

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0026]

Atlantic Wind Lease Sale 11 (ATLW–11) for Commercial Leasing for Wind Power Development on the U.S. Gulf of Maine Outer Continental Shelf—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed sale notice; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) proposes to hold Atlantic Wind Lease Sale 11 (ATLW–11) and offer multiple lease areas (Lease Areas) for commercial wind power development on the U.S. Outer Continental Shelf (OCS) in the Gulf of Maine. The proposed Lease Areas are located in the Gulf of Maine offshore the States of Maine and New Hampshire, and the Commonwealth of Massachusetts. This Proposed Sale Notice (PSN) contains information pertaining to the proposed Lease Areas, certain lease provisions and conditions, auction details, lease forms, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution procedures. The issuance of any lease resulting from a sale would not constitute approval of project-specific plans to develop floating offshore wind energy. Such plans, if submitted by the Lessee, would be subject to subsequent environmental, technical, and public reviews prior to a BOEM decision whether to approve them. BOEM is proposing an ascending clock auction with multiple-factor bidding.

DATES: BOEM must receive your comments no later than July 1, 2024. All comments received during the comment period will be made available to the public and considered prior to publication of any Final Sale Notice (FSN). For prospective bidders who want to participate in this lease sale, unless you have already received confirmation from BOEM that you are qualified to participate in the Gulf of Maine auction, BOEM must receive your qualification materials no later than July 1, 2024, and, prior to the auction, BOEM must confirm your qualification to bid in the auction.

ADDRESSES: You may submit written comments on the PSN in one of the following ways:

- *Electronically:* <https://www.regulations.gov>. In the search box, enter “BOEM–2024–0026” and click

“Search.” Follow the instructions to submit public comments.

- *Written Comments:* Submit written comments in an envelope labeled “Comments on Gulf of Maine Lease Sale PSN” and deliver them by U.S. mail or other delivery service to: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166.

Qualifications Materials for Potential Lease Sale Participants: To qualify to participate in a lease sale following the publication of this PSN, qualification materials should be developed in accordance with the guidelines at <https://www.boem.gov/Renewable-Energy-Qualification-Guidelines>. Qualification materials should be submitted electronically to renewableenergy@boem.gov, or in an envelope labeled, “Qualification Materials for Gulf of Maine Wind Energy Lease Sale” to Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166.

For more information about submitting comments, see sections XX, “Public Participation,” and XXI, “Protection of Privileged and Confidential Information,” under the **SUPPLEMENTARY INFORMATION** caption below.

FOR FURTHER INFORMATION CONTACT:

Zachary Jylkka, Bureau of Ocean Energy Management, Zachary.Jylkka@boem.gov or (978) 491–7732; or Gina Best, Bureau of Ocean Energy Management, Gina.Best@boem.gov or (703) 787–1341.

SUPPLEMENTARY INFORMATION:**I. Background**

a. *Request for Interest (RFI):* On August 19, 2022, BOEM published an RFI in the **Federal Register** (87 FR 51129), to assess interest in, and to invite public comment on, possible commercial wind energy leasing on the Gulf of Maine OCS. The RFI Area consisted of approximately 13.7 million acres. In response to the RFI, BOEM received nominations of areas of interest from five developers, all of which BOEM deems legally, technically, and financially qualified. In addition to gauging interest in the development of commercial wind energy leases within the RFI Area, BOEM also sought feedback from Tribes, stakeholders, industry, and others regarding the location and size of specific areas they wished to be included in (or excluded from) a future offshore wind energy lease sale, along with other planning considerations. BOEM received 51

unique comments on the RFI.

Comments and nominations are available at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

b. *Call for Information and Nominations (Call):* On April 25, 2023, BOEM published a Call for Information and Nominations for Commercial Leasing for Wind Power Development on the Gulf of Maine” (see 88 FR 25427). BOEM received 127 unique comments on the Call. Seven developers nominated areas for a commercial wind energy lease within the Call Area.¹

c. *Area Identification (Area ID):* An Area ID determination is a required regulatory step under the renewable energy competitive leasing process used to identify areas for environmental analysis and consideration for leasing. After the close of the Call comment period, BOEM initiated the Area ID process using information and input from stakeholders received to date.

