

Overview of the BOEM Renewable Energy Authorization Process

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The Bureau of Ocean Energy Management (BOEM) is the agency within the U.S. Department of the Interior responsible for managing development of the nation's offshore energy resources, including conventional energy, renewable energy, and marine minerals, in an environmentally and economically responsible way.

BOEM's Regulatory Authority for Renewable Energy Activities

BOEM is responsible for issuing leases, easements, and rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). The OCS is regulated by the Outer Continental Shelf Lands Act (OCSLA).¹ The OCS refers to federal submerged lands, subsoil, and seabed beginning three nautical miles off the coastline (for most states) and extending to the edge of the Exclusive Economic Zone (EEZ).²

BOEM's authority to oversee renewable energy development derives from amendments to subsection 8(p) of the OCSLA, as set forth in section 388(a) of the Energy Policy Act of 2005.³ The Secretary of the Interior delegated authority to BOEM to regulate activities that produce or support the production, transportation, or transmission of energy from sources other than oil and gas. BOEM published regulations governing its renewable energy program in 2009, found in 30 C.F.R. part 585.⁴

Importance of Stakeholder Engagement

To familiarize stakeholders with BOEM's planning and leasing process and to initiate conversations to set the stage to obtain crucial stakeholder input, BOEM established Intergovernmental Renewable Energy Task Forces in states that expressed an interest in developing offshore renewable energy. The role of each Task Force is to collect and share relevant information that would be useful to BOEM during its decision-making process. Task Force meetings have helped identify areas of significant promise for offshore development and provided the opportunity to identify and resolve potential conflicts.

In August 2020, Louisiana Governor Edwards signed Executive Order JBE-2020-18, establishing a Climate Initiatives Task Force and setting greenhouse gas emission reduction goals for the State of Louisiana.⁵ On October 21, 2020, Louisiana requested that BOEM take the necessary steps towards the establishment of an Intergovernmental Task Force for offshore renewable energy. The inaugural meeting of the Gulf of Mexico Regional Task Force was held on June 15, 2021, and included the States of Louisiana, Texas, Mississippi, and Alabama.

The Process

BOEM's renewable energy program occurs in four distinct phases: (1) planning and analysis, (2) leasing, (3) site assessment, and (4) construction and operations. A timeline of these activities is provided below.

For OCS activities, a lease is an agreement between an energy developer and the United States authorizing the use of a designated portion of the OCS for renewable energy activities. A developer holding a lease is referred to as a Lessee. A lease agreement allows a prospective renewable energy developer to explore, develop, and, potentially, produce energy from renewable energy resources.⁶ BOEM issues three types of leases for offshore renewable energy production:

- Commercial lease — for commercial activities that generate energy for sale and distribution.
- Limited lease — for activities that support the production of energy, but do not result in the production of electricity for sale or distribution beyond a very limited threshold.
- Research lease — reserved solely for states or federal agencies to conduct renewable energy research activities on the OCS.

A lease does not grant the lessee the right to construct any facility; rather, the lease grants the right to develop plans for use of the area for BOEM's review and potential approval – a Site Assessment Plan (SAP) and a Construction

and Operations Plan (COP). Activities proposed in a plan are subject to BOEM's approval after thorough environmental and technical reviews are conducted.

The process may result in a lease, but BOEM also issues grants for some renewable energy projects. BOEM also issues two types of grants associated with renewable energy projects:

- **Right-of-Way (ROW)** — A ROW grant authorizes the installation of cables, pipelines, and associated facilities that involve the transportation or transmission of electricity or other energy produced from a renewable energy project that is not located on the OCS.
- **Right-of-Use (RUE)** — A RUE grant authorizes the construction and maintenance of facilities or installations that support the production, transportation, or transmission of electricity or other energy produced from a renewable energy project in the OCS.

Planning and Analysis

The planning and analysis phase seeks to identify suitable areas for wind energy leasing consideration through collaborative, consultative, and analytical processes that engage stakeholders, tribes, and state and federal government agencies. This is the phase when BOEM conducts environmental compliance reviews and consultations with tribes, states, and natural resource agencies. The process begins with a Call for Information and Nominations published by BOEM in the *Federal Register*.

Based on the information gathered, BOEM will identify priority Wind Energy Areas (WEAs) offshore. WEAs are locations that appear most suitable for wind energy development. Factors vary from region to region, but include considerations such as wind potential and areas with the fewest conflicts (such as with protected resources, oil and gas development, military activities, or fishing). Additionally, parties may seek to develop wind outside of a WEA, in which case, BOEM will process unsolicited lease applications, as applicable. For either, BOEM will prepare an Environmental Assessment for Lease Issuance and Site Assessment.

Competitive vs. Non-Competitive Leasing

The leasing phase results in the issuance of a commercial wind energy lease. Leases may be issued either through a competitive or noncompetitive process.

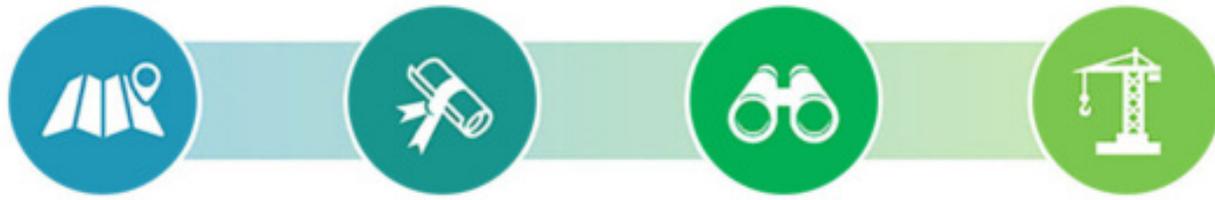
The Energy Policy Act of 2005 requires that BOEM issue leases and grants on a competitive basis unless it determines that there is no competitive interest in the proposed lease or grant.⁷ When only one developer has indicated interest in developing a given site, BOEM may issue a lease or grant non-competitively.⁸ If multiple developers express interest in leasing a given site, then BOEM proceeds with a competitive leasing process, which may ultimately result in a lease sale where developers can bid against each other to win the lease or grant.

