

## [Updates](#)

March 09, 2023

BOEM Issues Proposed Sale Notice With Novel Bidding Credits for Gulf of Mexico Offshore Wind



The Bureau of Ocean Energy Management (BOEM) released a [Proposed Sale Notice](#) (PSN) on February 24, 2023, for the simultaneous auction of three potential offshore wind energy leases in the Gulf of Mexico. The currently proposed lease areas include a 102,480-acre area offshore Lake Charles, Louisiana, and two similarly sized areas offshore Galveston, Texas. These lease areas have the potential to power almost 1.3 million homes but are a significant reduction in the original Wind Energy Areas (WEAs) proposed for leasing.

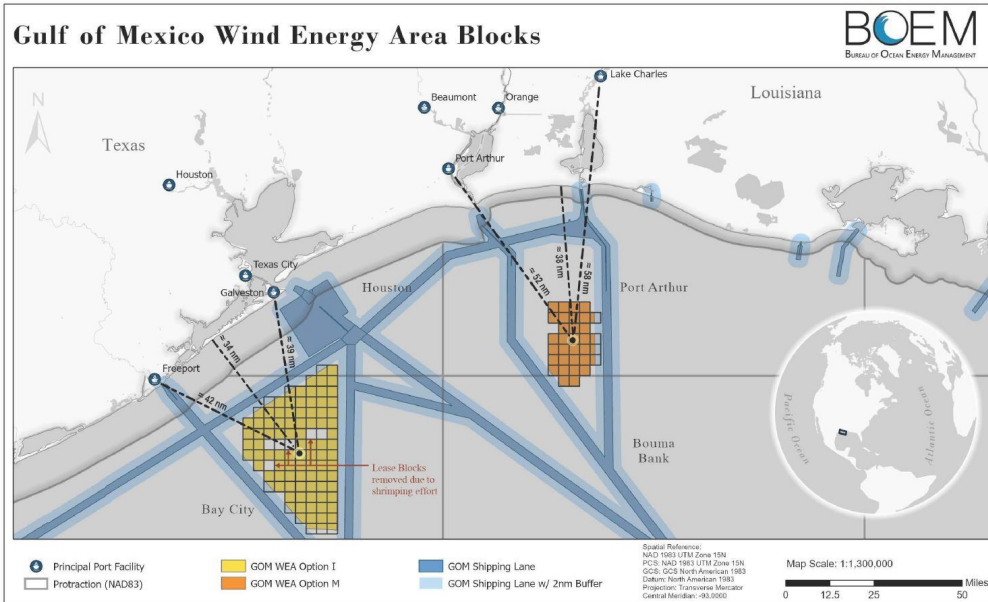
The PSN follows the multiple-factor auction format and bidding credits that BOEM introduced with the [California auction](#) while also introducing the new concept of a fisheries compensatory mitigation fund bidding credit and a bidding credit for contributions to supply chain development efforts that advance hydrogen generation. BOEM further proposes adding or revising certain lease stipulations or provisions from previous commercial leases, including communications plans, protected species, timing for submission of Marine Mammal Protection Act (MMPA) authorizations, and prohibitions on the construction of surface facilities in certain instances.

BOEM is considering whether to eliminate one of the Texas Coast Region lease areas, which will likely affect the number of bidders. Potential bidders also should take note of the U.S. Coast Guard's announcement that it will conduct a draft [Port Access Route Study](#) for port approaches to Galveston Bay and Sabine Pass, Texas, and Calcasieu Pass, Louisiana (TX/LAPARS), which could affect the delineation and size of the lease areas proposed. Stakeholders have until April 25, 2023, to submit comments. Major provisions of the PSN and the parameters of the USCG TX/LAPARS are described below.

### **Offshore Wind Proposed Lease Areas**

BOEM released a [Call for Information and Nominations](#) (Call) for leasing in the Gulf of Mexico on November 1, 2021. After the close of the Call comment period, BOEM initiated the area identification process and sought public comments on two preliminary draft Wind Energy Areas (WEAs). The first draft WEA located off the coast of Galveston covered a total of 546,645 acres and had the potential to power 2.3 million homes with clean wind energy. The second draft WEA located off the coast of Lake Charles covered a total of 188,023 acres and had the potential to power 799,000 homes. At the same time, BOEM announced a draft Environmental Assessment (EA) covering the entire Call Area. The public comment period for the preliminary WEAs and EA was open for 45 calendar days.

BOEM [announced](#) the final WEAs offshore Galveston, TX, and Lake Charles, LA, on October 31, 2022.

