



Institute *for*
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

May 21, 2018

Office of Renewable Energy Programs
Bureau of Ocean Energy Management

Submitted via regulations.gov

Re: Request for Feedback on BOEM's Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic Outer Continental Shelf (Docket No. BOEM-2018-0018)

The Institute for Policy Integrity ("Policy Integrity") at New York University School of Law¹ respectfully submits the following comments to the Bureau of Ocean Energy Management ("BOEM") in response to its request for feedback on BOEM's path forward for future offshore renewable energy leasing on the Atlantic Outer Continental Shelf ("OCS"). Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

BOEM has so far held seven competitive offshore wind lease sales and has awarded 13 commercial offshore wind leases with about 17 GW of capacity. There are wind energy leases off every state on the Atlantic coast from Massachusetts to North Carolina. This is important progress. However, BOEM can and should take steps to develop a robust offshore wind program that will deliver benefits to the public for decades to come.

These comments explain that BOEM should:

- Establish more offshore "wind energy areas" and hold more offshore wind lease sales, in order to fulfill its statutory mandates under the Federal Land Policy and Management Act ("FLPMA") and the Outer Continental Shelf Lands Act ("OCSLA");
- Consider the Atlantic coastal states' strong need for more offshore wind capacity and development in order to meet their renewable portfolio standards (RPS) and offshore wind targets;

¹ This document does not purport to present New York University School of Law's views, if any.

- Streamline and harmonize BOEM’s lengthy process for designating wind energy areas and holding lease sales with parallel state and environmental review processes, to the maximum extent feasible; and
- Regularly re-evaluate any numerical criteria that it adopts for siting wind energy areas, in order to keep pace with technology and other potential developments.

I. BOEM Should Identify More Areas of the OCS as Available for Wind Energy Leasing, Consistent with Its Multiple Use and Sustained Yield Mandates.

Pursuant to the Federal Land Policy and Management Act (“FLPMA”), BOEM must manage the resources of the OCS, including wind energy, according to the “principles of multiple use and sustained yield.”² Offshore wind energy serves these principles well because it supports the long-term needs of the public for renewable energy, while limiting environmental impacts to the OCS itself, as well as to other public lands. As such, BOEM should identify more areas for wind-energy leasing in the OCS.

FLPMA defines “multiple use” as:

[T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet *the present and future needs of the American people*; . . . the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the *long-term needs of future generations for renewable and nonrenewable resources*, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.³

“Multiple use” also refers to the “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”⁴

“Sustained yield” is defined as: “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the *various renewable resources of the public lands* consistent with multiple use.”⁵ Importantly, FLPMA’s definition of sustained yield highlights *renewable* resources of the public lands, which includes things like wind energy, as opposed to exhaustible resources like oil and natural gas.

² 43 U.S.C. § 1701.

³ 43 U.S.C. § 1702(c) (emphasis added).

⁴ *Id.*

⁵ 43 U.S.C. § 1702(h)(emphasis added).

Managing the OCS for multiple use and sustained yield means that there must be a significant portion of public lands devoted to renewable energy development and resource conservation in order to sustain public natural resources long-term—particularly for the “present and future” needs of the American people. Identifying more areas of the OCS for offshore wind energy is highly consistent with these principles, especially where such wind energy areas are also sited to avoid conflicts with important marine habitat, fisheries, and other ecological values.

Similarly, Section 18 of the Outer Continental Shelf Lands Act (“OCSLA”) directs that management of the Outer Continental Shelf be “conducted in a manner that considers *economic, social, and environmental values of the renewable and nonrenewable resources* contained in the outer continental shelf, and the potential impact of oil and gas exploration on other resource values of the outer continental shelf and the marine, coastal, and human environments.”⁶ Under this section, BOEM must manage the OCS for both renewable and nonrenewable resources, while striking the proper balance among economic, social, and environmental values.

