

[Updates](#)

October 20, 2022

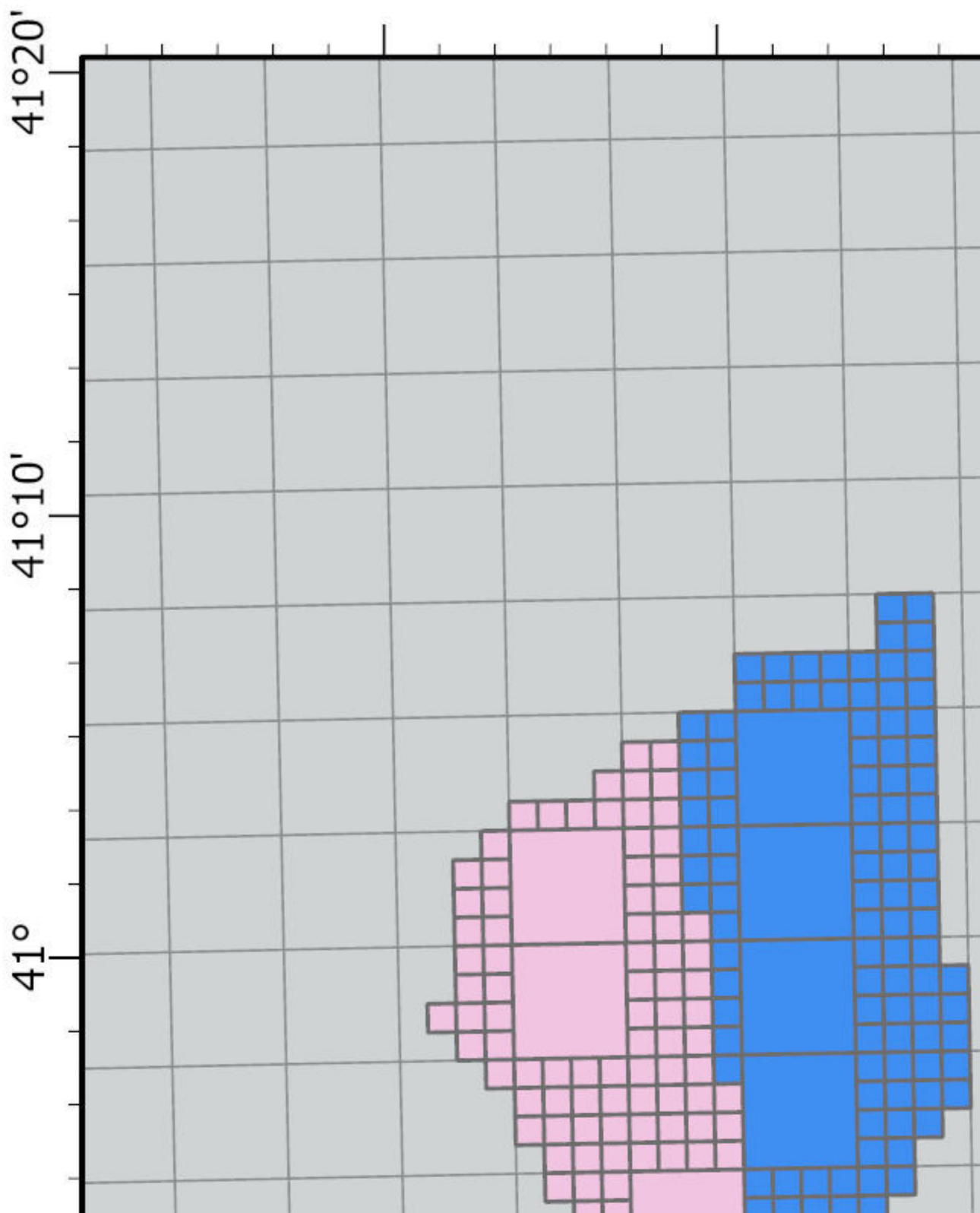
BOEM Releases Final Sale Notice for California Offshore Wind Lease Sale

The Bureau of Ocean Energy Management (BOEM) issued its [Final Sale Notice](#) (FSN) on October 18, 2022, for the first offshore wind energy leases on the west coast of the United States. With the lease sale scheduled for December 6, 2022, BOEM is moving forward with its west coast leasing roadmap and national goals to achieve 30 gigawatts of offshore wind energy by 2030 and 15 gigawatts of floating offshore wind by 2035.

The California lease sale covers 373,267 total acres across [five different leases](#): three within the Morro Bay Wind Energy Area off the central California coast and two within the Humboldt Wind Energy Area to the north. The five proposed lease areas in the FSN are the same as those identified [in the Proposed Sale Notice](#) (PSN) published in May 2022. If developed, those areas could result in at least 4.5 gigawatts of new wind energy capacity—enough to power more than 1.5 million homes.



Bureau of Ocean Energy
Management



In response to the comments received on the PSN, BOEM made several changes in the FSN to the sale format and procedures. These include a single auction sale format and additional bidding credits for committing to different kinds of Community Benefit Agreements (CBAs). BOEM also developed and refined a number of lease stipulations, including provisions to (1) advance lessee engagement with tribes and other affected parties, (2) protect national security, (3) require coordination with the California Coastal Commission, and (4) prioritize federal and state climate change adaptation strategies for fisheries. These requirements build off of and expand on those in other offshore wind energy leases, particularly those in the [New York Bight](#) and [Carolina Long Bay](#).

Multiple-Factor Auction With Additive Credits for Nonmonetary Factors

In the PSN, BOEM proposed to allow each qualified entity to bid for one lease per region (North Coast and Central Coast regions) and via simultaneous auctions. But in the FSN, BOEM changed the sale format to a single auction in which all the lease areas will be offered to up to 43 bidders. In each round of the auction, a bidder can bid for at most one of the offered leases at a time. A bidder can switch between different lease areas from round to round, but it must bid in each round, and ultimately it can acquire only one of the leases in the auction.

