



Central Atlantic Wind Lease Sale (ATLW-10)

Final Sale Notice (FSN)

Response to PSN Comments

June 2024

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Acronyms and Abbreviations

Acronym	Definition
ADAMS	Advanced Dynamic Aircraft Measurement System
BOEM	Bureau of Ocean Energy Management
CFIUS	Committee on Foreign Investment
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
CVOW	Coastal Virginia Offshore Wind
DOD	Department of Defense
DOE	Department of Energy
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ	Environmental Justice
EMF	electromagnetic fields
ESA	Endangered Species Act
FOA	Funding Opportunity Announcement
FSN	Final Sale Notice
GHG	Greenhouse Gases
GW	Gigawatt
JVN	Joint Voluntary Notice
LPA	Labor Peace Agreement
NASA	National Aeronautics and Space Administration
NCCOS	National Centers for Coastal Ocean Science
NEPA	National Environmental Policy Act
NERC	North American Electric Reliability Corporation
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NORAD	North American Aerospace Defense Command
NPRM	Notice of Proposed Rulemaking
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
OSW	Offshore Wind
PAM	Passive Acoustic Monitoring
PEIS	Programmatic Environmental Impact Statement
PSN	Proposed Sale Notice
RFI	Request for Information
RWSC	Regional Wildlife Science Collaborative for Offshore Wind
SAP	Site Assessment Plan
USACE	U.S. Army Corps of Engineers
USCG	United States Coast Guard

Introduction

On December 12, 2023, the Department of Interior (DOI) Bureau of Ocean Energy Management (BOEM) issued a proposed sale notice (PSN) for its proposal to hold Atlantic Wind Lease Sale 10 (ATLW-10) and offer one or more lease areas (Lease Areas) for commercial wind power development on the U.S. Central Atlantic Outer Continental Shelf (OCS). The comment period closed on February 12, 2024. BOEM's consultant, ICF, analyzed the submissions received and developed this summary report.

Through February 12, 2024, BOEM received a total of 310 public comment submissions in response to the PSN (Docket BOEM-2023-0062). Of the 310 submissions, 309 were found to be unique (39 substantive and 270 non-substantive), and 1 not germane submission. All 39 substantive and 3 non-substantive unique comments are reflected in this report.¹ Taking these comments into account, BOEM revised the lease terms, conditions and stipulations, auction format and procedures, and other documents related to the ATLW-10 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.

Comment counts provided at the beginning of most sections reflect all submissions received. This summary report, however, is not intended to be an exhaustive discussion of all unique comments received on the PSN. Rather, it attempts to identify content that reasonably contributes to the development or improvement of alternatives or analyses detailed in the more substantive of comments. It should not be assumed that the footnotes provided throughout the summary reflect an exhaustive list of commenters making each specific argument. Rather, the references reflect example commenters providing the more detailed versions of each argument. Where a significant number of commenters made a specific argument, up to ten public comment submissions would be referenced in the footnote.

¹ An additional 267 commenters provided unique comments as part of the Sierra Club submission.

Issue 1. General comments

Comments associated with this issue are summarized in the subsections below.

Issue 1.1. General support

Approximately 10 commenters expressed general support for the proposed Atlantic wind lease sale (proposed sale).

A few commenters expressed general support for the proposed sale on the grounds that it would help meet renewable energy goals and fight the climate crisis, help build the offshore wind (OSW) supply chain, and support workforce development in a clean energy industry.²

One commenter asserted that the proposed sale is a reflection of stakeholder engagement and Federal coordination for identifying areas suitable for leasing and that it is critical to helping States meet clean electricity goals and OSW procurement targets, as well as supporting goals for the Biden-Harris administration.³ Similarly, some commenters expressed support for the Biden Administration’s target of installing 30 GW of OSW by 2030.⁴ One commenter added support for the PSN on the grounds that it would help North Carolina meet its “legislatively directed power-sector net-zero carbon commitments.”⁵

One commenter encouraged BOEM to continue to identify wind energy areas for a “second round of leasing” in order to ensure State and national energy goals are met.⁶

One commenter expressed general support for OSW development that avoids and mitigates impacts to wildlife, minimize negative impacts to conflicting ocean uses, includes consultation with Native American Tribes and communities, engages with State and local governments and other stakeholders, avoids impacts to underserved communities, and uses data to ensure science- and stakeholder-based decision making. They discussed the myriad threats posed by climate change, reasoned that OSW development could generate both clean energy as well as economic growth and jobs, and added that OSW development under the PSN could help meet State and national energy goals.⁷

Issue 1.2. General opposition

Approximately four commenters expressed general opposition to the proposed sale.

A few commenters expressed general opposition to the proposed sale for reasons such as:

- The ocean belongs to all Americans;⁸
- This proposed sale represents a rogue move by BOEM and the government;⁹
- The proposed sale is “tax-guzzling,” and a “non-green, ineffective, inefficient scam;”¹⁰
- OSW is destructive to the environment and wildlife,¹¹ and;

² Shell New Energies US LLC; N. Rovedo; Corio Generation; Sierra Club.

³ RWE.

⁴ energyRe Offshore Wind; bp America Inc; American Clean Power Association; Sierra Club Virginia Chapter; Sierra Club; Southern Environmental Law Center.

⁵ North Carolina Department of Commerce.

⁶ American Clean Power Association.

⁷ Southern Environmental Law Center.

⁸ J. Public.

⁹ J. Public.

¹⁰ J. Brandt.

¹¹ Anonymous (BOEM-2023-0062-DRAFT-0034).

- There should be no turbines in the oceans.¹²

One commenter asserted that the proposed sale’s cost benefit ratio is “terrible,” with OSW being 3 times the cost of current energy sources like natural gas and micro nuclear while only delivering one third of the energy. They expressed concern over higher utility rates and reasoned that any increases in rates should be paid off by “the individuals who signed off on this lease sale.” The commenter reasoned that these proposed lease areas would do nothing to meet the 30GW goal and urged stakeholders to “get out [of] this while they can.”¹³

Issue 1.3. Other general topics/mixed feedback

Approximately 10 commenters discussed other general topics related to the proposed sale.

One commenter expressed general support for wind energy as a way to reduce greenhouse gas emissions but reasoned that it must be implemented in a way that ensures navigational safety. They added that they had worked with the U.S. Coast Guard (USCG) to develop its Marine Planning Guidelines when developing wind energy areas.¹⁴ Similarly, one commenter discussed their personal involvement with and experience in OSW development on the U.S. OCS, including a present development of large OSW portfolios in Massachusetts and New Jersey. The commenter added their support for the comments filed by the American Clean Power Association on the grounds that they do not conflict with any of the sentiments expressed in their own comment.¹⁵

One commenter expressed general support for proceeding with OSW sales on the condition that BOEM ensure that the lease areas are “of sufficient size to maximize the opportunity economies of scale.”¹⁶ Another commenter reasoned that OSW will play a major role in achieving national climate goals, but added that it should be developed in an environmentally responsible manner, mitigate impacts, engage stakeholders, and generally ensure that communities and wildlife are protected.¹⁷ Similarly, one commenter reasoned that states’ strategies and timelines for decarbonization should be factored into BOEM’s schedule for timing, locating, and sizing lease areas.¹⁸

One commenter expressed support for BOEM’s efforts in OSW leasing and reasoned that an auction should be designed to attract experienced developers in a way that encourages competition and cost savings for ratepayers.¹⁹

One commenter acknowledged the variety of use conflicts in the Central Atlantic but reasoned that because it is important for the U.S. to transition to a cleaner energy system, these resources should be deployed “whenever possible.” They recommended that BOEM initiate a stakeholder group with itself, Central Atlantic States, and developers, in order to coordinate activities and assist the deconfliction process.²⁰

¹² T. Jones.

¹³ Anonymous (BOEM-2023-0062-DRAFT-0034).

¹⁴ World Shipping Council.

¹⁵ Shell New Energies US LLC.

¹⁶ Dominion Energy.

¹⁷ BlueGreen Alliance.

¹⁸ The Nature Conservancy.

¹⁹ Equinor Wind US LLC.

²⁰ Ocean Winds North America.

One commenter asked BOEM to reconsider the current exclusions on the coast of North Carolina and include the coast in the next round of OSW leasing and development.²¹ One commenter discussed the possibility of BOEM considering other leases beyond Lease 0557 and 0558 and recommended that BOEM provide additional opportunity for comment prior to finalizing additional wind energy areas.²²

One commenter generally discussed the use of automated tools in infrastructure planning for additional lease areas and proposed its own software, “Optioneer,” as a tool to help BOEM or other developers to automate the optioneering processes for energy infrastructure and design, as well as for choosing future lease areas.²³

BOEM Response:

BOEM appreciates the public’s participation in this 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 greenhouse gas emissions and understands the need for efficient yet thorough vetting of these projects. Wind energy leases that may be awarded as a result of this sale grant to the lessees only the exclusive right to submit plans for BOEM’s approval. In accordance with BOEM’s renewable energy regulations, the submission (and BOEM’s potential subsequent approval) of a Construction and Operations Plan (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 for a specified term. If a COP is submitted, BOEM will prepare a National Environmental Policy Act (NEPA) analysis on that site-specific plan.

On December 13, 2023, members of the Biden-Harris administration, including the Department of the Interior, Department of Defense, Department of Commerce’s National Oceanic and Atmospheric Administration, U.S. Coast Guard and National Aeronautics and Space Administration, U.S. Senators Ben Cardin and Chris Van Hollen, and Maryland Governor Wes Moore announced a commitment to work jointly to evaluate additional areas off Maryland’s shores that could become wind energy areas (WEAs) and support the development of potential future offshore wind projects.

BOEM is continuing the partnership with the National Oceanic and Atmospheric Administration’s National Centers for Coastal Ocean Science to use and to further develop a comprehensive, ecosystem-based ocean planning model to assist in identifying possible areas suitable for wind energy development for a potential second lease sale in the Central Atlantic which could occur as soon as 2025.

Issue 2. Background

Comments associated with this issue are summarized in the subsections below.

Issue 2.1. Statutory/legal authority

Approximately nine commenters discussed statutory and legal implications concerning the proposed sale.

Outer Continental Shelf Lands Act (OCSLA)

A commenter expressed concern that under Section 3(c) of the proposed lease form, BOEM included language that may result in improper construction of Section 12 of the Outer Continental Shelf Lands Act (OCSLA). (*see* 43 U.S.C. § 1341(a)(12) (1953)). Here, the commenter expressed general agreement with

²¹ D. Hill.

²² NOAA NMFS.

²³ Continuum Industries.

BOEM's statement in Section 3(c) of the proposed lease form that "the Lessor reserves the right to suspend the Lessee's operations in accordance with the national security and defense provisions of Section 12 of the Act and applicable regulations." However, the commenter urged BOEM to clarify that the phrase "applicable regulations" will not result in suspension of leases for reasons beyond national security exigencies.²⁴ Additionally, a commenter remarked that because the statutory authority underpinning BOEM's suspension regulation is OCSLA, BOEM's regulatory authority to suspend operations for national security or defense purposes is necessarily limited to the narrow circumstances set forth in Section 12 of OCSLA. To avoid confusion, the commenter requested that the FSN include a clarifying explanation of BOEM's understanding of the scope of its authority to suspend operations in the interest of national security or defense.²⁵

A couple of commenters argued that, under the OCSLA, BOEM has the authority and responsibility to ensure "a fair return and safe operations" in the development of wind energy on the OCS. (*see* 43 U.S.C. § 1337(p)(4)(A) and (H)). Given this responsibility and authority, the commenters argued that BOEM can and must enforce labor peace agreements on turbine developers. The commenters added that labor peace agreements are consonant with BOEM's proprietary interest in ensuring Federal lands such as the OCS are developed efficiently and without costly disruption. As such, the commenters argued that by preventing labor disputes, which would cause disruptions to and inefficient development of OCS turbines, labor peace agreements are important instruments that ensure safe operations and fair returns on wind investments.²⁶ In addition to arguing that BOEM has the authority to include robust union protections, another commenter asserted that the OCSLA's statutory regime grants the agency broad authority to address environmental, economic, and coastal zone impacts resulting from development on the OCS. The commenter stated that the multi-factor bidding process should include policy considerations that extend to broader climate, environmental, and economic goals. In particular, the commenter asserted that the PSN is an opportunity to address supply chain improvements that were laid out by the Biden Administration under Executive Order 14017.²⁷

Another commenter argued that BOEM possesses discretionary authority to balance policy goals outlined in subsection 8(p)(4) of OCSLA, which include navigational, fishing, national security, environmental, and conservation interests. Specifically, the commenter referenced eight enumerated policy goals, including the protection of the environment (B), prevention of waste (C), conservation of natural resources (D), coordination with relevant Federal agencies (E), protection of correlative rights (G), fair return to the United States (H), consideration of sea and seabed use (J), and oversight, inspection, research, monitoring, and enforcement (L). Additionally, the commenter suggested that BOEM has the authority to use methods adopted by States along the Atlantic coast, stating that such States require bidders to commit to investments in supply chain, workforce development, and fisheries compensation.²⁸

Likewise, another commenter asserted that BOEM's proprietary interests and statutory authority under the OCSLA requires the agency to prioritize environmental protection in the development of turbines. The commenter added that doing so would comport with the Biden Administration's goals related to ocean and marine ecosystem protection.²⁹

²⁴ Atlantic Shores Offshore Wind LLC.

²⁵ Shell New Energies US LLC.

²⁶ Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO.

²⁷ BlueGreen Alliance.

²⁸ The Nature Conservancy.