BOEM and the National Oceanic and Atmospheric Administration’s National Centers for Coastal Ocean Science (NCCOS) collaborated in employing an ocean planning tool (the NCCOS model) to help identify an area that appears most suitable for floating offshore wind energy leasing and development in the Gulf of Maine. The Area ID process seeks to identify and minimize potential conflicts in ocean space as well as to mitigate interactions with other users and adverse interactions with the environment; the NCCOS model supports that effort. BOEM employed the NCCOS model during two distinct steps of the Area ID process: first, to model relative suitability within the boundaries of the Call Area to identify the Draft Wind Energy Area (WEA) and Secondary Areas; and second, to model the relative suitability within the boundaries of the Draft WEA (plus Secondary Area C).

On October 19, 2023, BOEM announced the Gulf of Maine Draft WEA and opened a 30-day public comment period. The methodology used to delineate the Gulf of Maine Draft WEA is outlined in the “Draft NCCOS Report: A Wind Energy Area Siting Analysis for the Gulf of Maine Call Area.”² The Draft WEA covered approximately 3.5 million acres. BOEM considered the following

¹ Comments can be viewed at <https://www.regulations.gov/docket/BOEM-2023-0025/comments>. A map of the nominations received can be viewed at https://www.boem.gov/sites/default/files/images/gulf_of_maine_call_nominations_heatmap.png.

² Available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Gulf_of_Maine_Draft%20WEA_Report_NCCOS_0.pdf.

non-exclusive information sources when identifying the Draft WEA: comments and nominations received on the Call; information from the Gulf of Maine Intergovernmental Renewable Energy Task Force; input from federally recognized Tribes; input from State and Federal agencies; comments from stakeholders and ocean users, including the maritime community, offshore wind developers, and the commercial and recreational fishing industry; input from State and local governments on renewable energy goals; and information on domestic and global offshore wind market and technological trends.

d. BOEM completed the Area ID process after considering additional input received from stakeholders during the Draft WEA comment period. BOEM published the Final WEA on March 15, 2024. The Final WEA comprises approximately 2 million acres and represents an 80% reduction from the size of the Call Area and a 43% reduction from the Draft WEA. The Final WEA has the potential to support generation of 32 gigawatts (GW) of clean energy, surpassing current State goals for offshore wind energy in the Gulf of Maine (13–18 GW, based on Massachusetts and Maine’s offshore wind goals and estimates provided by the regional grid operator, ISO-New England). The size of the Final WEA allows BOEM to consider additional ways to reduce conflicts with users and resources, while also supporting the region’s renewable energy goals. For additional information, the Gulf of

Maine Area ID documentation can be found at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

e. *Environmental Reviews*: On March 18, 2024, BOEM published a notice of intent to prepare an environmental assessment (EA) to consider potential environmental impacts of site characterization activities (e.g., biological, archaeological, geological, and geophysical surveys and core samples) and site assessment activities (e.g., installation of meteorological buoys) that are expected to take place after issuance of wind energy leases (89 FR 19354). The March 18 notice initiated a public scoping process, with BOEM seeking comments on the issues and alternatives that should inform the EA. Public comments on the notice can be found at <https://www.regulations.gov> in docket no. BOEM–2024–0020. In addition to the preparation of the Draft EA, and compliance with threatened and endangered species requirements for certain data collection activities associated with OCS leasing,³ BOEM has initiated other required consultations under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act. The EA and associated consultations will inform BOEM’s decision whether to proceed with a final sale notice (FSN). BOEM will solicit comments on the EA before it is finalized. BOEM will conduct additional environmental reviews upon

receipt of a lessee’s Construction and Operations Plan (COP) if one or more of the proposed leases reach that stage of development.

f. *Phased Leasing*: BOEM is proposing lease areas that we believe represent a balance between providing sufficient acreage to meet regional renewable energy demands and known spatial use conflicts. BOEM may propose additional lease sales within the region at a future date; however, the timing and scope of any future sale will be informed by the results of this proposed Gulf of Maine sale, as well as the position of potentially affected Tribes, Gulf of Maine States, stakeholder engagement, relevant market conditions, and regional energy goals.

