

## **BOEM Proposes First Ever West Coast Offshore Wind Lease Sale**

The Bureau of Ocean Energy Management (BOEM) published its [Proposed Sale Notice](#) (PSN) on May 31, 2022, for what would be the first ever offshore wind energy leases on the west coast of the United States. The sale would span 373,268 total acres across five different proposed leases, three within the Morro Bay Wind Energy Area (WEA) off the central California coast and two within the Humboldt WEA to the north. If developed, these areas could result in at least 4.5 gigawatts of new wind energy capacity—enough to power more than 1.5 million homes.

BOEM would allow a bidder to bid for and ultimately acquire one lease in each of the two regions. BOEM proposes to utilize a multiple-factor auction that will credit bidders for financial commitments to an offshore wind workforce training program or to the development of the domestic supply chain. Another proposed credit would favor developer commitments to a community benefit agreement with a community or stakeholder group whose use of the lease area would be directly affected by the proposed offshore wind development.

Stakeholders have until August 1, 2022, to submit comments regarding the lease area delineations, auction format, and other details presented in the PSN. Following the comment period, BOEM will develop its Final Sale Notice (FSN) and set the date for simultaneous auctions of the Morro Bay and Humboldt leases. Twenty-three bidders qualify for the auction as of May 31, and BOEM is accepting qualification materials for new potential bidders through the close of the public comment period. Major provisions of the PSN follow below.