²⁹ Southern Environmental Law Center

Other statutory requirements and treaties

A commenter stated that while BOEM published a notice of intent on August 1, 2023, to prepare an EA for potential impacts associated with OSW leasing activities in the Central Atlantic Call Area, BOEM proceeded with the Draft Environmental Assessment (EA) January 12, 2024, despite concerns about the timing of public input. The commenter argued that this is contrary to BOEM's mandate under the National Environmental Policy Act (NEPA), reasoning that overlapping comment periods on the PSN and the Draft EA made it challenging to ensure that EA analysis informed public comments and agency decision-making.³⁰

Another commenter stated that the Energy Act of 2020 mandates the Secretary to establish a national minimum goal of "25 GW of electricity from wind, solar, and geothermal energy projects" on public lands by 2025. (*see* Pub. L. 116-260). The commenter added that, under the Paris Agreement, the U.S. has committed to reducing net greenhouse gas emissions by 50-52 percent below 2005 levels by 2030. The commenter reasoned that these commitments necessitate rapid deployment of OSW energy.³¹

A couple of commenters argued that BOEM is statutorily required to carry out a programmatic environmental impact statement (PEIS) ahead of lease sales.³²

BOEM Response:

BOEM sought public input regarding the NEPA analysis during the 30-day scoping period, which ended on August 31, 2023, and again during the 30-day comment period on the draft EA, which ended on February 12, 2024. BOEM carefully considered and assessed the comments received while drafting and revising the EA. The EA, and its associated FONSI, informed BOEM's decision in the FSN.

BOEM declines to revise section 3(c) of the lease as suggested in the comment. The proposed language is the same as in prior issued leases, and the provision appropriately acknowledges that the regulations on suspensions allow for suspensions for both national security related purposes (i.e., under Section 12 of OCSLA and 585.417(b)) and for other purposes (e.g., 30 CFR 285.417(a)(2)).

The traditional provisions of PLAs are consistent with BOEM statutory authorities. The additional provisions usually associated with a labor peace agreement are beyond BOEM's purview.

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." If used, the PLAs would require 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 non-union contractors. PLAs typically include prevailing wages provisions, no-strike clauses, dispute resolution procedures, and safety and training provisions.

Issue 2.2. Purpose and Need

Approximately two commenters discussed the purpose of and need for the proposed sale.

A commenter stated that turbine development can offset climate change, which disproportionately impacts vulnerable communities.³³ Another commenter referenced a study finding that the United States

³⁰ Southern Environmental Law Center.

³¹ American Clean Power Association.

³² bp America Inc.; Responsible Offshore Development Alliance (RODA).

³³ Southern Environmental Law Center.

currently produces over 7.2 billion metric tons of greenhouse gases (GHG) annually, 1.7 billion metric tons of which originate from the power sector. Contrasting the health and environmental consequences of GHG-producing power sources with the benefits of wind energy, the commenter urged rapid deployment of the offshore wind development that would result from the proposed sale. Specifically, the commenter referenced a study finding that, when monetized, GHG reductions resulting from turbines have produced \$690 million in benefits a year. The commenter added that such benefits are complemented by the efficiency of wind-generated electricity. Lastly, the commenter stated that expeditious roll-out of the proposed sale would further the Biden Administration’s carbon goals.³⁴

BOEM Response:

BOEM appreciates the public’s participation in this 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 greenhouse gas emission and understands the need for efficient yet thorough vetting of these projects.

Issue 2.3. Other comments on background

Approximately five commenters provided other comments on the background information provided in the PSN.

A commenter expressed concern that the permitting challenges facing current OCS renewable energy lessees could significantly impact developer interest in this and future lease sales.³⁵ Another commenter involved in the development of turbines near the Port of Virginia discussed the success of the Coastal Virginia Offshore Wind (CVOW) project, and how CVOW should be a template for future wind projects.³⁶ Another commenter generally discussed the danger of climate change, adding that Central Atlantic States have shown a willingness to participate in wind development given those States’ own efforts related to wind energy.³⁷ Similarly, another commenter discussed Maryland’s Renewable Energy Portfolio Standard, which requires 50 percent of all electricity sales to come from renewable sources by 2030. The commenter stated that Maryland increased its OSW goal to 8.5 GW by 2031 with the enactment of the Promoting Offshore Wind Energy Resources (POWER) Act. The commenter reasoned that these policy considerations comport with BOEM’s efforts to develop OSW energy.³⁸ Likewise, another commenter discussed how BOEM should consider Atlantic States’ energy goals while implementing the PSN.³⁹

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. Through Task Force meetings and engagement meetings, the Atlantic States’ energy goals continue to be considered throughout BOEM’s leasing process.

Issue 3. Areas for proposed leasing

³⁴ American Clean Power Association.

³⁵ Shell New Energies US LLC.

³⁶ Dominion Energy.

³⁷ Ocean Winds North America.

³⁸ Maryland Energy Administration and Maryland Department of Natural Resources.

³⁹ The Nature Conservancy.

Comments associated with this issue are summarized in the subsections below.

Issue 3.1. Comments on Area B-1

Approximately three commenters provided comments on lease area B-1.

A commenter expressed support for the removal of wind area B-1 from the proposed sale due to potential impacts on Assateague Island National Seashore. The commenter asked BOEM to exclude Area B-1 from all future proposed sales.⁴⁰

A commenter urged BOEM to include wind area B-1 in the lease sale to maximize the size of wind areas put up for lease to reach the scale needed to protect the environment from the harms of climate change.⁴¹

A commenter said that the anticipated mitigation requirements that led to the removal of wind area B-1 were not available to the public upon publication of the PSN and stated that the approach to removal is “segmented and confusing at best.”⁴²

BOEM Response:

The Federal team consisting of BOEM, DOD, and NASA reviewed the constraints associated with Area B-1 and conducted an analysis of the mitigations that would be necessary to keep that Area viable during an initial Central Atlantic offshore wind lease sale. The team identified the magnitude and cost of collective mitigation needed to accommodate offshore wind construction and operations in this area. After this review, BOEM decided to remove WEA B-1 from consideration as part of the upcoming Central Atlantic lease sale due to the significant costs and mitigation that would be required. However, B-1 may be considered as part of a potential second lease sale in the Central Atlantic, which could occur as soon as 2025.

Issue 3.2. Lease Area A-2 (OCS-A 0557)

Approximately 10 commenters provided comments on lease area A-2.

Support for one lease

Several commenters recommended keeping lease area A-2 as one lease instead of dividing it into smaller subsets.⁴³ One commenter said that the current size is attractive from a project design and technical perspective given the likely need to use high voltage direct current export technology.⁴⁴ Another commenter stated that smaller lease areas would limit the ability of leaseholders to capture economies of scale and therefore provide competitive pricing to ratepayers.⁴⁵

Support for multiple leases

A commenter recommended dividing lease area A-2 into smaller subsets, saying that multiple smaller lease areas would increase competition at the auction and allow for economies of scale through installation of higher densities than BOEM initially estimated.⁴⁶

⁴⁰ National Park Service.

⁴¹ Ironworkers Mid-Atlantic States District Council.

⁴² Responsible Offshore Development Alliance.

⁴³ bp America Inc.; Maryland Energy Administration and Maryland Department of Natural Resources.

⁴⁴ Atlantic Shores Offshore Wind LLC.

⁴⁵ RWE.

⁴⁶ Invenergy.

Opposition to lease

A commenter said BOEM should consider excluding from lease area A-2 the clearly defined transit route used by commercial fishing vessels. The commenter also said that unexploded ordinance is a known issue off the coast of Delaware that could present a concern for transmission cable routing from lease area A-2. Finally, the commenter said that impacts to artificial reefs should be avoided when considering cable routes and points of interconnection.⁴⁷ A commenter recommended avoiding lease area A-2 in its entirety due to its overlap with several fisheries valued at over \$4 million combined.⁴⁸ A commenter said that lease area A-2 should be denied due to conflicts with the North American Aerospace Defense Command (NORAD) and the Air Force.⁴⁹

Other comments

A commenter requested verification of the actual acreage in lease area A-2, noting that the values provided on page A-1 do not sum to the same value as the areas in the diagram on page A-3.⁵⁰

A commenter encouraged BOEM to review the public comments on the USCG's Notice of Proposed Rulemaking (NPRM) for Shipping Safety Fairways Along the Atlantic Coast (docket number 2019-USCG-0279) as it includes fairways adjacent to proposed lease areas A-2 and C-1.⁵¹ Another commenter expressed concerns that the proposed lease area A-2 could encroach on the buffer zones surrounding the USCG's proposed fairways.⁵²

BOEM Response:

After careful consideration of comments, BOEM will offer A-2 as one lease area in ATLW-10 without modification from the area described in the PSN. BOEM has maintained the size of the lease areas to preserve flexibility for lessees to design appropriate layouts at the COP stage. Through the Area Identification process, BOEM avoided a significant amount of ocean area that supports important habitat and fishing operations. While some fishing activity and habitat could not be entirely avoided, additional, site-specific data collected by the Lessee will inform the Lessee's design of its proposed facility and BOEM's review of the COP, which may result in further avoidance and minimization of potential impacts. The COP stage is the point at which 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. BOEM will continue to collaborate with DoD and USCG to avoid or mitigate potential impacts as a facility is designed and proposed for BOEM approval.

Issue 3.3. Lease Area C-1 (OCS-A 0558)

Approximately 15 commenters provided comments on lease area C-1.

Comments on subdivision

Several commenters recommended dividing lease area C-1 into two lease areas.⁵³ A few commenters specifically requested that the lease area be divided along a North-South border to create Eastern and

⁴⁷ Delaware Department of Natural Resources and Environmental Control.

⁴⁸ Virginia Marine Resources Commission.

⁴⁹ Long Island Commercial Fishing Association.

⁵⁰ Atlantic Shores Offshore Wind LLC.

⁵¹ United States Coast Guard (USCG).

⁵² World Shipping Council.

⁵³ Invenergy; RWE; Equinor Wind US LLC.

Western halves.⁵⁴ Some commenters said that increasing the number of lease areas would increase competition in the auction.⁵⁵

A commenter said that lease area C-1 should not be subdivided.⁵⁶

Conflicts with other resources

A few commenters objected to the inclusion of lease area C-1 due to the habitat for multiple species.⁵⁷ One of the commenters said that the lease area should be removed from the current lease sale until further investigation in the form of high-resolution habitat mapping and seafloor sampling takes place.⁵⁸ Another commenter also objected to the inclusion of the lease area due to conflicts with NORAD and the Air Force.⁵⁹

A commenter asked that BOEM identify the presence of the Dunant submarine cable system in the southeastern corner of lease area C-1. The commenter also recommended reducing the overall lease area to allow for a 1 nautical mile buffer between the southern boundary of the lease area and the Dunant cable route.⁶⁰

Other comments

A commenter said that the position of lease area C-1 presents less of a navigational safety concern than lease area A-2.⁶¹

A commenter requested verification of the actual acreage in lease area C-1, noting that the values provided on page A-1 do not sum to the same value as the areas in the diagram on page A-3.⁶²

BOEM Response:

While lease area C-1 remains as described in the PSN, a stipulation has been added to lease OCS-A 0558 (see Addendum C Section 11.2) regarding existing submarine cables within the lease area. This stipulation will require that the Lessee coordinate with the cable owner to ensure the cable owner is able to conduct maintenance operations during and after construction of Lessee facilities on the lease. Regarding the division of lease area C-1, the area is being maintained as one lease area to allow for flexibility in siting a wind facility due to several potential siting constraints, including setbacks needed for the existing Dunant cable, proximity to existing lease OCS-A 0483, and potential benthic habitat and fishing activity within the lease area.

Issue 3.3.1. Setback or Buffer Between Lease Area C-1 and Existing Lease

Approximately six commenters provided comments on setbacks or buffers.

A commenter recommended including a buffer between existing lease OCS-A 0483 and lease area C-1 if turbine spacing and orientation will differ between the lease or project areas in order to ensure safe

⁵⁴ Atlantic Shores Offshore Wind LLC; bp America Inc.; Equinor Wind US LLC.

⁵⁵ Shell New Energies US LLC; energyRe Offshore Wind; American Clean Power Association.

⁵⁶ Dominion Energy.

⁵⁷ Virginia Marine Resources Commission; NOAA NMFS.

⁵⁸ NOAA NMFS.

⁵⁹ Long Island Commercial Fishing Association.

⁶⁰ Google, LLC.

⁶¹ World Shipping Council.

⁶² Atlantic Shores Offshore Wind LLC.

navigation and operation for fisheries.⁶³ Another commenter did not specifically recommend a buffer but did suggest common turbine spacing and layout for adjacent wind projects.⁶⁴

Several commenters said that BOEM should not include a buffer for lease area C-1.⁶⁵ One of the commenters said BOEM has not provided any clarification as to why one might be necessary and said it would lead to the unnecessary removal of lease blocks.⁶⁶

A commenter said that rather than removing lease blocks from the proposed lease area, it would be better to allow any necessary setback to be established during the construction and operations plan (COP) process, which would allow the developer to work with the neighboring lessee and other interested parties.⁶⁷ Another commenter recommended that buffer zones between adjacent leases be addressed on a case-by-case basis through discussions with impacted stakeholders, and welcomed BOEM's input on a set of general principles or guidelines for those discussions.⁶⁸

A commenter said that BOEM states in the PSN that it has included in the Siting Conditions section of Addendum C a lease stipulation that prohibits surface structures within a specified distance of the CVOW project, but no such stipulation appears in the version made available to the public.⁶⁹

BOEM Response:

BOEM will not modify Lease Area C-1 to include a 2 nm setback between this lease and existing lease OCS-A 0483. BOEM has included in Lease OCS-A 0558, a siting condition regarding surface structure layout and orientation (see Addendum C Section 11.1). Lease area OCS-A 0558 is located adjacent to the existing BOEM lease area OCS-A 0483. Therefore, in the Lessee's proposed project design in the COP, the Lessee must endeavor to design a surface structure layout that contains two common lines of orientation between OCS-A 0558 and OCS-A 0483 (as described in Navigation and Vessel Inspection Circular 02-231-19). If the Lessee and the neighboring BOEM lessee (i.e., the lessee for OCS-A 0483) cannot agree on such a surface structure layout, the OCS-A 0558 Lessee must incorporate a 2 nm setback from the boundary of the neighboring lease, within which the OCS-A 0558 Lessee must not construct any surface structures.

