.

Section 5.2.7. What are the key elements of a CBA that BOEM should consider? Should the requirements for eligibility for bidding credits for a CBA include transparency, coalition building, inclusiveness, or enhanced communication?

Comment Summary:

A community group, a Tribal government, and an advocacy group supported environmental protections and research/monitoring investments. A Federal agency and a union supported enforceability. A union commenter recommended that CBAs act as legally enforceable contracts. An industry commenter, advocacy group, and a Federal agency supported coalition building.

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Multiple commenters generally supported diversity, equity, inclusion, and engagement as key elements of a CBA. An advocacy group said CBAs should prioritize early and frequent engagement with underserved communities. Similarly, an advocacy group said that developers should be required to conduct coordination and partnership development meetings no less than quarterly. A trade association and a community group listed multiple key elements related to engaging communities to develop plans and giving community members choices. Both also discussed opportunities for youth to participate in educational research activities. Similarly, an individual and a union discussed equitable workforce/supply chain development. The union suggested measurable hiring targets that promote equity, apprenticeships and other educational opportunities that promote disadvantaged/underrepresented groups in the OSW workforce, and local supply chains that promote people of color and women-owned businesses. Both also discussed dedicating operation fees to long-term costs. An advocacy group said lessee suppliers paid using the credit should document the quantity and quality of jobs created, and/or negotiate their own CBAs. A Tribal government commented that should BOEM decide not to increase the 2.5 percent bidding credit percentage proposed in the PSN and not to reserve an additional 20 percent community benefit credit for CBAs that prioritize and engage directly with impacted Tribes (including their Tribe), then CBAs should allow a Tribe to create separate or sub-agreements as a sovereign government with jurisdiction over its territory and community.

Multiple commenters also generally supported accountability and transparency measures. An advocacy group specified one key element should include publicly sharing CBAs. A trade association recommended measurable commitments, clear CBA terms, annual reviews, and monitoring using photographs that are to be made public as soon as possible.

Several commenters recommended funds and/or investments, including a few different funds/investments that would go towards community infrastructure, Tribes, fisheries, workforce training, and economic development, and a fund for fishery economic and community resilience.

BOEM Response:

BOEM carefully considered all the comments on key elements of a CBA. BOEM lacks the authority to direct lessees to invest in, or hire, specific parties. BOEM included as a requirement for both the Lease Area Use CBA and the General CBA that the CBAs must:

- Specify any monetary, material, or other benefits provided, or to be provided, by the Lessee to the impacted community, including any mitigation or other compensatory measures provided by the Lessee to the impacted community, such as the establishment of any special purpose funds and the mechanisms through which monies therein will be disbursed;
- Indicate the commitment of the parties to collaboration and resolution of issues. This commitment may be indicated by a statement that the parties will agree to mediation, a strategy for collaboration, or other type of plan describing how the parties will collaborate or resolve issues as needed;

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- Describe communication methods, engagement methods, or educational opportunities for the impacted community; and
- Specify plans (or strategies) to mitigate potential impacts from the proposed development of the Lease Area on the impacted community.

Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added. Engagement requirements for lessees separate from the CBAs are addressed in Section 7 below.

BOEM included CBA accountability requirements in lease stipulations 12 and 13, including documentation requirements and enforcement measures. The topic of publicly sharing CBAs is addressed in Section 5.3.6 below. The topic of how BOEM will evaluate CBAs is addressed in Section 5.3.1 below. The topic of CBA monitoring and enforcement is addressed in Section 5.3.2 below. The topic of CBAs and payments into funds is addressed in Section 5.3.8 below.

Section 5.2.8. How can BOEM use this potential type of credit to encourage early community engagement, mutual benefits, and a long-lasting dialogue between a potential developer and community or stakeholder group?

Comment Summary:

In response to this question a trade association recommended early CBA execution. The commenter said CBAs should be executed before a COP is issued, and no later than the submission of the Site Assessment Plan (SAP). Two advocacy groups stated a community-led funding and governance structure provides a pathway for residents to engage throughout the process of OSW development and operations. Further, the commenters suggested that the Native American [Tribes] Communications Plan and EJ Outreach and Engagement Plan that would be developed with relevant entities would provide an outline for outreach and engagement.

An advocacy group stated that creating community-led funding as well as OSW reporting and transparency could create long-lasting dialogue between developers and communities.

An OSW industry commenter referenced a portion of the PSN that indicates that leases will require engagement with Tribal governments. The commenter said that with current funding levels, Tribal governments and other communities may lack the resources for communication required for meaningful engagement. Additional funding for communications staff within Tribes would help them engage with developers throughout the project. A few Tribal governments requested additional funding, along with the creation of steering committees led by community members who will decide where the funding should go. An OSW industry commenter also asked for steering committees and proposed a “community-centered benefits package” that would commit developers to long-term investment in the region. Additionally, a Tribal government suggested a community engagement plan that aims to provide clean energy to communities that lack energy access.

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A professional association said that additional bidding credits should be given for bidders who have entered/are planning to enter CBAs with local communities. The commenter said these CBAs should address onshore impacts such as housing affordability and transportation early in the leasing process. The commenter asserts that this will support disadvantaged local communities.

BOEM Response:

The General CBA execution deadline specified by BOEM in the FSN is no later than the time of the submission of the Lessee's first FDR. This deadline allows sufficient time for the Lessee to define the project in order to identify the potential impacts to be addressed in the CBA. General CBA benefits could include increased support to facilitate engagement in the process through which the lease will be developed in order to alleviate impacts from lease development.

The General CBA may be executed with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. The General CBA must specify the monetary, material, or other benefits provided, or to be provided, by the Lessee to the impacted community, including any mitigation or other compensatory measures provided by the Lessee to the impacted community. General CBA benefits could include contributions to a community benefit fund whose purpose is to provide funds for infrastructure to impacted communities to alleviate impacts from the Lessee's project, and increased support to facilitate engagement in the process through which the lease will be developed in order to alleviate impacts from project development.

BOEM lacks the authority to direct lessees to invest in, or hire, specific parties but does require that the General CBA specify how the impacted community is likely to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development.

Engagement requirements for lessees separate from the CBAs are addressed in Section 7 below.

Section 5.2.9. What types of agreements could BOEM promote that result in mutually beneficial outcomes to both the Lessee and community or stakeholder groups, or lead to expeditious and orderly development of offshore wind resources in the Lease Areas?

Comment Summary:

A Tribal government proposed a community benefits package that includes Tribal funds, a community-led committee that is involved in the decision-making process, investments in fisheries, animal protections, environmental research and monitoring investments, and a clear plan for engagement between Tribal communities and developers. An OSW industry commenter

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also suggested a Tribal bidding credit. The commenter specifically discussed a credit that will connect Tribes to the energy grid.

A local government said that early stakeholder engagement is necessary for expedient deployment. The commenter also stated that CBAs that are lease stipulations or larger bidding credits should carry the most weight.

An OSW industry group discussed a CBFC that combines all the proposed credits. The commenter said that a CBFC would maximize stakeholder benefits and flexibility, which will also benefit energy consumers by ensuring the lowest costs.

BOEM Response:

Tribes are potential beneficiaries of both CBAs, and, as such, a Tribal-specific CBA was not added. The engagement requirements in the lease require lessees to make reasonable efforts to engage with Tribes and parties that may be potentially affected by the lessees' project activities on the OCS.

BOEM has provided the purpose, requirements, restrictions, and enforcement in the lease requires clear and consistent measures for any potential bidding credit and has offered as much flexibility as it deems feasible with the Lease Area Use CBA and General CBA.

Section 5.3. General questions regarding CBA credits

Comment Summary:

Several commenters, including Tribal governments and individual commenters, suggested CBAs be expanded to reach the local North Coast communities and Tribes. More broadly, a Federal agency recommended that “two types of communities be addressed in CBAs: place-based communities and communities of practice.” An advocacy group and a Federal agency reasoned that fisheries should also qualify for CBAs. The advocacy group requested that BOEM provide a clarification of the requirements to be eligible for community benefits.

Other recommendations from commenters regarding CBA credits included:

- *That the CBA process be fair, transparent, and enforceable.*
- *That material agreement terms be standardized so that each lessee is held to the same obligations.*
- *BOEM should create “a digital repository of existing Community Benefit Agreements (CBAs) between developers and communities to promote transparency and level the playing field across communities, including disadvantaged communities,” as well as “a system of accountability that is independently verifiable for the CBAs that lessee’s broker with stakeholders to ensure that the credits awarded to developers committing to enter into a CBAs are coupled with a system of accountability for the work done under the*

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CBA.” The commenter also cited the New York State Energy Research and Development Authority (NYSERDA) as an example of benchmarks that BOEM could emulate.

- *Requirement for a financial commitment for the CBA to provide assurances to the affected community, specifically a financial commitment of at least 90% of the credit value.*
- *“CBAs should cover both the site assessment/characterization phase and the operation and decommissioning phase as the impacts, and those impacted, will likely differ during those stages.”*

BOEM Response:

A bidding credit may be earned for a Lease Area Use CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee’s potential OSW development. A bidding credit may be earned for a General CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA. The purpose and general requirements and restrictions of both CBA bidding credits are described in the FSN. Documentation must be provided by the Lessee which contain and elaborate on the information specified in the conceptual strategy submitted with the BFF. The documentation must enable BOEM to objectively verify that the CBA has met the purpose, goals, and requirements for the CBA bidding credit, and that it is in compliance with the bidding credit criteria. Lessees must use best efforts to provide benefits at least commensurate to the value of the bidding credit received. This may include both monetary and non-monetary benefits. Any benefits provided to the impacted community should not duplicate benefits or mitigation measures imposed on the Lessee through, or pursuant to, statutes other than OCSLA.

BOEM has not proposed standard terms for the agreements, as the CBAs are unique agreements between the lessee and a potentially impacted community, and BOEM has determined it most beneficial for the affected communities if the counterparties to a CBA can tailor the agreements to their specific goals, so long as the agreements fit within the terms of the lease and a bidder’s conceptual strategy. However, BOEM has specified requirements in the lease and BFF Addendum for the PACW-1, including specific provisions pertaining to: the parties the CBA must be between; how the community is expected to be impacted; how CBA must address the impacts arising from lease development; the benefits to be provided by the CBA; the need for a commitment between the parties to collaborate and resolve issues; communication, engagement, and educational opportunities for the impacted community; and mitigation plans. BOEM also requires lessees to use best efforts to provide benefits commensurate to the value of the bidding credit received. The BFF Addendum will allow all interested parties to review the requirements BOEM has set forth for the CBA credits. Further, BOEM will publish each Lease after it has

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been executed. BOEM will seek to be as transparent as possible in releasing conceptual strategies and executed Community Benefit Agreements, subject to claims of confidential business information, FOIA exemptions, BOEM's regulations and other relevant authorities. Accordingly, BOEM may not be able to publish a repository of relevant CBAs. The CBAs must be entered into no later than at the time of the submission of the Lessee's first FDR, but that does not preclude lessees from entering into a CBA earlier, such as at the site assessment or characterization phase.

BOEM has not required a specific financial commitment for the bidding credits. BOEM provides a bidding credit to lessees for entering into a CBA with a community, but finds that the community and the developer would be in the best position to negotiate what is included in the CBA given the specific impacts and circumstances, rather than the contents of the CBA being specified by the government. However, lessees must use best efforts to provide benefits commensurate to the value of the bidding credit received. The CBA may include both monetary and non-monetary benefits. CBAs are intended to address the project impacts on the impacted communities negotiated by the parties under a CBA pursuant to the lease requirements of such CBAs. BOEM does not require that impacts to be addressed are those occurring only under a particular phase of the project development; therefore, CBAs can cover all impacts from all phases of a potential project.

Section 5.3.1. How should BOEM evaluate the agreements? On what metrics can BOEM evaluate CBAs? How can BOEM verify actions to be undertaken pursuant to the CBA?

Comment Summary:

Evaluation

A trade association and the PFMC recommended that BOEM evaluate CBAs based on the degree to which they provide broad, long-term support to local coastal communities and stakeholder groups that will be most impacted during the life of the project. Similarly, state agencies said that bidders should be required to disclose how they plan to work with affected communities to reach monetary and non-monetary commitments. An advocacy group and a Tribal government specified that local communities should include underserved populations such as Tribes. A trade association and an advocacy group proposed a FCBA, voicing their support for agreements to be evaluated based on the set of principles outline in the FCBA template.

Several advocacy groups commented that transparency in criteria is critical for CBA metrics and verification. A trade group suggested that bidders' conceptual strategies should be made public prior to being adopted as final to improve transparency.

An individual commenter and the PFMC expressed support for the CBA qualifications for financial contributions equaling the workforce training and supply chain development bidding credits. The individual commenter also said that BOEM should "require the lessee to provide

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documentation that they have met 25% of their financial commitment by the first COP submittal.”

A state agency recommended that bidders be evaluated “based on the adequacy of each proposed bid credit without full credit guaranteed,” because the agency reasoned that if all applicants meet the requirements, the requirements are not strict enough.

An advocacy group suggested BOEM select winning bids based on the bidder’s selection of the number of bidding credits and the final case value of those bidding credits. Further, the commenter stated that once the bid credit has been evaluated, BOEM should also consider the cash-only value of the bid.

BOEM Response:

The Lease Area Use CBA must specify how the impacted community’s uses of the Lease Area or how the impacted community’s use of resources harvested from the geographic space of the Lease Area is expected to be impacted by the Lessee’s potential OSW development. Similarly, the General CBA must specify how the impacted community is likely to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development. Lessees must explain how they will select or identify impacted communities with whom to enter into a Lease Area Use CBA or General CBA. Tribes are potential beneficiaries of contributions under the workforce/supply chain bidding credits and/or benefits under both Lease Area Use CBA and General CBA. Fishing and fishing-related industries are potential beneficiaries of the Lease Area Use CBA, and, as such, a specific FCBA as described by commenters was not added as a bidding credit. BOEM will require executed copies of the qualifying CBAs no later than at the time of the submission of the Lessee’s first FDR.

The BFF Addendum describes how BOEM will evaluate the conceptual strategies submitted by bidders to qualify for the CBA bidding credit(s). The lease and BFF Addendum describe how BOEM will evaluate the lessees’ documentation that they met the requirements for the CBA bidding credit(s). The documentation must enable BOEM to objectively verify that the CBA has met the requirements for the CBA bidding credit, and that it is in compliance with the bidding credit criteria provided in the lease. At a minimum, this documentation must include:

- All written agreements between the Lessee and the impacted community, including the executed Lease Area Use CBA;
- A description of work done with impacted communities, including the monetary and non-monetary commitments that reflect the value of the bidding credit received; and
- Sworn statements by the Lease Area Use CBA signatories or their assignees, attesting to the truth and accuracy of all the information provided in the above documentation.

Metrics

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The PFMC suggested metrics that prioritize a broader range of affected stakeholders, while another commenter reasoned that metrics should include emphasis on reduction or mitigation of impacts.

A Federal agency said that BOEM should use the Federal Energy Regulatory Commission (FERC) model as a template for CBAs and their minimum requirements.

Verification

Several commenters, including an advocacy group and a trade association, expressed support for a transparent process, which they reasoned will aid in verification. The advocacy group also suggested a yearly report be required and the trade association expressed support for documentation to be evaluated by a neutral third party.

The PFMC recommend that BOEM seek the assistance of a Federal or state official to ensure accountability in the implementation of CBAs. Similarly, an advocacy group suggested that “bidders’ investments be evaluated by issue-specific panels that also include stakeholders with expertise in the goals being addressed (e.g., workforce training or environmental justice)” and that BOEM enlist the help of the White House Environmental Justice Advisory Council (WHEJAC) and its screening tool to evaluate investments.

State agencies urged BOEM to “include lease stipulations associated with the bidding credits that are enforceable by BOEM to ensure the commitments are certain and durable.”

An advocacy group remarked that if a developer fails to uphold the commitments made in the CBA, the money returned to the Office of Natural Resources Revenue (ONRR) should still ultimately go to the community organizations that were originally slated to receive the funds.

BOEM Response:

CBA bidding credits are for CBAs that address impacts arising from lease development. The Lease Area Use CBA bidding credit allows a bidder to receive a credit of 5 percent of its cash bid in exchange for a commitment(s) to execute a CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee’s potential OSW development. The General CBA bidding credit allows a bidder to receive a credit of 5 percent of its cash bid in exchange for a commitment(s) to execute a General CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.

BOEM acknowledges that CBAs are a tool that is employed by other Federal agencies.

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The lease includes enforcement mechanisms if BOEM determines that a Lessee or assignee has failed to enter into a CBA that satisfies the commitment by the Lessee's first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the date of lease execution. The interest rate will be the underpayment interest rate identified by ONRR. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR submission or the 10-year timeframe stated in the lease stipulations. The requirements and restrictions applicable to the bidding credit commitment described in the lease bind the Lessee and any future assignee(s) of the lease as per 30 C.F.R. 585.410.

Any benefits provided under a CBA should not duplicate benefits or mitigation measures imposed on the Lessee through, or pursuant to, statutes other than OCSLA. CBAs are private agreements between two non-governmental parties, including any authority to direct funds to one of those parties. Any disagreements between the parties regarding fulfillment of the contract will need to be resolved without BOEM's participation, and BOEM will confine itself to determining whether the lessee has satisfied the terms of its bidding credit. As such, BOEM does not require yearly reports or third-party verification of the CBAs or required documentation in the lease stipulations. In lease stipulation 3, BOEM does require each Lessee to submit a progress report every six months that, among other requirements, must describe engagement with Tribes and parties and provide information that can be made available to the public and posted on the BOEM website.

Section 5.3.2. How and when should BOEM enforce and monitor CBA commitments?

Comment Summary:

A few commenters, including an industry group, a Federal agency, and an advocacy group recommended that the CBAs be designed to be enforceable, with regular reporting structures to help BOEM enforce and monitor commitments. Similarly, another advocacy group said that there should be clear documentation and enforcement mechanisms in which developers are required to show proof of the community investments they have funded. A trade association specified that reports should occur on a quarterly basis and monitoring should begin when the developer receives a lease. A different trade association reasoned that lessees should update the list of impacted parties acknowledged by their CBAs upon COP submission. An advocacy group recommended that all lease stipulations and lease funding of bid credit commitments be reviewed semi-annually by BOEM, including engagements with a Community Steering Committee, Regional Tribal Steering Committee, and other "community-driven governance structures." The commenter also suggested BOEM provide lessees six months to come into compliance with any conditions identified as not met.

A trade association, the PFMC, and a union concluded that CBAs and their financial benefits should extend through the lifetime of the OSW project, including decommissioning.

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A trade association, a union, and an advocacy group requested that the FSN establish a meaningful non-compliance penalty, “up to and including the possible revocation of the lease and re-auction of the parcel.” Another trade association said that funds should be repaid if commitments are not met and suggested there be an opportunity for BOEM to identify supposed or alleged deficiencies with an opportunity for leaseholder correction prior to the repayment stage.

BOEM Response:

BOEM has provided in Sections 12 and 13 of the lease, documentation and enforcement mechanisms in which developers are required to show proof of the community investments to which they have committed, including sworn statements by the CBA signatories or their assignees, attesting to the truth and accuracy of all the information provided in the documentation.

BOEM does not require steering committees to guide investments but allows for contributions to a community benefit fund whose purpose is to provide funds for infrastructure to impacted communities to alleviate impacts from the Lessee’s project.

BOEM does not require that impacts to be addressed in CBAs are those occurring only under a particular phase of the project development.

BOEM will require each Lessee to meet its CBA commitment(s) in accordance with the conceptual strategy submitted with the BFF. BOEM will require executed copies of the qualifying CBAs no later than at the time of the submission of the Lessee’s first FDR. The documentation provided by the Lessee must contain and elaborate on the information specified in the conceptual strategy submitted with the BFF. Any dispute between the Lease Area Use CBA parties will be expected to be resolved without BOEM’s involvement. BOEM reserves the right to determine that the bidding credit commitment to execute a CBA has not been satisfied because changes to the Lessee’s conceptual strategy or its implementation, that occur after the auction, do not meet the criteria for the bidding credit.