II. Areas Proposed for Leasing

Within the Final WEA, BOEM proposes eight areas for leasing, as described in Table 1. Descriptions of the proposed Lease Areas may be found in Addendum A of each of the proposed leases, located on BOEM’s website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Several leases are subject to a proposed lease stipulation that would prohibit surface or subsurface development in portions of the lease that are adjacent to corridors BOEM created between proposed leases to facilitate existing and future vessel transit (section II-d). For those leases, the total “developable acres” are less than the total “lease acres” as described in Table 1.

TABLE 1—GULF OF MAINE PROPOSED LEASE AREAS, ACRES, AND ASSIGNED REGION

Lease area ID	Region	Total lease acres	Total developable acres
OCS–A 0562	North	121,339	121,339
OCS–A 0563	North	132,369	132,369
OCS–A 0564	South	110,308	105,499
OCS–A 0565	South	115,290	115,290
OCS–A 0566	South	127,388	127,388
OCS–A 0567	South	123,118	117,391
OCS–A 0568	South	134,149	123,389
OCS–A 0569	South	106,038	101,757
Total		969,999	944,422

³ See <https://www.boem.gov/sites/default/files/documents/renewable-energy/OSW-surveys-NLAA-programmatic.pdf>.

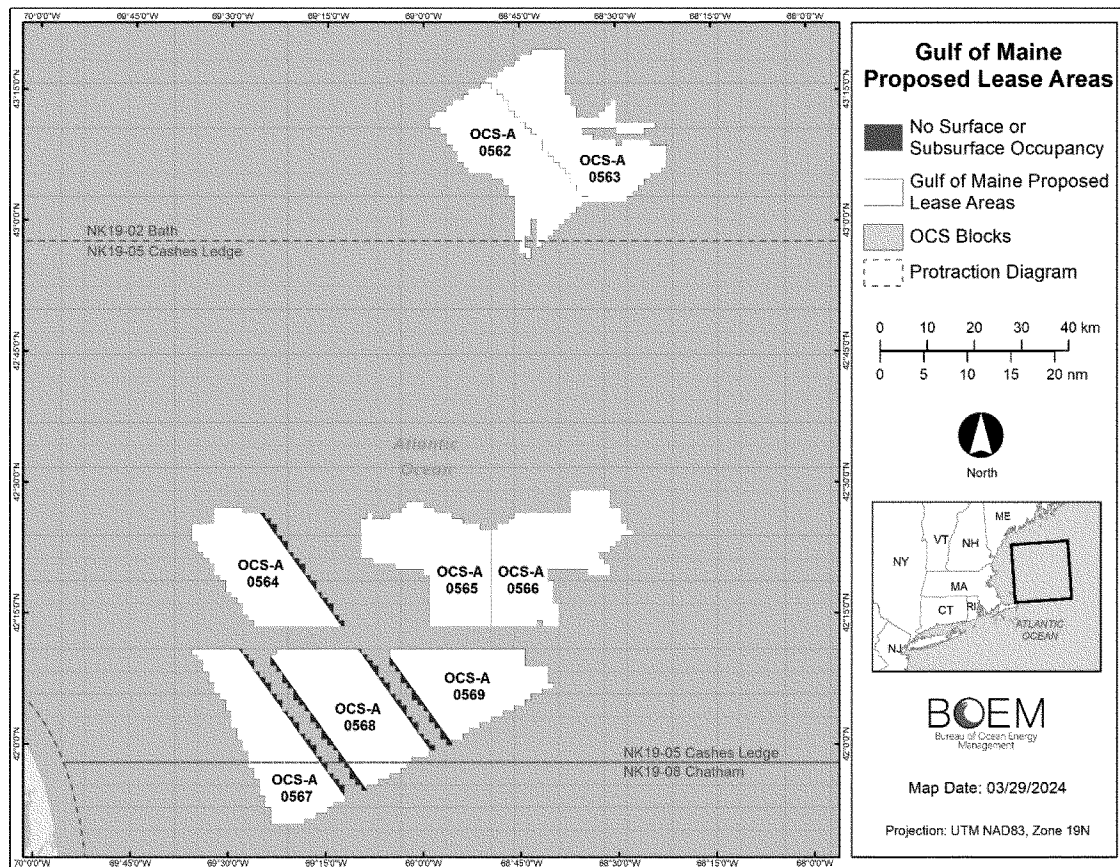


Figure 1: Gulf of Maine Proposed Lease Areas

a. *Map of the Area Proposed for Leasing:* In addition to Figure 1, maps of the Lease Areas, and various GIS spatial files may be found on BOEM's website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

b. *Potential Future Restrictions to Ensure Navigational Safety:* Potential bidders are advised of the possibility that portions of the Lease Areas may not be available for future development (*i.e.*, installation of wind energy facilities) because of navigational safety concerns. While the Final WEA avoids the vast majority of the U.S. Coast Guard's (USCG) Maine, New Hampshire, Massachusetts Port Access Route Study proposed safety fairways, there is one small area of overlap directly northeast of the Cashes Ledge Groundfish Closure area. This area now falls within the northern portions of leases OCS-A 0562 and 0563. BOEM will coordinate with USCG as its rulemaking process to designate possible safety fairways continues, and BOEM may require additional mitigation measures at the COP stage when the lessee's site-specific navigational safety risk assessment is

available to inform BOEM's decision-making.