Issue 3.4. Number, size, orientation, and location of the proposed Lease Areas

Approximately 20 commenters provided comments on the number, size, orientation, and location of the proposed lease areas.

Number of leases

Several commenters argued that BOEM should make available more areas for lease in the Central Atlantic to help reach State and Federal renewable energy and energy security goals.⁷⁰ A commenter

⁶³ NOAA NMFS.

⁶⁴ United States Coast Guard (USCG).

⁶⁵ Invenergy; energyRe Offshore Wind; American Clean Power Association; Shell New Energies US LLC.

⁶⁶ American Clean Power Association.

⁶⁷ Shell New Energies US LLC.

⁶⁸ energyRe Offshore Wind.

⁶⁹ Shell New Energies US LLC.

⁷⁰ Dominion Energy; Utility Workers Union of America, AFL-CIO; Ironworkers Mid-Atlantic States District Council; BlueGreen Alliance; bp America Inc.; Maryland Energy Administration and Maryland Department of Natural Resources; The Nature Conservancy; American Clean Power Association; Sierra Club Virginia Chapter; Sierra Club.

recommended splitting both lease areas A-2 and C-1 to create four total leases to drive competition and reduce auction prices.⁷¹ A couple commenters expressed disappointment about the exclusion of additional areas off the coasts of Maryland and North Carolina.⁷²

A commenter said that consideration of additional wind energy areas should require a supplemental analysis with an associated comment period and should avoid deep sea coral areas and major commercial and recreational fishing grounds.⁷³

Orientation of turbines

A commenter said that in the event that lease area C-1 is divided into two leases, BOEM should require OSW developers with abutting lease areas to either maintain two consistent lines of orientation across the adjacent lease areas or take a defined setback distance from the lease boundary where no surface structures can be placed.⁷⁴ Another commenter recommended that BOEM require that each wind farm be organized in straight rows and columns to facilitate navigation safety, consistent and continuous marking and lighting, and search and rescue. The commenter also said that if noticeable spacing between wind farms is not feasible, additional marking and lighting to include Automatic Identification System Aids to Navigation should be used to alert mariners of the change in spacing and/or orientation.⁷⁵

Size and location of leases

A commenter recommended the removal of specific aliquots from the lease sale due to their overlap with sensitive ecological areas and important fishing areas. The commenter specifically identified the northern- and southern-most portions of lease area A-2 and the western half of lease area C-1. The commenter also recommended that BOEM require that all site characterization data be collected in standardized formats based on stakeholder engagement and best available science, and be made publicly available.⁷⁶

Another commenter also encouraged the removal of locations that overlap with important benthic, invertebrate, and finfish resources and habitat, including for threatened and endangered species.⁷⁷

BOEM Response:

BOEM will not split Lease Area A-2 or C-1 and will be offering a total of two lease areas in ATLW-10. BOEM continues to use the NCCOS model and work with Federal and State agencies, tribes and stakeholders to determine if additional acreage in the Central Atlantic Region could be suitable for wind energy development in a potential second Central Atlantic lease sale, which could be scheduled as soon as 2025-2026.

Through the Area Identification process, BOEM avoided a significant amount of ocean area that supports important habitat and fishing operations. While some fishing activity and habitat could not be entirely avoided, additional, site-specific data collected by the Lessee will inform the Lessee's design of its proposed facility and BOEM's review of the COP, which may result in further avoidance and minimization of potential impacts.

⁷¹ Corio Generation.

⁷² Sierra Club Virginia Chapter; Sierra Club.

⁷³ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

⁷⁴ Atlantic Shores Offshore Wind LLC.

⁷⁵ United States Coast Guard (USCG).

⁷⁶ NOAA NMFS.

⁷⁷ Delaware Department of Natural Resources and Environmental Control.

Issue 4. Lease Sale Guidelines

Comments associated with this issue are summarized in the subsections below.

Issue 4.1. Bidder Participation

Approximately four commenters discussed bidder participation.

A couple of commenters said that increasing the number of lease sale areas would increase competition and lower electricity prices for consumers.⁷⁸ One commenter remarked that it is in the long-term interest of both BOEM and consumers to have a diversity of players in the market, benefiting local supply chain development by increasing investment, encouraging a diversity of suppliers, and increasing competition for contracts. The commenter stated that increased diversity in the market also could help minimize risk of non-delivery as OSW is capital intensive and there is an inherent risk that leaseholders would fail to develop a given lease area.⁷⁹

Another commenter said that multiple lease areas being awarded to multiple OSW developers would result in more offtake contracts, which have a better chance of contributing to State OSW procurement targets than one larger project alone.⁸⁰

BOEM Response:

BOEM will be offering two lease areas in ATLW-10. BOEM continues to use the NCCOS model and work with Federal and State agencies, tribes and stakeholders to determine if additional acreage in the Central Atlantic Region could be suitable for wind energy development in a potential second Central Atlantic lease sale, which could be scheduled as soon as 2025-2026.

BOEM concurs that there are benefits to the development of offshore resources on the OCS from increased competition and diversification of the offshore wind industry. BOEM has concluded that increased competition is likely to lead to a more diverse pool of lessees and potential developers in the United States, expanding opportunities for innovation in this sector, and insulating this nascent industry against unforeseen risks and challenges.

While a one lease per bidder restriction could potentially lead to a decrease in the overall bonus bids received, BOEM concurs that increased competition for state wind energy procurements offers greater potential benefits to state procurement processes and state ratepayers. These projects are likely to be multi-billion-dollar investments, a figure which affords considerable opportunities for economies of scale on a project-by-project basis, i.e., without lessees winning multiple leases.

Therefore, BOEM is limiting bidders to bid upon and win only one lease area.

Issue 4.2. Affiliated Entities

Approximately two commenters discussed affiliated entities.

One commenter stated that the reference to relative ownership compared to “other bidding entities” should be to “other persons” as control should be assessed based on the bidding entities’ ownership relative to all other owners, rather than other bidding entities alone. The commenter requested BOEM

⁷⁸ Corio Generation; energyRe Offshore Wind.

⁷⁹ energyRe Offshore Wind.

⁸⁰ Invenergy.

revise this provision to use “other persons” instead of “other bidding entities” when issuing the final sale notice (FSN).⁸¹

BOEM Response:

As currently written in the PSN, BOEM identifies affiliated entities as: “...a bidding entity is any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity) that is participating in the same auction.” Additionally, Section III(b)(v) contemplates “[o]ther evidence [that] indicates the existence of power to exercise control...” should a concern of control arise.

For this reason, BOEM has decided not to change the definition of ‘affiliated entities’ as written in the proposed sale notice (PSN) when issuing the final sale notice (FSN).

Issue 4.3. Bidding and Auction Procedures

Issue 4.3.1 General Bidding Credit Comments

One commenter wrote that bidding credits should be tailored to maximize concrete benefits to the public, have a clear allocation and verification regime before an auction, and minimize the unintended risk of increasing the time and cost of offshore wind development.⁸² Another commenter remarked that the FSN should retain BOEM’s proposed bidding credits’ supply chain and fisheries focus as the bidding credits system provides uniquely positive benefits. The commenter recommended increasing the overall credit availability to 30 percent, as this would match BOEM’s actions in the California PACW-1 and Gulf of Mexico GOMW-1 lease sale and would provide positive benefits to taxpayers and electricity consumers.⁸³ Similarly, a commenter said that BOEM should increase the bidding credit cap from 25 percent to 30 percent.⁸⁴

One commenter suggested that any such programs or bidding credits be entirely separate from any mitigation and monitoring measures required as lease conditions to address project specific impacts. The lease language should be revised to specify that BOEM will consider project-specific details evaluated in the construction and operations plan, associated NEPA analysis, and supporting analyzes. Further, this approach would be consistent with the National Oceanic and Atmospheric Administration’s (NOAA) Mitigation Policy for Trust Resources (NAO 216-123).⁸⁵

Several commenters suggested increasing the bidding credit percentages to support fisheries compensatory mitigation. A commenter said that by allocating more credits to fisheries, BOEM would enable OSW lease holders and fishermen to work collaboratively and most effectively on efforts that reflect our changing oceans.⁸⁶ Two commenters suggested splitting the 25 percent multiple-factor bidding credits evenly between the workforce/supply chain credit and fisheries compensatory mitigation. Another commenter suggested increasing the bidding credit cap to 30 percent from 25 percent and increasing the fisheries fund credit to 13 percent. One commenter requested the percentage for supply chain/workforce credit should be lowered and the credit offered for fisheries mitigation and compensation raised to be more commensurate with relative impacts and opportunities. Another commenter stated that BOEM

⁸¹ RWE.

⁸² Shell New Energies US LLC.

⁸³ Corio Generation.

⁸⁴ Invenenergy.

⁸⁵ NOAA NMFS.

⁸⁶ Atlantic Shores Offshore Wind LLC.

should implement a bidding system that incentivizes developers to minimize and mitigate impacts to fishing from project development. The commenter said that there are many shortcomings of the format proposed in the PSN.⁸⁷

One commenter urged BOEM to make clear to bidders and lessees, through lease terms and otherwise, that BOEM might issue civil penalties for non-compliance with lease terms and that such authority would be applied with respect to bidding credit. The commenter stated that BOEM should strengthen its enforcement of lease terms by including more substantial penalties above simply paying back benefits received, including for failures to fulfill lease terms on bidding credits. The commenter said that current requirements would be unlikely to provide enough incentive to lessees who could simply decide down the line to abandon commitments made earlier at the leasing stage.⁸⁸ Another commenter stated that should a lease be sold to a different developer at any point, honoring existing agreements should be prioritized over payment of the bid credit during lease assignment.⁸⁹

BOEM Response:

BOEM will continue to limit the multiple-factor component of the bid to 25 percent. This limit has applied to previous BOEM lease sales. BOEM notes that in the PACW-1 lease sale, highlighted in the comments, the 30 percent credit was used as a percentage of the cash bid. BOEM is updating the method of calculating bidding credits. BOEM is modifying the percentage split between workforce training/supply chain and the fisheries fund. In the PSN BOEM proposed 17 percent for the workforce and supply chain credit and 8 percent for the fisheries compensatory mitigation fund. The bidding credit is being revised to allocate the bidding credit evenly between the workforce training & supply chain and the fisheries compensatory mitigation fund at 12.5 percent each. The existing leasing decision process is designed to minimize offshore impacts including fisheries impacts. BOEM is not making additional changes to the bidding credit provisions for the fisheries compensatory mitigation fund. The fund will support fisheries compensatory mitigation efforts as described in the terms and conditions for COP approval. The COP approval will describe fisheries compensatory mitigation and other lessee obligations for the construction stage and beyond consistent with project specific NEPA analysis.

BOEM is not making changes to the bidding credit enforcement provisions. Repayment of the credit amount with interest is required if the bidding credit provisions are not fulfilled. The time-value of money provides an ample incentive for bidding credit fulfillment. All lease provisions are binding on current and future lessees if the lease is later transferred or sold.

Issue 4.3.2 Fisheries Compensatory Mitigation Credit

Approximately 15 commenters provided comments on the fisheries compensatory mitigation fund credit.

A few commenters expressed support for a fisheries compensatory mitigation fund credit.⁹⁰

Applicability

⁸⁷ Responsible Offshore Development Alliance.

⁸⁸ Ironworkers Mid-Atlantic States District Council.

⁸⁹ Responsible Offshore Development Alliance.

⁹⁰ Corio Generation; Delaware Department of Natural Resources and Environmental Control; bp America Inc.; Maryland Energy Administration and Maryland Department of Natural Resources.

A few commenters said that eligible uses of the fund should not be limited to compensating gear and income loss, and instead suggested that bidders be provided more flexibility in how the fund addresses impacts to fisheries.⁹¹

A commenter recommended expanding the mitigation fund geography beyond the Central Atlantic wind energy areas to account for the regional nature of fishing.⁹²

Credit amount

Some commenters said that BOEM should amend the final sale notice to indicate that the compensation fund amounts may not be sufficient and could be revised following project-specific analysis of fisheries impacts.⁹³

A commenter expressed caution that there is a risk that the 8 percent bidding credit does not constitute an amount that would justify creation of a compensation fund due to administrative costs. The commenter suggested that BOEM should allow lessees to pay the credit amount directly to BOEM for distribution if this were to happen.⁹⁴

A commenter recommended increasing the size of the credit to 12.5 percent to be in line with the workforce training or supply chain development credit.⁹⁵ Another commenter suggested increasing the credit to 13 percent, with the extra 5 percent coming from an increase in the overall bidding cap to 30 percent from 25 percent.⁹⁶ Other commenters asked BOEM to justify the 8 percent bid credit for the Central Atlantic when a recent lease sale in the Gulf of Mexico included a 10 percent bidding credit.⁹⁷ Another commenter said that the 8 percent credit is too low.⁹⁸

Regional fund

A commenter said that a regional fund may be impractical because the fisheries compensation fund credits associated with this lease auction may be insufficient to support one.⁹⁹ Another commenter suggested that BOEM include language in the FSN that will ensure that up to 50 percent of the fisheries bid credit generated by the Central Atlantic auction may be dedicated to compensatory mitigation claims or resiliency investments specifically associated with the Central Atlantic leases if the credit is paid into a regional fisheries fund.¹⁰⁰

A commenter said that a regional fund is close to being established, with 11 States having signed a letter of support for its establishment, among other developments.¹⁰¹

Other comments

A commenter expressed support for minimizing costs by leveraging existing processes, procedures, and information from BOEM Fisheries Mitigation Guidance and the Eleven Atlantic States' Fisheries

⁹¹ Shell New Energies US LLC; NOAA NMFS.