If BOEM determines that a Lessee or assignee has failed to enter into a CBA that satisfies the commitment by the Lessee’s first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the date of lease execution. Any additional enforcement and monitoring will be between the parties who executed each CBA. Additionally, the bidding credit commitments are part of the Lessee’s commitment under a lease and BOEM may exercise any of the remedies provided under Section 8 of the lease including issuance of cessation of operations orders, suspension or cancellation of the lease, and/or the imposition of penalties, in accordance with OCSLA and applicable regulations.

Section 5.3.3. What level of credit should BOEM offer in exchange for bidders entering into a CBA, and how does that level affect receipt of fair return to the United States?

Comment Summary:

Many commenters suggested that the level of credit BOEM should offered in exchange for bidders entering into a CBA should be increased. The PFMC requested that the level of credit be increased (without providing a specific number) and an industry group asked that the overall level (workforce development/supply chain credits and CBAs) be raised. Several Tribal governments and an advocacy group stated their preference for a modest increase to 3%, while an individual remarked that an increase to 8-10% would give “a high incentive for the Wind Developers to sign on.” An advocacy group proposed 15%, a trade association recommended raising the level from 15-20%, and a joint submission from members of Congress suggested 20%. A trade association asserted that the gap between workforce credits and CBA credits should be narrowed, offering support for 15% workforce and 10% CBAs. A Tribal government reasoned that 22.5% would be sufficient, while an industry group expressed for an increase to 25%.

An advocacy group suggested that as incentive to bidders for selecting the bid credit package, a discount of 10% for each bid credit should be applied to the new bidding credits proposed.

Other commenters did not provide an exact number, instead warning BOEM against placing a cap on credit levels or recommending that “the credit be of ample weight to see the full benefits.”

A Tribal government remarked that BOEM has broad discretion to determine the definition of fair return, while an advocacy group and an industry group encouraged BOEM to use its discretion to broadly define the concept of fair return. The advocacy group reasoned that a broad definition of fair return should include “revenues for structural support for under-resourced rural/Tribal regions hosting the development of these industries.”

BOEM Response:

BOEM has determined that roughly half the total value going into domestic supply chain and work force development is appropriate to incentivize developers to enter into CBAs. This amount is then split between the two CBAs, meaning that BOEM will provide a bidding credit of 5 percent of the monetary component to potential lessees for entering into a CBA with Lease Area impacted users and a bidding credit of 5 percent of the monetary component for a CBA with an impacted community. Working with the aggregate value of 30 percent of the monetary component, BOEM determined that because the needs for workforce training and domestic supply chain are great and required for development of the OSW industry, the majority of the credit should be allocated there. BOEM has allocated two-thirds of the non-monetary component to these purposes and is splitting the remaining one-third of the non-monetary credit between the

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two CBAs. Given the anticipated value of the Lease Area, BOEM finds this amount would be sufficient to encourage benefits to communities that may be affected by the project.

For the PACW-1 auction, BOEM has determined that the combination of an aggregate bidding credit of 30 percent of the cash bid (equivalent to 23.1 percent of the total bid) and the monetary bid component provides fair return to the United States. The fair return to the United States is achieved through both the monetary component of the bid (through revenue to the U.S. Treasury), but can also include non-monetary components (advancement of initiatives that are consistent with OCSLA section 8(p)(4) factors and benefit the United States).

Section 5.3.4. If BOEM grants a bidding credit for a CBA, at what point in BOEM's renewable energy leasing process must the CBA be executed?

Comment Summary:

Several commenters, including trade associations, the PFMC, and an OSW industry group said that BOEM should require that lessees immediately begin negotiating CBAs. Similarly, an advocacy group asserted that CBAs should be executed as "soon as a legally responsible entity is constituted." A Tribal government specified that their proposed Tribal CBA "should be executed prior to the commencement of activities by the Lessee to better reach the Secretary's goals under the OCSLA," noting that phased approach may be appropriate. An advocacy group stated that CBAs should be executed as early in the process as possible and suggested prioritizing funding payments. The commenter also suggested an added bid credit discount for earlier payments, or additional payments.

A few commenters, including a trade association, the PFMC, and an OSW industry group, agreed that executing the CBA 90 days prior to the lease award would be satisfactory.

An advocacy group and an industry group recommended that CBAs should be executed immediately after the approval of the COP up to the first FDR. The advocacy group reasoned that "the approval of the COP and the submission of the first FDR strongly signals that the offshore wind construction process will be underway." A Federal agency recommended timing CBA execution to COP approval, reasoning that BOEM should make COP approval conditional upon a finalized CBA.

BOEM Response:

The executed CBA(s) must be provided to BOEM no later than at the time of the submission of the Lessee's first FDR. The documentation must contain and elaborate on the information called for in the conceptual strategy submitted with the BFF to allow BOEM to confirm compliance with the bidding credit criteria provided in the lease stipulations. This deadline allows sufficient time for the Lessee to define the project in order to identify the potential impacts to be addressed in the CBA.

Section 5.3.5. Should the two CBA credits BOEM discussed above be combined?

Comment Summary:

Several commenters, including advocacy groups and trade associations, asserted that the two CBA credits should not be combined. One of the trade associations reasoned that “members of an entity signing the CBA should not be disqualified from participating under the other bidding credit.”

Conversely, an advocacy group concluded that the two CBA credits should be combined.

An industry group suggested that BOEM should replace its two proposed bidding credits with a CBFC that would allow for allocation of funds where they would be most beneficial. The CBFC would constitute most of the credits currently proposed and expand the benefits to include Tribal and EJ communities. The group also proposed a fisheries compensation credit, which would be awarded for a wider range of agreements and mechanisms.

BOEM Response:

BOEM is offering two types of CBA bidding credits that, together, would total 10 percent of the monetary bid. These two credits are designed to facilitate BOEM’s mission, as outlined in OCSLA, to ensure that development provides for consideration of other uses of the sea or seabed and for protection of the environment. See 43 U.S.C. §§ 1337(p)(4)(B) and 1337(p)(4)(J)(ii). In consideration of these factors, BOEM has decided to offer two credits that separately address impacts to communities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be affected by the Lessee’s potential OSW development, and impacts to communities that may be affected by the development of the lease area in other ways.

The CBAs must comply with the requirements listed in the BFF Addendum and the Lease, but will otherwise allow flexibility regarding the communities with whom a Lessee may enter an agreement. Tribal and EJ communities may qualify under both CBAs. No CBA that makes a Lessee eligible for a bidding credit may include exclusivity or preferential clauses that prevent or disincentivize an impacted community from entering into such agreements with other lessees or potential lessees. Both CBA bidding credits have specific purposes and requirements; flexibility is available as to the parties that may be beneficiaries and the types of contributions for which the CBAs may be used.

Section 5.3.6. Should executed CBAs be posted publicly?

Comment Summary:

Many commenters, including trade associations, advocacy groups, the PFMC, and a Federal agency, asserted that executed CBAs should be posted publicly. A trade association and the PFMC concluded that publicly posting the CBAs will promote transparency and fairness. An

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advocacy group cautioned that when making CBA information public, BOEM should be sure to uphold Tribal sovereignty.

A Tribal government disagreed, stating that due to “the sensitive nature of information that may be contained or reference in a CBA—particularly a Tribal-specific CBA— and out of respect for Tribes' sovereign status, any agreement with a Tribe should not be posted publicly without free, prior, and informed consent of the impacted Tribe.”

BOEM Response:

BOEM will seek to be as transparent as possible in releasing conceptual strategies and executed CBAs, subject to claims of confidential business information, FOIA exemptions, BOEM’s regulations and other relevant authorities.

Section 5.3.7. What disclosures/certifications should be required to be part of any CBA? Anything else BOEM should take into consideration when evaluating the use of CBAs?

Comment Summary:

Disclosures/certifications

A trade association and a union asserted that the CBA partner should be required to provide background information demonstrating prior work similar to the goal of the CBA. The trade association urged BOEM to require companies to certify their independence from the entity with whom they are entering into a CBA. The trade group also recommended limiting the class of CBA partners to “nonprofits, unions, local government agencies, and local small businesses or small business associations directly impacted by the offshore wind lease.” A trade association, which suggested a fishing community-specific CBA or FCBA, similarly concluded that the entity must be a 501(c)(3) or C6 MBC (whose membership consists of multiple commercial fishermen’s port associations with an inclusive, democratic, membership representing multiple fishing gear types).

An advocacy group reasoned that additional “disclosures and certifications should be clearly shared with Tribes and parties to support community engagement, administrative and jurisdictional burdens of environmental monitoring, compliance, and enforcement activities.”

A trade association recommended that bidders “should be required to include representations and warranties with each CBA.”

Other considerations

An advocacy group urged that BOEM take steps to ensure that the most affected groups will receive mitigation funding, primarily to compensate for fisheries losses and costs. However, an industry group reasoned that CBAs are not the most appropriate mechanism to mitigate impacts to fisheries and fishing communities, adding that “BOEM should maintain flexibility on what it

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considers a CBA and should give credit to other forms of mitigation, such as a regional fund administered by a third party.”

A Tribal government commented that “BOEM should not authorize CBAs that purport to, or seek to, avoid the enforcement of applicable environmental, wildlife, and cultural resource laws and regulations or would otherwise limit the rights of Tribes to meaningfully participate in oversight of BOEM or the Lessee and their activities.”

An advocacy group said that developers should be required to “specify whether they are using the expedited permitting process CA set up in the budget bill (AB 205, 2022) because the law requires that the CBA meet certain parameters.”

BOEM Response:

BOEM opted to maintain a broad definition of potential counterparties to a CBA to best position developers to address impacts that may arise from their proposed projects. Developers are encouraged to enter into a CBA with multiple impacted parties. Potential impacted communities include: Private, public, or municipal corporation, company, association, or partnership; county, city, or town (as those terms are used in the California Government Code); or other legal entity organized under the laws of any State of the United States or the District of Columbia, the law of any federally recognized Tribe or federal law applying to Tribes, or the law of any territory or insular possession subject to U.S. jurisdiction; Federally recognized Tribe under 25 U.S.C. § 5131; or State of the United States or a political subdivision thereof.

Potential benefits for the Lease Area Use CBA do include assisting with gear changes or potential gear loss or damage, loss of fishing (or fishing-related) income, and mitigating other similar potential impacts. BOEM has provided lessees with flexibility in how best to structure the CBA benefits. BOEM keeps the potential beneficiaries of the CBA broad, and specifically acknowledges that a fund would count as a CBA.

The CBAs are not designed to relieve developers of any of their responsibilities or obligations under BOEM’s regulations or applicable laws, or to limit Tribal engagement.

The Lessee will commit to executing a CBA in accordance with the conceptual strategy submitted to BOEM. The documentation must enable BOEM to objectively verify that the CBA has met the requirements outlined in the lease. This information is included at the BFF Addendum. At a minimum, this documentation must include:

- All written agreements between the Lessee and the impacted community, including the executed CBA;
- A description of work done with impacted communities, including the monetary and non-monetary commitments that reflect the value of the bidding credit received; and Sworn statements by the CBA signatories or their assignees, attesting to the truth and accuracy of all the information provided in the documentation.

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Compliance with CA budget bill (AB 205, 2022) is outside of the purview of the CBA for this lease sale. If the State of California has any additional requirements for CBAs, the Lessee would need to satisfy applicable requirements in addition to the requirements BOEM has for qualifying a CBA to receive a bidding credit.

Section 5.3.8. Should BOEM explicitly allow a Lessee’s CBA to include payments into a mitigation or innovation fund? If so, what metrics should BOEM use to evaluate whether the use of the fund is acceptable in meeting OCS Lands Act goals?

Comment Summary:

Some commenters, including a few advocacy groups, a Federal agency, the PFMC, and a Tribal government, answered that yes, BOEM should explicitly allow a Lessee’s CBA to include payments into a mitigation or innovation fund. The Tribal government asserted that payments to a fund managed by the Yurok Tribe should be explicitly authorized in the FSN.

A trade association suggested that BOEM should require fishery-specific CBAs to include annual “impact fee” payments into “a mitigation fund overseen by the nonprofit fishermen's entity for the creation of long-term resiliency in coast fishing communities.” An advocacy group urged BOEM to evaluate these funds equity considerations and avoid allocating exclusively to communities with significant resources and capital.

On the other hand, a trade association asked if BOEM can disallow payments into a mitigation or innovation fund as part of a Lessee’s CBA. An advocacy group stated that fund governance entities will determine direction on fund payments and investments.

BOEM Response:

The Lease Area Use CBA may include payments into a special purpose fund, such as payments to support gear changes, navigation technology improvements, and other efforts to improve safety and navigation, or to compensate the fishing and related industries whose use of the geographic space of the Lease Area is impacted by the Lessee’s potential OSW development. The General CBA also allows for monetary benefits to impacted community(ies), including any mitigation or other compensatory measures provided by the Lessee, in order to alleviate impacts from lease development. To allow maximum flexibility, BOEM opted for including language that was not too restrictive on which initiatives could be funded and how they could be structured.

Section 5.3.9. Is offering a bidding credit to enter into a CBA the most effective method to encourage similar types of agreements between developers and stakeholders or community groups, or is there a more effective format BOEM should consider?

Comment Summary:

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Several advocacy groups, a trade association, and a Federal agency, answered that yes, offering a bidding credit to enter into a CBA is the most effective method to encourage similar types of agreements between developers and stakeholders or community groups. The Federal agency concluded a CBA should be used along with a suite of other tools to support the same goals. One of the advocacy groups reasoned that because the credits come out of the BOEM bid proceeds, the developer has no incentive to short the CBA.

A trade association stated that CBAs may be effective if the bidding credit is large enough to incentivize bidders and if BOEM requires early and regular engagement. The PFMC expressed concern that the “the focus on CBAs signals a shift in emphasis to compensating for fisheries losses instead of where it properly belongs—on avoiding and minimizing them.” The commenter suggested that CBAs may require more time and work before they become an effective mechanism. An advocacy group criticized CBAs because financial contributions would not begin until the OSW project generates revenues, but the group reasoned that funds should be provided at the beginning of the site assessment and characterization phase. A Tribal government reasoned that CBAs would be more effective if they included Tribes. A local government urged BOEM to “consider lease stipulations as a more effective format for encouraging agreements between developers and stakeholders than voluntary CBAs.”

BOEM Response:

Any benefits provided to the impacted community under a CBA should not duplicate benefits or mitigation measures imposed on the Lessee through, or pursuant to, statutes other than OCSLA. The documentation to enable BOEM to objectively verify that the CBA has met the requirements for the Lease Area Use CBA or the General CBA bidding credit must be provided no later than at the time of the submission of the Lessee’s first FDR which is required prior to start of construction. The timing for providing the financial contributions would be pursuant to the negotiated CBA. Tribes are potential beneficiaries of both CBAs.

Section 6. Project Labor Agreements (PLAs)

Comment Summary:

Several commenters, including professional associations, a trade association, advocacy groups, a joint submission from labor unions, a coalition of unions, and two joint submissions from unions, among others, expressed support for including PLA stipulations in the lease contract. Regarding PLA stipulations, commenters recommended the following:

- *Include PLA stipulations for local hire and targeted hire goals, including for underrepresented workers or workers who live in disadvantaged communities.*
- *Change PLA stipulations to increase opportunities for local communities, underrepresented communities, and Tribal nations, and to address community safety.*

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- *Broaden PLA lease stipulation to include all contractors, subcontractors, and employees and to cover all phases of onshore and offshore project development.*
- *Lease stipulations should provide that reasonable efforts include, but are not limited to, early and frequent outreach to unions whose members possess the requisite knowledge and expertise to build and operate projects in a timely and effective manner.*
- *All construction workers be paid at the prevailing wage rate and that registered apprentices be utilized on the construction projects.*
- *PLA stipulations lead to safer working conditions by creating a more skilled workforce or by ensuring that employers follow best practices when working on an organized worksite.*
- *PLAs could help to assure timely completion by keeping projects free from potential disruptions resulting from disputes, grievances, or jurisdictional issues.*

A joint submission from unions said that requiring lessees to enter into PLAs could help BOEM achieve the goals set forth in EO 14008 and 13985 and simultaneously fulfill its duty to hold the OCS in the national interest and promote positive social and economic impacts of its projects. The commenter also remarked that the expeditious construction of the wind farm, which a PLA could facilitate, would directly serve BOEM's proprietary interest in receiving a fair return on its lease. Further, the trade association stated that PLAs provide a mechanism for facilitating expeditious and orderly development and cited a recent study that found that contractors who are signatories to craft labor agreements are 21% less likely to experience delays in project completion times due to worker shortages and 14% less likely to have trouble filling craft worker positions.

A union, a local elected official, and an industry commenter urged BOEM to consider awarding bidding credits to developers that enter into PLAs. A union commenter expressed concern about the lease language under Section 6.1 of the draft Commercial Lease and specifically discussed the stipulation for the lessee to "make every reasonable effort" to enter a PLA for "the construction stage of any project in the leased area." The commenter requested that BOEM expand this section of the draft lease to first, require that the Lessee use union labor for every phase of the project and second, require that the Lessee respect existing union jurisdiction and labor agreements, including but not limited to, hiring a subcontractor with a direct relationship with the workers who traditionally perform that work. An industry commenter requested that BOEM clarify the timeline for when the Statement of Goals would need to be provided as well as the schedule of when BOEM would expect regular progress updates.

BOEM Response:

Stipulation 8.1 encourages the use, by OSW developers, of a PLA during the construction of their projects and that applies to all contractors. 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

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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. PLAs typically include prevailing wages provisions, no-strike clauses, dispute resolution procedures, and safety and training provisions.⁷

PLAs are only available for use in the building and construction industries. See 29 U.S.C. § 158(f). Therefore, BOEM is only encouraging their use during the construction phase of an OSW project.

Stipulation 10 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 floating OSW project components. The Statement of Goals, among other things, must include workforce diversity, training, and development, including within underserved communities and Tribes, and ensure equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses.

The Lessee must submit a final report evaluating the Lessee's success in meeting the Statement of Goals no later than the first Fabrication and Installation Report (FIR) submission. If a COP is approved, the Lessee must annually provide updates to the Lessor about the Lessee's progress in meeting these goals. This information may be included as part of the certification of compliance statement provided pursuant to 30 CFR 585.633(b).

Section 7. Stakeholder Engagement

Comments associated with this issue are discussed in the sub-issues below.

Section 7.1. Engagement Progress Reports

Summary of Comments:

Several commenters proposed a requirement for lessees to provide reports summarizing their engagement with ocean users likely to be affected by the proposed lease development. The PFMC suggested that regular progress reports should be publicly available, and that timely data is important in allowing all parties involved in the leasing process to understand potential impacts of wind energy. One commenter stated that progress reporting would not equate to quality engagement efforts from developers. Another commenter recommended BOEM include the maritime industry in an engagement plan for stakeholders affected by leasing. Comments also recommended BOEM ensure financial resources for engagement are institutionalized for the lifetime of the leases in a way that prioritizes regional and social equity.

Some commenters support the semi-annual frequency of report as proposed, while others opposed the proposed frequency of reporting. One commenter stated that due to the potential

⁷ 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.

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time frame for requested revisions of up to 60 days after the report, this would require lessees to work continuously on progress reports and suggested that BOEM consider a reporting requirement that would be less time-consuming for lessees. A joint submission from industry commenters recommended that stakeholder outreach and feedback should be reported at a frequency agreed upon between the lessee and BOEM.

BOEM Response:

Section 3 of the Lease Addendum “C” addresses progress reporting requirements including for the lessee to provide information that can be made available to the public and posted on the BOEM website. The intent of Section 3 of the lease is to improve Lessee communication and transparency with affected Tribes, parties, and members of the public, and to encourage lessees to identify and engage with underserved communities, including those described in Executive Order 12898 on EJ that may be disproportionately impacted by the Lessee’s activities on the OCS, in order to avoid, minimize, and mitigate potential adverse effects by, for example, investing in these communities.

