

## Responses to Comments

### Proposed Sale Notice - Massachusetts Lease Sale ATLW-4A

The Bureau of Ocean Energy Management (BOEM) received approximately 21 comments on the *Proposed Sale Notice (PSN) for the Massachusetts Lease Sale ATLW-4A*. The comments came from a variety of stakeholders including industry, environmental groups, Federal, state and local governments, interagency councils, and the general public. The comments were generally positive and comprised of the following categories: 1) General support for offshore wind development, 2) Opposition to oil and gas drilling, 3) Need to address potential visual impacts in the future, 4) Need to address impacts on fishing and navigation, 5) Lease terms, auction format, and process, 6) Mitigations for protected species, 7) Qualifications, financial assurance, and decommissioning, 8) Eliminating the Site Assessment Plan (SAP) requirement for meteorological buoys, 9) Shortening the consultation review periods for surveys and more flexibility on the timing of those surveys.

#### 1. Comments with General Support for Offshore Wind Development.

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***Comment:*** BOEM received 21 comments on the PSN for Massachusetts Lease Sale ATLW-4A with 19 of them expressing some degree of support for offshore wind development. Commenters requested a quick and efficient approval process for potential projects, citing the potential for carbon reduction, new jobs, and support for the local economy.

BOEM appreciates the public's participation in our process and the fact that individual stakeholders took the time to express their opinions regarding the development of wind energy on the Outer Continental Shelf (OCS). BOEM recognizes the important role that offshore wind can play in the effort to decrease carbon pollution and understands the need for efficient yet thorough vetting of these projects.

#### 2. Comments Opposing Oil and Gas Drilling

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***Comment:*** BOEM received one comment from the general public expressing opposition to oil and gas drilling.

Leases issued under Massachusetts Lease Sale ATLW-4A would not authorize any oil and gas development activity, including drilling operations. Information regarding oil and gas development can be found at <https://www.boem.gov/national-ocs-program/>.

#### 3. Comments regarding the need to address potential visual impacts in the future.

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***Comment:*** BOEM received one comment from the National Park Service (NPS) regarding the need to coordinate and consult in future stages of the project due to the potential visual impacts on the Gay Head Lighthouse National Historic Landmark and potential impacts to

**other coastal locations depending on the siting of cables or other onshore components of a commercial-scale wind energy project, if proposed.**

BOEM appreciates the NPS's shared commitment to work expeditiously with stakeholders. As a sister bureau in the Department of the Interior, BOEM will follow departmental guidelines and policies to appropriately engage the NPS at future stages of BOEM's regulatory process. The issues raised by NPS are specific to potential impacts from commercial development within the Lease Areas being offered in ATLW-4A. If BOEM receives a SAP or a Construction and Operations Plan (COP), the bureau will initiate consultation under Section 106 of the National Historic Preservation Act to consider the effects of the proposed activities on historic properties (including National Historic Landmarks) and will involve the NPS as a consulting party.

**4. Comments regarding the need to address impacts to fishing and navigation.**

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***Comment:* BOEM received a number of comments from state and local governments, industry and interagency management councils regarding the potential impacts that wind energy development may have on fishing activities and navigation in the area. The New England Fisheries Management Council requested an extension of the comment period so that more detailed information could be provided on the fishery resources, habitats, and commercial activities in the area. The Executive Office of Energy and Environmental Affairs for the State of Massachusetts also requested that BOEM address a number of fishing and navigation issues in its forthcoming project-specific environmental reviews—including the need to identify navigation corridors, transmission and inter-array cables, fishing gear interactions and potential displacement, and mitigation measures.**

BOEM informed the Northeast Fisheries Management Council that an extension to the comment period would not be granted based on the fact that BOEM's National Environmental Policy Act (NEPA) analysis of this lease sale did not result in the identification of new information or changed circumstances that would substantially change its 2014 finding of no significant impacts (FONSI) concerning issuance of commercial leases within the Massachusetts Wind Energy Area (WEA). This analysis included impacts to commercial and recreational fisheries.