⁹² Atlantic Shores Offshore Wind LLC.

⁹³ NOAA NMFS; Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

⁹⁴ Shell New Energies US LLC.

⁹⁵ Atlantic Shores Offshore Wind LLC.

⁹⁶ American Clean Power Association.

⁹⁷ Delaware Department of Natural Resources and Environmental Control; Virginia Marine Resources Commission.

⁹⁸ Responsible Offshore Development Alliance.

⁹⁹ Shell New Energies US LLC.

¹⁰⁰ RWE.

¹⁰¹ American Clean Power Association.

Mitigation Project but noted that neither have been finalized. The commenter also supported independent management of the fund by a third party.¹⁰²

Regarding environmental conservation, a commenter said that BOEM should direct funding to research through the Regional Wildlife Science Collaborative for Offshore Wind (RWSC), and if BOEM chooses not to, it should at least consult RWSC's science plan.¹⁰³

A commenter argued that the use of bidding credits should allow the competitive lease award process to take into consideration Federal and State policy priorities, as was recently demonstrated in the PSN for the California and Gulf of Mexico to include a fisheries mitigation credit.¹⁰⁴

A commenter said that lessees should have more than 5 years to contribute to the fisheries compensation fund, especially in light of the allowance of 5 years to conduct site assessment activities.¹⁰⁵

A commenter recommended that BOEM require winning lessees provide regular communication about the investment of any bidding credits.¹⁰⁶

BOEM Response:

BOEM is increasing the bidding credit for the Compensatory Mitigation Fishing Fund to 12.5 percent from the 8 percent proposed. The increase in this credit is being offset through a reduction in the Workforce Training and Supply Chain credit. If funds needed for fisheries compensatory mitigation are insufficient, the lessee will be responsible for additional compensation consistent with the terms and conditions of COP approval.

BOEM is not making other changes to the bidding credit provisions in the FSN including changing the time limit that lessees have to contribute to a fund. BOEM finds that five years is sufficient for lessees to fulfill the requirements for this bidding credit. BOEM requires independent and fiduciary management of any fund, and those provisions are unchanged.

Issue 4.3.3 Conservation Activities Credit

Approximately 10 commenters discussed conservation activities bid credits.

Support

A couple of commenters expressed general support for a conservation activities bid credit but reasoned that such a program should have measurable standards, management plans, and be generally flexible in allowing developers to decide how to apportion and pay for the credit and its implementation.¹⁰⁷

Similarly, one commenter recommended that if these credits become available for use in the Central Atlantic, that they should be as flexible as possible and be made available to resource managers as early as possible.¹⁰⁸

A couple of commenters expressed appreciation for the opportunity to provide feedback on a potential conservation activities bid credit and reasoned that the issue should include a more robust process,

¹⁰² Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

¹⁰³ National Wildlife Federation et al.

¹⁰⁴ Virginia Marine Resources Commission.

¹⁰⁵ American Clean Power Association.

¹⁰⁶ North Carolina Department of Commerce.

¹⁰⁷ Delaware Department of Natural Resources and Environmental Control; bp America Inc.

¹⁰⁸ Maryland Energy Administration and Maryland Department of Natural Resources.

including BOEM publishing a Request for Information (RFI) with a public comment period and hosting stakeholder feedback sessions, and that conservation bid credits should be effective at addressing OSW impacts, flexible, regionally relevant, measurable, and attractive to developers, among other things.¹⁰⁹

Oppose

One commenter asserted that a bidding credit would not be the most effective solution for protecting endangered species, migratory birds, and North Atlantic right whales.¹¹⁰ Another commenter asserted that before BOEM proceeds with such a program, it should confirm that this credit is necessary, accessible to all potential lessees, flexible, and as effective as possible within its context.¹¹¹

Other comments on conservation activities bid credits

One commenter recommended that a significant portion of the total bidding credits go towards a conservation program, discussed eligible activities under a conservation bidding credit, such as data collection and data management initiatives, and reasoned that effective programs based in adaptive management can help the compatibility of OSW development with conservation and sustainability efforts.¹¹²

One commenter encouraged BOEM to consider a variety of programs furthering the conservation of North Atlantic right whales as eligible for the conservation bidding credit program, generally discussed effective ways to develop, determine eligibility for, implement, and enforce such as program, and listed previously proposed bidding systems across other lease sales from the Atlantic, Pacific, and Gulf of Mexico.¹¹³ Another commenter discussed how common and heavily incentivized bidding credits are for supply chain, workforce development, and fisheries compensation are across States on the Atlantic Coast, reasoning that investments in conservation-related projects should be similarly addressed.¹¹⁴

One commenter asserted that BOEM should conduct an extensive review of institutions to see which might be best equipped to administer a conservation bid credit, such as the RWSC for Offshore Wind in the Atlantic, the Oregon Ocean Science Trust and Fund in the Pacific, and the Gulf of Mexico Alliance in the Gulf of Mexico. The commenter added that a potential conservation bid credit should require similar documentation and enforcement measures as required for supply chain, workforce development, and the fisheries compensatory mitigation fund bidding credits, and listed a handful of these measures. Finally, this commenter discussed a number of “ideal qualities” of a conservation bid credit, including 1) being environmentally critical, such as targeting species in specific need of protection, 2) being additive to other mitigation and monitoring efforts and being founded upon “Net Positive Impact” principles, such as those discussed in the Marine Law Symposium cited by the commenter, 3) being regionally relevant and tailored to the areas in which OSW is being developed, 4) being measurable and transparent for the benefit of both participating institutions and the general public, and 5) being attractive to developers, by which BOEM should conduct a formal RFI and hold conversations with developers in order to determine what qualities of bid credits make them more likely to be used.¹¹⁵

¹⁰⁹ American Clean Power Association; National Wildlife Federation et al.

¹¹⁰ RWE.

¹¹¹ Shell New Energies US LLC.

¹¹² IOOS Association.

¹¹³ Oceana.

¹¹⁴ The Nature Conservancy

¹¹⁵ National Wildlife Federation et al.

To conserve environmental resources, one commenter recommended that BOEM implement the largest conservation bidding credit possible in all future leases in New England and other regions.¹¹⁶ Likewise, another commenter suggested that BOEM elevate the conservation program bidding credit as a priority in its non-cash options and allow for at least 15% of the total non-cash bidding credit to be associated with approved conservation programs.¹¹⁷

BOEM Response:

BOEM had requested information on conservation bidding credits as a potential bidding credit for future lease sales. BOEM received numerous comments regarding both support and opposition for conservation bidding credits. The majority of the comments expressed support for conservation bidding credits but commented on the need to review the percentage of total allowable bidding credits, a need for additional stakeholder engagement on the topic, and the structure and accessibility of conservation bidding credits. BOEM is not planning a conservation bidding credit at this time and it will not be included in the final sale notice for the Central Atlantic. However, BOEM is continuing to analyze the comments received and identify any actions needed to consider such credits in future lease sales.

Issue 4.3.4 Workforce Development and Supply Chain Credit

A few commenters expressed general support for the proposal to give bidding credits to developers for workforce training and/or supply chain development on the grounds that they would spread benefits around and contribute to the success of the OSW industry.¹¹⁸

One commenter expressed general opposition to the use of such credits on the grounds that they would “not support a particularly efficient use of re-training resources” and that revenue-sharing legislation through Congress would be a better mechanism for sharing economic benefits of OSW, or, if credits are included, that a portion of them be used for training purposes.¹¹⁹

One commenter said that it “has no comment” on bidding credits for workforce training or supply chain development.¹²⁰

One commenter generally discussed the development of conservation bidding credits in the context of supply chain development and workforce training credits, reasoning that the overall structure, enforcement mechanisms, and eligibility requirements for conservation credits should mirror that of the workforce and supply chain credits.¹²¹

BOEM Response:

BOEM is offering a 25 percent bidding credit split evenly between workforce training & supply chain development and fisheries compensatory mitigation. It is not offering other bidding credit incentives in this sale.

Size of bidding credits

A few commenters recommended that BOEM increase the bidding credit cap to at least 30 percent on the grounds that it would allow bidders to pursue vigorous plans, ensure developments serve the public

¹¹⁶ New England for Offshore Wind.

¹¹⁷ The Nature Conservancy.

¹¹⁸ Atlantic Shores Offshore Wind LLC; RWE; bp America Inc.

¹¹⁹ Shell New Energies US LLC.

¹²⁰ National Park Service.

¹²¹ The Nature Conservancy.

interest, meet OCSLA and Department of Labor standards, and secure important domestic investments, rather than letting manufacturing flow out of the United States.¹²²

One commenter expressed general support for these bidding credits and asserted that BOEM should consider applying a consistent value of a 20 percent bidding credit for the Central Atlantic but added that BOEM needs to be more specific on how these development efforts would be evaluated for success and how developers might handle obstacles related to development. They also reasoned that BOEM should consider a bidding credit for lessees that coordinate with nearby lessees on shared transmission systems.¹²³

One commenter compared the workforce and supply chain bidding credits to the fisheries compensatory mitigation funds, reasoning that the former's 17 percent credit is too high in comparison to the 8 percent for fisheries, and that they should be changed to be more commensurate with "relative impacts and opportunities."¹²⁴

Bidding credit structure and standards

A couple of commenters urged BOEM to raise the minimum standards for bidding credits on workforce training to encourage the use of union programs, especially apprenticeship and apprenticeship readiness programs, which teach industry best practices, ensure safe operations, and would help BOEM meet equity obligations by reaching marginalized and EJ communities.¹²⁵

Similarly, one commenter reasoned that BOEM should expand the proposed credit structure in order to increase investments in OSW energy and in supply chain development and workforce training, specifically to benefit underserved communities. To do so, the commenter urged BOEM to focus on investing in strategies that would remove barriers to training and employment and establish pipelines of talent through apprenticeship programs and other credential programs, follow examples set by other branches of the Federal government, such as the U.S. Department of Transportation and certain branches of the armed forces, encourage contracting with minority- and women-owned businesses, and encourage investment in "quiet foundation technology."¹²⁶

Another commenter expressed general support for these bidding credits, recommended that BOEM include "wraparound services" as an activity eligible for the workforce development bidding credit, and suggested that BOEM clarify how these credits will interact with "competitive State offshore wind solicitation processes" with significant investment attached.¹²⁷ One commenter expressed general support for these bidding credits but reasoned that increased leasing in the Central Atlantic will be the best way to support the establishment of a domestic OSW industry.¹²⁸

One commenter asserted that BOEM should require strategies submitted to qualify for bidding credits to be made publicly available and stated that the DOE Funding Opportunity Announcement (FOA) for Regional Hydrogen Hubs Community Benefits Plans could be used as a model for these strategies. They discussed positive impacts of community benefits plans under the FOA and urged BOEM to ensure that

¹²² The Nature Conservancy; American Clean Power Association; Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO.

¹²³ Delaware Department of Natural Resources and Environmental Control.

¹²⁴ Responsible Offshore Development Alliance.

¹²⁵ Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO.

¹²⁶ Southern Environmental Law Center.

¹²⁷ Maryland Energy Administration and Maryland Department of Natural Resources.

¹²⁸ American Clean Power Association.

any bidding credit investments include a supplier code of conduct, require the development of a community benefit agreement and the collection of information on jobs created from the use of the supply chain bidding credit, require consultation with labor unions and community groups, and invest in training programs, especially those benefiting marginalized communities. The commenter added that BOEM should work to ensure that Safety Management Systems and supplier codes of conduct protect workers and that developers do not discriminate against any workers that raise health or safety concerns on the job.¹²⁹

One commenter recommended that these bidding credits include a “right of first refusal” to commercial fishing industry members with unique and/or transferable skill sets.¹³⁰

BOEM Response:

The workforce training and supply chain development bidding credit is designed to support investments that would not otherwise occur. The OCSLA does not authorize BOEM to prescribe labor provisions, domestic content, manufacturing, or assembly for offshore wind” components used to construct OCS offshore wind projects. BOEM encourages union apprenticeships and labor management training partnerships but cannot require specific programs.

A bidder’s Conceptual Strategy may contain proprietary or confidential information, and BOEM will continue to protect that confidentiality. Lessees can work with states and stakeholders in making workforce and supply chain investments to determine those that will provide the greatest value for advancing the domestic offshore wind industry.

Considering the needs of offshore wind in the Central Atlantic, BOEM has increased the bidding credit for fisheries compensatory mitigation and reduced the percentage for workforce training and supply chain development. Bidders are eligible for a 25 percent bidding credit in the Central Atlantic sale with 12.5 percent allocated to each workforce training & supply chain and fisheries compensatory mitigation.

Issue 4.3.5 Auction Procedures

One commenter expressed support for the proposed use of the "one-per-customer" rule. As there would be only two or three lease areas available, offering a bidder the opportunity to acquire more than one lease would reduce competitive interest in the auction. The commenter said that limiting bidders to acquiring only one lease in the auction, on the other hand, would be consistent with principles of equity and fairness and would ensure additional diversity of leaseholders in the region.¹³¹ Similarly, another commenter remarked that limiting bidders to a single lease area is simple and consistent with previous BOEM auctions.¹³² A commenter expressed support for the “one-per-customer” rule for this auction, as this would maximize developers’ flexibility to switch between leases and ensure that the lease areas get awarded to multiple bidders.¹³³ Another commenter wrote that auction process changes should move forward as proposed.¹³⁴

Bidding restrictions based on proximity

¹²⁹ BlueGreen Alliance.