The Lessee must submit to the Lessor [BOEM] a progress report every six months (unless the Lessor directs otherwise). Within the progress report, lessees will be required to identify Tribes and parties that may be affected by lessees’ activities on the OCS and with whom the lessees engaged, provide updates on engagement activities, document potential adverse effects to the interests of Tribes and parties, document how, if at all, a project has been informed or altered to address those potential effects, document feedback from engagement regarding transmission planning prior to proposing any export cable route, provide information that can be made available to the public, and include strategies to reach potentially affected individuals with Limited English Proficiency.

The Lessee is required to make reasonable efforts to engage with Tribes and parties that may be potentially affected by the Lessee’s project activities on the OCS, including mariners and the maritime industry. The obligation to provide progress reports does not expire at the end of the site assessment term and continues until the date of COP approval (if a COP is approved). If a COP is received, BOEM will review the COP and determine any additional engagement resources that may be required.

BOEM retained the requirement that, within 60 calendar days from receipt, the Lessor may request that the Lessee modify the progress report to address any comments the Lessor submits to the Lessee on the contents of the document. The Lessee must address comments in a manner deemed satisfactory by the Lessor.

Section 7.2. Engaging underserved communities (including disadvantaged or environmental justice communities)

Comment Summary:

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General comments

Numerous commenters generally remarked on the importance of engaging communities likely to be impacted by the OSW area lease sales and expressed their support for BOEM's focus on engagement. Supporting BOEM's considerations for underserved communities, state agencies asserted that lessees should work with communities to develop a framework for community leadership and capacity building and seek to establish formal agreements to monitor community impacts and implement community benefits.

Some commenters suggested that steering committees could help guide local investments as part of the wind energy development process.

An advocacy group proposed that incentives for investments would benefit underserved communities. The commenter reasoned that lease stipulations for investments that environmentally, economically, and socially benefit EJ communities would further BOEM's goals under OCSLA.

BOEM Response:

As described in lease stipulation 3.1 on the required progress report, the intent of the requirement is to improve Lessee communication and transparency with affected Tribes, parties, and members of the public, and to encourage lessees to identify and engage with underserved communities, including those described in Executive Order 12898 on EJ that may be disproportionately impacted by the Lessee's activities on the OCS, in order to avoid, minimize, and mitigate potential adverse effects by, for example, investing in these communities.

As described in lease stipulation 3.1.1 on engagement, BOEM requires that each Lessee engage in ways that minimize linguistic, technological, cultural, capacity, or other obstacles to parties including underserved communities. To facilitate engagement, each Lessee should work collaboratively with Federal, state, and local governments, community leadership and organizations, and Tribes. Lessees are strongly encouraged to work with Tribes and parties to develop specific efforts to increase groups' capacity to participate in the engagement activities described in the lease, for example, by creating working groups or formal agreements to monitor community impacts and implement community benefits.

BOEM does not require steering committees to guide investments but allows for contributions to a community benefit fund whose purpose is to provide funds for infrastructure to impacted communities to alleviate impacts from the Lessee's project.

Tribes

Several commenters, including Tribal governments and an OSW industry group, stated their concern for BOEM's previous level of engagement with Tribal communities on other OSW projects. These commenters recommended that BOEM consult with both Tribal governments and

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Tribal communities to put stipulations in place to help mitigate the potential impacts that OSW development would have on Tribal communities.

One of the Tribal governments provided BOEM with a list of preferences regarding Tribal consultation and recommended it as an aid to help inform consultation and collaboration efforts with the Yurok Tribe.

A Tribal government generally stated that a method for mediating disagreements between Native American Tribes and Lessees did not exist.

BOEM Response:

Analyses of the impacts of siting, constructing, operating, and decommissioning a wind turbine generator are beyond the scope of what is considered for the FSN because no wind energy projects are being approved. When a COP is submitted, BOEM will review it and conduct reviews under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) which will include stakeholder outreach and public comment periods.

However, BOEM requires lessees to have early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions with Tribes and parties that may be potentially affected by the Lessee's project activities on the OCS.

The Lessee must submit to the Lessor a progress report every six months. The progress report which includes: Tribal Governments (Tribes) and parties with whom the Lessee made reasonable efforts to engage; documentation of engagement with Tribes and parties; documentation of potential adverse effects from the Lessee's project to the interests of Tribes and parties; how, if at all, the design or implementation of the project has been informed by or altered to address these potential effects; description of scheduled engagement activities; and feedback from engagement with Tribes and parties.

In addition, the stipulation requires that the progress report also address lease requirements for the development of a NATCP. The purpose of the NATCP is to ensure early and active information sharing, focused discussion about potential issues, and collaborative identification of solutions to ensure that Tribes have an early and active role in providing input to the Lessee before it makes decisions that may impact their cultural, economic, environmental, and other interests. The Lessee must engage with Tribes in the development of the NATCP in accordance with each Tribe's consultation policies, procedures, and/or preferences, if any, as indicated in writing by an authorized representative of a given Tribe's governing body. The development of the NATCP must be in accordance with each Tribe's consultation policies, procedures, and/or preferences, if any, as indicated in writing by an authorized representative of a given Tribe's governing body.

If the Lessee does not address the comments provided by the Lessor on its progress reports in a timely and adequate manner, BOEM reserves the right to require specific actions, such as, but

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not limited to, third-party verification/mediation at the Lessee's expense, adjustment of required reporting frequency, or designation that the lease is not in good standing.

Several Tribal governments commented on the positive and negative impacts OSW development would have on the Tribal nations in the surrounding areas of the lease. One of the Tribal governments cautioned BOEM about the potential harms likely to face Tribal nations, some of which were economic and environmental harms. Despite the potential harms, the Tribal government further reasoned that early investment through bidding credits in disadvantaged communities would help enable engagement. Another Tribal government encouraged BOEM to include Tribal nations in all phases of the leasing process so that the protection of underserved communities and their resources would not be overlooked.

An advocacy group detailed the negative conditions facing Tribal regions due to cycles of under-investment by various industries in Tribal communities. Lack of access to health care and other social services, lack of quality education and career opportunities, and lack of access to nutritional foods are among some of the conditions facing disadvantaged or underrepresented communities. As a result of these conditions, Tribal nations in the region face threats to safe and sustainable living. The advocacy group provided recommendations to BOEM that would mitigate further impacts to Tribal nation and other underserved communities.

An industry group and an advocacy group recommended the establishment of a "Regional Tribal Capacity Fund" to target needs of Tribal nations and "the history of the federal government's actions towards" those nations. The industry group also proposed measures that would "ensure the safety of Indigenous people...including efforts to reduce...rates of missing and murdered Indigenous people."

BOEM Response:

BOEM is including three possible bidding credits in the FSN, one for workforce training and/or supply chain development and two for CBAs. Tribes may receive Contributions for workforce training and/or domestic supply chain development and are potential beneficiaries of both CBAs.

Specifically, BOEM has included "workforce diversity, training, and development, including within underserved communities and Tribes" and "ensuring equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses" in the description of possible investments for the supply chain Statement of Goals lease requirement for lessees; and has included disadvantaged businesses among the Contributions to domestic supply chain development.

In addition to the lease stipulations requiring lessees to "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," and inclusion of Tribal Fisheries Departments in the Commercial Fishing lease stipulations, BOEM has included:

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- A lease stipulation strongly encouraging lessees to develop specific efforts to increase groups' capacity to participate in the engagement activities described in this lease, for example, by creating working groups or formal agreements to monitor community impacts and implement community benefits;
- Tribes and Tribal businesses among the entities eligible to receive Contributions for workforce training and/or supply chain development;
- Tribes and Tribal businesses among the entities that may provide workforce training funded by lessees;
- Tribes and Tribal businesses among the entities eligible to enter into a Lease Area Use CBA;
- “Mitigating potential impacts to cultural viewsheds or potential impacts on marine and land species that are of significance to Tribal culture or impacted communities” in the description of benefits that could be included in a General CBA under the new bidding credit provision; and
- “Contributions toward Tribal workforce development programs or training for employees of wholly owned Tribal corporations that lead to the expeditious and orderly development of floating offshore wind energy projects” among the Contributions to workforce training.

Other comments on underserved communities

Several commenters reasoned that early investment and bidding credits would flow to disadvantaged communities to provide adequate resources for positive engagement with lessees. Similarly, an advocacy group and an industry group suggested bidders should prioritize investing into apprenticeships and training programs to help dislocated and disadvantaged workers. Another advocacy group suggested that BOEM should encourage investments that could benefit EJ communities environmentally, economically, and socially.

An advocacy group remarked on the history and importance of entrepreneurship within minority communities. This commenter, along with another advocacy group, asserted that a bidding credit contribution should be used to grow local small business to fill supply chain gaps and specified that minority and women-owned businesses face higher barriers to accessing needed capital. The commenters suggested that minority businesses are disadvantaged as they seek to expand to OSW.

An advocacy group provided proposed revisions to the underserved communities engagement and reporting section, featuring a high-level summary of proposed revisions to existing terms in the PSN.

BOEM Response:

Under the lease, Lessee engagement must allow for early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions. The Lessee will make

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reasonable efforts to engage with Tribes and parties that may be potentially affected by the Lessee's project activities on the OCS, including underserved communities, as defined in Section 2 of Executive Order 13985. The Lessee is also required to provide a progress report which includes documenting potential adverse effects from the Lessee's project to the interests of Tribes and parties and 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).

Regarding the creation of a robust and resilient U.S.-based floating OSW supply chain, the Lessee must submit to the Lessor a Statement of Goals in which the Lessee describes any plans, including engagement with domestic suppliers, by the Lessee for contributing to the creation of a robust and resilient U.S.-based floating OSW supply chain. The Statement of Goals must include the Lessee's plans for investments in supply chain improvements, if any, to support the OSW industry, including investments in workforce diversity, training, and development, including within underserved communities and Tribes and ensuring equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses.

Section 7.3. Other comments on stakeholder engagement

Comment Summary:

Several commenters provided general recommendations for BOEM regarding stakeholder engagement. Several commenters, including advocacy groups, a union, state agencies, a Federal agency, and a trade association, urged BOEM to develop and engage in transparent, open, and honest communication among stakeholders.

Several commenters, including a few trade associations, a Tribal government, an advocacy group, and an industry group, expressed concern for BOEM's past approaches to engagement on other wind energy projects. The commenters urged BOEM to improve its approaches to communication, safety, transmission planning, and cumulative effects analyses.

An advocacy group urged BOEM to make its engagement process inclusive of marginalized and impacted groups in planning OSW development. The advocacy group asserted that the inclusion of indigenous nations and the local community should be prioritized as the planning process proceeds. On the subject of inclusivity and engagement, another advocacy group explained that proactive communication and engagement served as the foundation for responsive decision-making that would reflect the needs of stakeholders, community members, and Tribal governments. This group recommended that the engagement process consist of honest communication and accessibility in order to facilitate trust among all who are impacted by the lease development. The commenter also detailed what engagement looks like for ocean users and community members, Tribal governments, and fish industries. The group encouraged BOEM to remain open throughout the engagement process and provide equitable access to data sharing.

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The same advocacy group also advised BOEM to coordinate its efforts with key Federal agencies like NOAA and USCG for better data collection and sharing.

An industry group asked for “a seat at the table” and proposed a community benefits package that includes “community-led steering committees” as a way to engage local communities in the leasing process.

An advocacy group suggested that the PSN be revised to include a Maritime Communication Plan in addition to the three other communication plans proposed. The commenter reasoned that the commercial maritime industry warrants a communication plan because they are a major waterway stakeholder and have been accounted for in the Draft Fisheries Mitigation Guidance.

BOEM Response:

BOEM acknowledges and appreciates all comments on its own engagement process and recommendations for improvement. The FSN and associated documents prescribe requirements for lessees regarding stakeholder engagement.

In addition to the responses provided in Section 7.2 above, BOEM will require each Lessee to develop a publicly available ACP that describes the strategies that the Lessee intends to use for communicating with Federal, state, and local agencies (including harbor districts) with authority related to the Lease Area and should outline specific methods for engaging with and disseminating information to these agencies. The purpose of the ACP is to ensure early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions in order to improve the quality and efficiency of various agency decision-making processes, and to promote the sustainable development of OSW energy projects.

The Tribes and parties with whom each Lessee must make reasonable efforts to engage includes mariners and the maritime community.

When a COP is submitted, BOEM will review it and conduct reviews under NEPA and NHPA which will include stakeholder outreach and public comment periods.

A Tribal government expressed a preference for the separation the Morro Bay and Humboldt WEAs (or North Coast) processes to better consult with the Yurok Tribe. The commenter noted that although the terms Tribal and “Yurok Tribe” are used interchangeably throughout their comments, and although their comments are generally regarding the Humboldt WEA, the terminology should not be interpreted to be specific input on Morro Bay (except for impacts to migratory species). The commenter added that combining Morro Bay and Humboldt WEA creates a burden on impacted federally recognized Tribes when providing input on proposed activities impacting their territory, while respecting the sovereign rights of other Tribes.

BOEM Response:

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The California FSN and associated documents specify two California regions: the North Coast Region (inclusive of the two leases that will be offered within the Humboldt WEA) and the Central Coast Region (inclusive of the three leases that will be offered within the Morro Bay WEA). BOEM is building upon an existing lease stipulation on coordinated engagement to require that, to the maximum extent practicable, each Lessee must coordinate engagement activities with other regional lessees and document its activities in its progress reports. Lessees must design coordinated engagement activities to decrease the communication and consultation burden on Tribes and parties. Each Lessee will be required to engage with the Tribes and parties that may be potentially affected by its particular project activities.

An advocacy group and an industry commenter cautioned BOEM about the potential navigational hazards caused by wind farms. The advocacy group urged BOEM to consult with the USCG's PAC-PARS to better understand the impacts the lease areas will have on navigation.

BOEM Response:

BOEM is working closely with the USCG on its Pacific Port Access Route Study and will continue to do throughout the leasing and development process to address potential impacts of lease development on navigation. Please see the response in Section 4 above.

Section 8. Rent

Comment Summary:

Several commenters discussed issues related to rent. One Tribal government commenter stated that since they had not ceded their ocean territory, they should receive financial compensation collected by the Federal Government for leases overlapping with the ocean territory of their Tribe. The commenter stated that 30 C.F.R. § 1218.55 requires royalties for oil and gas leases on Indian land to be paid to the impacted Tribes and that the Secretary of the Interior should use the agency's authority to meet such requirements in this case. The commenter requested that the proceeds raised through this lease be distributed to the Tribe by the DOI or Department of Treasury.

An advocacy group recommended that the cost of managing energy-sector data should be factored into a portion of OCS rental receipts or cost-recovery fees. The group further recommended setting aside these funds for long-term data management in coordination with relevant Integrated Ocean Observing System Regional Associations and Regional Ocean Partnerships where applicable.

BOEM Response:

OCSLA states: “[a]ll rentals, royalties, and other sums paid to the Secretary under any lease on the Outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.” 43 U.S.C. § 1338. Accordingly, the Secretary does not have discretion to direct any money paid under a

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lease issued pursuant to OCSLA to a Tribe. The cited regulation applies to oil and gas that the United States holds in trust for a Tribe. No portion of the OCS is held in trust for a Tribe. Therefore, there is no trust corpus to trigger the Federal Government's trust responsibility. *Mitchell v. U.S.*, 445 US 535, 546 (1980). Furthermore, the Federal Government's trust responsibility to Tribes does not require it to go beyond existing statutes and regulations. *Pawnee v. United States*, 830 F.2d 187, 192 (Fed. Cir. 1987).

Section 9. Environmental Impacts/Concerns

Summary of Comments:

The majority of public comments on the PSN about environmental issues requested analysis of the impacts, including cumulative impacts, of siting, construction, and operation of wind generators on the OCS. Many commenters expressed opposition to or concern about wind energy development due to potential impacts of wind turbine construction and operation to commercial fishing, marine navigation, biological resources, cultural resources, viewsheds, and EJ communities. Several commenters asked that BOEM conduct a Programmatic Environmental Impact Statement (PEIS) to evaluate all impacts of siting, constructing, and operating a wind energy project prior to leasing. One commenter repeated its previous request that BOEM adequately address past analytical deficiencies such as inaccurate descriptions of No Action alternatives, water quality impacts, economic costs and benefits, and quantifiable reduction in greenhouse gas emission if the proposed action moves forward. Other commenters recommended the inclusion of lease stipulations in the FSN to mitigate environmental impacts of wind energy and encouraged BOEM to adopt an "adaptive management" approach to revising stipulations. Commenters also requested that BOEM conduct more research on wind projects' environmental impacts and monitor projects for impacts to wildlife, particularly protected wildlife.

BOEM Response:

Analysis of the impacts of siting, constructing, operating, and decommissioning a wind turbine generator is beyond the scope of what is considered for the FSN; a lease sale does not represent the approval of any wind energy projects.

Issuance of leases would allow only for the submission of plans (SAPs or COPs) for BOEM's consideration and approval. Therefore, BOEM's environmental analysis and discussion focused on reasonably foreseeable environmental consequences of activities expected to take place after issuance of commercial leases—specifically, site characterization (i.e., surveys of the lease area and potential cable routes) and site assessment activities (i.e., temporary placement of up to three meteorological (met) buoys on each lease) within the WEAs.

Comments that supplied specific information, scientific research, or raised specific concerns regarding the impacts of commercial wind turbine development such as possible impacts to marine navigation, commercial fishing, marine life including elephant seals, birds, viewsheds, EJ communities, and scientific surveys are noted, but are outside the scope of what is considered in

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support of the FSN because no wind energy projects are being approved. BOEM encourages these commenters to remain engaged in coming years if and when a COP is submitted to BOEM for renewable energy development.

At the COP stage, BOEM will prepare an EIS which will address impacts to the environment from lease development and BOEM can include conditions in its COP approval to try to address these and other impacts. Comments and recommendations on the preparation of a PEIS are noted and will be considered prior to making a determination on how to proceed with the environmental impact analysis for COPs proposed in the leases issued as a result of the PACW-1.

Regarding studies of impacts and monitoring project impacts on marine resources, BOEM's Environmental Studies Program is invested in studying impacts from existing OSW projects (e.g., Block Island Wind Farm and the Coastal Virginia Offshore Wind Research project), as well as baseline studies of marine wildlife and habitat. In addition to BOEM-funded studies, BOEM is also working collaboratively with state and Federal funding partners.

Section 9.1. Department of Defense (DoD) Impacts

Comment Summary:

Some commenters mentioned potential conflict between OSW development in the Morro Bay and DoD operations. One industry commenter urged BOEM to deconflict lease areas from other Federal agency activity that would impede OSW and to facilitate solutions with the DoD to allow mixed use of the Morro Bay lease areas as early as possible. Another industry commenter requested that BOEM make public any potential DoD stipulations in the lease area prior to the FSN and urged transparency on site-specific stipulations that could impede development. This commenter further suggested that without more clarity on DoD-specific stipulations, developers may be hesitant to bid on leases in the Morro Bay lease area and recommended that BOEM work with DoD to clarify lease stipulations and mitigate outstanding issues. One industry commenter also requested that BOEM include in the FSN a description of potential site-specific stipulations that may be required by the DoD, including those that may impact OSW site assessment, construction, and operation.

One trade association encouraged BOEM to advocate for OSW in the Morro Bay lease area and include the "most minimal site-specific stipulations necessary in final leases." This commenter further noted that its members have decades of experience navigating concerns and working with the DoD. A Federal agency commenter stated that its assessment of the WEAs and proposed actions in the draft EA "has no perceived impacts at this time upon any of the Tri-Agency NEXRAD/WSR-88D radars (NOAA, FAA, & DoD)," but if assumed turbine heights increase by 10 meters or more, potential impacts would need to be reassessed.