BOEM has nonetheless elected to include a stipulation in the leases that it is offering for sale in ATLW-4A that requires lessees to coordinate and communicate their site assessment and site characterization activities with commercial and recreational fishermen. BOEM included the same stipulation in its most recently issued lease, OCS-A 0512 offshore New York, and it has determined that this lease stipulation is also prudent for these proposed leases offshore Massachusetts given the importance of fishing to the economies of Southern New England states. When BOEM receives COPs for the leases that are sold in ATLW-4A, it will conduct a site-specific NEPA analyses that will include a thorough review of anticipated fisheries impacts resulting from any proposed wind energy facilities. Furthermore, in response to Massachusetts Secretary Beaton's request for matching funds to establish a regional Fisheries Science Panel and to conduct additional regional fisheries science initiatives, BOEM is committing \$200,000 this fall with additional funding in 2019. BOEM believes that collaborative regional fisheries monitoring is an important component to understanding direct and cumulative effects of offshore wind energy projects on fish and the fisheries they support.

## 5. Comments on the lease terms, auction format, and process.

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***Comment:*** BOEM received one comment from an industry representative suggesting that the renewable energy leasing process should have future development and call areas defined in a process similar to that used in the National OCS Oil and Gas Leasing Program.

This comment is outside the scope of this sale, but nonetheless warrants a response. BOEM is not considering a renewable energy leasing program similar to the National OCS Oil and Gas Leasing Program. The offshore wind industry is very different from the fully-mature offshore oil and gas industry, which is required to operate under a five-year leasing program. That industry was developed over several decades, enjoys a well lubricated supply chain, more predictability, and is essentially stable by comparison with the nascent offshore wind industry. Unlike oil and gas, successful development of an offshore wind lease is dependent upon an agreement for power offtake, likely with one or more utilities in a nearby state (or states). BOEM currently takes the position that the broad goals of a national offshore wind leasing program are better satisfied with more flexible mechanisms such as annual goals or targets for new offshore wind capacity.

***Comment:*** BOEM solicited comments in the PSN regarding the use of non-monetary bidding credits for a Community Benefits Agreement (CBA), as well as whether there should be a cap on the value of the credit. The responses ranged from recommendations that non-monetary credits be used to suggestions of a 5 to 20 percent credit, with mixed responses regarding whether there should be a dollar cap on the value of the credits. Some industry representatives commented that BOEM should accept a CBA in the bidding process and opposed any maximum limit on the value of that CBA. Other industry representatives supported the use of a CBA in the bidding process, but suggested a cap on the credit that would be given for offering a CBA (such as five or ten percent of the total bid). Still other industry representatives suggested that a CBA at the bidding stage is premature.

Several New England states have recently established aggressive clean energy procurement goals and moved forward with corresponding long-term power purchase opportunities, which have advanced the market for offshore wind energy in New England. As such, BOEM has determined that non-monetary credits (including the CBA identified in the PSN and variations of it) are not necessary to ensure the success of this upcoming auction and the future development of the WEA. BOEM will utilize an ascending bidding auction format for ATWL-4A instead of the multiple-factor format proposed in the PSN. Non-monetary bidding credits will not be implemented in the auction format for this lease sale. This decision was informed through the comments received on the PSN, the increased competitive nature of BOEM's recent offshore wind lease sales (ATWL-6 and 7), and the aforementioned recent advancements in the maturity of the US offshore wind market since BOEM's initial lease sales. By implementing the ascending bidding auction format in ATWL-4A, BOEM is also fulfilling its fair return responsibilities under Outer Continental Shelf Lands Act. The ascending bidding auction format will provide the most revenue to the Federal Government for the rights to lease these areas.

***Comment:*** BOEM received a number of comments regarding the further delineation of the lease area. Several industry representatives' support dividing the proposed lease areas into smaller leases. Suggestions included further divided lease areas resulting in equal-sized leases and dividing the existing lease areas into 5 smaller lease areas. One industry representative also suggested that BOEM create a single lease area for the area deeper than 57 meters (m) to specifically target developers interested in floating foundations. On the other hand, three industry representatives support the existing two lease delineations.