BOEM has also included a proposed lease stipulation "Surface Structure Layout and Orientation" (see Addendum C, section 10 in the Gulf of Maine proposed leases), which would require lessees with directly adjacent leases (*i.e.*, OCS-A 0562 and 0563; OCS-A 0565 and 0566) to design a surface structure layout that contains two common lines of orientation across the adjacent leases (as described in Navigation and Vessel Inspection Circular 02-23). If the lessees cannot agree on such a layout, each lessee would be required to incorporate a 1 nm setback from the boundary of the adjacent lease within which surface structures are prohibited. This would create a minimum 2 nm distance between the proposed facilities of each lessee along the lease boundary. These setback distances are based on USCG recommendations for prior lease sales for which development was expected to include fixed offshore wind foundations (BOEM has included similar lease stipulations for such sales where there were adjacent leases). Given the expectation that offshore wind development in the Gulf of Maine will necessitate floating foundations, BOEM requests comments on this proposed

stipulation, particularly the required setback distances and whether setbacks should prohibit both surface and subsurface structures (*i.e.*, floating foundations, mooring lines, anchor structures, or inter-array cables).

c. *Corridors between Leases:* Members of the fishing community have requested that offshore wind energy facilities be designed in a manner that, among other things, provides for uninterrupted transit to fishing grounds where relevant. Within the southern region of the Final WEA, east of Massachusetts, BOEM has created three corridors between leases to facilitate existing and future transit through proposed lease areas.⁴ These areas occur in a Northwest to Southeast direction, as well as in an East and West direction, and have a minimum width of 2.5 nautical miles (nm). The width of these areas was adapted from the New York Bight leasing process, which resulted in 2.44 nm corridors between lease areas (see <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>). As stated in the New York Bight FSN (BOEM-2022-0001), BOEM used

⁴ BOEM does not have the authority to designate transit lanes. The United States Coast Guard's (USCG) authority to provide safe access routes for the movement of vessel traffic is found in the Ports and Waterways Safety Act. See 46 U.S.C. 70003.

calculations and guidelines published by the Permanent International Association of Navigation Congresses World Association of Waterborne Transport Infrastructure and Maritime Institute in the Netherlands, as well as the USCG draft Port Access Route Study (USCG–2020–0172) to inform that analysis.