BOEM Response:

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For Radar, the ACP will be the mechanism for NOAA, FAA, and DoD to work with developers on turbine heights and radar impacts prior to COP phase. Impacts to specific radar systems from proposed facilities will be evaluated with the COP submission.

Addendum “C,” Section 4 of Lease includes stipulations related to National Security and Military Operations. In addition, the FSN notes bidders should be aware of site-specific terms and conditions that may result from COP approval after consultation with DoD on development within the Lease Areas. For example, DoD will likely require a curtailment protocol with the Lessee to avoid conflicts with electromagnetically sensitive activities conducted in the area, including those associated with the Point Mugu Sea Range, Vandenberg Space Force Base, and North American Aerospace Defense Command (NORAD). DoD has indicated to BOEM that curtailment will be temporary and limited to instances where it is necessary to avoid conflicts with national security or defense requirements.

Section 9.2. Viewshed

Comment Summary:

One commenter mentioned viewshed issues in their comments. A trade association stated that floating turbines located far offshore from California are unlikely to be visible to the naked eye and suggested that any local concerns related to project visibility could be alleviated.

BOEM Response:

Comment noted. Impacts to viewsheds will be considered in detail once COPs are submitted for the leased areas to describe, among other things, the size and location of floating turbines.

Section 9.3. Sound Propagation

Comment Summary:

A few commenters discussed sound propagation issues in their comments. An advocacy group expressed concern about the impacts of OSW activities on marine wildlife and suggested that BOEM should require lessees to demonstrate how they will mitigate underwater noise during site assessment and characterization activities. This commenter conveyed support for requiring lessees to use low-energy equipment for geophysical surveys and recommended that BOEM require lessees to submit plans detailing noise generating activities and actions they will take to minimize noise. The advocacy group also recommended using Protected Species Observers and passive acoustic monitoring to monitor marine mammals and sea turtles during potentially harmful geophysical surveying activities. The group further suggested that surveys be conducted during daylight hours in good visibility and encouraged an independent expert review of the required Alternative Monitoring Plan. Finally, the advocacy group recommended that BOEM and lessees conduct sufficient data on baseline noise levels prior to OSW development and throughout their operation to assess impacts from OSW development on marine life and make this data publicly available.

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A Federal agency suggested that BOEM could require OSW developers to construct vessels incorporating vessel quieting technology, stating that noise from propeller cavitation is the primary source of chronic noise from vessels in the ocean environment and that such noise can adversely impact various marine species. An advocacy group expressed concern about acoustic impacts of OSW development on whale migration patterns and marine wildlife communication.

BOEM Response:

In order to minimize interactions and avoid injury or disturbance to marine mammal and sea turtle species, lessees are required to follow BOEM's Best Management Practices (BMPs), as described in the Humboldt and Morro Bay EAs, as well as in the Section 7(a) consultation under the Endangered Species Act (ESA). BOEM derived these BMPs based on relevant experience on the Pacific OCS, as well as through analysis of the best available data (Crocker & Fratantonio, 2016) and coordination with NMFS Greater Atlantic Regional Office on SAPs submitted to BOEM for the Atlantic OCS. BOEM will implement BMPs through issuance of leases and review of proposed plans through standard operating conditions (SOCs). These BMPs include the use of Protected Species Observers, clearance, and shutdown zones, as well as ramping up of electromechanical survey equipment when technically feasible. BOEM will review all survey plans, including the list of proposed electromechanical survey equipment, to ensure that the equipment will be able to acquire the necessary information required in a SAP, and comply with appropriate lease requirements, BMPs and relevant consultations.

BOEM's BMPs require that survey plans describe how the Lessee will comply with these practices, and other relevant requirements. BOEM's survey guidelines recommend that surveys are conducted when there is enough light to identify marine mammal and sea turtle species, however, Alternative Monitoring Plans (AMPs) that describe the techniques and methodologies that will be used to comply with BMPs and relevant consultations, will be considered on a case-by-case basis. BOEM's regional subject matter experts work with BOEM's acoustics experts at the Center for Marine Acoustics (CMA) to review these AMPs, and together with NOAA Fisheries ensure that AMPs will be effective in minimizing impacts to marine mammals and sea turtles.

BOEM is currently funding, and will continue to fund, environmental studies in the Pacific, that include collecting baseline acoustic soundscape data. BOEM's survey guidelines include guidance for passive acoustic baseline data collection over two annual cycles to capture inter-annual and seasonal variability. The data from BOEM-funded studies are made publicly available, and lessees are encouraged to deposit their data at publicly accessible archives.

A recent publication states that most electromechanical acoustic sources used for high-resolution geophysical and geotechnical surveys are unlikely to impact protected species, due to the characteristics of these sounds and how they are attenuated in the ocean (Ruppel et al., 2022). The BMPs and other relevant consultation requirements are developed based on the best

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available information to minimize interactions and avoid injury or disturbance to marine mammal and sea turtle species.

Regarding vessel quieting technologies, BOEM is considering the comment and looking into available options. BOEM is also working with NOAA Fisheries and the Department of Energy in evaluating and promoting quieting methods and technologies for OSW construction and operation.

Section 9.4. ESA

Comment Summary:

Some commenters addressed ESA issues in their comments. An industry commenter requested that BOEM clarify how a lessee would comply with the protected species stipulation and how “any new or emerging information would be incorporated into the leases beyond the execution date.” Another industry commenter requested that BOEM clarify whether the ESA consultation document or the NEPA document in Appendix D of the Final EA conditions prevail as it relates to draft lease stipulations in Appendix C of the draft lease agreement.

In discussing impacts of OSW infrastructure in the lease areas on birds and bats, an advocacy group suggested that several species warrant consideration, such as those listed under the Federal and California ESAs. The advocacy group also stated that the “Protected Species stipulation requires lessees and operators to comply with reasonable and prudent measures, terms and conditions, and mitigation measures established in the relevant Endangered Species Act biological opinion.” A Federal agency suggested that BOEM should update lease conditions to ensure that activities authorized under the lease are consistent with the outcomes of ESA and essential fish habitat (EFH) consultations between NMFS and BOEM.

BOEM Response:

The FSN clarifies that ESA and EFH consultations have been completed for California lease activities, and the language of the FSN and the updated leases makes clear that the protective measures identified in the leases are consistent with any measures arising from the consultation documents and also in Appendix D of the Environmental Assessments. All species listed under the Federal ESA where there was some potential for effects, including birds and bats, were the subject of analysis and, where appropriate, consultation. Although not the subject of a federal consultation process, species listed under the state ESA were in some cases addressed within the analysis of the EAs.

Regarding new or emerging information, the updated leases state that when engaging in biological surveys lessees must comply with the outcomes of the ESA and EFH consultation that concluded on September 21, 2022, with a provision for the lessees to opt into any new or updated consultation processes. Finally, in the case of site assessment activities, lessees must

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submit a SAP for BOEM's review, providing further opportunity to address new or emerging information or other changed circumstances via further consultation.

Section 9.5. Other General Environmental Impacts

Comment Summary:

General environmental comments

Numerous commenters discussed general environmental impacts in their comments. These general comments include those related to protection of the environment, to potential impacts arising from the construction and operation of OSW, and for the need for monitoring programs. It should be noted that these comments are largely redundant with the extensive analyses, including NEPA analyses, prepared throughout the leasing process. For further information on general environmental issues, BOEM refers the reader to the Environmental Assessments for Humboldt and Morro Bay, including the appendices on comments and responses to each.

Another advocacy group stated that BOEM is required by law to protect the environment when administering the OSW leasing program, including when specifying lease stipulations. The commenter said that when issuing wind leases, BOEM must provide for safety, protection of the environment, prevention of waste, conservation of OCS natural resources, and consideration of other uses of the sea or seabed, including fisheries. The group also wrote that in addition to ESA listed species, all marine mammals are protected under the Marine Mammal Protection Act (MMPA), and BOEM's measures should be clarified to reflect that the requirements apply to all marine mammals.

Monitoring and data

Several commenters discussed the importance of monitoring environmental impacts during OSW development and operations.

An advocacy group recommended protection of benthic habitat by requiring detailed surveys prior to site assessment. The commenter also recommended requiring lessees to obtain box core samples to confirm benthic sediment composition and suggested avoiding biogenic structural habitat when anchoring buoys. The commenter further recommended that BOEM require that lessees "avoid intentional contact within rock outcroppings, seamounts, or deep-sea coral/sponge habitat and include a buffer that fully protects these habitats" in COPs. A Tribal government commenter suggested that qualified marine archaeologists should be present during high-resolution geophysical (HRG) surveys. An individual recommended including specifics in mitigation and monitoring guidelines related to topics such as sound, electromagnetic fields, temperature, sediment changes, and acidity.

A Federal agency suggested conducting extensive mapping and habitat data collection in coordination with NMFS to identify sensitive habitats within lease areas and recommended using the CMECS for mapping. Several commenters mentioned data collection, sharing, and

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transparency in their comments. An advocacy group recommended that BOEM collect adequate data to protect biodiversity, fishing access, indigenous uses, and protect California coastal resources. Several Tribal government commenters recommended measures to strengthen environmental protections, including provisions for Tribal monitoring and research, data transparency, and access.

An advocacy group suggested that current mitigation measures are insufficient to ensure wildlife protection and stated the need to develop robust, transparent data that is shared in real time and informs adaptive management provisions. The advocacy group suggested using new technology to scan for wildlife collisions with turbines and encouraged transparent data sharing throughout the duration of a project. The group further suggested that BOEM should establish an adaptive management program to evaluate data in real time, identify trends, and determine corrective actions in case of unforeseen consequences due to OSW projects.

Another advocacy group recommended a collaborative and transparent approach to science to protect ocean resources and further recommended making scientific results publicly available and making data publicly accessible. This advocacy group further recommended making data on entanglements, vessel strikes and fatalities, and turbine collisions promptly and publicly available to allow for adaptive management and mitigation. The group also suggested that all data on incidences of ensnarement of marine debris on OSW infrastructure and marine species entanglements be made publicly available. Another advocacy group suggested that BOEM should be involved in the establishment of a West Coast-specific Regional Wildlife Science Collaborative and further recommended working with energy developers to ensure that data is collected throughout the duration of a project and shared according to standard metadata conventions and in appropriate formats.

BOEM Response:

Most of the comments summarized above concern the construction of a wind energy project, which is not authorized by lease issuance and will be subject to a detailed environmental analysis that provides for ample stakeholder participation. At the COP stage, BOEM will prepare an EIS which will address impacts to the environment from lease development and that BOEM can include conditions in its COP approval to try to address these and other impacts.

Notwithstanding the foregoing, it is worth mentioning that BOEM regulations require that lessees acquire detailed data on the environmental setting of proposed project activities to ensure that BOEM can comprehensively evaluate potential environmental impacts. In addition, for activities expected to take place after lease issuance (e.g., site characterization and site assessment activities), the FSN and lease stipulations make clear that environmental information should be acquired in consultation with Tribes, agencies, and other appropriate parties. The data acquired is to be used to support submittal of a COP, which in turn is subject to analysis under NEPA. These processes ensure that data and the analysis of data is publicly available.

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Comments regarding location included several comments identifying space-use conflicts between the lease areas and existing commercial and recreational fisheries and that these should be resolved. One commenter suggested a future Lessee's COP should identify portions of the lease areas where recreational fishing at or near the surface could be safely allowed or prohibited.

BOEM Response:

The BOEM leasing process continuously refines analysis of the OCS for potential OSW development. The information gathered during this process includes extensive environmental data, as well as data on other uses of the OCS such as commercial and recreational fishing. Information gathering begins with the Call for Information and Nominations and continues to the Area Identification stage. The Area Identification memoranda for California include a description of BOEM's understanding of use of the WEAs by fishermen. After Area Identification, BOEM prepared Environmental Assessments for Humboldt and Morro Bay, which each in turn represented an accumulation and analysis of further information related commercial and recreational fishing within the WEAs. See, for example, the Humboldt and Morro Bay Environmental Assessment sections on Commercial Fishing (Section 3.7 in each). Finally, a detailed analysis of site-specific use of lease areas by fishermen, including the interface between fishing and proposed project infrastructure, will be included in forthcoming NEPA analyses related to COP reviews.

National marine sanctuaries

Several commenters mentioned concerns related to National Marine Sanctuaries, with many specifically discussing the Chumash Heritage National Marine Sanctuary (CHNMS). An industry commenter expressed concern about issues that may arise if the boundary of the CHNMS is not adjusted to allow lessees to run transmission cables from the Morro Bay area to shore, stating that the current boundary may create legal and timing hurdles that could impede project development. This commenter, along with other industry commenters, an advocacy group, and a trade association, urged BOEM to reconcile this issue with NOAA.

An industry commenter requested that BOEM provide bidders with increased certainty of the viability of the Morro Bay lease areas by ensuring that "the preferred alternative in the forthcoming CHNMS Draft EIS reflects a boundary adjustment that excludes the sea space between the Morro Bay WEA and the Morro Bay and Diablo Canyon power plants, the two most likely points of interconnection." One industry commenter requested that BOEM provide clarity on this issue prior to publishing the FSN, while another requested that CHNMS regulations be released prior to the BOEM auction and explicitly authorize OSW cable routes through the sanctuary. One industry commenter stated that the designation of the CHNMS "may require generation to transmit power to load centers via a longer offshore route" and suggested that shared transmission infrastructure may minimize seabed environment impacts.

A Federal agency expressed interest in knowing whether any lease decisions would include "an actual or implied interest in a corridor through the MBNMS (Monterey Bay National Marine

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Sanctuary) and/or the CHNMS for placement of subsea electrical transmission cables to shore and offshore floating substations." The Federal agency further recommended BOEM offer a lease stipulation or bidding credit for developers who propose to consolidate the number of cables or reduce the numbers, size, footprint, and impact of subsea electrical transmission cables to shore. This commenter also stated that if development plans required OSW infrastructure like anchors or cabling to be placed in MBNMS, permits would be required for disturbing the seabed. The Federal agency requested that BOEM coordinate with MBNMS staff "regarding initiating a Section 304(d) consultation under the National Marine Sanctuaries Act" and specifically MBNMS Superintendent Lisa Wooninck to address OSW activities related to the Morro Bay WEA.

A state agency mentioned that CHNMS is adjacent to the southern border of the Morro Bay WEA and stated that the goals of climate and renewable energy goals must be harmonized with protection of environmental and cultural resources. An advocacy group expressed concern about OSW infrastructure such as cabling being given "preemptory siting priority within pre-existing and new National Marine Sanctuaries."

BOEM Response:

BOEM is aware of the process for potential designation of the CHNMS near the Morro Bay lease areas and has included consideration of this process throughout the BOEM efforts leading up to leasing. BOEM is working with NOAA as a cooperating agency on the preparation of the EIS for designation of the CHNMS, and in this manner ensures that matters related to OSW development are appropriately considered while the two agencies work toward their distinct but complementary goals.

Section 10. Leasing Process

Comment Summary:

Several commenters provided general comments on the leasing process. The PFMC and trade associations stated a PEIS is essential to measure the economic and environmental protections for the fishing industry and ocean environment. In addition, one of the trade associations stated that a more detailed analysis is needed for the public to understand whether the potential impacts are unacceptable or if other areas would be more suitable for wind energy development. The commenter encouraged BOEM to follow a comprehensive approach similar to that planned for the New York Bight on the West Coast. Another trade association stated that the Morro Bay EA and Humboldt EA fall short of identifying or measuring impacts of OSW development in the WEA. The commenter stated that a PEIS based on the area of exclusion and other marine species activity and ecosystem effects should be considered early in the lease process and before leases are granted. Further, this commenter stated their opposition to BOEM proceeding with lease sales as described in the PSN without completing a PEIS and gathering more data and completing pending reviews of potential impacts on ecosystems and socioeconomic impacts.

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An advocacy group disagreed with the PSN assertion that issuance of leases does not guarantee that a project will be built. The commenter stated their belief that OSW companies do expect to build projects despite the details of the projects being unknown.

BOEM Response:

BOEM has noted elsewhere in this document the comments received that advocate for preparation of a PEIS prior to lease issuance. In the case of the NY Bight PEIS, a PEIS is being prepared after lease issuance to support review of multiple plans for construction and operation of OSW facilities. BOEM will continue to evaluate the potential benefits of preparation of a PEIS after lease issuance in other areas of the OCS where multiple leases share common timing and geography. In the case of leases in California, BOEM has not yet determined whether a post-lease PEIS would be practicable and add value to the review of COPs submitted for Humboldt and/or Morro Bay leases. Regardless of what determination is made, BOEM will always prepare environmental analyses for COPs that are inclusive of potential environmental impacts and socioeconomic factors at both the site-specific and more broad scales.

Section 10.1. Deadlines and milestone

Comment Summary:

Some commenters suggested the process move quickly. A trade association reiterated that there is clear local and national support for OSW in the Pacific region and encouraged BOEM to work toward a final sale later in 2022 with a lease sale shortly thereafter. According to the commenter, a schedule of lease sales will, “drive the certainty and the market signal needed to spur the scale of domestic investments.” Several industry commenters urged BOEM to commit to a lease auction and sale in 2022 and provide as much advanced notice of the lease auction as possible. An individual stated the climate crisis is an emergency and therefore OSW development off the coast of California should be accelerated. The commenter also stated the time allowed to prepare the EIS and COP submissions is excessive.

Some commenters suggested BOEM slow the lease sale and auction process. A few industry commenters suggested that if an auction were to move ahead in September, the four months from the publication of the PSN to the auction is not enough to prepare their bids, leading to decreased competition at auction. Specifically, some industry commenters stated that an accelerated timeline provides an unfair advantage to prospective bidders with experience in the US OSW market or California energy market as they are more capable of accommodating shorter auction timelines than new market entrants. The commenters suggested it is in BOEM’s best interest to ensure all interested parties have sufficient time to prepare for the auction to level the playing field.

Further, some industry commenters stated that given the complexities of the California market compared to other mature markets, like New York Bight, the proposed timeline is unrealistic for bidders. Further, a commenter stated that it would be nearly impossible to expect new bidders to

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be sufficiently well-prepared and informed for the auction in a fraction of the time compared to previous lease sale processes that were technologically simpler. Industry commenters also noted the four months allotted for the California lease sale is half the time given to bidders in advance of the New York Bight lease sale, where the technology was simpler and lacked the complexities of a multiple-factor bid. To allow participants enough time to prepare their valuation and be better informed, some industry commenters recommended adopting a timescale as BOEM has done on past lease sales. One industry commenter recommended BOEM provide a three-month extension to the timescale to accommodate the needs of bidders in the lead up to the auction and improve overall auction outcomes.

An advocacy group and trade association stated that unproven FOSW technology causes concern and recommended BOEM proceed with caution and allow more time to identify and address environmental impacts not yet identified.

BOEM Response:

In response to the PSN for the PACW-1 lease sale, BOEM received comments encouraging the bureau to hold the sale without delay, and other comments suggesting that bidders would benefit from additional time to prepare bid strategies. The number of qualified bidders and other indications of competitive interest indicate strong interest in this lease sale, and BOEM is confident that a sufficient number of bidders will be prepared to bid on the schedule described in the FSN. BOEM has scheduled the sale to occur on December 6th, 2022, with a Mock Auction for bidders on December 5th, 2022. The time from publication of the FSN to the lease sale is approximately 45 calendar days, which is comparable to other BOEM lease sales, adding further support for the proposed schedule.

The California Energy Commission recently (CEC) adopted a report establishing OSW goals and moving the state one step closer to development of the clean energy resource off California's coast. Preliminary findings in the report set planning goals of 2,000-5,000 megawatts (MW) of OSW by 2030 and 25,000 MW by 2045, enough electricity to power 3.75 million initially and 25 million homes by mid-century. This sale will help to facilitate the state's ability to meet those goals and is consistent with OCSLA which states: "the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs" (43 U.S.C. § 1332(3)). BOEM did receive a significant number of nominations of interest from potential bidders, a clear indication of industry interest. On balance BOEM has decided to move forward with the current schedule as we expect the high level of industry interest indicates a high level of competition for the PACW-1.