BOEM considered the comments and has decided to re-apportion the remainder of the Massachusetts WEA from two to three Lease Areas. This will increase competition without altering the general characteristics, other than size, of the two existing leases. These three lease areas are still large enough to support projects greater than 800 MW in size (larger than European leases) while accounting for siting flexibility, are in the same orientation to reduce wake effects on adjacent leases, and allow for more competition in the offshore wind offtake market.

***Comment:*** BOEM solicited comments in the PSN regarding the imposition of buffer zones between adjacent leases, as well as the appropriate distance for those buffers and the timing for determining those buffers. Five industry representatives were supportive of implementing lease buffers ranging from 100 m to 1,000 m, or based on rotor diameter or turbine tip height. Two industry representatives oppose implementing lease buffers during the leasing stage, with one of those representatives asserting that bidders take potential buffers into account in valuing the lease areas—and that the need for actual buffers is difficult to predict at the lease sale stage. The other industry representative argued that buffers are a good idea, but should be implemented later during the plan submittal phase. Two other industry representatives agreed buffers are a good idea and indicated that any buffer areas should not be considered part of the leases, rather considered a “separation zone.” One of those representatives stated that any buffer should be identified in the Final Sale Notice (FSN) for additional comment.

BOEM recognizes the potential for projects on adjacent leases to significantly affect one another. For example, a project that sites turbines very close to the edge of an adjacent lease area may impose wake, navigation, and other safety effects on a neighboring project. In order to balance the rights of lessees and their neighbors to insure the full enjoyment of their respective leases while preserving lessees' flexibility in designing their projects, BOEM has incorporated a stipulation in the leases barring lessees from proposing turbines within 750 m of adjoining lease boundaries unless both lessees agree to a smaller setback between the turbine and the edge of the lease. This decision eliminates uncertainty regarding when lessees should address setbacks between projects, and clearly identifies the default spacing prior to lease sale (~1,500 m).

***Comment:*** BOEM received one comment from an industry representative that the operational period in the lease terms should be lengthened to 30 years.

BOEM agrees that development of these lease areas could benefit from a longer operations term. Offshore wind technology is quickly advancing and BOEM recognizes that longer operations

terms may better reflect the design life of the current technology and therefore assist in project financing. In addition, the development time tables of several large scale European offshore wind farms have shown that the construction phase can last multiple years and the size of leases OCS-A 520, OCS-A 0521, and OCS-A 0522 could lend themselves to a phased-development approach. BOEM has increased the Operations Term of the offered leases to 33 years.

***Comment:* BOEM received one comment from an industry representative suggesting that the vessel strike avoidance requirement should not be a lease stipulation but instead should be addressed in each particular vessel activity proposed in the survey plans associated with the COP.**

The vessel speed restrictions in BOEM's leases are a requirement of National Oceanic and Atmospheric Administration's (NOAA) 2013 Biological Opinion issued to BOEM for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic OCS in Massachusetts, Rhode Island, New York, and New Jersey WEAs, which covers the proposed lease sale, implements the Endangered Species Act, and is aimed at reducing the potential for vessel collisions with North Atlantic right whales.

***Comment:* BOEM received two comments regarding competition in this lease sale. One industry representative argued that only new competitors (companies that do not already hold leases in the region) should be allowed to participate in the auction. Another industry representative opposed BOEM's rule prohibiting one bidder from winning both lease areas in favor of deference to antitrust laws.**