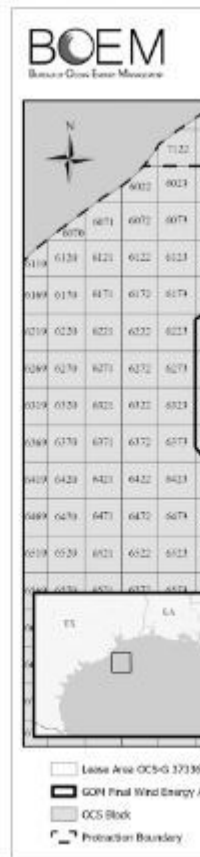
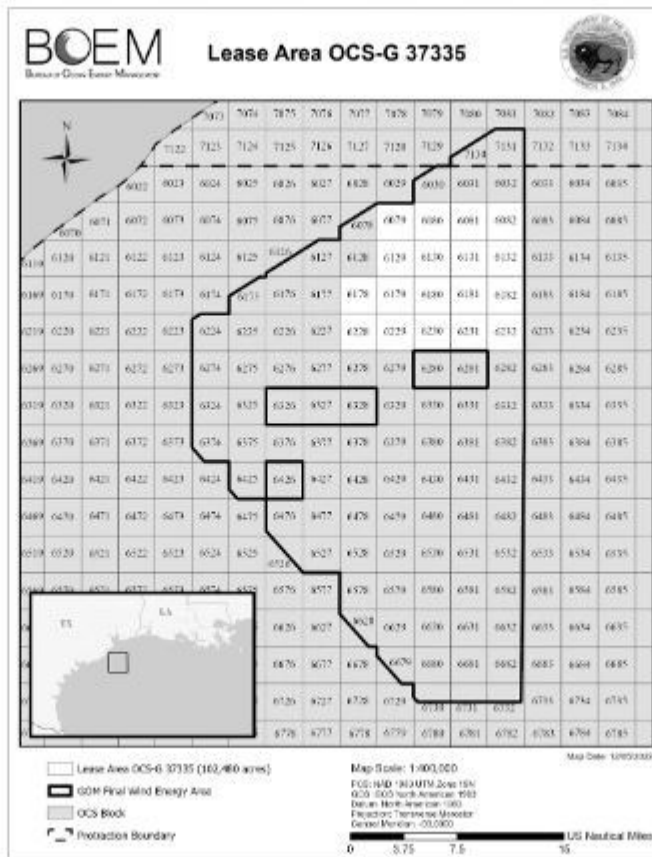
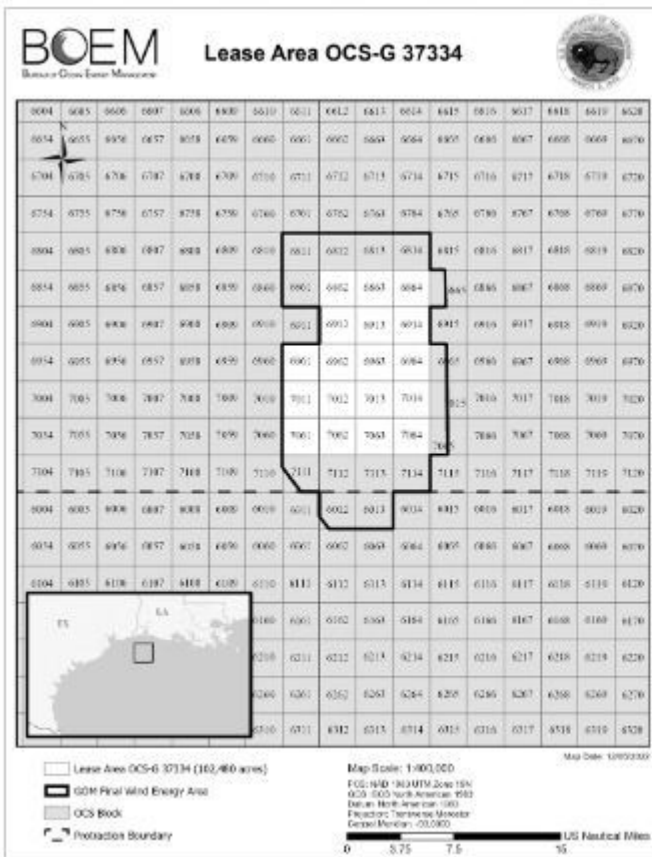


In developing the two final WEAs, BOEM followed [a new process](#) to help deconflict the WEAs in advance. BOEM and the National Oceanic and Atmospheric Administration (NOAA) National Centers for Coastal Ocean Science (NCOOS) collaborated using an ocean planning tool to identify the WEAs based on the best available science and public engagement, minimizing future resource use conflicts. *The [WEA Modeling Report](#)* discusses in detail how all competing ocean uses were described and identified in the WEA model. BOEM ultimately reduced the available areas for leasing by 53,000 acres based on recommendations by the Department of Defense (DOD) and the U.S. Coast Guard (USCG). Although BOEM did not include an additional WEA near Port Fourchon, LA, it noted that it would consider that area in a future lease auction.