Despite these principles, BOEM currently manages the OCS by placing more emphasis on fossil fuel leasing and development than other important uses, including offshore wind energy. For example, BOEM issues oil and gas leases in the Gulf of Mexico using a system known as “Area Wide Leasing,” which makes essentially *all* of the Gulf of Mexico open for industry tract nominations for oil and gas leasing at every lease sale. This system has led to record-low bids and lack of competition for available tracts, which shortchanges the revenue due to the public.⁷

BOEM’s “name your tract, name your price” approach for offshore oil and gas illustrates how the agency currently prioritizes fossil fuel leasing over other, equally important uses of the OCS including offshore wind. For offshore wind, BOEM uses a slower, step-by-step approach, whereby BOEM solicits industry nominations and public comments at each stage of the process and significantly narrows the acreage available for commercial lease before holding a lease sale.⁸

For offshore wind energy, BOEM should not use an “area-wide leasing” strategy because of the risk that it will lead to low bids and decreased competition, as it has in the offshore oil and gas context. However, BOEM should expeditiously identify a greater

⁶ 43 U.S.C. § 1344(a)(1) (emphasis added). Congress also directed the Secretary of the Interior to “select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.” 43 U.S.C. § 1344(a)(3).

⁷ See PROJECT ON GOVERNMENT OVERSIGHT, *Drilling Down: Big Oil’s Bidding* (Feb. 22, 2018), <http://www.pogo.org/our-work/articles/2018/drilling-down-big-oils-bidding.html>; INSTITUTE FOR POLICY INTEGRITY, *Comments to Royalty Policy Committee, Department of the Interior* (Feb. 28, 2018), http://policyintegrity.org/documents/RoyaltyPolicyCommittee_Feb_2018_comments.pdf.

⁸ For an example of how BOEM proceeds down the path to holding an offshore wind commercial lease sale, see <https://www.boem.gov/commercial-wind-leasing-offshore-massachusetts/>.

number of offshore wind energy zones and keep these areas off limits to oil and gas leasing. After conducting thorough environmental review, BOEM should then hold competitive offshore wind lease sales within these zones, in order to foster a healthy, competitive market for renewable energy on the OCS. Identifying more areas of the OCS for wind energy leasing is highly consistent with BOEM's statutory mandates under both FLPMA and OCSLA.

Further, BOEM should develop an OCS management strategy that prioritizes responsible offshore wind development *before* fossil fuel leasing and development, given wind's long-term environmental benefits. Offshore wind energy will supply decades of clean energy to the public and can and should be valued by BOEM for its environmentally-friendly attributes, like few to zero greenhouse gas emissions which contribute to climate change. Moreover, the need for more offshore wind, underscored in Part II, below, illustrates the irrationality of opening up 98 percent of the OCS to oil and gas leasing, as contemplated in BOEM's draft OCS Leasing Plan, as this would pose unnecessary conflicts with valuable wind energy areas.

II. BOEM Should Identify More Wind Energy Areas in Order to Help States Meet Their Renewable Energy Goals.

BOEM lists potential "positive" factors for identifying new offshore wind areas as including "areas adjacent to states with offshore wind economic incentives."⁹ That factor is a valid criterion that BOEM should continue to consider. In addition, BOEM should prioritize wind energy areas near all states with strong renewable portfolio standards (RPS) and other climate and clean air policies, in general, as all of these regions are strong candidates for developing offshore wind resources.¹⁰

In a scenario calling for wind energy to provide 20 percent of U.S. electricity by 2030 and 35 percent by 2050, the Department of Energy estimated the need for the development of 22 GW of offshore wind power by 2030, and 86 GW by 2050, mainly along the Eastern Seaboard.¹¹ The twenty-eight states in the continental United States that have a coastal boundary consume about 78 percent of the nation's electricity.¹² Northeastern states also face some of the highest electricity costs in the country due to a confluence of factors including a lack of existing renewable energy capacity and natural gas pipeline constraints.¹³

⁹ 83 Fed. Reg. 14881, 14882 (Apr. 6, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-04-06/pdf/2018-07106.pdf>.