Bidders should be aware that BOEM may include a lease stipulation in the FSN that addresses corridors between leases, pending the outcome of additional discussions with ocean users and stakeholders as well as consideration of comments submitted in response to this PSN.

d. *Areas of No Surface or Subsurface Occupancy:* To accommodate the desired distances between surface and subsurface structures (*i.e.*, 2.5 nm width of the designated corridors between leases described above), select portions of the lease areas in the southern portion of the Gulf of Maine WEA (OCS–A 0564, 0567, 0568, 0569) will be offered for sale, but no surface or subsurface occupancy will be permitted, as described in Addendum A of each respective lease.

e. *Stellwagen Bank National Marine Sanctuary:* The Gulf of Maine WEA lies adjacent to the Stellwagen Bank National Marine Sanctuary. Should a lease be issued within the WEA, future offshore wind development may necessitate installation of energy transmission cables within the sanctuary boundaries in identified cable corridors. NOAA has advised BOEM that they may consider authorizing installation of energy transmission cables within sanctuary boundaries under the authority of the National Marine Sanctuaries Act, through one or more of the following mechanisms—General Permits, Authorizations, Certifications, and Special Use Permits.

f. *Potential Future Restrictions to Mitigate Potential Conflicts with Department of Defense (DOD) Activities:* Those interested in bidding should be aware of potential conflicts with DOD's existing uses of the OCS. BOEM coordinates with DOD throughout the leasing process. This included consultation with the Military Aviation and Installation Assurance Siting Clearinghouse, which conducted a DOD assessment of the Gulf of Maine Draft WEA. The assessment identified potential impacts, which are described below.

i. *Air Surveillance and Radar:* The North American Aerospace Defense Command (NORAD) mission may be affected by development of the Lease Areas. Similar impacts have been encountered with other Lease Areas

along the Atlantic Coast and have been largely if not entirely mitigated. Considering both the expected height of offshore turbines and future cumulative wind turbine effects, adverse impacts can be mitigated through the use of Radar Adverse-impact Management (RAM)⁵ and overlapping radar coverage. For projects where RAM mitigation is acceptable, BOEM anticipates including the following project approval conditions:

(1) Lessee will notify NORAD when the project is within 30–60 days of completion of commissioning of the last wind turbine generator (WTG) (meaning every WTG in the Project is installed with potential for blade rotation), and again when the project is complete and operational, for RAM scheduling;

(2) Lessee will contribute funds to DOD in the amount of no less than \$80,000 toward the cost of DOD's execution of the RAM procedures for each radar system affected; and

(3) Lessee will curtail wind turbine operations for national security or defense purposes as described in the lease.

ii. *Department of Navy operations:* While the Navy did not identify any conflicts with the Final WEA, mitigations to resolve potential conflicts with ship testing may be necessary depending on the specific projects proposed within the Lease Areas.

BOEM may require the lessee to enter into an agreement with DOD to implement any necessary conditions and mitigate any identified impacts. BOEM will further coordinate with DOD and the lessee to eliminate potential conflicts throughout the project review stage, which may result in adding mitigation measures or terms and conditions as part of any plan approval.

g. *Potential Future Restrictions to Mitigate Potential Conflicts with Sand Resources:* Potential bidders are advised that BOEM has identified sand resource areas in aliquots offshore the Gulf of Maine (MMIS Application <https://mmis.doi.gov/BOEMMMIS>). OCS sand resource areas are composed of sand deposits found on or below the surface of the OCS seabed. There is potential for sand resources to exist in other areas in the Gulf of Maine not currently identified in aliquots. If it is determined that accessible and significant OCS sand resources may be impacted by a proposed activity, BOEM may require potential bidders to undertake measures deemed economically, environmentally, and technically feasible to protect the

resources to the maximum extent practicable, including minimizing, avoiding, and mitigating impact to these resources. Measures may include modification of proposed transmission corridor locations if warranted. Neither BOEM nor the Bureau of Safety and Environmental Enforcement will approve future requests for in-place decommissioning of submarine cables in sand resource areas unless BOEM has determined that the submarine cables do not unduly interfere with other uses of the OCS, specifically sand resource use.

h. *Potential Future Restrictions to Mitigate Possible Conflicts with Deep-Sea Corals and Biologically Sensitive Benthic Habit:* Potential bidders are advised that in the Gulf of Maine Final WEA, BOEM has identified the presence of deep-sea corals and sponges, as well as hardbottom habitat areas suitable for sensitive deep-sea coral and sponge species. BOEM anticipates that any site assessment activities and site characterization activities within the Gulf of Maine authorized by a lease would be subject to the protections for live-bottom features included in BOEM's programmatic consultation with the National Marine Fisheries Service under ESA section 7 (see Addendum C, section 5.2 in the Gulf of Maine leases).⁶ BOEM will conduct additional environmental review upon receipt of a lessee's COP and, as a condition of approval, may require avoidance measures to reduce potential impacts to sensitive benthic species and habitat within the Lease Area.