The three proposed lease areas identified in the PSN represent a 54% reduction of the Louisiana Coast WEA, and a 36% reduction in the Texas Coast Region WEA, totaling a significant two-thirds reduction from the 682,000 acres originally proposed in October 2022.

Table IV-2. High- and low-priced areas identified within the wholesale markets of the three Interconnections. Regions are defined based on a regional concentration of nodes identified with the Market Price Differential metric.

Region	Low-Priced Areas	High-Priced Areas
Plains	Southern and Western KS OK/TX Panhandles	Southern OK Southwest MO
Midwest	Southwest and Central IA Southern MN	Northwest WI Eastern and UP MI
Mid-Atlantic	Northeast IL Southeast PA	Eastern MD/VA Delmarva Peninsula MD & DE
New York	Upstate NY	Long Island NY
New England	North VT/NH	-
California	Mojave Desert CA	Southern Coast CA Northern Coast CA
Mountain	Eastern WY	-
Texas	Northern TX Western TX Southern TX	-



According to the PSN, the reduction is intended to stave off potential conflicts with the other Gulf users, including oil and gas, shipping, fishing, and the military, who have [engaged extensively](#) with BOEM. The final lease areas offered in the Final Sale Notice (FSN) are expected to be even smaller.

In the FSN, BOEM will offer only one lease area within the Lake Charles WEA. BOEM is seeking comments on the number of lease areas that should be offered within the Texas Coast Region and which lease area would be preferred if only one is offered. BOEM notes that even within these deconflicted areas, there are still potential conflicts with other ocean users, including existing military uses of the area, fishing vessel transit corridors, and navigational safety concerns.

A DOD assessment of the Call area concluded that North American Aerospace Defense Command (NORAD) missions may be affected by the development of the lease area(s), but that adverse impacts could be mitigated through Radar Adverse-Impact Management (RAM) and overlapping radar coverage. If RAM is required within the lease area, the lessee will be required to contribute \$80,000 toward the cost of the procedure and also curtail wind turbine operations for national security or defense purposes. The lessee will be required to enter into an agreement with DOD.

Other potential restrictions noted in the PSN include the designation of transit corridors for fishing passage through lease areas. BOEM notes that information currently available does not indicate that transit corridors are warranted but notified the bidders that it could include a lease stipulation designating certain portions of the lease area pending the outcome of additional discussions with ocean users and stakeholders.

BOEM noted potential conflicts with USCG lightering operations in portions of the Texas Coast Region leases and will continue to work with USCG to mitigate any potential impacts and risks to these operations. Further, due to navigational safety concerns, portions of the lease areas may not be available for future development. The USCG has recommended that BOEM add a two-nautical-mile buffer around the shipping fairways in the Gulf of

Mexico, and additional mitigation measures may be required.

Potential bidders should also be aware that on March 1, 2023, immediately following the BOEM announcement of the PSN, the USCG announced it would conduct a draft [Port Access Route Study](#) (TX/LAPARS) to "evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to Galveston Bay and Sabine Pass, Texas, Calcasieu Pass, Louisiana." 88 Fed. Reg. 12966. According to the [notice](#), the TX/LAPARS "will consider whether existing or additional routing measures are necessary to improve navigation safety due to factors such as planned or potential wind energy offshore development, current port capabilities and planned improvements, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty." In particular, the USCG stated that the study was needed to determine "what impact, if any, the final WEAS will have on existing users of the study area." 88 Fed. Reg. 12968. Finally, the USCG notes that the study could take 12 months or more, which clearly would introduce some uncertainty for any winning bidders. All comments and related material must be received on or before April 17, 2023.

### **Multiple-Factor Auction With Credits for Nonmonetary Factors**

Similar to the [California](#) and [Carolina Long Bay](#) lease sales last year, BOEM proposes to use a multiple-factor auction format with a bidding system that combines monetary (cash) and nonmonetary factors. BOEM is proposing to grant bidding credits for commitments to:

- Support workforce training programs for the offshore wind industry and/or development of a U.S. domestic supply chain for the offshore wind industry, or a combination of both.
- Establish and contribute to a fisheries compensatory mitigation fund, or contribute to an existing fund to mitigate potential negative impacts to commercial and for-hire recreational fisheries caused by offshore wind development in the Gulf.