¹⁰ See Ivan Gold & Nidhi Thakar, *A Survey of State Renewable Portfolio Standards: Square Pegs for Round Climate Change Holes?*, 35 WM. & MARY ENVTL. L. & POL'Y REV. 183, 249 (2010) (finding that, in the absence of international or federal climate policy, state RPS policies are effective at stimulating renewable energy development and that, "[s]ince 1998, more than sixty percent of new renewable development occurred in RPS states, and the bias toward RPS states is increasing.").

¹¹ U.S. DEP'T OF ENERGY, WIND VISION: A NEW ERA FOR WIND POWER IN THE UNITED STATES (APR. 25, 2015).

¹² U.S. DEP'T OF ENERGY, 20% WIND ENERGY BY 2030: INCREASING WIND ENERGY'S CONTRIBUTION TO U.S. ELECTRICITY SUPPLY 48 (2008), <http://www.nrel.gov/docs/fy08osti/41869.pdf>.

¹³ Benjamin Fox, *The Offshore Grid: The Future of America's Offshore Wind Energy Potential*, 42

Offshore wind solves several problems for Atlantic states with large coastal populations: it overcomes the issue of limited onshore land availability for renewable energy projects, and it enables states to transition away from fossil fuel resources like coal, oil, and natural gas which negatively affect climate change, as well as environmental and public health. Coastal states need BOEM to identify and approve more “offshore wind areas” close in their region in order to meet offshore wind and RPS targets and other climate and clean energy policies.

For example, New York’s Clean Energy Standard requires that 50 percent of New York’s electricity come from renewable energy sources by 2030. And the State has an offshore wind energy development goal of 2,400 MW (2.4 GW) by 2030, enough energy to power up to 1.2 million New York households.¹⁴ New York is joined by many other coastal states in its support for offshore wind and desire for more BOEM-approved offshore wind energy areas. New Jersey has committed to the goal of 3,500 MW of offshore wind energy by 2030, enough to power as much as 1.5 million New Jersey homes. New Jersey has also pledged to obtain 24.39 percent of its electricity from renewable sources by 2028 and 100 percent by 2050.¹⁵ The state has also passed legislation to help spur offshore wind development.¹⁶

Several other Atlantic coastal states have RPS targets and offshore wind goals. For example, Connecticut has a goal of 27 percent renewable energy by 2020; Delaware 25 percent by 2025; Maryland 20 percent by 2022; and Virginia 15 percent by 2025.¹⁷ Massachusetts has a 15 percent by 2020 RPS and a 1,600-megawatt by 2027 offshore wind target.¹⁸

Further, there is strong industry interest in developing more offshore wind. In December 2016, BOEM held an auction for leasing rights to one New York offshore wind area, 11 nautical miles off Long Island. The auction went through 33 rounds of bidding

ECOLOGY L. Q. 651 (2015),

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2107&context=elq>

¹⁴ 2017 New York State of the State Policy Book, pgs. 54-57,

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms>.

¹⁵ DSIRE, Renewables Portfolio Standard: New Jersey,

<http://programs.dsireusa.org/system/program/detail/564> (last visited May 17, 2018); *see also*

Insider NJ, “Murphy Unveils Aggressive Plan to Combat Climate Change & Make New Jersey a National Leader in Clean Energy,” Press release, April 26, 2017, available at

<https://www.insidernj.com/press-release/-murphy-unveils-aggressive-plan-combat-climate-change-make-new-jersey-national-leader-clean-energy/>.

¹⁶ *See* Offshore Wind Economic Development Act, NJ PL 2010, c.57, approved August 19, 2010, Senate, No. 2036 (hereafter, the NJ Offshore Act).

¹⁷ *See* NATIONAL CONFERENCE OF STATE LEGISLATURES, State Renewable Portfolio Standards and Goals (Aug. 1, 2017), <http://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>.

¹⁸ *Id.*; OffshoreWind.biz, “Massachusetts Settles on 1600MW Offshore Wind Target by 2027” (Aug. 1, 2016), <https://www.offshorewind.biz/2016/08/01/massachusetts-settles-on-1600mw-offshore-wind-target-by-2027/>.

before BOEM awarded the lease to Statoil for more than \$40 million. That is more than was paid for the first 11 federal wind energy area leases together; the strong interest was due to factors including state RPS requirements, advances in offshore wind energy technology, and the experience of industry players well-versed in developing offshore wind projects in Europe. Norwegian company Statoil—soon to be renamed Equinor in a sign of sustained momentum away from fossil fuel energy¹⁹—will explore building up to 1,000 megawatts of offshore wind power in the area, beginning with a project that will generate between 400 and 600 megawatts. The results of this auction demonstrate the strong industry appetite for developing more offshore wind in the OCS.