¹³⁰ Virginia Marine Resources Commission.

¹³¹ Shell New Energies US LLC.

¹³² energyRe Offshore Wind.

¹³³ bp America Inc.

¹³⁴ Equinor Wind US LLC.

One commenter said that BOEM should consider prohibiting bidders from winning a lease area that is within 25 miles (21.7 nautical miles) of any other lease the bidder already controls. This would ensure diversity and competition between developers and increase opportunities for businesses in the supply chain.¹³⁵

BOEM Response:

BOEM is dedicated to maintaining competition for individual lease areas in the auction design and facilitating a competitive environment for state offshore wind procurements. Preventing a qualified bidder from bidding on a lease area offered in the Central Atlantic sale is contrary to the OCS Lands Act which requires BOEM to maintain open competition for OCS resources. Consistent with the PSN, BOEM is restricting bidders to winning one lease area to facilitate competition for state offtake agreements.

Bidder information and cost of grid upgrades

A commenter urged BOEM to ensure transparency and accountability with public dollars, by including a specification in the lease that any information or documentation submitted by the winning bidder with respect to the bidding credits cannot be marked as confidential.¹³⁶ Another commenter said that while the necessary cost of grid upgrades cannot be fully eliminated, it can be somewhat mitigated by using a portion of the lease sale proceeds from the auction to subsidize them. The commenter wrote that this is an appropriate way for BOEM to generate return and value to ratepayers in support of developing the country's critical energy transmission infrastructure.¹³⁷

BOEM Response:

A bidder's Conceptual Strategy may contain proprietary or confidential information and BOEM will continue to protect that confidentiality. BOEM encourages lessees to work with states and stakeholders to find the workforce and supply chain investments that will provide the greatest value for advancing the domestic offshore wind industry. BOEM is not offering bidding credits for transmission or grid upgrades in this sale.

Issue 4.4. Lease sale deadlines and milestones

Approximately two commenters discussed lease sale deadlines and milestones.

A commenter said that BOEM should not wait until the current Central Atlantic lease sale is held to initiate the first step, namely the publication of a Call for Information and Nominations.¹³⁸

One commenter stated that a cumulative effects review should include all project stages and not decouple site characterization surveys from construction, operations, and decommissioning activities. It would benefit all parties for BOEM to clarify its approach to cumulative effects review and implement regional planning processes as robust as those it employs for oil and gas leasing. The commenter remarked that fast tracking the large number of projects based on existing, environmentally random OSW energy production targets leaves little recourse to reverse any biological or ecological impacts.¹³⁹

¹³⁵ Maryland Energy Administration and Maryland Department of Natural Resources.

¹³⁶ Ironworkers Mid-Atlantic States District Council.

¹³⁷ energyRe Offshore Wind.

¹³⁸ American Clean Power Association.

¹³⁹ Responsible Offshore Development Alliance.

A commenter said that one of the most important reforms needed to fulfill BOEM's statutory mandates and inform whether, where, and how much OSW development is appropriate is that it must prepare a regional PEIS before leases are issued. This is important as site characterization activities have potentially significant environmental impacts, especially when considered at a cumulative, regional scale, and the most important opportunity for avoiding and minimizing impacts to fisheries and the marine environment from OSW activities exists when deciding on lease siting. The commenter also remarked that leasing necessitates an environmental impact statement (EIS), not an EA. The commenter stated that under NEPA, an EA is appropriate for a proposed action that is not likely to have significant effects, or the significance of the effects is unknown, whereas an EIS is appropriate for actions that are likely to have significant effects.¹⁴⁰

BOEM Response:

Multiple states within the Central Atlantic region have indicated to BOEM an interest in identifying additional WEAs to meet state offshore wind energy goals. In response to this interest, BOEM began a second round of planning for the Central Atlantic region in 2024.

The Proposed Action for this EA is the issuance of commercial wind energy leases within the WEAs that BOEM has designated on the OCS in the Central Atlantic, and the granting of ROWs and RUEs in support of wind energy development. Issuance of leases and grants would only allow for the submittal of plans for BOEM's consideration and approval, which does not constitute an irreversible and irretrievable commitment of resources. Therefore, BOEM's environmental analysis focused on the effects of site characterization and site assessment activities that take place after the issuance of commercial wind energy leases. This EA analyzes BOEM's issuance of up to four leases that may cover the entirety of the WEAs, the issuance of potential easements associated with each lease, and the issuance of grants for subsea cable corridors and associated offshore collector/converter platforms. In the event that a Construction and Operations Plan (COP) is submitted by a lessee at a later date, BOEM would analyze the impacts of that proposed action based on the site-specific plans submitted.

Issue 4.5. Lease terms and conditions

Approximately nine commenters discussed lease terms and conditions.

One commenter recommended that BOEM review the proposed lease stipulations and look for opportunities to narrow or clarify them to avoid discouraging developer interest or unnecessarily devaluing the lease areas.¹⁴¹ Another commenter requested BOEM include the right to project easements in the FSN as such a right is essential to ensure the efficient development of the OSW project in the lease area.¹⁴² A few commenters requested BOEM clarify that the Lessee must apply for any project easement as part of the COP or site assessment plans (SAP), consistent with provisions in BOEM's previous FSNs, such as Gulf of Mexico and California.¹⁴³

BOEM Response:

¹⁴⁰ Responsible Offshore Development Alliance.

¹⁴¹ Shell New Energies US LLC.

¹⁴² RWE.

¹⁴³ RWE; Invenery; American Clean Power Association.

BOEM has included the requested ROW and RUE language in the FSN. The referenced language was in the PSN draft leases and is included in final leases for both Central Atlantic areas. BOEM was never intending to convey any changes to the ROW/RUE policy or process.

One commenter suggested that BOEM include a lease stipulation that would require regular physical and biological oceanographic sampling for a minimum of three to five years prior to construction in the lease areas and surrounding waters. Regarding site assessment programmatic informal Endangered Species Act consultation, the commenter recommend that the lease condition be written in a way that would require compliance with any updated versions of the June 2021 consultation or any consultations that are developed in the future that may replace that consultation.¹⁴⁴ Another commenter wrote that clear, strong environmental measures should be incorporated directly into the final lease stipulations (e.g., minimizing underwater noise levels, avoiding benthic habitats, and avoiding North Atlantic right whales), acknowledging that these measures might need to be strengthened over time following the best available science. The commenter also remarked that BOEM should require turbine collision avoidance measures and lighting restrictions for birds and bats during site assessment and construction as lease stipulations. In addition to requiring standardized impact avoidance and mitigation, the commenter stated that it is vital for BOEM require standardized monitoring to ensure a successful and efficient buildout of environmentally responsible OSW in the Central Atlantic region.¹⁴⁵

A commenter said that BOEM should require consistency and coordination between new and existing lessees on site assessment and characterization survey methods, including fisheries surveys, considering the recommendations of the Responsible Offshore Science Alliance for fisheries assessment.¹⁴⁶ Another commenter stated that BOEM should require lease stipulations for contributions to collaborative science and regional monitoring. They recommended that BOEM include lease stipulations requiring lessees to provide plans for adaptive mitigation strategies and compensatory mitigation, as needed, based on monitoring outcomes.¹⁴⁷

A commenter expressed support for the inclusion of detailed decommissioning plans outlining the standards successful lease holders must meet for restoring the marine environment in the PSN. The commenter said that EISs for existing projects do not contain any relevant information on the steps that must be taken to decommission these sites and BOEM staff indicated that the cables could be reused for different projects once the initial lease has ended, which indicates no intention of decommissioning these lease sites.¹⁴⁸ One commenter said that, regardless of the OREI layout and location, all mooring systems and ancillary equipment should be contained inside the approved lease area as a requirement under the terms and conditions of a specific lease.¹⁴⁹

BOEM Response:

BOEM Guidelines for Providing Benthic Habitat Survey Information for Renewable Energy Development on the Atlantic Outer Continental Shelf, under 30 CFR Part 585 recommend 2 years of seasonal survey data (spring, summer, fall, winter) for pre-construction site characterization. Baseline surveys should include the entire area of potential adverse effect. Control sites for post-construction monitoring should be identified. Remote acoustic surveys should cover 100% of the area. Other sampling resolution is site-

¹⁴⁴ NOAA NMFS.

¹⁴⁵ Southern Environmental Law Center.

¹⁴⁶ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

¹⁴⁷ Southern Environmental Law Center.

¹⁴⁸ Responsible Offshore Development Alliance.

¹⁴⁹ United States Coast Guard (USCG).

dependent but generally not more than one sample per 1-2 km along a proposed line of potential impact or one sample per 1-2 km² within a proposed area of potential adverse effect.

Regarding ESA consultation, BOEM has updated the lease stipulation to require that Lessee OCS activities comply with the standards in the Project Design Criteria and Best Management Practices found in BOEM's notice

(<https://www.boem.gov/sites/default/files/documents/PDCs%20and%20BMPs%20for%20Atlantic%20Data%20Collection%2011222021.pdf>) last revised on November 22, 2021. At the Lessee's option, the Lessee, its operators, personnel, and contractors may satisfy this requirement by complying with the NMFS approved measures to safeguard protected species that are most current at the time an activity is undertaken.

Issue 4.5.1. National security stipulations related to foreign interests

Approximately eight commenters discussed national security stipulations related to foreign interests.

Supply Chain

Multiple commenters stated that development of OSW by a domestic workforce would improve United States supply chain stability by providing a consistent independent energy source to power the nation.¹⁵⁰ A few commenters cited a summary report jointly-commissioned by the Department of Energy (DOE) and the North American Electric Reliability Corporation (NERC), assessing risks to the U.S. electricity generation and distribution infrastructure, which found that the “bulk power system is dependent on long supply chains, often with non-domestic sources and links” and determined that the “increased reliance on foreign manufacturers, with critical components and essential spare parts manufactured abroad (e.g. HV transformers)” means the “supply chain itself represents an important potential vulnerability.” The commenters expressed support for the report’s recommendation that “efforts should be considered to bring more of the supply chain and manufacturing base for these critical assets back to North America.”¹⁵¹

National Security

One commenter said that establishing a domestic content preference would help create more certainty for manufacturing companies looking to enter into the OSW supply chain, further contributing to the goals of national security, expeditious and orderly development, and fair return to the United States.¹⁵² A commenter expressed support for BOEM’s facilitation of an OSW industry as it could help protect national security interests not only by moving the country towards energy independence, but also by mitigating the national security threats posed by climate change itself.¹⁵³

A commenter stated that they had no concern with BOEM’s new proposed national security stipulations and the requirement to share information with the Department of Defense (DOD) and the Committee on Foreign Investment (CFIUS). Additionally, the commenter expressed support for stipulations to take seriously the National Aeronautics and Space Administration’s (NASA) and DOD’s concerns regarding

¹⁵⁰ Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO; BlueGreen Alliance.

¹⁵¹ Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO; BlueGreen Alliance.

¹⁵² BlueGreen Alliance.

¹⁵³ Ironworkers Mid-Atlantic States District Council.

the proximate location of the project to their facilities into account, as these facilities are essential to national security.¹⁵⁴

One commenter expressed concern with proposed lease stipulation 4.4, which would require the lessee to provide the names of entities who own, or would engage in activities at, an OCS facility, and the names of any foreign entities allowed access to such facilities, to the DOD for review at least 14 days prior to the lessee taking any actions in the lease area. The commenter recommended that BOEM and the DOD consider whether their objectives could be met through a less burdensome requirement such as an annual or semi-annual report of foreign entities who have or are expected to engage in activities on the lease. Additionally, the commenter remarked that because the statutory authority underpinning BOEM's suspension regulation is OCSLA, BOEM's regulatory authority to suspend operations for national security or defense purposes is necessarily limited to the narrow circumstances set forth in Section 12 of OCSLA. To avoid confusion, the commenter requested that the FSN include a clarifying explanation of BOEM's understanding of the scope of its authority to suspend operations in the interest of national security or defense.¹⁵⁵

Regarding new national security stipulations related to foreign interest, one commenter requested further definition of what BOEM implies when it states, "prior to the lessee taking any action in the lease area." The commenter said that while they understand the need to perform this reporting prior to any construction activities on the lease area, they recommend activities such as surveys or operations be exempt from such reporting. Additionally, the commenter requested more detail on Stipulation 4.5.¹⁵⁶

A commenter remarked that the reference in Section 4.5 of the draft lease to 31 Code of Federal Regulations (CFR) part 800 might need to be changed to or include reference to 31 CFR part 802" because the CFIUS regulations pertaining to filing based on real estate jurisdiction are for the most part contained in part 802. The commenter also said that Section 4.5 of the draft lease stating the approval of any assignment of lease interest should conclude only after any of the following three outcomes; CFIUS concludes action on the declaration; CFIUS does not conclude action on the declaration, but also does not request a joint voluntary notice (JVN) or initiate a unilateral review; or CFIUS requests a JVN be filed or initiates a unilateral review subsequent to the declaration, and then concludes action on that further review.¹⁵⁷

BOEM Response:

While BOEM has largely avoided and minimized conflict with military activities during the Area Identification process, the national security stipulations in the lease are necessary to ensure coordination and deconfliction of potential remaining conflict during lessee activities over the life of the lease. Revisions to the proposed lease stipulations were made in the final leases in response to comments received. These revisions include: broadening the Coordination with Military Operations stipulation to not be limited to electromagnetic emissions related activities; changing the timing of and type of foreign interest information to be provided by lessee; clarification on the applicable CFIUS regulations and when a lease assignment may proceed after a CFIUS review; and the addition of a stipulation requiring a national security risk assessment related to distributed optical fiber sensing equipment and lessee controlled acoustic monitoring devices.