In order to strike a balance between encouraging full participation in the lease sale and ensuring a diverse range of lessees in the region, BOEM has decided to maintain the prohibition on bidders winning more than one lease area set forth in the PSN and set no restrictions on existing lessees in the region participating in the lease sale. After consulting with the U.S. Department of Justice Antitrust Division and BOEM's auction contractor, however, BOEM has decided that affiliated entities will not be allowed to compete against each other in the lease sale. BOEM believes affiliated entities are likely to possess shared information that, if used improperly, could give them an unfair advantage in certain circumstances during the auction. As set forth in the FSN, BOEM considers two entities to be affiliated if (a) one entity (or its parent or subsidiary) has or retains any right, title, or interest in the other entity (or its parent or subsidiary), including any ability to control or direct actions with respect to such entity, either directly or indirectly, individually or through any other party; or (b) the entities are both direct or indirect subsidiaries of the same parent company. Affiliated entities may decide amongst themselves prior to the start of the auction which one will participate individually. This rule will guard against the potential for collusive behavior and/or conflicts of interest (or the appearance thereof), while not unduly restricting competition.

Please note that BOEM is not barring associated entities—defined as entities that share a mutual right, title, or interest in an independent third entity—from competing against each other in this sale. All bidders are, however, subject to the same anti-competitiveness rules set forth in the FSN and BOEM regulations.

**Comment: BOEM received one comment from an industry representative suggesting that BOEM should adopt a “standard high bid” and a “highest rejected bid” process.**

BOEM is declining to adopt these suggested processes in this lease sale for the following reasons.

*Standard high bid:* BOEM’s proposed auction format is competitive, transparent, and provides bidders flexibility in submitting their bids. Introducing a standing high bid determination mechanism or similar rule would potentially reduce bidder flexibility. BOEM recognizes the merits of such rules but allows bidders more flexibility in their independent valuations of individual lease areas, which may have different attributes that are uniquely valued.

*Highest rejected bid:* BOEM has studied various auction formats, including “second price” auctions and “highest rejected bid” rules. These auction format studies and BOEM’s summary are available online at: <https://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Renewable-Energy-Auction-Formats.aspx>. The chosen auction format satisfies current program objectives and promotes price discovery, an important feature in the auction of offshore wind energy leases.

**Comment: BOEM received one comment from an industry representative regarding the need to define “full enjoyment” and “unreasonable interference” in the lease.**

BOEM determines the meaning of “full enjoyment” and “unreasonable interference,” as needed, on a case-by-case basis depending on site-specific circumstances. Variations in potential facility designs, site conditions, and competing ocean uses make it difficult for BOEM to formulate a standardized definition of these terms.

## **6. Comments on mitigations for protected species.**

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**Comment: BOEM received comments regarding the potential impacts on protected species and potential mitigations to reduce or avoid those impacts. A coalition of environmental groups submitted comments on specific mitigation measures for the Atlantic right whale for the life of the project. The mitigations mentioned include: 1) site selection with complete avoidance of foraging or calving areas at a minimum; 2) temporal restrictions on G&G activities; 3) 1,000 m exclusion zones during geophysical surveys and construction; 4) 10 knot vessel speed restriction for all vessels during the life of the project; 5) underwater noise reduction; and 6) long-term research and monitoring.**

BOEM shares commenters’ concerns regarding conservation and recovery of North Atlantic right whales (NARW). BOEM has reviewed current lease requirements that are intended to avoid or minimize potential impacts to NARW, and believes that the current suite of mitigation measures is sufficiently protective of NARW in the lease area, during site characterization activities. These conditions were developed in consultation with the National Marine Fisheries Service and discussed as effective measures at BOEM's *Workshop on Best Management Practices for Atlantic Wind Facilities and Marine Protected Species*. BOEM remains committed

to using the best science and scientific information available to support effective mitigation strategies. BOEM will continue to coordinate with our Federal and non-federal partners to evaluate new information as it becomes available. Specific mitigation and monitoring recommendations addressed in more detail in the following section.