The workforce training and/or domestic supply chain development bidding credits would be worth 20% of the cash bid. A bidder could commit to both workforce training and supply chain development, but the bidding credit for these commitments combined would still be worth 20% of the cash bid. The proposed fisheries compensatory mitigation fund bidding credit would be worth 10% of the cash bid. If a bidder qualifies for both of the proposed bidding credits, the credits would be additive for a total potential credit of 30% of the cash bid. The proposed fisheries compensatory mitigation fund bidding credit is a new auction credit that replaces the Community Benefits Agreement auction credit available in the California lease sale.

### **Credit for Workforce Training and/or Supply Chain Development**

BOEM proposes to give a qualifying bidder a credit of 20% of its cash bid in exchange for committing to make a qualifying monetary contribution to programs or initiatives that support workforce training programs for the offshore wind industry, development of a U.S. domestic supply chain for the offshore wind energy industry, or both. The contribution must be tendered in full, and the lessee must provide documentation evidencing it has made the contribution and complied with applicable requirements no later than the date the lessee submits its

first Facility Design Report (FDR).

BOEM's proposed evaluation criteria for the two credit factors include the following:

- **Workforce Development.** The contribution must result in a better-trained or larger domestic offshore wind workforce that would provide for more efficient operations via an increase in the supply of fully trained personnel. The contribution must support one or more of the following: labor or workforce training for offshore wind, maritime training for the crewing of vessels, offshore wind manufacturing training, Tribal offshore wind workforce development programs, or training for any other job skills related to offshore wind development. The Tribal offshore wind workforce development program is new since the California auction.
- **Domestic Supply Chain.** The contribution must result in a more stable domestic supply chain by reducing the upfront capital or certification cost for manufacturing wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities. Contributions must be made toward activities supporting the development of the offshore wind domestic supply chain, domestic component suppliers, technical assistance grants, the development of Jones Act-compliant vessels, purchase and installation of lift cranes, port infrastructure directly related to offshore wind component manufacturing or assembly, bonds for businesses engaged in offshore wind development, and other contributions that the lessee can demonstrate will further the manufacture of offshore wind.

For the first time, bidding credits could be available for contributions to supply chain development efforts that advance the manufacturing of offshore wind components or subassemblies that could be used to generate hydrogen. Through the credit, BOEM acknowledges the potential [opportunities](#) to pair offshore wind with clean hydrogen, particularly in the Gulf of Mexico, where resources for hydrogen production and infrastructure are already [in place](#). As with prior lease sales, bidders would need to include a conceptual strategy for meeting the credit requirements in the [bidders' financial form](#) (BFF) and the [bidders' form addendum](#) in advance of the lease, along with a bid deposit for one or both leases.

### **Fisheries Compensatory Mitigation Fund Bidding Credit**

The bidding credit for establishing and contributing to a fisheries compensatory mitigation fund is new compared to previous offshore wind lease sales but is consistent with BOEM's publication of draft [fisheries impacts mitigation guidance](#) and a move by nine East Coast states to establish a [regional administrator for fisheries compensation and mitigation](#) from offshore wind development.

The purpose of the fisheries compensatory mitigation fund bidding credit is to minimize potential economic effects on commercial fisheries affected by potential offshore wind development. BOEM notes that cooperation with commercial fisheries affected by Outer Continental Shelf (OCS) operations will allow the development of the lease area to advance. Lessees are encouraged to contribute to a regional fund that would compensate fisheries for losses resulting from all OCS wind energy leases and easements in the Gulf of Mexico. The compensation must address gear loss or damage or lost fishing income in the Gulf of Mexico lease areas.

The fisheries compensatory mitigation fund would assist commercial fisheries directly affected by income or gear losses due to offshore wind activities on offshore wind leases or easements and is intended to address the impacts identified in BOEM's environmental and project reviews. The compensatory mitigation must cover impacts that result directly from the preconstruction, construction, operations, and decommissioning of an

offshore wind project being developed on the Gulf of Mexico wind energy leases or easements. The fund must be established, and the contribution must be made, before the lessee submits the lease's first FDR. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a strategy as described in the [BFF Addendum](#).

BOEM seeks comment on how the fisheries compensatory mitigation fund and associated bidding credit should be structured, including whether mitigation funds should be segregated to cover specific leases or if funds should be pooled to cover fisheries impacts derived from future offshore wind leasing and projects in the Gulf of Mexico.