¹⁵⁴ energyRe Offshore Wind.

¹⁵⁵ Shell New Energies US LLC.

¹⁵⁶ Atlantic Shores Offshore Wind LLC.

¹⁵⁷ bp America Inc.

Issue 4.6. Environmental issues and concerns

Approximately five commenters provided comments on environmental issues and concerns.

A commenter said that any place where sediments will be disturbed must be evaluated for sediment contamination to understand the potential for environmental effects associated with contaminant release.¹⁵⁸ Another commenter said that lessees should be responsible for tracking plumes and assessing impacts when oil or other contaminants such as nutrient loading enter the environment.¹⁵⁹ A third commenter urged BOEM to incorporate environmental avoidance and mitigation measures directly into the leases for lease areas A-2 and C-1 as stipulations.¹⁶⁰

A commenter expressed their commitment to an OSW industry that improves public health by reducing pollution and takes all action necessary to develop projects in an environmentally responsible manner by avoiding, minimizing, monitoring, and mitigating impacts to wildlife and natural resources.¹⁶¹

Issue 4.6.1. Social factors (including environmental justice)

Approximately three commenters provided comments on social factors.

A commenter said that OSW has the ability to deliver community benefits, especially to disadvantaged communities, and can be guided by robust and inclusive stakeholder engagement.¹⁶²

A commenter argued that regional experts and stakeholders should guide the selection of priority conservation activities and direct how those conservation dollars are spent.¹⁶³

A commenter urged BOEM to encourage engagement with rightsholders and stakeholders throughout the leasing and permitting process, including consultations with Tribal, State, Federal, and local entities, conservation groups, and representatives of the fishing industry, utilities, academia, labor groups, and others. The commenter supported a lease requirement to hold a set number of regional meetings per year with stakeholders but also commented that these engagement opportunities do not substitute for government-to-government consultation with Tribes.¹⁶⁴

BOEM Response:

Stakeholder engagement is a major focus of BOEM's renewable energy program, which includes a number of processes to enhance outreach, coordination, and collaboration. BOEM has established Intergovernmental Renewable Energy Task Forces, which consist of federally recognized Tribes, federal agencies, states and local governments, to maximize coordination with governmental partners. BOEM engages with the public at multiple steps in the lease sale and environmental review processes, holding scoping meetings, public meetings and most recently the well-received New York and New Jersey Offshore Wind Environmental Justice Forums for the New York Bight Region. BOEM outlines numerous opportunities for public engagement on its website and actively seeks public comments and feedback through both its formal notices in the Federal Register and also through various outreach efforts. BOEM

¹⁵⁸ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

¹⁵⁹ IOOS Association.

¹⁶⁰ Southern Environmental Law Center.

¹⁶¹ New England for Offshore Wind.

¹⁶² BlueGreen Alliance.

¹⁶³ The Nature Conservancy.

¹⁶⁴ Southern Environmental Law Center.

encourages and welcomes all public participation and supports conservation activities informed by regional experts and stakeholders alike.

Additionally, BOEM recognizes that it has a unique legal relationship with Tribal Nations set forth in the Constitution of the United States, treaties, statutes, and court decisions, and therefore, consultation with a Tribal Nation must recognize the government-to-government relationship between the federal government and Tribal Nations. BOEM acknowledges that Tribal Nations possess special expertise and BOEM will continue to consult with Tribal Nations and, as appropriate, their representatives, including the Tribal Historic Preservation Officer (THPO), regarding offshore wind projects on the OCS.

Issue 4.6.2. Commercial Fisheries

Approximately seven commenters provided comments on commercial fisheries.

Commercial fisheries concerns

A commenter discussed in detail the commercial fisheries operating in the proposed lease areas, saying that they will be negatively impacted due to displacement of fishing effort, increased user conflicts, gear loss/damage, increased operational costs, reduction in fishery landings and revenue due to changes in fishery distribution or abundance, and navigation and safety concerns. The commenter also recommended that surveys of fisheries resources be considered as part of the site characterization process and integrated as a lease stipulation into the final sale notice.¹⁶⁵ The commenter was joined by another commenter in stating that the PSN does not reference or identify the fishing areas within the lease areas and are not excluded from sale, and urged BOEM to amend the PSN to note portions of the lease areas that may not be available for future development due to overlap with marine resources, fishery uses, and infrastructure considerations.¹⁶⁶

A commenter stated that stakeholders within the fishing industry have consistently raised environmental concerns to BOEM regarding OSW development, offering suggestions to improve environmental stewardship and balance with sustainable seafood production, but BOEM has neither adequately addressed these requests nor prioritized the fishing industry's ecological knowledge. The commenter criticized BOEM's current and prior approaches to avoiding conflicts between OSW facilities and fisheries, stating that such methods have been unpredictable and ineffective, leading to confusion, ineffective engagement, and increased risk to coastal communities. According to the commenter, both the EA and PSN findings lacked diligence and public input.

The commenter added that BOEM failed to account for three aspects of wind program safety that are mandated by the OCSLA: safety, environmental protection, and prevention of interference with fishing. The commenter argued that in order to prevent interference with fishing BOEM must account for and include the following:

- Acknowledging that turbine spacing of less than 2 nautical miles in areas fished with mobile gear constitutes a complete closure;
- Requiring orientation and layout of turbines to maintain fishing practices as much as possible, with closely spaced turbines leaving a greater no-build area on significant fishing grounds within a lease if practical;
- Full incorporation of fishermen's knowledge into cable routes and burial depths;

¹⁶⁵ NOAA NMFS.

¹⁶⁶ NOAA NMFS; Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

- Prohibition of development in areas identified as sensitive habitats, important fishing grounds, or vulnerable to adverse impacts from OSW development, regardless of inclusion in a lease, before such effects are known;
- Alternatives to address fisheries impacts, including site assessment and project design principles aimed at reducing disruptions to fishing, fisheries habitats, coastal businesses, and seafood-dependent communities; and
- Identification of opportunities within the leasing process for implementing measures such as seasonal restrictions on site activities, improved hazard notifications, whistleblower protections, and establishing clear criteria for assessing conflicts that may impede OSW development.¹⁶⁷

A commenter expressed concern that BOEM has not adequately addressed nor considered impacts on fisheries resources that are economically and socially important to Virginia, despite detailed information the commenter provided to BOEM during the Central Atlantic call area winnowing process.¹⁶⁸ A commenter expressed support for OSW energy development but emphasized the importance of fisheries throughout the area to the social and economic well-being of communities in this region.¹⁶⁹

Other comments

A commenter said that lease areas A-2 and C-1 should not be considered for sale because of the economically important commercial fisheries in both of those areas.¹⁷⁰

A commenter said that OSW development will destroy commercial fisheries.¹⁷¹

A commenter recommended that the commercial fishing industry be prohibited from any discussion, decision, or determination on wind power development due to the “recent action of fishermen colluding” with Koch Industries to block oversight and regulation.¹⁷²

BOEM Response:

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. 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. When 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, and may include terms and conditions to address mitigations as part of COP approval, if necessary.

BOEM will not recommend fisheries surveys as a site characterization lease stipulation. Our regulations require information not surveys as a part of the site assessment and characterization activities. Additionally, fisheries surveys may be conducted should data gaps require those as part of the development of the COP.

Additionally, the multi-factor auction includes an option for a bidder to qualify for a Fishing Compensatory Mitigation Bidding Credit. This credit is intended to help address the impacts identified in

¹⁶⁷ Responsible Offshore Development Alliance.

¹⁶⁸ Virginia Marine Resources Commission.

¹⁶⁹ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

¹⁷⁰ Long Island Commercial Fishing Association.

¹⁷¹ T. Jones.

¹⁷² Anonymous.

BOEM's environmental and project reviews, including compensating fishers for income loss or gear loss or damage.

Issue 4.6.3. Recreational fisheries

Approximately three commenters provided comments on recreational fisheries.

A commenter discussed in detail the recreational fisheries operating in the proposed lease areas, saying that they will be negatively impacted by OSW development. The commenter also recommended that surveys of fisheries resources be considered as part of the site characterization process and integrated as a lease stipulation into the final sale notice.¹⁷³

A commenter expressed concern that BOEM has not adequately addressed nor considered impacts on fisheries resources that are economically and socially important to Virginia, despite detailed information the commenter provided to BOEM during the Central Atlantic call area winnowing process.¹⁷⁴

A commenter said that OSW development will destroy recreational fisheries.¹⁷⁵

BOEM Response:

A lease does not 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. 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. When 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, and may include terms and conditions to address mitigations as part of COP approval, if necessary.

BOEM will not recommend fisheries surveys as a site characterization lease stipulation. Our regulations require information not surveys as a part of the site assessment and characterization activities. Additionally, fisheries surveys may be conducted should data gaps require those as part of the development of the COP.

Additionally, the multi-factor auction includes an option for a bidder to qualify for a Fishing Compensatory Mitigation Bidding Credit. This credit is intended to help address the impacts identified in BOEM's environmental and project reviews, including compensating fishers for income loss or gear loss or damage.

Issue 4.6.4. Recreational Resources

Approximately one commenter discussed recreational resources.

The commenter described in detail the various National Historic Landmarks and other locations that it said would be impacted by OSW development, primarily due to changes to historic views and vistas. The commenter requested that as lease areas are developed, plans are made to create visual simulations, including static photos, videos, nighttime simulations, and time lapse simulations from coastal national parks in order to create visual impact assessments. The commenter also discussed the importance of dark nighttime skies and provided several specific suggestions BOEM should take to protect the night sky.

¹⁷³ NOAA NMFS.

¹⁷⁴ Virginia Marine Resources Commission.

¹⁷⁵ T. Jones.

This commenter also provided historical background on the Cape Hatteras Light Station, which was first authorized by Congress in 1794 to establish a system of navigational aids and ensure safe maritime transportation. The commenter stated that the National Park Service maintains the lighthouse and the keepers' quarters, while the USCG operates and maintains the automated light. The commenter also discussed the Cape Henry Lighthouse, which, according to the commenter, has historical significance as America's first lighthouse, built in 1792 as the first Federally funded public works project. With respect to both lighthouses, the commenter urged BOEM to ensure the preservation and maintenance efforts of each are not impeded by turbinized development.¹⁷⁶

BOEM Response:

BOEM has processes in place to assess and mitigate potential impacts to historical, visual, and recreational resources throughout all phases of offshore energy development from lease sale and issuance, site characterization and assessment, construction and operation, to decommissioning. At each stage BOEM conducts rigorous environmental reviews to identify and address reasonably foreseeable potential impacts. For example, at the construction and operation phase for each lease, as part of an in-depth Environmental Impact Statement (EIS), BOEM creates visual simulations from many points of view and varying times of day and night. Also, BOEM requires lessees to submit Construction and Operations Plans that include detailed visual impact assessments. BOEM shares the commenter's concerns for National Historic Landmarks, National and State Parks, and the importance of dark nighttime skies and works diligently to balance all concerns and interests in the fulfillment of BOEM's mission "to manage the development of U.S. Outer Continental Shelf (OCS) energy, mineral and geological resources in an environmentally and economically responsible way.

Issue 4.6.5. Fish and invertebrate resources

Approximately six commenters discussed fish and invertebrate resources.

A commenter said that the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with National Marine Fisheries Service (NMFS) with respect to “any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act,” and the Fish and Wildlife Coordination Act requires Federal agencies to consult with NMFS “with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.” The commenter said that the lease areas are essential fish habitat for several species and recommended that action identified in the NMFS and BOEM Survey Mitigation Strategy be implemented as lease conditions. The Strategy recommends long-term monitoring relevant for detecting impacts on managed marine resources, including fishing communities.¹⁷⁷

A commenter recommended a more detailed evaluation and consideration of the impacts on fisheries resources for multiple species through inclusion of the NMFS recommended data sets and surveys in the NCCOS model.¹⁷⁸ A commenter stated that lease area A-2 overlaps considerably with the Carl N. Shuster Horseshoe Crab Reserve and BOEM should consider the potential impacts of leasing on horseshoe crab

¹⁷⁶ National Park Service.

¹⁷⁷ NOAA NMFS.

¹⁷⁸ Virginia Marine Resources Commission.

movement patterns, electromagnetic field-species avoidance behavior, benthic habitat fragmentation and corresponding horseshoe crab utilization of the area.¹⁷⁹

A commenter expressed concern that acoustic impacts from OSW projects and seismic surveys have significant impacts to many species and their habitat.¹⁸⁰

A commenter expressed support for wind development projects that assess risks and avoid adverse interactions with marine mammals, seabirds, turtles, and other species.¹⁸¹

A commenter said that OSW projects are already destroying marine species and habitats and will continue to do so.¹⁸²

BOEM Response:

BOEM consults with the National Marine Fisheries Service (NMFS) under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) with lessees and project proponents in the development of assessments of the effects of proposed wind energy activities on Essential Fish Habitat (EFH). Before consultation with NMFS can begin, a project must be proposed by a lessee/project proponent. While NMFS may provide a review of trust resources under the Fish and Wildlife Coordination Act in an EFH Assessment, these measures are not applicable to actions on the Outer Continental Shelf under BOEM's jurisdiction. Discussion regarding the implementation of NMFS conservation recommendations and the development of lease terms and conditions may include considerations for NMFS independent surveys; however, that will occur after lease issuance. Similarly, the evaluation of impacts on commercial and recreational fisheries, fish, invertebrates, EFH, and sensitive species (marine mammals, seabirds, turtles, etc.) will be analyzed in the environmental review under NEPA during the development of an Environmental Assessment for site characterization activities and again with an EIS for construction and operations of proposed offshore wind energy projects.