Identifying more wind energy areas and holding more lease sales will allow greater numbers of offshore wind companies to participate in the process, and accelerate the transition to renewable energy.

III. BOEM Should Streamline and Harmonize Its Lengthy Process for Designating Wind Energy Areas and Holding Lease Sales with Parallel State and Environmental Review Processes, to the Maximum Extent Feasible.

Despite strong state support for offshore wind, there remains a significant gap between the renewable energy needed to meet state renewable portfolio standards and offshore wind goals and the amount of renewable energy each state has installed, permitted, and procured. BOEM should aim to meet coastal states' requests for more offshore wind energy areas and lease sales more expeditiously, and attempt to harmonize existing federal, state, and environmental review processes which together create lengthy lead times for the development of offshore wind energy.

Coastal states, including New York and New Jersey, have provided BOEM with input on desirable "wind energy areas" near their coasts that do not pose known environmental, safety, fishing, or visibility conflicts. For example, New York has identified an area in the OCS capable of generating 3,200 MW of energy, which would exceed its 2,400 MW offshore wind goal. New York has requested that within this Area of Consideration, BOEM identify and lease at least four new wind energy areas, each capable of supporting at least 800 megawatts each.²⁰ Now, the state is waiting for BOEM to approve these wind energy areas and hold lease sales.

Further, even states that afford economic incentives for offshore wind—one of BOEM's enumerated criteria—have expressed difficulty in bringing more offshore wind online, due to BOEM's protracted process. New York provides economic incentives for offshore wind; for example, the New York State Energy Research and Development

¹⁹ See Statoil to Change Name to Equinor, <https://www.statoil.com/en/news/15mar2018-statoil.html>.

²⁰ New York's offshore leasing master plan highlights offshore wind "areas for consideration"—stretches of ocean waters at least 20 miles offshore where offshore wind projects could be built while avoiding or minimizing potential conflicts with wildlife and other marine uses such as shipping lanes and fishing.

Authority (NYSERDA) recently made \$5 million available to support meteorological and oceanographic data collection off the New York coast in areas with the potential for future offshore wind development,²¹ and the state is analyzing a suite of different policies that would provide economic incentives for the energy produced by offshore wind.²²

NYSERDA has pointed to BOEM's slow process of identifying wind energy areas and holding lease auctions as one bottleneck to securing greater wind energy penetration. NYSERDA stated in January 2018 that one challenge that the state faces in making offshore wind available is the fact that, "development lead times include lengthy federal permitting processes that extend beyond" the state's renewable energy procurement timelines.²³ This is so even as the state aims to develop policies that will compensate offshore wind producers for the environmental benefits of their clean energy. NYSERDA estimates that the GHG emissions reduction benefits of delivering 2,400 MW of offshore wind energy will amount to approximately \$1.9 billion (net present value), estimated using the Interagency Working Group's Social Cost of Carbon.²⁴ That does not even account for other anticipated benefits like economic growth and public health benefits. The monetized GHG-reduction benefit is approximately equal to the estimated program costs for the range of most cost-effective procurement options identified by the state.²⁵ This indicates that the GHG reduction benefits, alone, justify the costs of the State's commitment to 2,400 MW of offshore wind, even before accounting for other important anticipated benefits.

BOEM should assess how to better cooperate with states to harmonize and streamline wind siting, permitting, and energy procurement. Currently, the federal and state processes operate in a parallel, step-by-step process, which takes several years to complete and which causes BOEM, the states, and industry to experience uncertainty at every step. For example, even after a company successfully bids on and secures a lease from BOEM to develop offshore wind energy, it must still navigate the environmental

²¹ NYSERDA, *NYSERDA Announces \$5 Million Available for Assessment of Wind Resources to Support Responsible and Cost-Effective Offshore Wind Energy Development* (May 1, 2018), <https://www.nyserda.ny.gov/About/Newsroom/2018-Announcements/2018-05-01-NYSERDA-Announces-5-Million-for-Assessment-of-Wind-Resources>.