Spending timeline requirements for bidding credits

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A joint submission from industry commenters recommended BOEM modify the documentation timeline to allow flexibility in the timing of spending to “foster optimal use of the funds and further BOEM’s goals.” The commenters recommended that as an alternative to the requirement to spend at least 25% of funding by the time of first COP submission, the commenter requested BOEM consider requiring a demonstration of “continued progress” towards meeting the lessee’s monetary contributions at the time of first COP submission.

Further, the commenters suggested BOEM consider allowing a phased spending of funds, instead of requiring the remainder of payments towards the monetary contribution be made no later than submission of the FDR. The commenters expressed concern that payments made no later than submission of the FDR would favor investment in the most readily accessible programs rather than in the programs that best address the long-term needs of the area. Similarly, another industry commenter requested BOEM reconsider the payment milestones as the first FOSW projects on the West Coast move through the process.

Another industry commenter recommended BOEM allow flexibility in the earliest funding distribution commitment deadline, stating they favor the less prescriptive timeline stated in BOEM’s Carolina Long Bay PSN, because according to the commenter, “[d]eferring the Bidding Credit payment commitment until FDR enables the lessees to identify the programs and recipients best suited to meet the bidding credit purpose and goals.”

Another industry commenter recommended BOEM consider an alternate payment schedule for bidding credits, and that BOEM require California bidding credits be allocated and expended no earlier than 12 months following the final non-objection to the Lessee’s FDR and FIR – allowing lessees sufficient time to have made a final investment decision and closed on the financing of the project. Further, the commenter requested BOEM extend the “Enforcement Timeline” to fifteen years, stating that although many projects can be built by early 2030s, essential infrastructure and transmission updates will need to be completed in the first wave of projects.

BOEM Response:

In the PSN, BOEM proposed a portion of the Contribution for workforce training and/or supply chain to be due at the first COP. BOEM has changed this requirement and now requires the complete Contribution *no later than* the submission of the first FDR, to provide flexibility in phasing funds as appropriate for programs and recipients best suited to meet the bidding credit purpose and goals. BOEM made this change in response to comments from developers that the early Contribution may lead to inefficiencies due to timing, and that the Contributions may be too rushed. Deferring Contributions until there is greater certainty in the projects to be built is more likely to result in well-considered investments and the greatest potential to expedite or facilitate the orderly development of OSW on the Pacific Coast. Though some commenters suggested allowing even more time to complete the contribution, BOEM believes that the FDR stage is appropriate as companies will have greater certainty in their project specifics and will be

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able to make meaningful contributions to domestic floating workforce and supply chain. Delayed investments beyond the FDR may come too late to be efficient.

Other comments on deadlines and milestones

Several industry commenters suggested BOEM extend the required time period for SAP submittal from 12 to 18-24 months following lease issuance to accommodate the time required for procurement of vessels to undertake geophysical and geotechnical survey in support of the SAP application, and for acquisition of necessary permits. The commenters stated that the 12-month time frame would require developers to begin these activities prior to BOEM lease auction. According to the commenters, BOEM granted “Preliminary Term extensions” on the East Coast due to the unrealistic nature of the proposed timeframe.

BOEM Response:

BOEM has retained the SAP submittal timeline pursuant to its regulations.

An industry commenter recommended, to be consistent with extensions already offered to leases in the New York Bight, BOEM extend the time frame to produce the NATCP from 120 days to 180 days, with the potential for a 180-day extension.

An industry commenter recommended an extension for the ACP, stating West Coast offices of Federal agencies will have much less experience with OSW permitting process than those on the East Coast.

An advocacy group requested BOEM work closely with USCG to allow the agency time to establish the appropriate navigation safety measures and avoid instances seen on the Atlantic Coast where BOEM has proceeded more quickly in the leasing process than the USCG has.

A trade association questioned why the PSN was issued before BOEM finalized the EA for Morro Bay WEA and recommended a second public comment period be opened when the Final EA for the Morro Bay WEA is published.

BOEM Response:

The lease stipulation on progress reports (Addendum “C,” Section 3.1) provides options for extensions if necessary.

BOEM is working closely with the USCG on their PAC-PARS and will continue to do so during development of the lease areas to establish appropriate navigation safety measures.

The FSN incorporates the Final EA and results of consultations.

Section 10.2. Lease terms and conditions

Comment Summary:

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Several Tribal governments stated BOEM must consult and prepare lease conditions and stipulations that address impacts to the “human environment” as defined in 30 CFR 585.211(b). Specifically, they stated that the human environment under BOEM’s jurisdiction is of particular importance to Tribal nations and Tribal communities and that BOEM must consider its Federal trust responsibility to Tribes and “ensure that leases approved by BOEM are implemented without causing significant detrimental impacts to the local Tribal governments on the north Coast.”

An advocacy group requested that lease stipulations pertain to all phases of development and operations, including decommissioning.

An industry commenter requested BOEM provide a list of proposed new or revised lease stipulations and accompanying guidance around ways in which a Lessee will need to prove compliance and the associated timelines for compliance. Similarly, a Federal agency recommended that for future PSNs, BOEM provide a document that indicates which terms are applicable across all proposed leases and which are unique to each lease.

BOEM Response:

The General CBA bidding credit may be earned for a CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.

A lease does not, by itself, authorize any activity within the leased area. The rights granted to the Lessee herein are limited to those activities described in any SAP or COP approved by the Lessor. The rights granted to the Lessee are limited by the lease-specific terms, conditions, and stipulations required by the Lessor per Addendum “C.” When a COP is submitted BOEM will conduct review under NEPA to address all potential impacts including those to the human environment and impose conditions on any approval of such COP.

Recommendations for new or revised stipulations

Several commenters, including an individual, industry, advocacy groups, Tribal commenters, and trade associations, recommended new or revised lease stipulations, including:

- *An adaptive management lease stipulation that includes baseline and ongoing monitoring of impacts to people and natural resources, reporting requirements, and a mechanism to address major issues as they arise.*
- *Require full decommissioning plans for all OSW infrastructure.*
- *Require monitoring of seafloor cable behavior and impacts.*

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- *Stipulate a requirement for adequate baseline information prior to commencement of activities, including objective science prepared by entities with no fiscal or policy stake in any part of the PACW-1 and subjected to full peer review protocols.*
- *A stipulation establishing a maximum threshold for cumulative interference by OSW with ocean upwelling systems.*
- *Lease stipulations to strengthen environmental protections and minimize ocean user conflicts.*
- *Protection of seabirds, including compliance of all PACW-1 project elements with the Federal Migratory Bird Treaty Act (MBTA).*
- *Protection of marine mammals, including protecting all aspects of communication among marine mammals and other species from industrial noise impacts.*
- *An advocacy group and Federal elected official requested BOEM support development of collision technologies. The advocacy group referenced recent research related to such technologies. The commenter also recommended BOEM require strategies to minimize collision risk with lease stipulations, including monitoring and collaboration with subject matter experts on how turbine design affects species collisions and requiring developers to prepare a bird and bat adaptive management plan. The joint submission from members of Congress suggested BOEM “incentivize and encourage turbine operation curtailment if data show increased risk for wildlife passage during certain times of the day or year,” and stated data collected should be accessible to the public.*
- *Require lessees to contribute to research by independent third parties to better understand baseline conditions and develop mitigation measures, including monitoring plans to inform avoidance, minimization, mitigation and compensatory mitigation strategies.*
- *Require lessees to install Motus stations on meteorological or environmental data buoys in coordinate with U.S. Fish and Wildlife Service’s (USFWS) Offshore Motus network – as stipulated in New York Bight and Carolina Long Bay leases.*
- *Referencing several stipulations, including Topographic Features, Live Bottom, Protection of Biological Resources, Beluga Whale stipulations, and Northern Sea Otter Critical Habitat stipulations, an advocacy group urged BOEM to, “adopt the “mitigation hierarchy” within the FSN to clarify expectations that lessees first avoid, then minimize and mitigate, potential environmental impacts from all stages of OSW development, and note that the monitoring stipulations will be a critical part of informing the implementation of this hierarchy.”*
- *Require that Lessee’s COP, “includes an analysis of wind wake effects and identifies lease areas and site designs that generate the least amount of wake effect on upwelling or other oceanographic processes.”*
- *A worker and public safety and wildlife protection stipulation that requires the implementation of the Best Achievable Technologies, not only the “Best Available Technologies.”*

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- *Stipulation that caps cumulative impacts of subsea mining and OSW affecting the Humboldt WEA.*
- *Stipulation related to addressing known scientific data gaps including impacts on seabirds and marine mammals, mapping of cetacean migratory patterns, need for detailed high-resolution understanding of commercial fishing activity in the PACW-1 areas, an EJ analysis at the pre-lease and development states to address impacts on indigenous and Tribal fishing activities, and other data gaps.*
- *Regarding mapping, the PFMC recommended that BOEM include a lease stipulation that requires lessees to conduct fine-scale mapping as part of their SAP to ensure Lessee's COP designs any OSW facility configuration in a manner that excludes OSW activities in or adjacent to important and sensitive habitats.*
- *The PFMC recommended BOEM require lessees to, "analyze and avoid the coastal and onshore and port impacts of activities needed to support OSW development related to these areas."*
- *To minimize impacts to NMFS mission-critical scientific surveys supporting U.S. seafood and fisheries, protected species, and climate science from development in the proposed lease areas, a Federal agency requested BOEM require a lease stipulation for survey sampling corridors. The commenter provided figures demonstrating their proposed location and size of the sampling sites. The commenter expressed support for the proposed Research Site Access lease stipulation and modifications to address the in situ monitoring of NMFS' historic survey areas.*
- *A "requirement that WEA Lessees must develop a mitigation plan, to be reviewed and coordinated with the NOAA IOOS Surface Currents Program, for purposes of implementing measures that correct for this WTI, which would include sharing real-time telemetry of surface currents, waves, and other oceanographic data with the Surface Currents Program into the public domain, measured at locations in the Project confirmed by the Surface Currents Program and its HF radar operators as sufficient to allow NOAA IOOS mission objectives to be met." A stipulation that limits acquired rights of lessees "to carefully delineate strict limits on the types of activities granted access with each leasehold." An advocacy group recommended legal constraints to ensure that any access to subsea Federal public lands to be conveyed to the wind industry cannot be construed in a way as to evolve over time into an OSW entry point for traditional OCS offshore oil and gas drilling in the same locations.*
- *During all phases of development, require artificial lighting on OSW projects be reduced to minimize attraction and disorientation-related impacts to birds and bats, including; use of "on demand" transportation safety lighting systems; use of the fewest number of lights on structures possible; use of white lights in favor of red or other colors; use of flashing lights instead of steady burning lights; and avoidance of high intensity lights.*
- *A stipulation to protect fishing grounds utilized by California's sustainable artisanal commercial fisheries.*

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- *The PFMC recommended that, if important or sensitive habitats cannot be entirely excluded from lease areas or cable corridors, BOEM should apply and/or require lessees to establish sufficiently sized buffer zones around these habitats to minimize impacts from OSW activities.*
- *A regional Fishery Management Council recommended BOEM require lessees to, “analyze and avoid the coastal and onshore and port impacts of activities needed to support OSW development related to these areas.”*
- *To minimize impacts to NMFS mission-critical scientific surveys supporting U.S. seafood and fisheries, protected species, and climate science from development in the proposed lease areas, a Federal agency requested BOEM require a lease stipulation for survey sampling corridors. The commenter provided figures demonstrating their proposed location and size of the sampling sites. The commenter expressed support for the proposed Research Site Access lease stipulation and modifications to address the in situ monitoring of NMFS’ historic survey areas.*
- *A requirement in WEA that lessees must develop a mitigation plan, to be reviewed and coordinated with the NOAA IOOS Surface Currents Program, for implementing measures that correct for wind turbine interference (WTI), which would include “sharing real-time telemetry of surface currents, waves, and other oceanographic data with the Surface Currents Program into the public domain, measured at locations in the Project confirmed by the Surface Currents Program and its HF radar operators as sufficient to allow NOAA IOOS mission objectives to be met.”*

BOEM Response:

BOEM has considered these stipulation requests and, applying its judgment and, after considering the 8(p) factors, has decided not to move forward with all of the stipulations at this time. Some of the issues potentially addressed by the requested stipulations may be addressed at later stages of lease development. When a COP is submitted, BOEM will conduct review under NEPA to address all potential impacts including those to the human environment and can impose conditions in its COP approval to address these, and other, impacts.

- *A stipulation that no tracts in the “Mendocino Area of Interest” shall be included in PACW-1.*

BOEM Response:

The five Lease Areas that will be offered in PACW-1 as described in the FSN are all located within the Humboldt and Morro Bay WEAs. No areas outside of the previously identified WEAs will be offered in PACW-1.

- *A stipulation that requires that all workers are placed in the proper employment classification and that workers involved in construction be paid the prevailing wage for*

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the area and workers involved in operations and maintenance be paid at least the MIT living wage rate for that area.

- *Require that, “supply chain investment strategies include requirements for suppliers to utilize a supplier code of conduct that consists of commitments to freedom of association without employer involvement; health and safety committees; workplaces free from harassment and discrimination; equitable access to jobs and inclusion of disadvantaged workers; family sustaining wages; and, where applicable, training programs that are industry-recognized (by both employers and labor unions), have stackable credentials, are portable, and accredited.”*
- *In the supply chain stipulation, add the requirement to establish a domestic content preference to include a minimum amount of domestic content to be used in the project, established through detailed analysis of component availability.*
- *In the supply chain stipulation, add a requirement that developers submit a publicly available Supplier Engagement Plan with the BFF in advance of the auction.*
- *Stipulation to require lessees to enter into PLAs that, “cover both contractors and subcontractors for the duration of the construction project, including work at staging and layout areas that may be removed from the actual construction site.” Further, “BOEM should define ‘construction’ work in the stipulation to include ‘new construction work and maintenance, expansion, renovation or upgrading work contracted out to a contractor or subcontractor in the construction industry.’”*

BOEM Response:

BOEM has included stipulations that address these comments using its best judgment and consideration of the 8(p) factors. Please refer to Stipulations 8, 10 and 11 pertaining to PLAs, supply chain Statement of Goals and workforce training and/or supply chain development bidding credit.

- *Stipulation to respect California’s right to determine Federal consistency and compliance with regional land use planning policies.*

BOEM Response:

The California Coastal Commission has granted conditional concurrence on BOEM’s Coastal Zone Management Act (CZMA) consistency determination. The Lessee will have to submit CZMA consistency requirements when a COP is submitted.

- *Stipulation requiring net carbon reduction of lease activities, including potential bidders to be disqualified due to a net carbon emission increase that would result from consideration of all phases of their company activities, including total oil and gas emissions balanced against carbon emissions saved by production electricity from OSW.*

BOEM Response:

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BOEM will not include a lease stipulation requiring net carbon reduction of lease activities. It is not possible to determine, at the leasing stage, what carbon emissions may ultimately be attributable to project construction and operations. Further, the policy choice of disqualifying bidders due to a potential net carbon emission increase for later project activities would represent an unduly stringent pre-construction requirement. BOEM will continue to consider the question of carbon emissions as it evaluates a COP.

- *Several stipulations to strengthen protections of Tribal nations and Tribal fisheries were recommended, including:*
 - *A “new Regional Tribal Capacity Fund stipulation and bid credit with financial guarantee, to assist Tribal nations in overcoming capacity constraints grounded in historical dispossession and the disproportionate impact of extractive industries on Tribal lands, cultures, economies, and livelihoods;”*
 - *A “new Tribal Fisheries Benefit Fund stipulation and bid credit with financial guarantee and requirement to address the specific impacts to Tribal sustenance and cultural fishing;” and*
 - *A new Tribal Research and Monitoring stipulation to commit developers to hire members of Native American Tribal nations in California as archaeological, environmental, and biological monitors for pre-construction surveys and ongoing project monitoring and research. “The Environmental Research and Monitoring Fund would help grow local infrastructure to facilitate this stipulation.”*
 - *Support for NATCP to respect the history of Tribal nations in this region, including, “the requirement that Lessees take the lead on developing a NATCP that requires affirmative and on-going consultation and present it to Tribes for review and approval within 120 days of full execution of leases. Tribal capacity to engage in this plan would be funded via the Regional Tribal Capacity Fund credit.”*
 - *A “new Environmental Research and Monitoring Fund stipulation and bid credit would fund independent local and tribally-led research and monitoring, and would provide investment in developing career pathways to grow local expertise in research and monitoring, particularly for members of Tribal nations. Funding would support development of a program to be co-created and administered with local Tribal nations and local Native American Studies and Marine or Offshore Wind research programs at higher education institutions, with the goal of creating educational, training, and career pathway programs for Native American students in STEM.”*
 - *A “new coordinated Electricity and Broadband Planning. During the study and planning phases of transmission and/or distribution grid upgrades, partners will work with Tribal nations, local governments and local environmental and community-based organizations (or, if applicable, Community and Tribal Steering Committees) to identify opportunities and facilitate providing electricity and*

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climate resilience benefits to communities lacking access to clean, renewable and reliable electricity.”

- *A “new Safety of Native American Tribes and local communities stipulations requiring Lessees to develop a workforce safety plan in response to the connection between worker camps and Missing and Murdered Indigenous People (MMIP). These plans may also include zero tolerance policies, whistleblower protections, worker training on applicable policies, and other tools to promote workplace and community safety.”*

BOEM Response:

BOEM lacks the authority to direct lessees to invest in, or hire, specific parties. Tribes are potential beneficiaries of both CBAs. The Lease Area Use CBA may include payments into a special purpose fund. The new General CBA may include contributions to a community benefit fund whose purpose is to provide funds to mitigate impacts to communities from the Lessee’s project.

In addition to the NATCP requirement, the reporting and engagement requirements in stipulation 3 of Lease Addendum “C” include:

The Lessee will engage in ways that minimize linguistic, technological, cultural, capacity, or other obstacles to parties. To facilitate engagement under this section, the Lessee should work collaboratively with Federal, state, and local governments, community leadership and organizations, and Tribes. The Lessee is strongly encouraged to work with Tribes and parties to develop specific efforts to increase groups’ capacity to participate in the engagement activities described in this lease, for example, by creating working groups or formal agreements to monitor community impacts and implement community benefits.

BOEM did not include a requirement for lessees to undertake or engage in an Electricity and Broadband Planning study as described in the comments as such a requirement is not within BOEM’s authority.

Section 14 of the lease describes the safety requirements to which each Lessee must adhere. The requirements include that the Lessee must “maintain all places of employment for activities authorized under this lease in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating under this lease;” and “provide any requested documents and records, which are pertinent to occupational or public health, safety, or environmental protection, and allow prompt access, at the site of any operation or activity conducted under this lease, to any inspector authorized by the Lessor or other Federal agency with jurisdiction.” In addition to the Section 14 safety requirements, safety plans specific to the Native American Tribes may be addressed in coordination with Tribes in the development of each Lessee’s NATCP.

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Section 5 above describes additional stipulations related to Tribal nations and Tribal fisheries.

- *Require that the Commercial Fisheries lease stipulation also include commercial passenger fishing vessels (CPFVs), which are important to the recreational fishing industry, including language to ensure that potential conflicts are “minimized” and identify a process by which fisheries stakeholders can raise issue to BOEM or a neutral third party if conflicts cannot be resolved.*

BOEM Response:

BOEM has included 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. Specifically, a Fisheries Communication Plan is required to be submitted within 120 days of lease issuance.

- *Stipulate that no rights to any PACW-1 related activity in the waters of a National Marine Sanctuary are being granted.*

BOEM Response:

BOEM does not have any jurisdiction within areas designated as a National Marine Sanctuary (NMS) and as such cannot grant rights to act within a NMS.