## Proposed Lease Stipulations

BOEM proposes to add or revise the following lease stipulations or provisions from previous commercial leases:

- **Fisheries Communication Plan (FCP).** BOEM proposes to include a stipulation in the lease titled, "Commercial Fisheries," which would include a requirement for a FCP.
- **Native American Tribes Communication Plan (NATCP).** BOEM proposes to require the lessee to work with BOEM to identify Tribes with cultural and/or historical ties to the lease areas and invite those Tribes to participate in the development of the NATCP.
- **Protected Species.** The lessee would be required to coordinate with BOEM, NMFS, and USFWS prior to designing and conducting biological surveys that could interact with protected species.
- **MMPA Authorizations.** If an authorization pursuant to MMPA Section 101(a)(5) is required, the lessee must provide a copy of the authorization prior to commencing survey activities.
- **Site Characterization.** BOEM proposes to make the pre-survey meeting between the lessee and BOEM optional at BOEM's discretion. BOEM also recommends removing the requirement for lessees to meet with BOEM prior to holding Tribal pre-survey meetings.
- **Siting Conditions.** BOEM will outline situations in which lessees may not construct surface facilities.
- **Research Access.** BOEM will explicitly reserve the right to access the lease area for the purposes of future research and other activities.
- **Project Labor Agreements and Supply Chain.** Lessees must make every reasonable effort to enter a project labor agreement covering the construction stage of any project proposed for the lease areas, which applies to all contractors. Further, the lessee must establish a statement of goals in which the lessee describes its plans for contributing to the creation of a U.S.-based offshore wind industry supply chain. The lessee would be required to provide regular publicly available progress updates on the achievement of those goals to BOEM.
- **Stakeholder and Ocean User Engagement Summary.** Lessees must include a stakeholder and ocean user engagement summary as part of their progress reporting requirements.
- **Confirmed Munitions and Explosives of Concern and Unexploded Ordnance Notification.** Lessees would be required to notify BOEM and BSEE upon the discovery of such devices.
- **Proposed Information to Lessees.** BOEM will inform lessees of Significant OCS Sediment Resource Areas which have been designated within the lease blocks. If it is determined that significant OCS sediment resources may be affected by a proposed activity, BOEM and/or BSEE may require the lessee to undertake measures deemed economically, environmentally, and technically feasible to protect the resources to the maximum extent practicable.

## **Other Issues for Comment**

BOEM is additionally interested in specific comments on the following items:

- The number, size, orientation, and location of proposed lease areas.
- Any considerations for the delineation of lease areas, including the commercial viability and size of lease areas, and considerations for port infrastructure and electrical grid interconnections.
- Need for transit corridors within the proposed lease areas.
- Technical and scientific data on existing uses that may be affected by the development of proposed lease areas.
- Benefits to underserved communities and how BOEM can include lease stipulations that ensure that underserved communities are considered and engaged early and often throughout the process.
- Methods to improve the frequency, duration, and sustainability of collaborative engagement among lessees, federally recognized Tribes, and other stakeholders, in addition to BOEM and other agencies' required government-to-government consultations with Tribal governments.
- Whether BOEM should consider prescribing uniform and aligned turbine layouts in the lease area and how this would mitigate the need for transit corridors.
- Whether the definition of "affiliated entities" in the bidding process sufficiently protects the policy objectives of BOEM's "one-per-customer" policy, and whether BOEM should change the definition to include bidders that have formed agreements with other bidders related to the disposition of leases offered in either of the auctions.

## **Conclusion**

Potential bidders for the lease areas and other interested parties should be prepared to comment on the reduction of the lease areas and proposed additions to the multiple-factor auction bidding credits, including the novel one for establishing and contributing to a fisheries compensatory mitigation fund. In addition, bidders should take note of the revisions and additions to the lease stipulations included in previous leases and the specific topics BOEM calls out in the PSN. Separately, interested stakeholders should consider commenting on the USCG's decision to conduct a Port Access Route Study for approaches to TX/LAPARS, as the study results will undoubtedly affect the final lease areas, whether in BOEM's designation of these areas in the Final Sale Notice or lease stipulations. Comments on the USCG decision to conduct TX/LAPARS must be received on or before April 17, 2023, a week in advance of the due date for comments on the PSN. This period allows interested parties to provide BOEM comments on the potential impact of the USCG action on the ultimate lease sale, expected later this year.

© 2023 Perkins Coie LLP

## **Authors**

## Explore more in

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

## Related insights

Update

[\*\*USPTO's Significant Restructuring of Trademark Fees Takes Effect January 18, 2025\*\*](#)

Update

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