Issue 4.6.6. Existing use conflicts

Comments associated with this issue are summarized in the subsections below.

Issue 4.6.6.1. Navigation and military uses

Approximately 20 commenters discussed military use and navigation.

NASA, DOD, and other comments related to Federal agency uses and navigation

A couple of commenters urged BOEM to generally consider the importance of national security, military uses, and search and rescue operations that various State and Federal agencies conduct within the proposed areas.¹⁸³ A couple of commenters discussed stipulations related to NASA operations in Section 10 of Addendum C to Lease OCS-A 0558. The commenters said that stipulation 10.1 required the lessee to assume all risk of damage or injury resulting from NASA activities and indemnify the United States against associated claims. Regarding stipulation 10.3.1, the commenter stated that it allowed the United States to temporarily suspend operations and/or require evacuation on the lease for fulfilling NASA missions. However, the commenters expressed the need for additional information to assess the associated

¹⁷⁹ Delaware Department of Natural Resources and Environmental Control.

¹⁸⁰ Responsible Offshore Development Alliance.

¹⁸¹ IOOS Association.

¹⁸² T. Jones.

¹⁸³ IOOS Association; BlueGreen Alliance; Sierra Club Virginia Chapter.

risks properly. Specifically, the commenters recommended clarification on the type and frequency of NASA and other navigational activities expected to impact the lease area, the affected portions of the lease area, and the circumstances necessitating suspension of operations and/or evacuation.¹⁸⁴ Another commenter raised general concerns over the potential for NASA Wallops to be impacted by turbine development.¹⁸⁵

A few commenters stated that BOEM's indication that certain portions of the lease areas might not be available for future development due to navigational safety concerns. Here, the commenters argued that BOEM may require additional mitigation measures at the COP stage based on the lessee's site-specific navigational safety risk assessment. The commenters also sought further clarification regarding potential impact of Advanced Dynamic Aircraft Measurement System (ADAMS) operations off the coast of Norfolk, Virginia, asserting that neither the PSN nor the lease documents provided additional granularity on this potential restriction. The commenters requested clarification on the portions of the lease area subject to potential curtailment or other mitigation due to impacts on ADAMS operations. The commenters generally advocated for limits on curtailment and radar mitigation requirements along with more clarity regarding the mitigation provisions.¹⁸⁶

Another commenter stated that the PSN indicates likely restrictions within the lease areas to minimize impacts to various entities, including navigational safety, radar used by the DOD, the Navy's advanced dynamic aircraft measurement system operations, Air Force operations, NASA operations, and BOEM sand mining. The commenter suggested that there is an absence of fisheries, fisheries surveys, and sensitive habitats from the list of entities for which restrictions are mentioned. The commenter expressed appreciation for the provisions in the PSN for a fisheries compensatory mitigation fund but suggested that BOEM prioritize avoiding and minimizing negative impacts to commercial and recreational fisheries, fishery species, and sensitive habitats. Here, the commenter argued that compensatory mitigation should be employed only for remaining impacts that could not be avoided or minimized.¹⁸⁷

A few commenters also sought clarity on the type and duration of envisioned curtailment events, as well as the potential types of "other mitigation" strategies that could be employed. The commenters also cautioned that implementing a 1,000 feet-above-sea-level height restriction, per the Air Force, could adversely affect the commercial viability of the lease areas and unduly restrict renewable energy production.¹⁸⁸ Similarly, another commenter requested further details on curtailment and height restrictions, advocating for BOEM to include additional information in the FSN to address these concerns.¹⁸⁹ A couple of commenters argued that the restriction should be increased to 1,200 feet.¹⁹⁰

Another commenter discussed its responsibilities related to offshore renewable energy leasing, particularly in safeguarding the Marine Transportation System. The commenter argued that there is a need for mitigating potential impacts on navigation safety, vessel traffic, traditional waterway uses, and USCG

¹⁸⁴ Shell New Energies US LLC; Atlantic Shores Offshore Wind LLC; Invenergy; American Clean Power Association.

¹⁸⁵ Long Island Commercial Fishing Association.

¹⁸⁶ Shell New Energies US LLC.; RWE; bp America Inc.; Ocean Winds North America; Maryland Energy Administration and Maryland Department of Natural Resources; American Clean Power Association; Equinor Wind US LLC; Responsible Offshore Development Alliance (RODA).

¹⁸⁷ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

¹⁸⁸ Shell New Energies US LLC.; Atlantic Shores Offshore Wind LLC.; bp America Inc; Ocean Winds North America; American Clean Power Association; Equinor Wind US LLC.

¹⁸⁹ Corio Generation; energyRe Offshore Wind; bp America Inc.

¹⁹⁰ bp America Inc.; energyRe Offshore Wind; Ocean Winds North America.

missions such as search and rescue, marine environmental response, and maritime security. The commenter referenced the recent publication of an NPRM for Shipping Safety Fairways Along the Atlantic Coast, encouraging BOEM to review public comments on fairways adjacent to proposed lease areas.¹⁹¹

A couple of commenters urged BOEM to apply Marine Planning Guidelines detailed in Navigation and Vessel Inspection Circular 02-23 when approving the siting of structures in leased areas, arguing for adherence to established protocols.¹⁹²

Another commenter discussed the presence of two discontinued ocean disposal sites within lease area A-2 and recommended collaboration between BOEM, the U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency to investigate these sites. The commenter argued the benefits of assessing potential impacts of leasing and subsequent OSW development in areas overlapping with or adjacent to these disposal sites. The commenter also argued that there is a need for understanding disposal site characteristics, including the types and depths of contaminants present, sediment composition, and other factors, to determine the risk of release during construction. The commenter proposed the inclusion of appropriate restrictions in any lease to avoid and minimize the risks of contaminant release and subsequent environmental damage.¹⁹³

A commenter argued that in general, lease areas A-2 and C-1 should be denied “due to the lease areas blocking the traditional ocean access points to port and egress from ports, from not only commercial fishermen from those States, but also fishermen from other States who land fish in Virginia and North Carolina.”¹⁹⁴ A commenter stated that navigation safety and environmental protection “require buffer zones around vessel traffic separation schemes, navigational safety corridors, and safety fairways.” The commenter suggested that the navigational safety concern posed by lease area C-1 is less compared to lease area A-2 due to available space for large commercial vessels to maneuver. However, the commenter expressed concern that future developments proposing new lease areas north or south of the fairways could lead to navigational complexity and safety concerns if shipping lanes were reduced to what the commenter argued is an unacceptable size.¹⁹⁵ Likewise, another commenter raised concerns about potential interactions with the USCG Port Access Route Study Chesapeake Bay North and South Fairways, suggesting increased risks of gear loss and displacement suffered by the commercial fishing industry due to concentrated shipping and military vessel operations within the fairways. The commenter recommended that BOEM require a buffer of no less than 2 nautical miles between existing Lease OCS--A 0483 and proposed Lease OCS--A 0558 to ensure safe navigation and operation for fisheries.¹⁹⁶

BOEM Response:

The proposed action is for lease issuance and site assessment activities – not the construction and operation of wind turbines. BOEM will consider the navigation related commenters proposed requirements in the Navigation Safety Risk Assessment (NSRA) submitted by lessees and also in the environmental analysis for offshore wind energy facilities. Similarly, potential conflicts between DoD and NASA activities with wind energy development are addressed through lease stipulations, the Lessee’s coordination with DoD and NASA during project design, and during BOEM’s review of the Construction

¹⁹¹ United States Coast Guard (USCG).

¹⁹² United States Coast Guard (USCG); World Shipping Council.

¹⁹³ NOAA NMFS.

¹⁹⁴ Long Island Commercial Fishing Association.

¹⁹⁵ World Shipping Council.

¹⁹⁶ Virginia Marine Resources Commission.

and Operations Plan which may include additional mitigations to avoid and minimize conflict. Detailed information on potential conflicts, such as the degree of radar interference and amount of potential curtailment, are not available until greater details on a proposed facility are known. The lease does not limit turbine height or specific technologies; however, BOEM is identifying issues in advance that future lessees should account for during project design and will require further coordination with DoD and NASA to ensure co-existence of activities with wind energy development.

Regarding clarification of NASA activities in the area adjacent to Lease OCS-A 0558, BOEM has included additional description of the activities in the Final Sale Notice for bidders.

Regarding clarification of DoD's operation of the ADAMS in the area adjacent to Lease OCS-A 0558, BOEM has included additional description of the activities in the Final Sale Notice for bidders.

Issue 4.6.6.2. Land use and infrastructure

Approximately seven commenters discussed land use and infrastructure.

A commenter recommended that BOEM consider additions and upgrades to shoreside available infrastructure necessary to support development in the Central Atlantic lease areas, reasoning that this could impact marine resources. The commenter suggested that BOEM assess the availability and suitability of existing port and electrical grid infrastructure to support future wind projects in the identified lease areas. If adequate infrastructure is not currently available, the commenter proposed that BOEM should evaluate the likelihood and constructability of obtaining such infrastructure before finalizing leases. The commenter argued that it is important to assess whether the existing electrical grid has the capacity to receive electricity generated from the lease areas or if there are feasible options for upgrading the infrastructure.¹⁹⁷

Another commenter stated that BOEM should consider the Land and Water Conservation Fund State Assistance Program and ensure that leases do not impede activities conducted under the program.¹⁹⁸ A few other commenters raised general concerns over ensuring sand resources and land infrastructure are not adversely affected by turbine construction.¹⁹⁹

BOEM Response:

BOEM's jurisdiction is only over the Outer Continental Shelf, whereas the onshore grid is managed by Regional Transmission Operators/Independent System Operators (RTO/ISOs) along with state governments and utilities. Any project would undergo a grid connection study with the applicable RTO/ISO to determine what upgrades are needed to accommodate the planned injection of electricity to the grid at the Point of Interconnection selected. In addition, BOEM continues to work with our federal partners at the US Department of Energy for long term planning for optimization of offshore wind transmission development. For example, the recently released Atlantic Offshore Wind Transmission Study investigates different scenarios for offshore wind transmission along the East Coast. Any lessee would also work with the applicable state and federal permitting agencies to design the land based route to the Point of Interconnection.

Issue 4.6.7. Electric cable transmission routes

¹⁹⁷ NOAA NMFS.

¹⁹⁸ National Park Service.

¹⁹⁹ RWE; Invenergy; Ocean Winds North America; American Clean Power Association.

Approximately 10 commenters discussed electric cable transmission routes.

Improvements to transmission routes

A commenter expressed general support for the proposal, reasoning that more communities will have access to electricity as a result of cables improving transmissibility.²⁰⁰ Another commenter suggested that there is a need for upgrades to transmission infrastructure due to the introduction of OSW energy. The commenter stated that power generation assets are typically located more inland in many parts of the US, with transmission infrastructure facilitating the transport of power to coastal load centers.²⁰¹

Transmission route design

A commenter provided general comments on the benefits of awarding contracts to artificial intelligence software developers in relation to transmission design and maintenance.²⁰² Another commenter urged BOEM to ensure deconfliction with respect to transmission routes and activities that take place within the proposed call areas.²⁰³ A commenter urged “BOEM along with USACE to collaborate with developers early in the planning phase to address conflicts and ensure alignment before finalizing route designs.”²⁰⁴ Another commenter suggested that, in general, there may be unforeseen visual impacts as a result of transmission route and export cable construction.²⁰⁵ Another commenter recommended “that BOEM require the lease holder(s) to coordinate cable routing and landfall with existing projects to reduce environmental impacts from the development of multiple projects within the lease areas.”²⁰⁶ Similarly, another commenter recommended that BOEM consider bidding credits for lessees who commit to “coordinating with nearby lessees for shared transmission or who commit to installing infrastructure that would provide the means necessary for a shared transmission system as other wind farms come online.”²⁰⁷

Another commenter urged BOEM to consider the need for installing and maintaining submarine telecommunication cables when selecting and developing OSW energy areas, suggesting the importance of national security and economic objectives. Specifically, the commenter requested BOEM to identify the presence of the Dunant submarine cable system in the proposed lease block and take proactive actions to avoid conflicts. The commenter recommended measures such as reducing the lease area or mandating minimum proximity boundaries between infrastructure development and cable routes to ensure spatial separation. Additionally, the commenter suggested mandating proximity agreements and cable crossing agreements to address installation and maintenance considerations.²⁰⁸

Another commenter discussed the requirement for burying project cables to reduce conflicts with other ocean uses and minimize effects of heat and electromagnetic field emissions, as outlined in the BOEM Draft Fisheries Mitigation Guidance. The commenter recommended a minimum cable burial depth of 6 feet for all current and future leases, aligning with the guidance provided by BOEM.²⁰⁹

Rights-of-way

²⁰⁰ N. Rovedo.

²⁰¹ energyRe Offshore Wind.

²⁰² Continuum Industries.

²⁰³ American Clean Power Association.

²⁰⁴ Atlantic Shores Offshore Wind LLC.

²⁰⁵ National Park Service.

²⁰⁶ NOAA NMFS.

²⁰⁷ Delaware Department of Natural Resources and Environmental Control.

²⁰⁸ Google, LLC.