Comments on Addendum “C”

A few commenters discussed Addendum “C” – “Lease-specific Terms, Conditions, and Stipulations.” An industry commenter stated that although it appreciates draft Lease Addendum “C,” the requirements are insufficient to “(1) ensure that Meta and other submarine cable operators are not adversely affected by wind energy activities, (2) protect submarine cable interests, or to (3) put potential lessees on notice of key stakeholder interests that may affect the value of the leasehold interest.”

A state agency encouraged BOEM broaden the language in the proposed ACP to include agencies that have an important role in planning for OSW that might not fit within “permitting and resource agencies,” as described in the PSN and proposed lease documents.

A Federal agency recommended several edits to Addendum “C,” Sections 5.1.1, 5.1.5, 5.3.1, 5.3.2, and 5.3.4, and also provided the following comments:

- *Section 5.1.3. – the commenter expressed support for BOEM’s inclusion of prioritizing Federal and state climate change adaptation strategies for fisheries in proposed mitigation measures in the COP.*
- *Section 5.3.4 – the commenter requested a one-month advance notice, instead of two weeks’ notice, of any geological and geophysical survey activities, and requests BOEM work with lessees, NMFS, and USCG to develop communication protocols and plans that are consistent for all lessees.*

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A trade association provided recommended edits to the language in Sections of the Lease Addendum “C,” including Section 3.1.1 – Engagement, Section 5.3 – Commercial Fisheries, and Section 8.3 – Lease Area Use CBAs.

BOEM Response:

The Lessee will make reasonable efforts to engage with Tribes and parties that may be potentially affected by the Lessee’s project activities on the OCS, including ocean users such as submarine cable operators mentioned by the commenter.

Lessee engagement must allow for early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions. Stipulation 3.1.1 requires engagement with parties including Federal, state, and local agencies. In addition, the Lessee must develop a publicly available ACP that describes the strategies that the Lessee intends to use for communicating with Federal, state, and local agencies (including harbor districts) with authority related to the Lease Area and should outline specific methods (including communication protocols and plans) for engaging with and disseminating information to these agencies to include agencies that have an important role in the planning for OSW.

Federal and state climate change adaptation strategies for fisheries will be addressed in proposed mitigation measures during review of a COP.

Consistent with previous leases, BOEM requires the Lessee to notify applicable ocean users (including Tribal Fisheries Departments) two weeks in advance of any geological and geophysical (G&G) survey activities. BOEM will work with lessees, NMFS, and USCG to develop communication protocols and plans that are consistent for all lessees.

Other comments on lease terms and conditions

A Tribal government provided redline edits on one of the proposed lease documents. An advocacy group provided a table of proposed lease revisions and a bidding credit “Stipulation Calculation Chart” for BOEM’s consideration.

BOEM Response:

BOEM carefully considered all comments on the proposed lease documents and incorporated the recommended revisions as it deemed appropriate. The specific revisions are addressed in the relevant sections of this document.

An industry commenter discussed transmission cables between OSW projects. The commenter recommended that, in the first round of OSW leasing, BOEM encourage bidders to address interconnection through shared transmission interconnecting multiple projects to bring aggregated power to shore, and encourage California, Oregon, and Washington to research and competitively procure shared transmission infrastructure or “ocean grid” that can efficiently

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integrate OSW while also reducing costs and impacts on the environment, cultural resources, and coastal communities.

BOEM Response:

BOEM recognizes the importance of strategic transmission planning. Coordinated transmission solutions are currently being evaluated and BOEM welcomes feedback from states, industry, and ocean users as we explore future options. Under BOEM's regulations, leases include the right to an easement to connect their proposed projects to the grid. To date, COPs for projects in the East Coast have proposed direct radial connection to the land-based grid. However, coordinated transmission promises numerous significant benefits, and BOEM is considering its authority to incentivize or require more coordinated approaches to project transmission, including at the COP stage.

With regard to the "Supply chain Statement of Goals," a union recommended that the "Statement of Goals" include the requirement that the lessee provide information on its planned and realized goals with respect to the domestic content of what it purchases including percentage of expenditure values by major component that has been spent domestically; type of process supported; and number of domestic work hours supported. The commenter also recommended a requirement that the lessee indicate whether it will adopt and adhere to a supplier code of conduct that includes a requirement that employee of its supplier will have the right to free and fair union representation elections.

BOEM Response:

BOEM believes the Statement of Goals is adequate as is. The Lessee must submit to the Lessor a Statement of Goals in which the Lessee describes any plans, including engagement with domestic suppliers, by the Lessee for contributing to the creation of a robust and resilient U.S.-based floating OSW supply chain. The Statement of Goals must include the Lessee's plans for investments in supply chain improvements, if any, to support the OSW industry, including ensuring equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses and wholly owned Tribal businesses. BOEM has the ability to review the Statement of Goals.

An industry commenter recommended BOEM clarify what is meant by "Federal and State climate change strategies" and how these relate to activities undertaken by lessees with regards to fishery adaptation strategies.

BOEM Response:

Proposed mitigation measures in the COP will, to the extent practicable, prioritize Federal, Tribal, and state climate change adaptation strategies for fisheries.

Regarding the Lease terms and conditions for commercial fisheries, a commenter recommended BOEM place the recreational fishing community on equal footing with the commercial fishing

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industry in lease stipulations and other points in the process where fishery impacts are of concern. Further, the commenter recommended:

- *Including in any FCP a requirement that a Lessee contact potentially affected commercial fishing communities prior to submitting its COP;*
- *Including a requirement to work collaboratively with local fishing industry representatives to identify optimum transmission and interarray cable routes;*
- *That the FCP require lessees to engage with representatives from affected fishing industry sectors to schedule site assessment and/or site characterization activities during times when fisheries utilizing proposed lease areas are not being prosecuted to minimize potential impacts; and*
- *BOEM consider the PFMC's "Fishery Ecosystem Plan" which "includes a future scenario planning exercise developed as part of the Council's Climate and Communities Initiative."*

BOEM Response:

Recreational fishing industries are included in parties for engagement and coordination with Fisheries Liaison (Engagement 3.1.1 and 6.3). The FCP is due within 120 days of lease Effective Date to encourage early engagement. The FCP must describe the strategies that the Lessee intends to use for communicating with commercial fishing communities prior to and during activities in support of the submission of a plan.

A Federal agency requested BOEM apply the Marine Planning Guidelines detailed in the Navigation and Vessel Inspection Circular (NVIC) 01-19 when finalizing specific lease areas, or when approving the siting of structures once an area has been leased.

An advocacy group urged BOEM to include lease stipulations for a FSN to ensure that future OSW projects off California meet standards for responsible development.

BOEM Response:

BOEM included a lease stipulation on surface structure layout and orientation that requires lessees with shared lease boundaries to endeavor to design a structure layout that contains two common lines of orientation across the adjacent leases, as described in USCG's Marine Planning Guidelines detailed in Navigation and Vessel Inspection Circular (NVIC) 01-19, Guidance on the Coast Guard's Roles and Responsibilities for Offshore Renewable Energy Installations (OREI).

A lease does not, by itself, authorize any activity within the leased area. The rights granted to the Lessee herein are limited to those activities described in any SAP or COP approved by the Lessor. When a COP is submitted, BOEM will conduct review of navigational safety and project design and may include terms and conditions as part of COP approval, if necessary.

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Related to bid credit commitments and penalty for non-compliance, an industry commenter stated, “the auction terms should be amended to require that bidders forfeit not only the entire amount of any non-compliant commitments but a significant penalty, up to and including forfeiture of the lease and the re-auction of the parcel by BOEM.” Additionally, a union commenter stated that in the event of ongoing violations of lease terms, “BOEM should invoke the noncompliance procedures in 30 CFR Subpart D.” The commenter noted that, in the absence of substantial penalties, requiring payment of revoked bidding credits in lieu of performance is not likely to deter decisions to reduce or abandon supply chain, training or other commitments.

An individual commenter recommended Lease Agreements include details for the types of engagement to be considered as “reasonable” and suggested requiring a Lessee to coordinate engagement activities with other regional Lessees, including bidders who have not yet entered into CBAs at the time of the auction.

An advocacy group provided proposed revisions to this section in Tables 1-2, featuring a high-level summary of proposed revisions to existing terms in the PSN. See Tables 1-2 in original submission letter.

BOEM Response:

Under the multiple-factor auction format, a combination of a monetary (cash) bid and non-monetary factor (bidding credit) in determining the outcome of the auction. BOEM reserves the right to determine that the bidding credit commitment has not been satisfied. If BOEM determines that a Lessee or assignee has failed to enter into a CBA that satisfies the commitment by the Lessee’s first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the date of lease execution. The interest rate will be the underpayment interest rate identified by ONRR.

Additionally, Lessor may exercise any of the remedies provided under Section 8 of the lease including issuance of cessation of operations orders, suspension or cancellation of the lease, and/or the imposition of penalties, in accordance with OCSLA and applicable regulations.

Within the progress report lease stipulations, lessees will be required to identify Tribes and parties that may be affected by lessees’ activities on the OCS and with whom the lessees engaged, provide updates on engagement activities, document potential adverse effects to the interests of Tribes and parties, document how, if at all, a project has been informed or altered to address those potential effects, document feedback from engagement regarding transmission planning prior to proposing any export cable route, provide information that can be made available to the public, and include strategies to reach potentially affected individuals with Limited English Proficiency.

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To the maximum extent practicable, the Lessee must coordinate engagement activities with other regional lessees and document its activities in its progress reports

Section 10.3. Auction process

Comment Summary:

Comments on single or multiple lease auctions

Several industry commenters and an advocacy group expressed support for BOEM's alternative whereby bidders would be permitted to bid for at most one Lease Area in total at a time, and ultimately win at most one Lease Area in total. One commenter stated that holding a single auction in which bidders can bid for and win only one Lease Area is consistent with the format of recent BOEM auctions of similar magnitude. Other commenters generally supported a single lease auction, stating it will encourage diversity and the number of potential winning bidders, as well as increase competition. One commenter noted the importance of diversity in the marketplace, including the need to keep prices low for ratepayers and the potential risk that leaseholders might fail to develop in the given lease area given that the California Lease Areas will require use of FOSW technology which few developers have experience in on a commercial scale.

Other industry commenters stated a single auction, rather than two simultaneous auctions, would help lower the levelized cost of electricity to the benefit of ratepayers in California and generate further positive impacts for the local workforce.

A few industry commenters stated they consider the Humboldt and Morro Bay WEAs within a single market, not two independent markets, and close enough in distance to enable competition in the supply chain, workforce and procurement process. Specifically, one industry commenter stated despite the Morro Bay and Humboldt WEAs being geographically separated, both WEAs are ultimately intended to delivery OSW energy into the California market within the California Independent System Operator (CAISO). Other industry commenters in support of a single Lease Area stated allowing bidders to bid on and win two Lease Areas by conducting simultaneous actions for two regions would greatly reduce the number of auction winners and would concentrate the market to just a few dominant bidders. Similarly, another commenter warned two simultaneous auctions allows for a single bidder to win multiple lease areas in the same market. Several industry commenters added that one auction for all proposed lease areas would be logistically simpler than two simultaneous auctions. The commenters noted that bidding software used for the auction would need to be able to identify which bidders are eligible to bid in each region and make restrictions accordingly.

Conversely, a joint submission from industry and a state agency stated BOEM should hold two simultaneous auctions in which bidders can win at least one lease in each WEA. The state agency stated that simultaneous auctions for the Morro Bay WEA and Humboldt WEA recognizes that the distinct differences between these two areas must be taken into consideration.

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Specifically, the commenter noted that in the North Coast, where transmission capability is limited, the Redwood Coast Energy Authority (RCEA) has included OSW in their Integrated Resource Plan (IRP) as a potential resource to achieve community energy goals, and the Central Coast, where transmission capability is more robust, the California Public Utilities Commission has identified in their IRP the development of OSW from the Morro Bay WEA.

The industry commenter stated allowing bidders to win one lease in each WEA is beneficial to BOEM and ratepayers but that allowing multiple leases could allow developers to leverage economies of scale, which would reduce the costs borne by ratepayers. Further, the commenter noted that with FOSW technology still maturing, generating economies of scale by allowing a bidder to win at least one lease in both WEAs helps developers advance these technologies at lower costs to the ratepayer. Lastly, the commenter stated BOEM should not over-prioritize an increase in number of lease holders by sacrificing cost-saving opportunities.

A joint comment submitted by industry stated that, if BOEM only allows one lease per bidder, they urge BOEM to set up the lease auction with all five leases available, allowing developers to compete for leases in both areas.

BOEM Response:

BOEM received overwhelming comments from industry to not make distinctions between the North Coast and Central Coast Regions within the auction process. Further, there were several comments on adopting a single lease auction format that maximizes the number of potential lessees in the market, rather than limiting them, as a critical first step towards maintaining a competitive lease allocation process that sufficiently encourages participation from all interested parties. BOEM agrees that offering all available Lease Areas in a single auction will ultimately lead to a more efficient outcome and that auction prices will reflect regional differences. Accordingly, the auction format has been revised in the FSN to a single auction that will result in five different winners.

Multiple-factor auction

Some industry commenters, a state agency, and advocacy groups expressed support for a multiple-factor auction format with a multiple-factor bidding system. State agencies expressed general support for a multiple-factor bidding auction format that will encourage lessees to make investments necessary for establishing a FOSW industry. An industry commenter stated a multiple-factor bidding system would boost competition and stimulate the development of domestic, regional and local supply chains that create high-road jobs and communities benefits. Another industry commenter stated that a multiple-factor auction format will help address the need to achieve commercial-scale OSW in California and discussed the challenges of obtaining local support and alignment of project incentives with local needs. An advocacy group stated a multiple-factor bidding format provides further areas of discretion to the Secretary of Interior to incorporate additional bidding credits that support benefits to Tribal nations and other

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underrepresented communities. Additional benefits of multiple-factor bidding offered by advocacy groups include providing BOEM the authority to weigh on factors like technical merit, timeliness, financing and economics, environmental considerations, public benefits, compatibility with state and local needs, cash bonus, rental rate, and operating fee rates. A Federal agency stated BOEM's proposed multi-factor auction will assist in addressing the important social and economic issues, such as workforce training and establishing CBAs, to coastal and fishing communities.

A trade association requested BOEM clarify expectations around multi-factor bidding as early as possible, specifically explaining references to unilateral authority to extend the documentation deadline for an unspecific length of time.

BOEM Response:

For the California auction, BOEM has elected to utilize a multiple-factor auction format, with a multiple-factor bidding system under 30 CFR 585.220(a)(4) and 585.221(a)(6). Multiple-factor auction formats allow BOEM to balance fair return on leased acreage while incentivizing initiatives that will aid in the expeditious and orderly development of the Outer Continental Shelf or other priorities under BOEM's statutory requirements. Under this format, BOEM would consider a combination of a monetary (cash) bid and non-monetary factor (bidding credit) in determining the outcome of the auction. BOEM has selected a multiple-factor auction format to incentivize workforce training and domestic supply chain development, as well as the use of CBAs.

As described in 30 CFR 585.216, BOEM reserves the right to describe auction details in the FSN, including bidding procedures.

Comments on the auction process

In addition to provide bidding credits, an industry commenter recommended BOEM consider capping bonus bids in offshore lease auctions. According to the commenter, bonus bid caps will: (1) increase competition in the auction processes because the auction will be dictated by which bidder is most able to meet the goals of OCSLA and the administration; (2) help avoid runaway prices; (3) allows stakeholders to shift resources to other priorities consistent with the public interest; and (4) save money in the form of reduced electricity costs of ratepayers.

With regard to joint bidding, an industry commenter suggested BOEM address the permissibility of joint bidding in the OSW leasing program offering that signed Joint Bidding Agreements are more transparent and promote an open form of cooperation between participants. Further, the commenter recommended BOEM "permit entities with an existing commercial agreement to bid jointly from an already qualified entities with an agreement in place." In a joint comment from industry commenters, it was recommended BOEM establish procedures to allow for joint bidding by multiple qualified entities. The joint commenters suggested BOEM:

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- *“allow qualified entities to submit joint bids in auctions and require that qualified bidders intending to bid jointly (either as a joint bid or where one qualified entity’s bid represents a joint bid) notify BOEM of such intention in advance of the Final Sale Notice for an auction;*
- *create a process whereby two (or more) qualified entities may offer a single bid jointly in each of the entities’ names separate and apart from forming an SPV entity;*
- *develop clear and transparent processes for requiring qualified bidders to designate their intent to bid jointly prior to a FSN and have the same reflected in a FSN; and*
- *acknowledge that when a bid offered by a qualified bidder on behalf of more than one qualified entity is successful, the lease may be issued to all qualified entities as co-lessees.”*

Regarding “affiliated entities,” an industry commenter agreed that affiliated entities should be prohibited from bidding against each other in the PACW-1 auction and the requirement to disclose any agreements between affiliated bidders regarding the disposition of leases that may be acquired in the auction. Further, the commenter suggested BOEM include an “operative provision to deter any party who attempts to circumvent the rules such that post-auction, BOEM should be entitled to enforce appropriate action in respect of the circumventing bidders, whether retrospectively and/or prospectively, depending on the circumstances.” Another industry commenter requested BOEM provide guidance on the participation of “affiliated entities” that entered into an agreement and should aim to make it easier for parties with shared interests to participate in BOEM auctions without needing to change the corporate structure of qualified entities prior to the auctions. See Section 11.4 – Comments on the BFF - for more comments related to the definition of “affiliated entities.”

Discussing the importance of a monitoring and adaptive management, state agencies stated the need for a comprehensive program that assesses monitoring data provided by lessees, government institutions and independent researchers to evaluate impacts at a regional scale, and make recommendations that can be implemented at the project level. The commenter suggested, to incentivize lessees to participate in a comprehensive program, BOEM consider a 5% bid credit in the lease auction.

Regarding the Auction Panel called out in the BFF Addendum, trade associations recommended that the Auction Panel include someone nominated by the fishing industry/community who has knowledge about fisheries operating within the lease areas. One commenter recommended someone from either NMFS or the PFMC who has knowledge of both the harvesting and processing of area could also be nominated. Further, one commenter recommended the Auction Panel’s review of each bidder’s strategy be released for public review prior to being adopted.

A trade association suggested the bidding credits should be the responsibility of the Auction Panel. The commenter stated the credits should be on a sliding scale and the Auction Panel

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should rank the submitted conceptual strategies for CBAs if multiple developers plan to use bidding credits.

An industry commenter encouraged BOEM to, “investigate mechanisms available to disincentivize “inflationary” bidders from placing Live Bids with the primary purpose of increasing the price of the Lease Area.” The commenter described how, under current rules, a bidder can place a Live Bid for the purpose of increasing the price of a Lease Area with very low risk of winning it. The commenter recommended BOEM seek expertise to ensure that any fix for this expressed issue does not introduce new inefficiencies or complexity to the auction.

An industry commenter expressed appreciation for BOEM’s acknowledgement of the complexity of the auctions and the willingness to hold mock auctions.

An individual commenter recommended BOEM evaluate bidders on the adequacy of each proposed bid credit, “without full credit guaranteed.” According to the commenter in the Carolina Long Bay auction, all participant bidders qualified for all bidding credits, indicating that the credits could be too easy to achieve.

BOEM Response:

For the California auction, BOEM has elected to utilize a multiple-factor auction format, to balance fair return on leased acreage while incentivizing initiatives that will aid in the expeditious and orderly development of the Outer Continental Shelf, incentivize workforce training and domestic supply chain development, and use CBAs to reduce impacts from project development to impacted communities.

BOEM considered setting an upper dollar value for bidding credits but ultimately decided to let the market determine lease value as done in previous OSW auctions.

BOEM appreciates the detailed comments provided on joint bidding but has determined not to move forward with developing the necessary procedures and criteria at this time. BOEM finds the existing qualification process provides for robust competition and demonstration of bidding partner commitment with the formation of a Special Purpose Vehicle entity. In addition, new qualification procedures, auction formats, and auction software need thoughtful development and would not be in place prior to the PACW-1 auction.