**a) Site selection with complete avoidance of foraging or calving areas at a minimum:** On November 2, 2012, BOEM published a Notice of Availability for the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Massachusetts Environmental Assessment* (77 FR 66185). Based on public comments received on the Environmental Assessment (EA), public comments, and the conclusion of consultation under the Endangered Species Act, BOEM revised the EA and issued a FONSI on June 18, 2014 (79 FR 117). On January 27, 2016, critical habitat for the North Atlantic right whale was revised (81 FR 4838). BOEM has evaluated North Atlantic right whale feeding and calving critical habitat for the leasing areas under consideration and determined there is no calving or foraging critical habitat that will be impacted. Although North Atlantic right whales may forage anywhere outside of critical habitat boundaries in the North Atlantic, these areas are ephemeral and may change both seasonally and annually for whales. Avoiding ephemeral feeding areas that may occur anywhere in the entire North Atlantic is not a reasonable mitigation measure justified by the available information. BOEM has evaluated the new information and changed circumstances since the FONSI was published, and has determined that no significantly different environmental effects will result than those described in the June 2014 EA. Based on currently available information, BOEM believes the suite of activity-specific mitigation measures and regulatory requirements for future development of the lease areas, such as COPs, are effective to avoid and minimize impacts to North Atlantic right whales.

**b) Temporal restrictions on Geological and Geophysical (G&G) activities:** Section 4.3 of Addendum C will require measures aimed at avoiding and minimizing impacts to protected species. Measures include maintaining a vigilant watch for protected species and a shut-down of acoustic sources when protected species are within an exclusion distance from G&G activities that have potential effects of animals. Species-specific separation distances for both vessels and acoustic sources will be required. The best available information through manufacturer specifications and field measurements indicate that G&G activities have a small acoustic footprint that is typically much less than the current separation distances required of an operating vessel. Additionally, many surveys have already been conducted in Atlantic lease areas and monitored by protected species observers. There have not been any impacts to North Atlantic right whales observed during any surveys completed. The small impact areas and current mitigation requirements to maintain a separation distance from protected species and shut-down acoustic sources when animals are within an exclusion zone are effective; therefore, seasonal restrictions of G&G activities are not warranted.

**c) 1,000 m exclusion zones during geophysical surveys and construction:** For acoustic sources that have zones of influence that may have impacts on protected species, Section 4.3 of Addendum C will require measures to avoid and minimize potential impacts during G&G surveys. Measures include maintaining a vigilant watch for protected species and a shut-down of acoustic sources when protected species are within an exclusion distance from a survey vessel.

Species-specific separation distances for both vessels and acoustic sources will be required. The best available information shows that G&G activities have a relatively small acoustic footprint that is typically smaller than the current separation distances required for any operating vessel. The commenter did not provide any additional information substantiating why a 1,000 m exclusion zone should be required. Therefore, current mitigation requirements and exclusion zone distances in Addendum C are effective to avoid or minimize effects to protected species. The lease does not include environmental stipulations pertaining to site assessment activities or construction activities. Requirements covering those types of activities, such as pile driving, will be considered in the future, incident to BOEM receiving, reviewing and approving a project-specific plan such as a SAP or a COP.

**d) 10 knot vessel speed restriction for all vessels during the life of the project:** Section 4.1 of Addendum C contains Vessel Strike Avoidance Measures aimed at reducing impacts to protected species. Measures include maintaining a vigilant watch for protected species, species-specific separation distances and speed restrictions of less than 10 knots (18.5 kilometers per hour) or less for vessels 19.8 m (65 feet [ft]) in length or greater, operating from November 1 through April 30. These restrictions are a requirement of NOAA's 2013 Biological Opinion issued to BOEM by NOAA for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic OCS in Massachusetts, Rhode Island, New York, and New Jersey WEAs. NOAA determines time frames and class of vessels for speed restrictions based on when higher densities of right whales are likely to pass through or reside in high traffic areas associated with ports (73 FR 60173). The restrictions will be implemented in order to reduce the potential of vessel collisions with protected species during activities conducted in support of the submission of a plan (i.e., SAP and/or COP) and apply throughout any survey areas. Vessel speed reductions for vessels 65 ft or greater will also be required when vessels are operating in Seasonal Management Areas and Dynamic Management Areas. BOEM believes that these standard operating conditions (Section 4.1 of Addendum C) will provide the necessary protections to North Atlantic right whales and other protected species offshore Massachusetts.