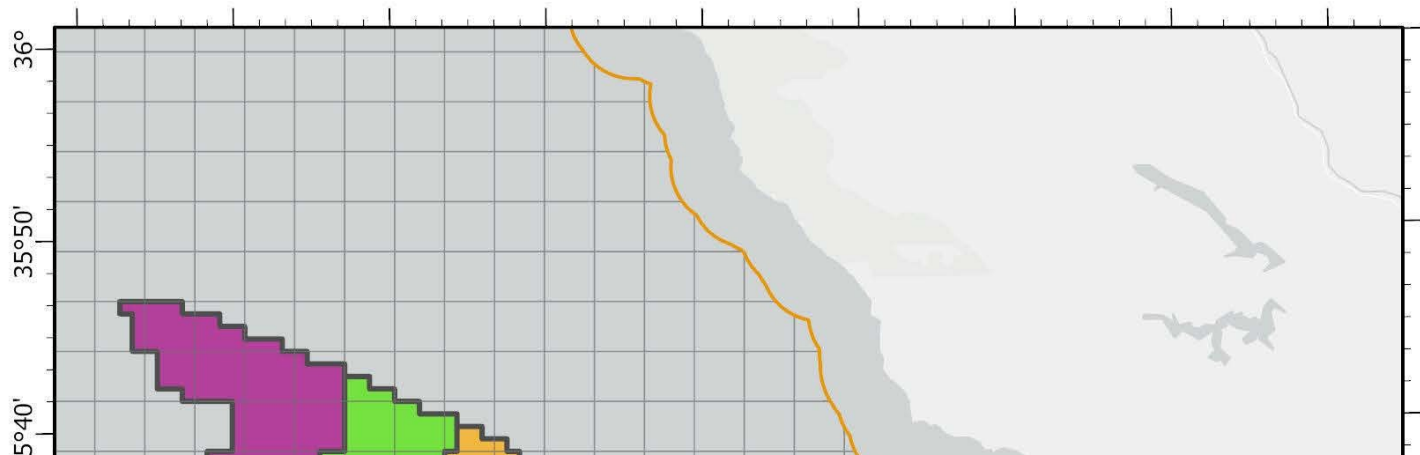
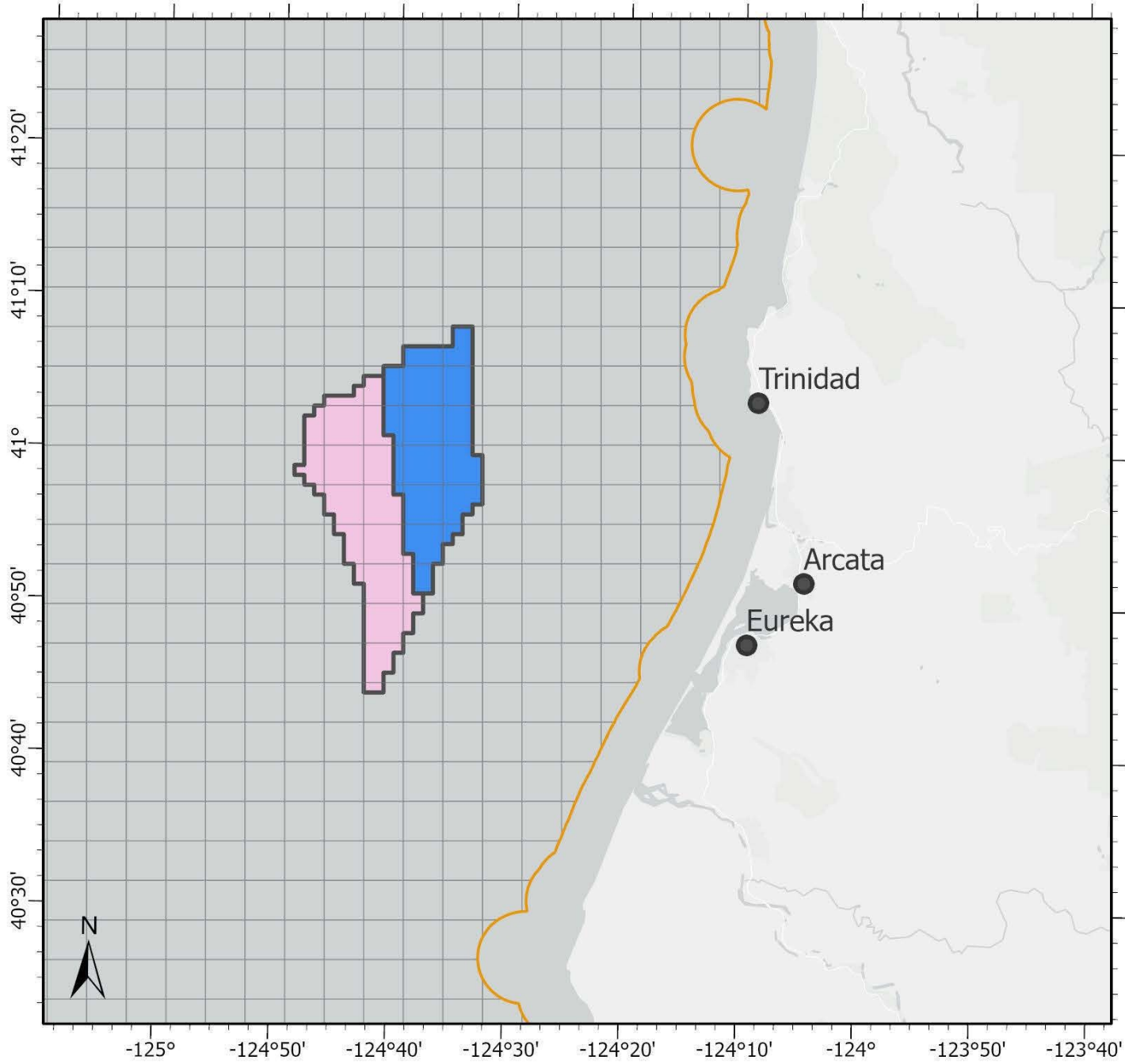
### **Proposed Lease Areas**

The five proposed lease areas encompass the entirety of the previously identified Humboldt and Morro Bay WEAs. BOEM states it delineated the lease areas so that each area (1) is of roughly equal power generation potential and geographic size, (2) is delineated in a manner to maximize energy generation, and (3) facilitates fair return to the U.S. Department of the Treasury (Treasury) through competition for the leases.

The size and location of the proposed lease areas are as follows:

<b>Lease area name</b>	<b>Lease area ID</b>	<b>Acres</b>
North Coast Region:		
Humboldt NE	OCS-P 0561	63,338
Humboldt SW	OCS-P 0562	69,031
Central Coast Region:		
Morro Bay NW	OCS-P 0563	80,062
Morro Bay C	OCS-P 0564	80,418
Morro Bay E	OCS-P 0565	80,418
<i>Total</i>		<i>373,268</i>

# California Proposed Lease Sale



BOEM proposes to allow each qualified entity to bid for one lease per region (North Coast and Central Coast regions) and via simultaneous auctions. BOEM is seeking feedback on this proposal, including an alternative approach whereby all lease areas would be offered in a single auction with bidders allowed to bid for and win only one lease area.