BOEM agrees that “affiliated entities” should not be able to bid against each other and that all agreements should be disclosed. In the case of two or more affiliated entities qualifying for the auction, only one will be permitted to participate.

BOEM appreciates the thoughtful comments about providing a bidding credit of 5% for monitoring and adaptive management although BOEM will not be moving forward with such a bidding credit. BOEM finds that adaptive management is a practice currently endorsed by BOEM and considered during a COP review. In addition, BOEM does not think a bidding credit will be necessary to incentivize a lease to participate in comprehensive programs. BOEM will

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continue to support comprehensive efforts to assess monitoring data and research to evaluate impacts from OSW development.

As OCSLA states: “the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs” (43 U.S.C. § 1332(3)). The bidding credits proposed in the PACW-1 are designed to be assessable and executable by all qualified bidders. From a competitive standpoint, any bidding credit that would only apply to specific bidders could impact the auction’s competitiveness.

Section 11. Other comments

Section 11.1. Comments on the California Energy Commission (CEC)

Comment Summary:

A state agency described the role the CEC plays in creating an energy system through policies and programs that create a low-carbon economy. Regarding California’s urgency to take action and address the climate crisis, the commenter explained that Governor Newsom has asked the CEC to establish a planning goal of at least 20 gigawatts by 2045 as it implements Assembly Bill (AB) 525 requiring an OSW strategic plan by June 2023.

BOEM Response:

Comment noted.

Section 11.2. Comments for the FSN

An industry commenter strongly recommended BOEM not reduce the size of the areas in the FSN. A state agency requested BOEM, “maximize the percentage of bidding credits in the FSN to a level that reflects the magnitude of investment required to establish this new industry that will minimize impacts, maximizes benefits, and results in new renewable energy generation that is affordable to California ratepayers and ensures a fair return to the United States.”

BOEM Response:

Lease areas in PSN has been retained in the FSN. BOEM must comply with the statutory requirement to obtain a fair return on leased acreage. For the California auction, BOEM has elected to utilize a multiple-factor auction format, with a multiple-factor bidding system under 30 CFR 585.220(a)(4) and 585.221(a)(6). Multiple-factor auction formats allow BOEM to balance fair return on leased acreage while incentivizing initiatives that will aid in the expeditious and orderly development of the Outer Continental Shelf or other priorities under BOEM’s statutory requirements.

A few commenters requested stipulations to include in the FSN, including:

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- *An advocacy group requested the FSN specific that if monitoring efforts reveal a need to minimize bird or bat fatalities, developers must deploy commercially available and technologically feasible minimization and avoidance technology and/or strategies.*

BOEM Response:

Comment noted and is more appropriate for consideration during the review of a COP.

- *Another advocacy group urged BOEM to include a stipulation to ensure future OSW projects off California meet standards for responsible development, including providing proactive mechanism to avoid or reduce impacts to the environment and complement additional requirements established through the project permitting process.*

BOEM Response:

Comment noted and is more appropriate for consideration during the review of a COP.

- *A Tribal government requested the FSN mandate the creation of an oil spill response plan in collaboration with the Yurok Tribe National Resource Division and Culture Department.*

BOEM Response:

Addendum “C,” Section 5.3 of the lease requires a Site-Specific Spill Prevention and Response Plan.

- *An individual commenter suggested the FSN should advance subcontracting opportunities for small and diverse suppliers by including an additional bid credit for bidders who commit to a minimum percentage of subcontracting dollars spent with diverse vendors or a lease stipulation requiring diverse subcontractor participation.*

BOEM Response:

The Lessee must submit to the Lessor a Statement of Goals in which the Lessee describes any plans, including engagement with domestic suppliers, by the Lessee for contributing to the creation of a robust and resilient U.S.-based floating OSW supply chain. The Statement of Goals must include the Lessee’s plans for investments in supply chain improvements, if any, to support the OSW industry including ensuring equal access to contracting opportunities, including to disadvantaged businesses and wholly owned Tribal businesses

- *An advocacy group recommended FSN should require lessees to contribute to robust scientific research and monitoring plans of wildlife and ecosystems with projects, and inform avoidance, minimization, and compensatory mitigation strategies. The commenter recommends that a stipulation for data sharing should also be included in the FSN.*

BOEM Response:

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Comment noted and is more appropriate for consideration during the review of monitoring plans submitted with a COP.

- *A Federal agency requested BOEM include in the FSN a lease stipulation for in situ monitoring by NMFS by modifying proposed sections 5.1.5 – Research Site Access stipulation.*

BOEM Response:

The Research Site Access stipulation allows a representative designated by the Lessor to access the Lease Area for research purposes.

An advocacy group reminded BOEM that conditions adopted by the California Coastal Commission in its conditional concurrence for the Humboldt WEA and Morro Bay WEA must be included in the FSN. The commenter referenced their public comment in response to the consistency determinations for the lease areas.

BOEM Response:

Conditions adopted by the California Coastal Commission in its conditional concurrence for the Humboldt WEA and Morro Bay WEA have been included in the leases where appropriate and BOEM intends to meet all the conditions of the conditional concurrence.

An industry commenter requested clarifications from BOEM, including clarification of what is meant by CBA “conceptual strategy,” suggesting it could be interpreted as a general roadmap for developing a CBA or as a framework for a specific CBA. The commenter also requested clarification regarding BOEM’s view of the relationship between CBAs and the “elements of the permitting process that may result in mitigation requirements based on quantified project impacts...”

BOEM Response:

The purpose, requirements, and restrictions of the two CBAs are described in the BFF Addendum. Lease stipulations in Addendum “C” state that any benefits provided to the impacted community under both CBAs should not duplicate benefits or mitigation measures imposed on the Lessee through, or pursuant to, statutes other than OCSLA.

An industry commenter stated there is precedent for flexibility in allowing BOEM to condition COP approval on the incorporation of planned transmission methods. The commenter pointed to language in the Atlantic Wind Lease Sale 9 for Commercial Leasing for Wind Power on the OCS in the Carolina Long Bay Area FSN as well as the New Jersey Ocean Wind 2 and Atlantic Shores Offshore Wind projects and assessments of OSW development in Great Britain as examples. The commenter warned that without similar allowance, and because California is still in the early stages of planning and permitting process for transmission needs of OSW, California

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may find its ability to pursue the potential cost savings and reduced environmental impacts of planned offshore transmission constrained.

BOEM Response:

Incorporation of planned transmission methods is not solely within BOEM's authority and would require coordination with state and local agencies and authorities along with the California Independent System Operator. BOEM will review a Lessee's proposed transmission interconnection during its COP review.

Regarding the PSN's statement that any lessee that fails to fulfill the commitments it made to obtain the bidding credits should be obliged to repay the credit plus the ONRR oil and gas rate, a trade association suggested that the FSN establish a non-compliance penalty for bidders who cannot comply, including the possible revocation of the lease and re-auction of the parcel.

Two industry commenters stated that BOEM should permit entities with an existing commercial agreement to bid jointly without the need for a Special Purpose Vehicle (SPV) or other form of formal corporate organization structure in place at the time of auction.

An industry commenter requested the FSN include provisions that entities wishing to access the lease areas for research or other activities provide the lessees with adequate notice to ensure safety and mitigate any conflicts with Operations and Maintenance (O&M) activities.

BOEM Response:

If BOEM determines that a Lessee or assignee has failed to satisfy the commitment described in the conceptual strategy at the time of the first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to the Office of Natural Resources Revenue (ONRR) with interest from the date of lease execution. The interest rate will be the underpayment interest rate identified by ONRR. BOEM may, at its sole discretion, extend the documentation deadline beyond first FDR submission or the 10-year timeframe stated in this paragraph.

BOEM has historically required affiliated entities to identify a single entity to participate in BOEM auctions, which typically entities have done so through the formation of an SPV. BOEM is currently evaluating this process and will not be implementing any changes to it in PACW-1. BOEM finds that entities are free to enter the lease area and that possible restrictions will only apply after the installment of project facilities, however coordination and communication is recommended. In addition, BOEM has included 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.

Section 11.3 Comments on the Bidder Financial Form (BFF)

BOEM PACW-1 Response to Comments

Industry comments, a Tribal government and a state agency discussed the definition of “affiliated entities.”

Several commentors recommended changing the definition of 'affiliated entities' to ensure two affiliates would not participate in same auction to avoid influence bidding strategies and any potential conflicts of interest between consortiums. Several commentors proposed BOEM revise the definition of affiliated entities to require bidders to disclose any agreements and publicly announced partnerships that have not yet been transacted.

The commenters recommended the following:

- *An industry commenter expressed support for the proposed definition and recommended BOEM include the update in the FSN. State agencies supported BOEM’s proposal to ensure that affiliated entities cannot bid against one another in the auction.*
- *Another industry commenter expressed support for BOEM’s revised definition of affiliated entities, and encouraged BOEM to adopt a definition that promotes the objectives of a “one-per-customer” sale. Specifically, the commenter supports BOEM’s requirement that bidders disclose any agreements with affiliated bidders regarding the disposition of leases that may be acquired in the auction. The commenter encouraged BOEM to require bidders to also disclose publicly, partnerships that have not yet been transacted.*
- *A few industry commenters recommended the definition be modified to include bidders that have entered into prior arrangements, such as a signed commercial agreement pursuant to the auction, such as a Joint Bidding Agreement. According to the commenters, this would prohibit affiliated eligible bidders from competing against each other in the North Coast or Central Coast auctions. One commenter stated that BOEM has not explicitly addressed the permissibility of joint bidding in the OSW leasing program.*
- *An industry commenter expressed concern that the definition of “affiliate” as proposed by BOEM is too broad and could result in parties being considered “affiliates” for purposes of the California lease auction even when there is no control one another that could affect the parties’ behavior in the auction. The commenter recommended aligning the definition of “affiliate” with 30 CFR 1206.20 as follows:*

“BOEM considers two entities to be affiliated if (a) one entity [Deletion: (or its parent or subsidiary) has or retains a right, title, or interest in the other entity (or its parent or subsidiary), including the ability to control or direct actions with respect to such entity, either directly or indirectly, individually or through any other party] [Bold: controls, is controlled by, or is under common control with another entity;... ”]

BOEM Response:

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Based on feedback received in response to the PACW-1 PSN and building off the definition of affiliated entities in the ATW-9 Carolina Long Bay lease sale, BOEM is considering broadening the definition of “affiliate” to include relationships between companies other than ownership and control. This expanded definition could include companies involved in agreements to jointly develop an area. BOEM is still investigating the use of an expanded definition of affiliation and will not be incorporating it in PACW-1. However, BOEM has not ruled out such broader definitions and may include them in future sales.

For the current lease sale, we have decided to retain the approach used in past lease sales with minor updates while further considering the effect of a broader definition on competition, the one-per-customer rule, state energy procurement processes, and other interests. BOEM’s past experience suggests that the proposed definition of “affiliates,” combined with the level of competition anticipated in the areas offered, will sufficiently prevent bidders from improperly circumventing the one-per-customer rule.

- *An OSW industry commenter recommended that BOEM should not apply an undefined term of “associates” to the enforcement of supply chain investment or workforce development in a way that would create arbitrary bottlenecks.*

BOEM Response:

The term “associate(s)” is not used in the lease.

A Tribal government stated that, to allow for flexibility with regard to CBAs and workforce development and training bidding credits, the definition of “affiliated entities” should not preclude the Yurok Tribe or its wholly owned Tribal corporations from being part of the multiple bids.

BOEM Response:

BOEM agrees that, with regard to CBAs and workforce development and training bidding credits, the definition of “affiliated entities” does not preclude the Yurok Tribe, or its wholly owned Tribal corporations from executing CBAs with multiple bidders.

With regard to pre-auction agreements, an industry commenter noted that the PSN required bidders to commit to enter into a CBA whereas the BFF Addendum requires bidders to enter a CBA to qualify. The commenter recommended BOEM clarify that bidders do not need to enter an agreement prior to the auction to qualify. The commenter added that, if BOEM does require bidders to enter agreements to qualify, it would create other impacts such as “provide an undue advantage to any bidders who have already executed such agreements, limit competition, and result in rushed, pre-mature, or generalized agreements for those who have not previously entered such agreements.”

BOEM Response:

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To qualify for the Lease Area Use Community Benefit Agreement (CBA) Bidding Credit or the General CBA Bidding Credit, bidders must execute a CBA no later than at the time the first FDR is submitted,

An industry commenter suggested that the requirement for sworn statements by counterparties to a contribution attesting to certain information in the “Workforce Training and/or Supply Chain Development” section of the BFF Addendum could also be used to ensure that counterparties to an agreement that facilitated additive value to the broader OSW industry verify what those additive benefits are, and how they were facilitated by the agreement. Further, the commenter stated bidders should provide verification documents that a contract was signed with the relevant supplier and the supplier should provide a letter affirming that the contract with the bidder spurred additional investments in supplier capabilities that would not otherwise have taken place absent the bidder’s contract. The commenter concluded that, “If a bidder fails to provide sufficient verification for the commitments made, BOEM should require repayment of the value of the portion of the bidding credit in question.” As an alternative, the commenter stated that BOEM could require bidders to hire an independent third-party auditor to validate the claim that an agreement facilitated additive value to the broader OSW industry, as was done by the New York State Energy Research and Development Authority in the New York 1 and New York 2 OSW bid rounds.

Further, the same industry commenter stated BOEM should not require that the bidder demonstrate that new or expanded capacity will be used to fulfill contracts with other developers. Instead, the commenter suggested the manufacturer verify through the bidder that the additional investments made are: (1) a result of the contract entered with the bidder and (2) create additional capabilities that can service the broader domestic industry. According to the commenter, “the value of the additive investment should be what is counted toward the credit for contracts that facilitates the building or upgrading of equipment or facilities.”

BOEM Response:

The lease stipulations make clear that the workforce training and supply chain contributions must benefit the entire floating offshore industry. The Contribution must support workforce training programs for the U.S. floating OSW industry, development of a U.S. domestic supply chain for the floating OSW industry, or both.

BOEM has revised the lease stipulation on documentation required to demonstrate the Lessee met its commitment and complied with the Workforce and Supply Chain bidding credit no later than the date on which the first FDR is submitted. The documentation must enable BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution. At a minimum, this documentation must include:

- All written agreements between the Lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contributions and how they will be used by the

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beneficiaries of the Contribution in order to satisfy the goals of the bidding credit for which the Contribution was made;

- All receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and
- Sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution, attesting that all information provided is true and accurate in the above documentation.

The documentation must also describe how the funded initiative or program has advanced, or is expected to advance, U.S. floating OSW workforce training and/or supply chain development. The documentation must provide qualitative and/or quantitative information that includes the estimated number of trainees or jobs supported and/or the estimated leveraged supply chain investment resulting or expected to result from the Contribution.

The documentation provided by the Lessee must contain and elaborate on the information specified in the conceptual strategy submitted with the BFF and must allow BOEM to objectively verify (i) the amount of the Contribution and the beneficiary(ies) of the Contribution; and (ii) compliance with the bidding credit criteria provided in Addendum “C” of the Lease.

If the Lessee’s implementation strategy has changed from that in the conceptual strategy due to market needs or other factors, the Lessee must explain the changed approach. BOEM reserves the right to determine whether the conditions of the bidding credit have been satisfied.

An advocacy group urged BOEM to make the required conceptual strategy describing verifiable actions that the lessee would take, submitted with a bidder’s BFF, publicly available within 48 hours of the verification of auction results. A joint submission from industry commenters recommended BOEM provide the following suggestions related to the conceptual strategy document:

- *Permit conceptual strategies that allow modification or updates if equivalent benefits can be achieved through approaches identified later as a lessee’s commercial project matures.*
- *Better define the desired contents without being too prescriptive, but allowing flexibility in the conceptual strategies and framework for fulfilling the lessee’s monetary contributions.*
- *Permit consolidation of conceptual strategies; allow bidders to submit conceptual strategy documents that cover both the Morro Bay and Humboldt regions as well as the two types of credits under consideration.*

Further, the joint submission from industry commenters recommended BOEM take the following approach with a lessee’s conceptual strategy:

1. *The conceptual strategy should be attached as an exhibit to the lease agreement;*

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2. *Lease stipulations should require performance of the plan set forth in the conceptual strategy but allow that plan to change pursuant to provisions in the conceptual strategy (and without amendments to the lease itself); and*
3. *Publicly disclose the conceptual strategy (except confidential business information) when publicly releasing the executed lease agreement.”*

BOEM Response:

BOEM has revised lease stipulations related to the conceptual strategy. The conceptual strategy is to be submitted with the BFF and the Lessee must provide documentation showing that it has met its commitment and complied with the applicable bidding credit requirements no later than the date on which the first FDR is submitted. If the Lessee’s implementation strategy has changed from that in the conceptual strategy due to market needs or other factors, the Lessee must explain the changed approach. BOEM reserves the right to determine whether the conditions of the bidding credit have been satisfied.

A industry commenter discussed market rates and factors that may affect the “market price” and the related BFF Addendum that states BOEM would prohibit “...a discount on the market price for goods or services provided by the recipient, or other preferential treatment.” The commenter suggested BOEM either eliminate the standard or clarify how they would determine market rates for goods or services in an industry where goods or services have not been produced or provided in the past and where BOEM is prevented from understanding accurate pricing.

BOEM Response:

The Contribution is required to benefit the floating OSW supply chain for all potential purchasers of OSW services, components, or subassemblies, not solely the Lessee’s project. Thus, BOEM has retained the lease stipulation that the Lessee, its parent company, or its affiliated entities are not permitted to retain an ownership/equity interest in the entity receiving the Contribution, a discount to the market price for goods or services provided by the recipient, or other preferential treatment, but can purchase OSW goods or services from the recipient of the Contribution at market rates. If necessary, BOEM will determine market price by conducting market research and outreach to determine a fair market price in a way that protects Lessee’s confidential contracts.

Section 11.4. Comments on legal/regulatory authority

Comment Summary:

The Outer Continental Shelf Lands Act (OCSLA)

Several commenters, including several advocacy groups, several industry groups, and several Tribal governments, asserted that the OCSLA gives BOEM sufficient authority and broad discretion to pursue bidding credits. Some commenters stated that the OCSLA, through bidding credits and lease stipulations, supports protection of the environment and communities affected

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by OSW development. Other commenters also reasoned that the OCSLA's broad discretion gives BOEM authority to implement additional bidding credit to promote benefits to disadvantaged communities, particularly those impacted by OSW development in the proposed leasing areas.

*To offset negative impacts on affected communities, some advocacy groups urged BOEM to use the flexibility bestowed by the OCSLA to "employ terms that incentivize investments in Tribal nations, natural resources and underserved communities through mechanisms such as the North Coast Regional Fund Credit, Regional Tribal Capacity Fund Credit, Environmental Research and Monitoring Fund, Lease Use Area Fund and Tribal Fisheries Fund," in addition to the proposed bidding credits. The commenters stated that key decisions related to the Administrative Procedure Act, discretionary powers in oil and gas contexts, and other legislative decisions such as *Commonwealth of Mass. v. Andrus*, 594 F.2d 872, 889 (1st Cir. 1979) give legislative and judicial support to flexibility and agency discretion in creating new and revised lease stipulations as well as bidding credits.*

An industry group reasoned that no provision of the OCSLA "limits the total amount of these credits or requires that they be considered on a national basis. Nor would the Miscellaneous Receipts Act (MRA) limit the amount or location of credits that can be provided, since the MRA requires only that receipts received by the Federal Government be deposited in the U.S. Treasury." The group commented that the OCSLA emphasizes the need to address local impacts, leading them to request that the FSN requires "workforce and supply chain development on a California/Western basis, with all qualifying investments obliged to demonstrate net additional benefits rather than just reaping windfall profits for unrelated investments in other regions."

Several of trade associations expressed concern that the OCSLA's policy acknowledging "the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected" is contradicted by the OSW proposal because they state it will infringe on fishing efforts.

Some advocacy groups also affirmed that BOEM is required by OCSLA to protect the environment when administering the OSW leasing program, including when specifying lease stipulations.