In the FSN, BOEM confirmed that bidders can qualify for one or more bidding credits for investing in workforce training or supply chain development and committing to CBAs, either for impacts associated with use of the lease area or more general use. If a bidder qualifies for all the bidding credits, the credits will be additive, for a total potential credit of a maximum 30% of the cash bid.

A bidder can earn credits by committing to workforce training, supply chain development, or a combination of the two for a maximum 20% credit. Other credits include a Lease Area Use CBA bidding credit, worth 5% of the cash bid, and a General CBA bidding credit, also worth 5% of the cash bid. A CBA is intended to mitigate potential impacts to communities, tribal, or other stakeholder groups and may assist fishing and related industries by supporting their resilience and ability to adapt to impacts that may arise from the development of the lease area.

BOEM Increases Lease Area Use Bidding Credit

The FSN increased the PSN proposal of a 2.5% credit to a 5% credit for a bidder with an existing CBA, or a bidder that commits to establishing a CBA, with a community or stakeholder group affected by offshore wind development in the lease area. To qualify for a Lease Area Use Bidding Credit, the community or stakeholder group with which the lessee executes the CBA must be one "whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is directly impacted by the Lessee's potential offshore wind development." Lessees can enter a CBA with multiple counterparties, or enter multiple CBAs.

BOEM Confirms Additional Bidding Credit

During the PSN review period, BOEM explored whether it had the authority to pursue an additional bidding credit for a more general CBA covering other offshore wind development effects not covered under the Lease Area Use Bidding Credit. BOEM sought comments regarding how such a credit could be justified under the Outer Continental Shelf Lands Act (OCSLA) as well as what benefits could be promoted by a more General CBA, what potential impacts should be addressed, what types of groups or entities should be eligible, and how BOEM could use this potential type of credit to encourage early community engagement, among other questions.

In the FSN, BOEM added a 5% bidding credit for bidders who have committed to a qualifying General CBA. The General CBA must be with one or more communities, tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.

Lease Stipulations

The FSN established lease stipulations based on comments on the PSN, including the California Coastal Commission's conditional concurrence with consistency determinations for Humboldt and Morro Bay Wind Energy Areas and conditions from the U.S. Department of Defense (DOD) to protect national defense capabilities and military operations.

As BOEM has required in other offshore wind energy leases, lessees will need to submit semiannual progress reports and regularly engage with tribes and other parties that may be affected by activities in the lease areas. To support the Biden-Harris administration's environmental justice initiatives, lease stipulations require that lessees engage in ways that "minimize linguistic, technological, cultural, capacity, or other obstacles." As in the New York Bight lease stipulations, lessees are required, to the maximum extent practicable, to coordinate with one another on engagement activities to reduce the burden placed on tribes and other affected parties.

BOEM is significantly expanding the requirements for engaging with fisheries in the lease stipulations, as compared to other offshore wind lease areas. As proposed in the PSN, the FSN requires California lessees to (1) identify dock space and transit routes that minimize space use conflicts and impacts to protect species, (2) minimize congestion and the creation of obstacles that increase the risk of entanglement, (3) prioritize federal and state climate change adaptation strategies for fisheries, (4) discuss potential conflicts between seasonal fishing operations and survey and development activities with commercial fishing communities prior to submitting a Construction and Operations Plan.

As stated in the PSN, BOEM is also expanding efforts to support domestic supply chains by requiring that lessees establish a Statement of Goals to describe plans for contributing to the creation of a "robust and resilient" floating offshore wind industry supply chain. This stipulation also requires that lessees make regular progress updates on the achievement of those goals to BOEM. These updates must be made publicly available, in a manner akin to the required progress reports.

Additional Restrictions

Although not listed as stipulations in the FSN, BOEM notes that some activities could necessitate the imposition of mitigation measures with potential implications for lessees' project development efforts, particularly for navigational safety and DOD activities. These were also identified in the PSN.

Further, BOEM is coordinating closely with the National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries, which has initiated a designation process for the proposed [Chumash Heritage National Marine Sanctuary](#) adjacent to the Morro Bay Lease Areas. BOEM is a cooperating agency on NOAA's environmental impact statement on the [proposed designation](#) and is providing input on the ongoing renewable energy leasing process, as well as contributing special expertise in marine energy and mineral matters. Designation of the Marine Sanctuary adjacent to a lease area may have implications for development of the lease area for commercial wind energy due to BOEM's lack of authority to issue leases, right-of-way grants, or right-of-use and easement grants within any unit of the sanctuary system.

Conclusion

While the FSN largely follows the PSN, interested developers should note that the lease stipulations in the FSN build off other offshore wind lease stipulations (namely, from the Carolina Long Bay and New York Bight), and that more outreach, engagement, and reporting will be required from developers in the California lease areas. In the near term, developers should prepare for the bidding auction and the additive credits available in the multiple-factor auction format. BOEM will hold an online mock auction for potential bidders starting at 7:00 a.m. PT/10:00 a.m. ET on December 5, 2022. The monetary auction will be held online and will begin at 7:00 a.m. PT/10:00 a.m. ET on December 6, 2022.

© 2022 Perkins Coie LLP

Authors

Explore more in

[Environment, Energy & Resources](#) [Energy Infrastructure & Clean Technology](#)

Related insights

Update

[**Trump's FDA and USDA: Five Key Issues To Watch in 2025**](#)

Update

[**The Dismantle DEI Act: One Potential Blueprint for Forthcoming Attacks on DEI**](#)