²⁰⁹ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

Another commenter recommended that BOEM consider establishing a new task force with the U.S. Department of Transportation and the Federal Highway Administration to encourage developers to utilize highway rights-of-way for constructing export cable routes. The commenter stated that Federal highways and Federally-funded State highways typically connect coastal areas to interior population centers in need of OSW power. The commenter further suggested that BOEM collaborate with Federal and State entities to grant onshore rights-of-way for constructing onshore cable routes to OSW leaseholders, subject to BOEM's final approval in the COP permitting process. The commenter asserted that existing OCS leaseholds already grant such rights-of-way on the Federal seabed and encouraged BOEM to adopt a similar approach for onshore Federally- and/or State-owned/controlled lands for all aspects of OSW equipment and cable footprints onshore.²¹⁰

A commenter discussed how in BOEM Lease Sales for California and the Gulf of Mexico, language was included to grant the lessee the right to one or more project easements for installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the lease as necessary for the full enjoyment of the lease. Here, the commenter suggested that BOEM include similar language in the FSN and clarify that the lessee must apply for any project easement as part of the COP or SAP to ensure OSW developers have a clear path to securing export corridors to deliver power to shore. The commenter discussed the transmission distance limitations and technology options for OSW projects, suggesting that distances longer than 50 miles would likely necessitate reactive compensation equipment to correct reactive power issues. Lastly, the commenter encouraged BOEM to simulate near-shore transmission equipment platforms as separate scenarios under viewshed impact studies during the environmental impact assessment process, assuming these structures to be situated 10 to 20 miles from the shoreline.²¹¹

Another commenter expressed support for a combined backbone transmission system for OSW in the Atlantic, including lease areas A-2 and C-1, suggesting potential benefits such as reducing the need for periodic OSW transmission construction, mitigating environmental impacts, and delivering significant cost savings. The commenter referenced a report by the Brattle Group, concluding that constructing a backbone system could save U.S. consumers at least \$20 billion and reduce environmental and community impacts by 50 percent.²¹²

One commenter expressed general opposition to the proposed OSW development on the grounds that it would “have negative economic impacts on our beach tourism, property values and shore town economies.”²¹³

BOEM Response:

The proposed action is for lease issuance and site assessment activities and does not include the installation, operation or decommissioning of an offshore wind facility. Per BOEM's regulations, any lease grants lessees the right to one or more easements for transmission. The lease will also require any lessee to consult with Tribal governments, and other potentially affected ocean users prior to submitting a proposed easement to BOEM. A stipulation has been added to lease OCS-A 0558 in which the Lessee must coordinate with the cable owner to ensure the cable owner is able to conduct maintenance operations during and after construction of Lessee facilities on the lease. Should a commercial wind lease be issued, and a Construction and Operations Plan (COP) submitted to BOEM for review, it will detail the Lessee's specific commercial wind development proposal (including potential locations of

²¹⁰ Ocean Winds North America.

²¹¹ Ocean Winds North America.

²¹² Southern Environmental Law Center.

²¹³ T. Jones.

subsea cable) along with site-specific site characterization information. This information will be used to assess the impacts to existing infrastructure such as active, in-service submarine cables in addition to potential mitigation measures such as cable crossing agreements and cable burial requirements. Additionally, should a commercial wind lease be issued, BOEM will facilitate the development of an Environmental Impact Statement in support of NEPA, which would require additional stakeholder engagement and coordination. As part of BOEM's review pursuant to 30 CFR 585.628 BOEM can specify terms and condition to be incorporated into the COP as a result of its review.

Issue 4.6.8. Threatened and endangered species

Approximately four commenters discussed threatened and endangered species.

A commenter raised general concerns that turbine construction would exacerbate existing threats to marine wildlife.²¹⁴ Another commenter cautioned BOEM to consider the potential impacts turbine construction would have on North Atlantic right whales.²¹⁵ Another commenter stated that throughout all stages of turbine development, protected species within the proposed lease areas may be impacted by or susceptible to increased noise, vessel strike, and habitat loss. The commenter argued that under the Endangered Species Act, BOEM may be required to conduct a programmatic consultation, with particular focus on aerial surveys for protected species, cumulative impacts that assess combined consequences of other lease areas, and site characterizations.²¹⁶

BOEM Response:

The proposed action is for lease issuance and site assessment activities – not the construction and operation of wind turbines. BOEM will consider the commenter's proposed requirements in its environmental analysis of lessees' construction and operations plans for offshore wind energy facilities. BOEM is consulting with the National Marine Fisheries Service (NMFS) under the Endangered Species Act to ensure the proposed action is in compliance.

Issue 4.6.9. Habitats of concern

Approximately three commenters discussed habitats of concern.

A commenter raised general concerns over the potential for turbine construction to conflict with benthic resources.²¹⁷ In addition to raising concerns that over the potential encroachment lease area A-2 would have on surf clam populations, a commenter urged BOEM to conduct detailed mapping of proposed export cables in relation to hard bottom habitats. The commenter also recommended that BOEM include lease stipulations that would require regular oceanographic and biological "sampling for a minimum of 3 to 5 years prior to construction in the lease areas and surrounding waters."²¹⁸ Another commenter urged BOEM to include details on potential overlap between leasing zones and export cable routes with benthic and hardbottom habitats. Additionally, the commenter urged BOEM to prohibit construction activities in areas that are concentrated with aquatic vegetation.²¹⁹

BOEM Response:

²¹⁴ J. Public.

²¹⁵ BlueGreen Alliance.

²¹⁶ NOAA NMFS.

²¹⁷ Southern Environmental Law Center.

²¹⁸ NOAA NMFS.

²¹⁹ Mid-Atlantic Fishery Management Council and New England Fishery Management Council.

BOEM consults with the National Marine Fisheries Service (NMFS) under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) with lessees and project proponents in the development of assessments of the effects of proposed wind energy activities on Essential Fish Habitat (EFH). Before consultation with NMFS can begin, a project must be proposed by a lessee/project proponent. The EFH-Assessment will include detailed descriptions of habitats within the proposed project area and project components (wind turbine generator locations, offshore substation locations, inter array cables, and export cable corridors). The extent of each habitat including submerged aquatic vegetation and shellfish resources (species, beds and reefs) are characterized and delineated.

Issue 4.6.10. Birds

Approximately two commenters discussed birds.

A commenter raised general concerns over the potential for turbine construction to displace bird populations.²²⁰ A commenter urged BOEM to require turbine collision avoidance measures and lighting restrictions during site assessment, reasoning that such measures would decrease the likelihood of bird strike. Additionally, the commenter recommended that BOEM include lease stipulations requiring developers to monitor turbine collision, particularly with endangered avian species. Here, the commenter reasoned that developers should also be responsible for post construction fatality monitoring.²²¹

BOEM Response:

The proposed action is for lease issuance and site assessment activities – not the construction and operation of wind turbines. BOEM will consider the commenter’s proposed requirements in its environmental analysis of lessees’ construction and operations plans for offshore wind energy facilities.

Issue 4.6.11. Marine mammals

Approximately three commenters discussed marine mammals.

A commenter raised general concerns over marine mammal vessel strikes habitat displacement as a result of turbine construction.²²² A commenter raised general concerns over the potential for turbine-generated noise to displace marine mammal populations.²²³ Another commenter argued that BOEM should require marine mammal monitoring through all development stages as a stipulation of leases.²²⁴

BOEM Response:

The proposed action is for lease issuance and site assessment activities – not the construction and operation of wind turbines. BOEM will consider the commenter’s proposed requirements in its environmental analysis of lessees’ construction and operations plans for offshore wind energy facilities.

Issue 4.6.12. North Atlantic right whales

Approximately five commenters discussed North Atlantic right whales (NARWs).

²²⁰ National Wildlife Federation et al.

²²¹ Southern Environmental Law Center.

²²² National Wildlife Federation et al.

²²³ NOAA NMFS.

²²⁴ Southern Environmental Law Center.

A commenter argued that leasing decisions in the area should consider the recommendations outlined in the NOAA Fisheries-BOEM North Atlantic Right Whale Strategy. The commenter proposed conducting continuous archival Passive Acoustic Monitoring (PAM) and acoustic telemetry monitoring in proposed lease areas to gather baseline information on marine species. The commenter advised using both archival and real-time PAM to collect baseline data on marine mammals along anticipated transit routes.²²⁵

Another commenter supported the development and operation of near-real-time acoustic surveillance systems to detect and report North Atlantic right whale locations, aiming to reduce interactions with vessels and enhance fishery management decisions. The commenter also stated that turbine construction must account for the fact that the North Atlantic right whale population “cannot afford to lose more 0.7 whales per year.”²²⁶ Another commenter proposed incorporating noise avoidance and mitigation measures, especially during site assessment and construction activities. Here the commenter reasoned that such measures would protect whale populations. The commenter recommended measures to comply with Received Sound Level Limit and sound field verification processes to ensure environmental protection and industry standards.²²⁷

Another commenter added that BOEM should incentivize developers to invest in technology for near-real-time acoustic detections of North Atlantic right whales to reduce risks from various ocean uses. The commenter asserted that a bid credit option should cover acoustic and visual near-real-time detection of large whales in all regions of OSW development, not just limited to North Atlantic right whales and the East Coast.²²⁸

BOEM Response:

The proposed action is for lease issuance and site assessment activities – not the construction and operation of wind turbines. Appropriate measures, including ones suggested by the commenters, are considered and applied when appropriate through ESA consultation with NMFS and/or the COP Approval Letter stage. BOEM will consider the commenter’s proposed requirements in its environmental analysis of lessees’ construction and operations plans for offshore wind energy facilities.

Issue 4.7. Labor and economy

Approximately 20 commenters discussed topics around labor and economy.

Economic impacts

One commenter expressed general opposition to the proposed OSW development on the grounds that it would “have negative economic impacts on our beach tourism, property values and shore town economies.”²²⁹

One commenter discussed challenges in the development of an OSW project related to interconnection points and asserted that financial support from BOEM would help developers and ratepayers.²³⁰ Similarly, a commenter discussed the positive economical outcomes of awarding multiple lease areas, including improvements to the local supply chain and benefits to ratepayers through increased competition.²³¹

²²⁵ NOAA NMFS

²²⁶ Oceana.

²²⁷ Southern Environmental Law Center

²²⁸ National Wildlife Federation et al.

²²⁹ T. Jones.

²³⁰ energyRe Offshore Wind.

²³¹ Invenergy.

One commenter expressed concerns about a “vacuum of knowledge” for experts in supply chain and workforce development and reasoned that policies and programs should be aligned with available resources, especially in the State of North Carolina where it is not immediately clear what companies are planning to do with their bidding credits.²³²

BOEM Response:

A bidder’s Conceptual Strategy may contain proprietary or confidential information and BOEM will continue to protect that confidentiality. BOEM encourages lessees to work with states and stakeholders to find the workforce and supply chain investments that will provide the greatest value for advancing the domestic offshore wind industry. BOEM is not offering bidding credits for transmission or grid upgrades in this sale.

Labor impacts

A few commenters recommended that BOEM include Labor Peace Agreements (LPAs) as a condition in its lease terms on the grounds that they would protect the government’s interest in wind farms, ensure fair return on operating fees, facilitate timely development through the prohibition of strikes and lockouts, and protect workers.²³³ A couple of commenters also asserted that BOEM “must stipulate that lessees enter into LPAs covering the construction of renewable energy projects” on the grounds that they would ensure workers have access to unions, directly address safety and required training, facilitate timely completion of offshore projects, align with President Biden’s Executive Order 14063, and assist historically marginalized and environmental justice (EJ) communities.²³⁴

BOEM Response:

BOEM encourages PLAs for the construction stage of offshore wind project and does not have authority to require provisions common to LPAs.

Domestic manufacturing

One commenter recommended that BOEM implement more consistent standards for auction processes in order to create more certainty for domestic manufacturing in the wind industry, such as a supplier code of conduct, generally discussed the investment cost of and job output of a domestic supply chain, and added that BOEM has discretion under OCSLA to grant leases as long as it meets a number of requirements under Section 8(p)(4), including “(1) protection of the environment; (2) safety; (3) expeditious and orderly development; (4) protection of national security interests of the United States; and (5) a fair return to the United States for any lease, easement, or right-of-way” in that subsection. In terms of a fair return to the United States, they reasoned that not developing a domestic supply chain could result in delays in COP as well as fewer jobs and less investment, and that it could have significant equity implications. For protection of the environment, they reasoned that the deployment of OSW would require substantial amounts of steel and cement, heightening the need to give preference to domestic manufacturers, given that they are fairly clean as compared to competitors, and because their use would reduce shipping distance, and thus, emissions resulting from shipping. The commenter went on to discuss these recommendations in the context of the goals of the OCSLA and recent Executive Orders, such as E.O. 11246, which “which prohibits employment discrimination and establishes affirmative action

²³² North Carolina Department of Commerce.

²³³ Ironworkers Mid-Atlantic States District Council; Utility Workers Union of America, AFL-CIO; BlueGreen Alliance.

²³⁴ BlueGreen Alliance; Southern Environmental Law Center.

requirements for nonexempt Federal contractors and subcontractors,” and others that commit to revitalizing U.S. supply chains and focusing on domestic production, doubling OSW by 2030, and otherwise combating the climate crisis through OSW production.

The commenter added that BOEM must show preference for domestic manufacturing along regional and local supply chains by moving away from the impediments faced by foreign suppliers, and that such a move would:

- Ensure a fair return to the United States;
- Create more certainty for U.S. manufacturing companies;
- Help reach Federal goals like the “national offshore wind energy target;”
- Produce 45,000 manufacturing jobs per year and \$5 billion in wages;
- Help mitigate risks to U.S. infrastructure as found in a joint DOE and NERC report;
- Result in numerous environmental benefits;
- Have extensive equity implications, where wages for marginalized workers have been negatively associated with globalization;
- Benefit port and near-port communities, and;
- Ensure supplier requirements are clear to manufacturers, among other things.²³⁵

BOEM Response:

BOEM is the OCS land manager and cannot prescribe domestic content, manufacturing, or assembly for offshore wind components used to construct OCS offshore wind projects. The supply chain bidding credit is being offered to assist the development of the domestic offshore wind industry through incentivizing investments that may not otherwise occur.

²³⁵ BlueGreen Alliance.