When BOEM determines that a Competitive Interest exists, BOEM notifies the public and developers of its intent to lease through Sale Notices before holding a lease sale. First, BOEM publishes a Proposed Sale Notice (PSN) in the *Federal Register* giving interested parties 60 days to comment. The PSN will describe the areas BOEM intends to offer for leasing, the proposed conditions of a lease sale, the proposed auction format of the lease sale, and the official lease form. Additionally, the PSN will describe the criteria and process BOEM will use to evaluate bids in the lease sale. If BOEM elects to go ahead with the Lease Sale, it publishes a Final Sale Notice 30 days before the sale, which provides the final version of the information in the PSN, including what the minimum bid is. The Lease Sale is an auction in which entities submit bids (and bid deposits). Companies must qualify by submitting their legal, financial, and technical qualifications in the application, and BOEM will determine whether they are eligible.

Once granted, a commercial lease gives the Lessee the exclusive right to seek BOEM approval for the development of the leasehold. The lease does not grant the Lessee the right to construct any facilities; rather, the lease grants the right to use the lease area to develop its plans, which must be approved by BOEM before the Lessee can move on to the next stage of the process. The approximate timing of these plans is shown in the chart.

Site Assessment

The site assessment phase includes the submission of a Site Assessment Plan (SAP), which is a detailed proposal for how the Lessee will assess the viability of the leasehold. The SAP describes the Lessee's plan to evaluate the geophysical and archaeological data of the area to assess the potential impacts of the project. The SAP describes how the Lessee will conduct resource assessment activities, such as the installation of meteorological towers or buoys, and technology testing during the site assessment phase of the commercial lease. BOEM must approve the SAP



Planning & Analysis
~2 YEARS

- Intergovernmental Task Force
- Request for Information or Call for Information and Nominations
- Area Identification
- Environmental Reviews

Leasing
~1-2 YEARS

- Publish Leasing Notices
- Conduct Auction or Negotiate Lease Terms
- Issue Lease(s)

Site Assessment
UP TO 5 YEARS

- Site Characterization
- Site Assessment Plan

Construction & Operations
~2 YEARS (+25)

- Construction and Operations Plan
- Facility Design Report and Fabrication and Installation Report
- Decommissioning
- Environmental and Technical Reviews

before the Lessee may conduct any “site assessment” activities on the leasehold, such as site characterization surveys or avian, marine mammal, and archeological studies.

Once submitted, BOEM conducts environmental and technical reviews of the SAP, eventually deciding to approve, approve with modification, or disapprove the SAP. When the SAP is approved, the Lessee performs additional assessment of the site, which usually includes using meteorological towers and/or buoys. Meteorological towers are used throughout the life of a project, whereas buoys are generally temporary and are deployed for a few years at a time.

Construction and Operation

The construction and operations phase begins with the submission of a Construction and Operations Plan (COP), which is a detailed plan for the construction and operation of a wind energy project on the lease. The COP describes how the Lessee will construct and operate a commercial wind project on a commercial lease, including a description of all planned facilities as well as a description of proposed construction activities, commercial operations, and conceptual decommissioning plans. A Lessee may conduct additional site characterization during this phase. BOEM must approve the COP before the Lessee can install facilities or conduct commercial activities described in the COP.

Upon receiving the COP, BOEM will conduct environmental and technical reviews of the plan to decide whether to approve, approve with modification, or disapprove the COP. If approved, the Lessee is authorized

to build the wind facility. Prior to the end of the lease term, the developer must submit a plan to decommission facilities.

When a Right-of-Way, rather than a lease, is issued, the grantee must prepare a General Activities Plan (GAP), not a COP. The GAP describes how the grantee will construct and operate renewable energy facilities on a limited lease or ROW/RUE grant. The GAP includes a description of construction activities for all planned facilities, associated activities, and conceptual decommissioning plans. BOEM must approve the GAP before the lessee can install facilities or conduct activities described in the GAP. 🦋

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Endnotes

1. 43 U.S.C. §§ 1331 – 1356b.
2. In general, the EEZ extends to 200 nautical miles from shore. Pres. Proc. No. 5030 (March 10, 1983), 48 Fed. Reg. 10605 (March 14, 1983).
3. 43 U.S.C. § 1337; Pub. L. 109-58.
4. For additional information on BOEM’s renewable energy regulatory framework and associated guidelines, see <http://www.boem.gov/National-and-Regional-Guidelines-for-Renewable-Energy-Activities/>.
5. Louisiana Exec. Ord. No. JBE-2020-18.
6. The lease also gives the Lessee the right to obtain easements without competition in order to install gathering, transmission, and distribution cables; pipelines; and appurtenances on the OCS as necessary for the full enjoyment of the lease. 30 C.F.R. § 585.200(b).
7. Regulations found at 30 C.F.R. 585.200 to 585.221 describe the process in detail.
8. See 30 C.F.R. § 585.230.