**e) Underwater noise reduction:** Currently, noise reduction is not warranted for G&G survey activities due to the small acoustic footprint of the G&G acoustic sources. Any resulting leases will not include environmental stipulations pertaining to site assessment activities or construction activities that could potentially include pile driving. Any potential sound sources that have effects on protected species, and appropriate noise reduction methods will be considered in the future, incident to BOEM receiving, reviewing, and approving a project-specific plan such as a SAP or a COP.

**f) Long-term research and monitoring:** BOEM continues to work on regional monitoring priorities for potential impacts of concern and develop a strategy for long-term research and monitoring. BOEM held a Best Management Practices for Atlantic Offshore Wind Facilities and Marine Protected Species workshop on March 7-9, 2017, and recently partnered with the Massachusetts Clean Energy Center to convene a follow-up workshop on a Marine Mammal Science Framework Workshop on May 29-June 1, 2018. The conclusions and research framework developed by marine mammal scientists will be available in Fall/Winter 2018. BOEM will consider the results of this workshop in developing a long-term monitoring and research framework for Massachusetts and Massachusetts/Rhode Island WEAs.



## **7. Comments on requirements for qualifications and financial assurance.**

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***Comment:*** One industry representative commented that BOEM should ease the requirements for qualification that previously qualified companies should be allowed to participate in the sale, and that once a company has qualified it should remain so for one year or more if no legal, technical, or financial changes occur.

BOEM generally requires a company to qualify for each lease sale to minimize any risk to the taxpayer that may be incurred due to changes in a company's technical and especially financial situation between lease sales. However, in some instances such as ATLW-4A, BOEM recognized the previously qualified entities and asked that they only reassert their interest in participating in ATLW-4A and update their qualifications package, if necessary. BOEM is interested in receiving input from industry stakeholders on potential ways to improve its qualifications process.

## **8. Comments on requirements for decommissioning.**

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***Comment:*** One industry representative commented that decommissioning funds used to meet financial assurance requirements should not be required before construction and should be allowed to build over the length of the operational term of the lease.

This comment is outside of the scope of this action. BOEM evaluates the timing and extent of a lessee's decommissioning obligations, on a case-by-case basis depending on the project that is proposed. BOEM is currently reviewing its decommissioning financial assurance regulations.

## **9. Comments on eliminating the SAP requirements for meteorological buoy deployment.**

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***Comment:*** BOEM received one comment from an industry representative requesting that the requirement to submit a SAP for installation of a meteorological buoy be eliminated.

This comment is outside of the scope of this action. BOEM has been made aware of this issue from multiple parties, and is currently reviewing its SAP regulatory requirements.

## **10. Comments on survey plans and review.**

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***Comment:*** BOEM received one comment from an industry representative suggesting that commercial leases should include a 45 day consultation and review process for survey plans rather than the existing 90 day process.

Upon receiving a survey plan, BOEM must fully evaluate it, identify potential deficiencies, and give lessees sufficient time to address those deficiencies. Once a plan is provisionally complete and sufficient, additional time must be granted to permit tribes to participate in the review and surveying activities consistent with BOEM's tribal consultation obligations. Additional time is

also required to permit NOAA sufficient opportunity to review the plan as required under the 2013 Biological Opinion issued to BOEM by NOAA for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic OCS in the Massachusetts, Rhode Island, New York, and New Jersey WEAs. Therefore, it is BOEM's position that no changes should be made to the existing 90-day process at the present time.

***Comment:* BOEM received one comment from an industry representative suggesting that BOEM should allow certain surveys to be conducted after the submission of the COP.**

BOEM requires data adequate to evaluate the COP for both environmental impacts and technical feasibility. BOEM will work with a lessee to produce a mutually satisfactory timeline for survey work related to the COP. BOEM is aware of similar concerns raised by multiple developers, and is currently reviewing its regulatory requirements for COP data submittal.