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

Similar to its recent auction of [two lease areas in the Carolina Long Bay](#), 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; and
- Establish a community benefit agreement with a community or stakeholder group whose use of the geographic space of the lease area, or whose use of resources harvested from that geographic space, is directly affected by a lessee's potential offshore wind development.

A bidder can qualify for one or both bidding credits, representing up to 22.5% of their cash bid.

BOEM is also soliciting input on a potential additional bidding credit for a community benefits agreement addressing effects not covered under the Lease Area Use Bidding Credit. More detail regarding these proposed credits follows.

### **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. To qualify, the winning bidder would need to financially contribute at least 80% of its bidding credit toward a workforce training program or development of a domestic supply chain. 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; or training for any other job skills related to offshore wind development.
- **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, bonds for businesses engaged in offshore wind development, and other contributions that the lessee can demonstrate will further the manufacture of offshore wind.

Bidders would need to include a conceptual strategy for meeting the credit requirements in the [bidders' financial form](#) and the [bidders' form addendum](#) in advance of the lease, along with a bid deposit for one or both leases. The credit could apply to two lease areas if a bidder who is qualified for the credit wins a lease in both the central and northern regions. A BOEM panel will review the bidders' nonmonetary component after bid deposits

have been received and notify bidders if they qualify for the credit prior to the auction.

Finally, a lessee that qualified for the credit would need to provide documentation to BOEM showing it has met at least 25% of the commitment by no later than its submission of the lessee's first construction and operations plan (COP), and the remainder of the commitment no later than the first Facility Design Report. The documentation would include all written agreements between the lessee and beneficiaries of the contribution, receipts documenting financial transactions in support of the contribution, and sworn statements in support of the contribution.

### **Lease Area Use Bidding Credit**

BOEM additionally proposes up to a 2.5% credit for a bidder with an existing community benefit agreement (CBA), or that commits to establishing a CBA with a community or stakeholder group affected by offshore wind development in the lease area. The community or stakeholder group 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." BOEM states a CBA is "intended to mitigate potential impacts to the community or stakeholder group ... and particularly to assist fishing and related industries to manage transitions, gear changes, or other similar impacts which may arise from the development of the Lease Area."

A bidder seeking to qualify for a Lease Area Use Bidding Credit must submit a conceptual strategy for a CBA or documentation of an existing CBA. Lessees could enter a CBA with multiple counterparties, or multiple CBAs, although lessees can only qualify for a maximum 2.5% credit under BOEM's proposal. A qualifying CBA would be one that:

- Specifies the monetary, material, or other benefits provided, or to be provided, by the lessee to the directly affected community or stakeholder group;
- Indicates commitment of parties to collaboration and resolution of issues, communication methods, engagement methods, or educational opportunities for the affected community or stakeholder group;
- Specifies plans or strategies to mitigate potential effects from the proposed development of the lease area on the community or stakeholder group; and
- Does not include exclusivity or preferential clauses that prevent or disincentivize an entity, community, or stakeholder from entering into similar agreements with other lessees or potential lessees.

A lessee recipient of this credit would be required to document execution of the CBA commitment by the lessee's first Facility Design Report submittal.

### **Potential Additional Credit**

The PSN also states BOEM is exploring whether it has 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 seeks comments regarding how such a credit "can be justified" under the Outer Continental Shelf Lands Act 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 can use this potential type of credit to encourage early community engagement, among other questions outlined in the PSN.

### **Lease Stipulations**

The PSN also describes conceptually the following potential lease stipulations:

- **Commercial Fisheries.** Similar to prior commercial leases, BOEM proposes to require a Fisheries Communications Plan (FCP) but with the following additional requirements: identifying dock space and transit routes that would minimize space use conflicts and potential effects to protected species; minimizing both congestion and the creation of obstacles that could result in an increased risk of entanglement; prioritizing Federal and state climate change adaptation strategies for fisheries; and requiring the lessee to contact potential affected commercial fishing communities prior to submitting its COP to discuss potential conflicts between seasonal fishing operations and the lessee's survey and development activities.
- **Protected Species.** BOEM would include in the leases the most current version of its Measures to Minimize Potential Adverse Impacts to Birds and Typical Mitigation Measures for Protected Marine Species. Alternatively, BOEM proposes to include the most current version of mitigation measures from the pending Final Morro Bay Wind Energy Environmental Assessment or the applicable consultation process.
- **Native American Tribes Communications Plan (NATCP).** BOEM proposes to revise its NATCP requirements from previous leases to require the bidder to invite tribes with cultural or historical ties to the lease areas to participate in development of the NATCP. The NATCP would also include protocols for unanticipated discovery of any potential precontact archaeological resources.
- **Stakeholder Engagement and Reporting.** BOEM proposes to require minimum engagement requirements and a semiannual progress report regarding lessee's engagement with tribal governments, ocean users, underserved communities, agencies, and other stakeholders that may be potentially affected by offshore wind development. A progress report would identify affected tribes and other parties, impacts on or benefits to those parties, and any changes to the project proposal to address those benefits or impacts. BOEM could require lessees to offer coordination meetings at regular intervals, and proposes that lessees must, to the maximum extent practicable, coordinate with one another on engagement activities to reduce the consultation burden placed on many tribes and parties.
- **Project Labor Agreements and Supply Chain.** BOEM is proposing two lease stipulations to encourage construction efficiency and to contribute towards establishing a domestic supply chain. Lessees would be required to (1) make every reasonable effort to enter into a project labor agreement covering construction of any of the leased areas, and (2) establish a statement of goals in which lessee describes how it would contribute to "the creation of a robust and resilient U.S.-based offshore wind industry supply chain."
- **Archaeological Survey Requirements.** BOEM proposes a modification of its prior lease stipulations regarding archaeological survey requirements. In addition to survey results, the lessee would provide a description of the methods it uses to conduct surveys in support of its site assessment plan (SAP) or COP. Additionally, the lessee would be required to coordinate a tribal pre-survey meeting with tribes identified by BOEM and in the NATCP. The post-review discovery clauses would require a lessee, in the event of an unanticipated discovery, to immediately halt bottom-disturbing activities within the area of discovery by a minimum of 50 meters as well as to refer to the NATCP for additional guidance on notifications.

## Other Potential Restrictions

Without identifying them necessarily as lease stipulations, BOEM notes that the following activities could necessitate imposition of mitigation measures with potential implications for lessees' project development efforts.

- **Navigational Safety.** BOEM acknowledges that the data gathered during the U.S. Coast Guard's ongoing Pacific Port Access Route Study (PACPARS) may result in the establishment of one or more new vessel routing measures, modification of existing routing measures, or disestablishment of existing routing measures off the Pacific Coast. The PSN indicates BOEM may require mitigation measures in the COP

once the lessee's site-specific navigational risk assessment is available to inform BOEM's decision-making, and that the PACPARS may result in additional navigational mitigation measures at the COP review stage. Further, BOEM may consider designating portions of the proposed lease areas as areas of no surface occupancy to facilitate vessel transit and continuance of existing uses—this could take the form of a lease stipulation in the FSN that addresses vessel routing measures.

- **U.S. Department of Defense (DOD) Activities.** The PSN states the proposed lease areas offshore Morro Bay area all located within the area determined by the DOD to be suitable for development, with site-specific stipulations. BOEM notes, however, that future consultation with the department could necessitate site specific stipulations, such as to deconflict potential effects to the North American Aerospace Defense Command (NORAD) mission.
- **Proposed Chumash Heritage National Marine Sanctuary.** The PSN acknowledges the proposed designation of the Chumash Heritage National Marine Sanctuary, an area comprising approximately 7,000 square miles off the central coast of California and adjacent to the Morro Bay WEA. BOEM states, without elaboration, that "future designation of a National Marine Sanctuary adjacent to a Lease Area may have implications for development of OCS leases for commercial wind energy."

## Conclusion

The PSN in some ways follows the format BOEM introduced with the Carolina Long Bay auction, while also introducing the new concept of the Lease Area Use Bidding Credit. If BOEM's detailed and broad-reaching questions for stakeholders are any indication, however, we could see shifts or the outgrowth of new concepts in a FSN to be released later this year. It also remains to be seen how an auction where bidders receive credits for promises of future performance will affect the ultimate return to the Treasury and meet BOEM's stated goal of conveying leases to the entities most likely to successfully develop the wind resource.

*The authors wish to acknowledge the contributions of Summer Associate Marlena Choupo.*

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