III. Participation in the Proposed Lease Sale

a. *Bidder Participation:* Entities that have been notified by BOEM that their qualification is pending or that they are qualified to participate in any Gulf of Maine auction through their response to the RFI or Call, or by separate submission of qualification materials, are not required to take any additional

⁶Project Design Criteria 1: Avoid Live Bottom Features. Best Management Practice: All vessel anchoring and any seafloor-sampling activities (*i.e.*, drilling or boring for geotechnical surveys) are restricted from seafloor areas with consolidated seabed features. All vessel anchoring and seafloor sampling must also occur at least 150 m from any known locations of threatened or endangered coral species. All sensitive live bottom habitats (eelgrass, cold-water corals, etc.) should be avoided as practicable. All vessels in coastal waters will operate in a manner to minimize propeller wash and seafloor disturbance and transiting vessels should follow deep-water routes (*e.g.*, marked channels), as practicable, to reduce disturbance to sturgeon and sawfish habitat. <https://www.boem.gov/renewable-energy/final-nlaa-osw-programmatic>.

⁵RAM is the technical process designed to minimize the adverse impact of obstruction interference on a radar system.

action to affirm their interest. Those entities are listed below:

Company name	Company No.
Avangrid Renewables, LLC	15019
Equinor Wind US LLC	15058
US Mainstream Renewable Power Inc	15089
Diamond Wind North America, LLC	15113
Hexicon USA, LLC	15151
TotalEnergies SBE US, LLC	15165
Pine Tree Offshore Wind, LLC	15167
OW Gulf of Maine LLC	15175
Repsol Renewables North America, Inc	15180
Maine Offshore Wind Development LLC	15181
Corio USA Projectco LLC	15182

All other entities wishing to participate in any Gulf of Maine auction must submit the required qualification materials to BOEM by the end of the 60-day comment period for this PSN.

b. *Affiliated Entities:* On the Bidder's Financial Form (BFF), discussed below, eligible bidders must list any other eligible bidders with whom they are affiliated. For the purpose of identifying affiliated entities, a bidding entity is any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity) that is participating in the same auction. BOEM considers bidding entities to be affiliated when:

i. They own or have common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another bidding entity. Ownership of less than 10 percent of a bidding entity constitutes a presumption of non-control that BOEM may rebut.

ii. They own or have common ownership of between 10 percent and up to including 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another bidding entity, and BOEM determines that there is control upon consideration of factors including the following:

(1) The extent to which there are common officers or directors.

(2) With respect to the voting securities, or instruments of ownership or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of

ownership by other bidding entities, if a bidding entity is the greatest single owner, or if there is an opposing voting bloc of greater ownership.

(3) Shared ownership, operation, or day-to-day management of a lease, grant, or facility as those terms are defined in BOEM's regulations at 30 CFR 585.113.

iii. They are both direct or indirect subsidiaries of the same parent company.

iv. If, with respect to any lease(s) offered in this auction, they have entered into an agreement prior to the auction regarding the shared ownership, operation, or day-to-day management of such lease.

v. Other evidence indicates the existence of power to exercise control, such as evidence that one bidding entity has power to exercise control over the other, or that multiple bidders collectively have the power to exercise control over another bidding entity or entities.

Affiliated entities are not permitted to compete against each other in the auction. Where two or more affiliated entities have qualified to bid in the auction, the affiliated entities must decide prior to the auction which one (if any) will participate in the auction. If two or more affiliated entities attempt to participate in the auction, BOEM will disqualify those bidders from the auction.