²² See, e.g., Corina Rivera Linares, "New York Regulators Seek Comments on Regulatory Program Involving Offshore Wind," TRANSMISSIONHUB (Apr. 11, 2018), <https://www.transmissionhub.com/articles/2018/04/new-york-regulators-seek-comments-on-regulatory-program-involving-offshore-wind.html>.

²³ NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, OFFSHORE WIND POLICY OPTIONS Paper 21 (Jan. 29, 2018), <https://www.nyserda.ny.gov/-/media/Files/Publications/Research/Biomass-Solar-Wind/Master-Plan/Offshore-Wind-Policy-Options-Paper.pdf>.

²⁴ NYSERDA, OFFSHORE WIND POLICY OPTIONS PAPER 19 (Jan. 28, 2015). Though the Trump Administration has disbanded the Interagency Working Group, 82 Fed. Reg. 16,093 (Mar. 28, 2017), experts have continued to recommend that agencies rely on those estimates as the best available estimate of the external cost of greenhouse gases. See Richard Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 655 (2017).

²⁵ *Id.* at 4.

review process, secure further approvals from BOEM for building and operations, and secure a contract to sell the energy that will be produced.

In addition to examining its internal process and strategizing with states and industry on possible improvements to accelerate offshore wind development, BOEM should look to other countries, such as Germany, the UK, the Netherlands, and Denmark, which have made strides in siting, permitting, and delivering offshore wind power as possible models for greater harmonization and integration.²⁶

IV. BOEM Should Regularly Re-Evaluate Any Numerical Criteria that it Adopts for Siting Wind Energy Areas, in Order to Keep Pace with Technology and Other Developments.

BOEM states that it is considering siting wind areas in water less than 60 meters deep. Such criteria may be a sensible way to focus offshore wind sites and keep costs low in the near term. However, if BOEM chooses to use such numerical criteria in its offshore wind strategy, it should conduct annual reviews to ensure that its criteria keep pace with developments in wind energy technology and will not, for example, stifle innovation or adoption of deepwater turbines.

For example, in 2016 in Europe, the average water depth of wind farms completed, or partially completed in 2016 was 29 meters and the average distance to shore was 44 km (23.7 nautical miles).²⁷ Information provided by the offshore wind industry and other countries can assist BOEM in setting and updating its water depth criteria and other standards.

In addition, BOEM has asked for feedback on siting new wind energy areas at least 10 nautical miles from shore. BOEM should consider the views of coastal states and cities whose residents would be most affected by wind turbines sited close to shore in setting and periodically revisiting this setback distance. For example, New York has suggested a buffer zone of at least 17 nautical miles (or 20 statute miles) from shore,²⁸ but other states may have different preferences, and preferences may evolve over time. BOEM should re-evaluate any setback criteria on a periodic basis as the United States gains more experience and familiarity with offshore wind, and as offshore wind technology advances (for example, as turbine height increases or as deepwater capabilities increase).

²⁶ *Id.* at 58.

²⁷ WIND EUROPE, THE EUROPEAN OFFSHORE WIND INDUSTRY: KEY TRENDS AND STATISTICS 2016 at 7, <https://windeurope.org/wp-content/uploads/files/about-wind/statistics/WindEurope-Annual-Offshore-Statistics-2016.pdf>.

²⁸ See NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, VISIBILITY THRESHOLD STUDY (Dec. 2017) at ES-1, <https://on.ny.gov/2lyXikd>.

In sum, BOEM has made important progress siting offshore wind off the Atlantic coast. However, it can and should accelerate offshore wind energy leasing, consistent with its statutory mandates, state RPS targets, and strong industry interest.

Sincerely,

Jayni Hein
Policy Director
Institute for Policy Integrity
NYU School of Law