State agencies remarked that the lease is additionally "subject to federal and state statutes (including amendments to the OCSLA or other statutes) and federal and state regulations promulgated thereafter, except to the extent that they explicitly conflict with an express provision of this lease. It is expressly understood that amendments to existing statutes, including but not limited to the Act, and regulations may be made, and/or new statutes may be enacted or new regulations promulgated, which do not explicitly conflict with an express provision of this lease, and that the Lessee bears the risk that such amendments, regulations, and statutes may increase or decrease the Lessee's obligations under the lease."

BOEM Response:

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Among BOEM's goals is conveyance of renewable energy leases to those entities most likely to successfully develop the wind resources. BOEM must also comply with the statutory requirement to obtain a fair return on leased acreage. For the California auction, BOEM has elected to utilize a multiple-factor auction format, with a multiple-factor bidding system under 30 CFR 585.220(a)(4) and 585.221(a)(6). Multiple-factor auction formats allow BOEM to balance fair return on leased acreage while incentivizing initiatives that will aid in the expeditious and orderly development of the Outer Continental Shelf or other priorities under BOEM's statutory requirements. BOEM has selected a multiple-factor auction format to incentivize workforce training and domestic supply chain development, as well as the use of CBAs. BOEM's decision to select these targeted factors is further addressed in Section 5 above.

Tribal authority

A Tribal government urged BOEM to consider its "federal trust responsibility to Tribes and ensure that leases approved by BOEM are implemented without causing significant detrimental impacts to the local Tribal governments on the North Coast." The Tribal government also asserted that BOEM can exercise its discretion granted by the OCSLA to include bidding credits that incentivize investments in "local communities, Tribal nations, Tribal fisheries, environmental research, commercial fisheries and local workforce, and domestic supply chain." Another Tribal government asserted that the Yurok Tribe "has jurisdiction of its ocean territory and dispute BOEM's explicit and implied claims that it has the right to lease or otherwise grant privileges to third parties."

BOEM Response:

Issuance of a lease does not approve any activity, nor does it irretrievably or irreversibly commit any resources. BOEM will continue to consult and engage with Tribes to ensure that Tribal concerns are taken into consideration and that potential impacts are appropriately avoided or mitigated.

BOEM revised the bidding credits to be inclusive of Tribes and wholly owned Tribal corporations, however, BOEM lacks the authority to direct lessees to invest in or hire specific parties.

Regarding jurisdiction on the OCS, OCSLA states, "the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter" (43 U.S.C. § 1332(1)). The U.S. Supreme Court has held that the United States has paramount rights over the States in the seabed (United States v. Louisiana, 339 U.S. 699 (1950)), and in 1998 the Ninth Circuit Court, applying the paramouncy doctrine, acknowledged the "sovereign control and jurisdiction of the United States to waters lying between 3 and 200 miles off the coast" (Native Vill. of Eyak v. Trawler Diane Marie, Inc., 154 F.3d 1090, 1095 (9th Cir. 1998)).

Coastal Zone Management Act (CZMA)

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CZMA requires that Federal agency activities affecting coastal resources be “carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” An advocacy group expressed concern the PSN circumvents the oversight role of CZMA and does not properly engage with affected local governments, Tribes, fishing interests, and the State of California.

BOEM Response:

BOEM has been working closely with the State of California and the California Coastal Commission, including seeking concurrence under the CZMA for leasing activities in California. The California Coastal Commission reviewed the actions, held public hearings, and ultimately concurred, with conditions, on BOEM’s proposed leasing at Humboldt and Morro Bay. BOEM has added a number of stipulations to the Lease to ensure that the lease activities are in compliance with the conditional consistency determination.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA)

The PFMC cited its authority granted by the MSA to “identify, conserve, and enhance EFH for species managed under the Council’s fishery management plans (FMPs),” as well as their authority to “comment on any Federal or state activity that may affect the habitat, including EFH, of a marine or anadromous fishery resource under its authority.” The commenter recommended analysis of effects of OSW on the following four of MSA’s 10 NS’s with respect to siting, design, and configuration of lease areas.

The commenter suggested studying the effects of the proposed action on:

- 1. The ability of fisheries to continue to achieve optimum yield from managed wild fish stocks.*
- 2. Scientific information which informs conservation and management measures, specifically including “data compiled directly from surveys or sampling programs, and models that are mathematical representations of reality constructed with primary data.”*
- 3. The sustained availability of fishery resources to fishing communities near any proposed lease sale areas, and on the sustained participation of those fishing communities in fisheries, including minimizing adverse economic impacts to fishing communities.*
- 4. Fishing vessel safety of navigation and safety of human life at sea.*

A Federal agency also requested that CBAs be designed with the conservation and management measures affirmed in NS 8 of the MSA in mind.

BOEM Response:

BOEM has considered other uses of the OCS in the vicinity of the lease areas throughout the leasing process, and has made changes to proposed lease areas and to lease terms in order to address some impacts to fisheries. For example, as documented in the Area Identification Memorandum on Morro Bay, proposed lease areas were purposefully located in deeper waters

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many miles offshore to reduce conflict with higher-use fishing areas nearer to shore. In addition, proposed lease areas on the eastern edge of the Morro Bay WEA were removed from consideration because of comment received, and data which confirmed, higher density of fishing use in that area.

In deciding whether to remove areas from leasing consideration, BOEM's charge is to balance all of 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. BOEM recognizes that the final Lease Areas in the FSN still encompass areas that have historically been used by several fisheries. The reporting requirements and enhanced engagement included in lease stipulations and discussed elsewhere in this comment response document 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, including all aspects of commercial fisheries such as vessel safety and transit.

The Lease Area Use CBA may assist fishing and related industries (including Tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage, as well as any loss of income, or other similar potential impacts that may arise from the development of the Lease Area.

California Coastal Commission

An advocacy group criticized BOEM for its preparation of two separate EAs for Morro Bay WEA and Humboldt WEA, which it anticipates will be at least partially combined into a single lease sale, because it denies reviewers such as the California Coastal Commission their statutory ability to "assess and comment on the combined cumulative impacts of the two leasing areas."

BOEM Response:

BOEM considered several factors when making the determination to prepare two separate EAs for the Humboldt and Morro Bay WEAs. First, the Area Identification process, which defines the area that will be evaluated in the NEPA process, were finalized months apart for the two areas. Next, the two WEAs are at least 500 miles apart and therefore have notably different environmental and social contexts. Finally, because the scope of the EAs was focused on site assessment and site characterization activities, and the potential environmental impacts of these activities were anticipated to be limited to the local vicinity of the activities—a fact which was well documented in the EAs once analysis was complete—there are no measurable cumulative impacts between the two leasing areas to analyze at the leasing stage. There will be further opportunity to consider the potential for cumulative impacts attributable to project construction and operation at the COP stage of review.

A Tribal government described the April 7, 2022, California Coastal Commission's conditional concurrence with BOEM's consistency determination that, "...leasing activities associated with

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future offshore wind development in the Humboldt Wind Energy Area were consistent to the maximum extent practicable with the California Coastal Management Program, provided that BOEM agreed to modify the project in accordance with certain conditions.”

BOEM Response:

BOEM has worked with the California Coastal Commission to incorporate the conditions of their concurrence with BOEM’s CZMA consistency.

Marine protected areas (MPAs) and the California Marine Life Protection Act (MLPA)

An advocacy group urged BOEM to avoid impacting MPAs through OSW development and asked BOEM to refrain from issuing leases that overlap with existing or proposed conservation areas, such as the proposed CHNMS.

BOEM Response:

BOEM has, throughout its leasing process in California, worked closely with the State of California and NOAA’s Office of National Marine Sanctuaries to ensure that OSW proceeds in a manner that appropriately takes into account multiple uses of and potential environmental impacts to the marine environment within the WEAs. BOEM’s interactions with the State, including with the California Coastal Commission, as well as with NOAA’s Office of National Marine Sanctuaries, are further discussed throughout this document.

Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad”

A joint submission from unions commented that “[r]equiring lessees to enter into PLAs can help BOEM achieve the goals set forth in EO 14008,” in addition to fulfilling EO 13985 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce) and promoting use of the Outer Continental Shelves in the national interest.”

BOEM Response:

BOEM has included stipulation 8 to encourage the lessee to enter into Project Labor Agreement that covers the construction stage of any project proposed for the leased area.

BOEM’s statutory authority

An industry group concluded that BOEM’s statutory authority will “allow more companies to participate and increase competition, reduce electricity costs for Americans, and create jobs and provide economic benefits to both coastal and inland communities.”

BOEM Response:

Comment noted.

Section 11.5. Other comments

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Comments on fishing communities

A trade association discussed the effects the proposed OSW lease sale may have in Humboldt County, including negative impacts on fishing communities. Another trade association discussed the complexities of CBAs, and challenges impacted parties face when attempting to provide suggestions for possible CBA structures without a specific proposal to respond to. The commenter stated the lease sale should not go forward without a second comment period that provides the public with a specific proposal BOEM intends to implement. An individual expressed general concern and opposition to OSW farms due to the unknown impacts to the ocean ecosystem and significant threat to the livelihood of fishing communities. A trade association stated the impacts on the fishing communities has been minimalized and mitigation plans to compensate fishing communities is a false premise.

BOEM Response:

Project-specific impacts along with possible impacts to fishing communities resulting from the proposed project will be evaluated with the submission of a COP, which will be subject to its own public comment period. Concerning the development of specific proposals at this stage, BOEM considered that it was not reasonable to develop that level of specificity for all bidders, since most of them would not be issued a lease and project proposals are not available to determine impacts to be mitigated. BOEM believes that the current framework is adequate for evaluating compliance with bidding credit requirements.

Comments on research access

Regarding BOEM's request in the PSN to the right to research access for the purposes of "future research and other activities," an industry commenter requested BOEM clarify that (1) these activities should be of a reasonable nature; (2) reasonable and adequate notice is given to the Lessee before the activities commence; and (3) clarify that such activities should not hinder or obstruct the Lessee or any third-party contractors / parties from carrying out their work at the offshore site. Additionally, another industry commenter encouraged BOEM to provide greater transparency and communication around Research Site Access from ocean user safety perspective and requested BOEM consider a standard communication protocol, including stipulation for a notification period for Site Access.

BOEM Response:

The Lessor reserves the right to authorize other uses within the leased area and project easements(s) that will not unreasonably interfere with activities described in an approved SAP and/or COP, pursuant to this lease. The Lessor will make a good faith effort to provide to the Lessee prior notice of needs for access for research purposes.

Comments on cable systems

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An individual commenter discussed the need for “cable protection” and “cable stabilization” measures and the need to consider the interconnection of cables. The same commenter also suggested a “Pulse Compression” radar to help mitigate radar interference near wind farms.

Regarding telecommunication cables, an industry commenter encouraged BOEM to cooperate with the U.S. Army Corps to ensure that siting of telecom cables is carried out to minimize conflict with leases.

An industry commenter discussed the need for all potential OCS lessees to be aware of the importance of coordinating activities with owners and operators of submarine cables during the earliest stages of the project development process. The commenter noted that the PSN or draft Lease do not inform potential lessees of the critical nature of submarine cable infrastructure or of the challenges posed by coordination. The commenter expressed strong support for categorical exclusion zones and spatial separation standards in BOEM’s selection process for lease locations. According to the commenter, such exclusion zones and spatial separation standards should be identified as restrictions and site use stipulations in the lease documentation.

A joint submission from industry stated that two planned submarine cable systems will overlap the two WEAs and create possible conflicts with mooring systems.

BOEM Response:

Cable protection and radar mitigations will be evaluated during the COP review. New progress report requirements discuss the need for early communication on transmission cables with Tribes and parties. Spatial separation distances may be evaluated, as necessary, with the submission and review of the COP because, at that time, they are likely to be specific to the project design and/or location.

BOEM notes the two planned submarine telecommunication cables and has included descriptions of the systems in the FSN.

Other comments

An advocacy group stated the PSN contains insufficient details about the concept of CBAs and requested a public comment opportunity on CBA concepts after BOEM revised the PSN but before the FSN is published, allowing at least 30-days to respond.

BOEM Response:

The FSN describes the purpose, general requirements, restrictions, documentation and enforcement of the CBA bidding credits. Based on the similarity of structure between the two CBA bidding credits and the information received in response to the PSN, BOEM did not feel an additional comment period was necessary. Therefore, no additional time for public comment is scheduled for the FSN.

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A commenter noted greenhouse gas emissions were not included as a monetary bid factor and stated that quantitative emissions transparency is a critical step in developing renewable energy and should be part of the bidding process.

BOEM Response:

At this time, BOEM has decided not to use greenhouse gas emissions as a monetary bid factor. The mechanics for doing so are currently unknown/uncertain. BOEM has decided to grant monetary bidding credits for initiatives that will be easier for lessees to achieve and which have a direct connection to goals the Secretary must ensure under OCSLA.

A commenter requested “BOEM provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (“CEQA”), Cal Public Resources Code (“PRC”) § 21000 et seq, and the California Planning and Zoning Law (“Planning and Zoning Law”), Cal. Gov’t Code §§ 65000–65010.”

A joint submission from industry commenters suggested BOEM address uncertainties described in the PSN before allowing auctions to still occur in 2022. The commenter recommended BOEM:

- *Provide an indication of the expected vessel routing measures and the intended setback requirements (e.g., 1-nm or 2-nm setbacks);*
- *Describe the specific measures the DoD may require alleviating impacts to the mission of the North American Aerospace Defense Command (e.g., specific downtimes, blade adjustments, etc.);*
- *Provide greater clarity on the size and location of no surface occupancy restrictions it might impose; and*
- *Provide greater clarity on the process for routing cables through marine sanctuaries.*

BOEM Response:

There are no predicted vessel routing measures from the USCG in the Draft PAC-PARS. Project-specific measures to alleviate impacts to the DoD mission will be evaluated with the submission of a COP and measures, such as curtailment protocol, may be required by DoD. Any such terms and conditions will result from consultation with DoD on development within the Lease Areas. DoD has indicated to BOEM that curtailment will be temporary and limited to instances where it is necessary to avoid conflicts with national security or defense requirements.

There are no surface occupancy restrictions included in the lease, however the lease may be amended post COP submission if warranted.

BOEM does not have authority to permit cables through a marine sanctuary and thus cannot provide greater clarity on such activities at this time.

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An industry commenter recommended BOEM work together with the relevant California agencies under a memorandum of understanding (MOU) to evaluate port availability and buildout, as well as the impacts of multiple ports and port use/and construction.

BOEM Response:

BOEM is working in close collaboration with the State of California to evaluate port facilities.

A Tribal government and academic commenter requested that a percentage of the payments developers pay to BOEM for leasing would go back to communities with funding streams to address the unique needs of commercial fishers, Tribal fisheries, Tribal nations and other North Coast communities. Steering committees will be led by residents and leaders would make decisions on how to use these funds.

BOEM Response:

BOEM lacks the authority to direct lessees to invest in, or hire, specific parties.

A Federal agency provided several statements related to impacts on fisheries. The commenter stated it is unclear how the term “directly impacted” in the PSN will be defined, by what entity, and how it would be validated. The commenter strongly advised that potential bidders “work with NMFS, California Department of Fish and Wildlife, local fisheries organizations and representatives, local cities, and review comment letters from the PFMC to learn more about local fisheries relevant to a potential CBA.” Regarding assisting impacted fisheries, a commenter stated that because many fishermen participate in more than one fishery, portfolios should also be considered when developing CBAs and CBAs should be developed with consideration of unintended consequences and support local sustainable fisheries. Lastly, the commenter recommended BOEM consider the recent correspondence provided by commercial fishing organizations to the California Coastal Commission that addresses CBAs (<https://documents.coastal.ca.gov/reports/2022/4/Th8a/Th8a-4-2022-correspondence.pdf>) which includes a template for a CBA (<https://documents.coastal.ca.gov/reports/2022/4/Th8a/Th8a-4-2022-correspondence.pdf>).

BOEM Response:

The parties to the CBA will determine the impacts pursuant to the requirements of the CBA in the lease. The CBA will be between the Lessee and an impacted community. The Lease Area Use CBA must, among other things, specify how the impacted community’s uses of the Lease Area or how the impacted community’s use of resources harvested from the geographic space of the Lease Area is expected to be impacted by the Lessee’s potential OSW development and address impacts to the impacted community arising from lease development. The Lessee must provide to BOEM a copy of the executed Lease Area Use CBA no later than at the time of the submission of the Lessee’s first FDR. BOEM reserves the right to determine that the bidding credit commitment to execute a Lease Area Use CBA has not been satisfied because changes to

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the Lessee's conceptual strategy or its implementation, that occur after the auction, do not meet the criteria for the bidding credit. The comments to the PSN, engagement requirements of the lease and the communication plans are available for parties to learn more about local fisheries relevant to a potential CBA.

A Federal agency provided fisheries information relevant to the two WEAs, including a recommendation to use NMFS' social indicators mapping tool. The commenter also discussed fisheries participation networks, stating that some fisheries involved in the port communities that may be affected by lease areas are identified in fisheries participation networks that NMFS, through the California Current Integrated Ecosystem Assessment (CCIEA) team, created. Further, the commenter discussed the NMFS-developed maps of Federal commercial fishing effort for groundfish bottom trawl and the albacore fisheries using Federal logbook data and three different metrics that provide information on the spatial and temporal variation of these ocean-use patterns.

A joint submission from members of Congress stated the public comment period should be extended beyond August 1, 2022, to allow more time for stakeholders to engage and comment on the PSN.

A joint submission from industry stated the anchoring systems for FOSW turbines and substations require a greater area than the narrow footprint for fixed- bottom structures and requested clarification on "whether project easements can be granted to accommodate subsurface anchoring systems extending beyond the boundary of the lease area (but where the floating turbine, including the blades, or substation would remain within the lease area boundary)."

BOEM Response:

Project-specific information will be provided with a COP to describe the impacts from lease development on commercial fisheries and the anchoring systems.

The comment period on the PSN was 60 days, as required in BOEM's regulations. BOEM believes that time period was sufficient given the breadth and depth of the comments it received.

Section 12. General comments on offshore wind energy

Comment Summary:

A few commenters, including several advocacy groups and an industry group, remarked on the potential for OSW development off the coast of California to address climate change and the need for more clean energy. State agencies stated that "California has some of the best OSW resources in the world and FOSW is emerging as a promising source of renewable energy generation for the state and can diversify the state's energy portfolio and provide an opportunity for good paying jobs and statewide economic benefits." Several commenters, including an advocacy group and a Tribal government, discussed the North Coast's history and reasoned that

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OSW provides an opportunity to fight climate change in a way that strengthens local communities, if development is community-driven and invests in indigenous, disadvantaged, and marginalized communities. An advocacy group recognized that OSW will help address the climate crisis, but remarked that this could put more ecological strain on the ocean. The commenter reasoned that “the establishment of robust governance principles affecting offshore wind implementation will be essential.”

One trade association disagreed with the nature of the questions, listing concerns that OSW will harm the fishing community. An individual requested that BOEM allow for increased offshore oil and gas leasing instead of OSW.

A local government said that it “anticipates potential service impacts as a result of future OSW development, but it is premature at this stage to speculate on the nature and scale of those impacts.” The commenter will assess impacts as more information as known to determine the appropriate cost-recovery mechanism.

BOEM Response:

BOEM appreciates the public’s participation in our process and the fact that individual stakeholders took the time to express their opinions regarding decisions about OSW development. BOEM recognizes the important role that OSW can play in the effort to decrease carbon pollution and understands the need for efficient yet thorough vetting of these projects. In accordance with BOEM’s renewable energy regulations, the submission of a COP, which is a detailed plan for construction and operation of a wind energy facility on a lease, allows the lessee to construct and operate wind turbine generators and associated facilities. If a COP is submitted, BOEM will prepare a NEPA analysis. This would most likely take the form of an EIS and would further analyze cumulative impacts, pursuant to NEPA.