



The Bureau of Ocean Energy Management (BOEM) published on December 20, 2023, its [notice of intent](#) (NOI) to prepare a Programmatic Environmental Impact Statement (PEIS) of reasonably foreseeable impacts of floating offshore wind energy development activities on the five leased areas offshore Humboldt County and Morro Bay, California.

This will be BOEM's second major programmatic analysis of offshore wind development under the National Environmental Policy Act (NEPA), following its initiation of a PEIS for six areas leased in the New York Bight. [\[1\]](#) According to BOEM Pacific Regional Director Doug Boren, this approach is intended "to help ensure that timely decisions can be made to advance offshore wind while protecting the ocean environment, marine life, and other ocean uses."

The California Offshore Wind Lease Sale

BOEM held a [competitive auction](#) in December 2022 for five lease areas totaling approximately 373,268 acres off central and northern California. The five winning lessees have the exclusive right to propose construction and operation plans (COPs) to BOEM for authorization to develop offshore wind energy facilities in their leases issued in 2023.^[2] The total value of the auction won by five companies reached \$757 million.

Purpose and Need for Programmatic Environmental Review

The NOI officially kicks off the "scoping" process for development of a PEIS covering the central and northern California offshore wind lease areas. The PEIS is intended to analyze potential impacts from floating wind energy development activities on the leased areas and identify mitigation measures that, if adopted, could lessen those impacts. The NOI states that the PEIS "will help BOEM make timely decisions on COPs" and that timely decisions advance federal and state renewable energy goals, including the Biden administration's goals of deploying 30 gigawatts (GW) of offshore wind capacity by 2030 and 15 GW of floating offshore wind capacity by 2025, as well as California's goal of 2-5 GW of offshore wind energy generation by 2030.

The NOI states that BOEM intends to address the following objectives in the PEIS:

- Analysis of the impacts of a representative project offshore California.
- Analysis of programmatic avoidance, minimization, mitigation, and monitoring (AMMM) measures for the northern and central California lease areas.
- Identification of minor or negligible impacts so that site-specific reviews can focus on moderate or major impacts and analyze regional cumulative impacts.
- Potential tiering of project-specific environmental analyses.

According to the NOI, the PEIS should enable site- and project-specific environmental analyses and consultations to focus on the unique impacts of individual proposed wind energy projects and on regional cumulative impacts.

Proposed Action and Preliminary Alternatives Analysis

The NOI makes clear that the California PEIS will not result in the approval of any offshore wind development activities or plans. Instead, the proposed action is intended to identify programmatic AMMM measures that BOEM may require as conditions of approval or that lessees may voluntarily incorporate in COPs for the northern and central California lease areas. As BOEM explains, these measures may include AMMM measures previously used by BOEM in prior offshore wind energy project documents.

As described in the NOI, BOEM intends to base its analysis on a "hypothetical development scenario based on a representative project design envelope" created by the National Renewable Energy Lab with the input of California lessees. The draft PEIS will include analysis of a no-action alternative that assumes no development of the five lease areas offshore California, as well as an alternative that analyzes the impacts of not adopting the programmatic AMMM measures for a representative project offshore California. BOEM may undertake various consultations in conjunction with the PEIS, including under the Endangered Species Act, Marine Mammal Protection Act, National Historic Preservation Act, Rivers and Harbors Act, and the Coastal Zone Management Act and will invite tribal government-to-government consultations. BOEM's future analysis of site-specific project impacts and alternatives related to individual COPs may tier from the PEIS or incorporate it by reference. Based on the site-specific analyses, BOEM may approve, approve with modifications, or disapprove individual

COPs. The NOI concludes with a detailed request for identification of potential alternatives, information, and analysis relevant to the proposed action.

BOEM Seeks Input From Interested Stakeholders by February 20, 2024

The NOI initiated a 60-day public comment period to identify issues and potential alternatives for consideration in "scoping" the California PEIS. As part of this process, BOEM will hold virtual scoping meetings, tentatively scheduled for February 6 and February 8, 2024. During the meetings, the public can participate in a Q&A session with BOEM and provide oral comments on the scope of the PEIS. In addition, federal agencies, tribal, state, and local governments, and the public are invited to provide written input on potential AMMM measures and the effects they could have on resources, activities in or near the California lease areas, and detailed information to inform development of the representative project design envelope and activities scenario. Information about the scoping meetings can be found [here](#).

According to the NOI, BOEM hopes to publish a draft PEIS for review in September 2024 and will seek additional public comments at that time. BOEM is also targeting December 2025 for publication of the final PEIS, with a record of decision (ROD) issued at least 30 days after the final PEIS is made available. The ROD is expected to (1) identify certain programmatic mitigation measures that BOEM may require, if appropriate, as conditions of approval for COPs submitted on these five California leases, (2) identify the mitigation measures that are better analyzed and considered in a COP-specific NEPA analysis, and (3) allow BOEM to use a tiered review process that relies on the PEIS analyses for the COPs submitted on these five California leases.

Implications

Applicable regulations^[3] require the NOI to include a preliminary description of the proposed action and brief summary of expected impacts. However, the NOI does not contain any detail on the proposed action and includes only a brief listing of expected impacts, leaving commenters to speculate on the contents of the proposed AMMM measures and the impacts they are designed to address. While BOEM states that measures may include AMMM measures previously used by BOEM in prior offshore wind energy project documents, it does not reference any specific EIS. Unlike the New York Bight PEIS, where BOEM can look to prior AMMM measures in the region and along the East Coast, BOEM has no project-based frame of reference for West Coast projects. Moreover, the utility of any regional PEIS for offshore wind projects has yet to be established, as BOEM has not published its draft PEIS for the NY Bight. That draft is anticipated early in 2024 and may provide some guidance as to how BOEM will proceed with its approach to conducting a PEIS and identifying potential AMMM measures for the California lease areas.

Endnotes

[1] See our prior [Update on the NOI for a PEIS in the NY Bight](#). Note that the California NOI for a PEIS mirrors the NOI issued for the NY Bight PEIS.

[2] See our prior [Update on the California lease sale](#).

[3] 40 CFR 1501.9(d).

© 2023 Perkins Coie LLP

Authors



Edward (Ted) Boling

Partner

TedBoling@perkinscoie.com [202.661.5872](tel:202.661.5872)



Laura Smith Morton

Partner

LMorton@perkinscoie.com [202.654.6283](tel:202.654.6283)



Laura G. Zagar

Partner

LZagar@perkinscoie.com [415.344.7198](tel:415.344.7198)



Christian Termyn

Counsel

CTermyn@perkinscoie.com [415.344.7018](tel:415.344.7018)

Explore more in

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

Related insights

Update

[Wrapping Paper Series: Issues and Trends Facing the Retail Industry During the Holiday Season](#)

Update

[New Statutory Requirements for Commercial Leases: SB 1103 Updates California Laws for Landlords and Commercial Tenants](#)