IV. Questions for Stakeholders

Stakeholders are encouraged to comment on any matters related to this proposed lease sale that are of interest or concern. BOEM has identified the following issues as particularly important, and we encourage commenters to address these issues specifically:

a. *Number, size, orientation, and location of the proposed Lease Areas:* BOEM is seeking feedback on the proposed number, size, orientation, and location of the Lease Areas and welcomes comments on which Lease Areas, if any, should be prioritized for inclusion, or exclusion, from this lease sale. BOEM is also open to comment on areas of the WEA that were not included as Lease Areas.

b. *Considerations for delineation of the proposed Lease Areas:* These delineation considerations may include comparable commercial viability and size; prevailing wind direction and

minimizing wake effects; maximized energy generating potential; mooring system anchor footprints and extents; possible setbacks at Lease Area boundaries; distance to shore, port infrastructure and electrical grid interconnections; and fair return to the Federal Government pursuant to the OCS Lands Act through competition for commercially viable Lease Areas. Additional comments are welcome regarding other considerations for delineating Lease Areas.

c. *Existing uses and how they may be affected by the development of the proposed Lease Areas:* BOEM asks commenters to submit technical and scientific data in support of their comments.

d. *Baseline Monitoring:* BOEM is considering a lease stipulation that would require Lessees to conduct baseline data collection activities for endangered and threatened marine mammals and their habitats in support of developing their construction and operations plans. BOEM requests comments on the scope of this potential requirement, including (but not limited to) priority information on species and habitats, methods to collect that data, regional collaboration, data sharing, and data management.

e. *Corridors between Leases:* BOEM welcomes comments on the potential effects of the proposed lease areas on existing vessel traffic, especially commercial maritime and fishing vessels. BOEM requests comments on the width, location, and orientation of corridors and how that would facilitate continuance of existing transit.

f. *Limits on the Number of Lease Areas per Bidder:* BOEM is proposing to allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area in the North Region as shown in Table 2. As proposed, a bidder can bid for and win a maximum of two South Region leases, or one North Region lease and one South Region lease—but cannot bid for or win both North Region leases. BOEM is seeking feedback on this proposal, including feedback on how different leasing scenarios (e.g., number of Lease Areas offered, size of Lease Areas, etc.) may influence the advisability of such a limitation.

TABLE 2—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS
[Preferred option]

Lease Area ID	Region	Acres
OCS-A 0562	North	121,339

TABLE 2—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS—Continued
[Preferred option]

Lease Area ID	Region	Acres
OCS–A 0563	North	132,369
OCS–A 0564	South	110,308
OCS–A 0565	South	115,290
OCS–A 0566	South	127,388
OCS–A 0567	South	123,118
OCS–A 0568	South	134,149
OCS–A 0569	South	106,038

Alternatively, BOEM could configure the leases into three regions, as shown in Table 3. BOEM would allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area in each region. BOEM is seeking feedback on this alternative option.

TABLE 3—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS
[Alternative option]

Lease area ID	Region	Acres
OCS–A 0562	North	121,339
OCS–A 0563	North	132,369
OCS–A 0564	South	110,308
OCS–A 0565	East	115,290
OCS–A 0566	East	127,388
OCS–A 0567	South	123,118
OCS–A 0568	South	134,149
OCS–A 0569	South	106,038

V. Proposed Lease Sale Deadlines and Milestones

This section describes the major deadlines and milestones in the lease sale process from publication of this PSN to execution of a lease.

a. The PSN Comment Period:

i. *Submit Comments:* The public is invited to submit comments during the 60-day period expiring on July 1, 2024. All comments received or postmarked during the comment period will be made available to the public and considered by BOEM prior to publication of the FSN.

ii. *Public Auction Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. No registration or RSVP is required to attend.

iii. *Submit Qualification Materials:* Prospective bidders who want to participate in the proposed lease sale must ensure that BOEM receives your qualification materials by July 1, 2024. This requirement includes all materials sufficient to establish a company’s legal, technical, and financial qualifications pursuant to 30 CFR 585.107–.108. To qualify to participate in the proposed lease sale, qualification materials must

be developed in accordance with the guidelines available at <https://www.boem.gov/Renewable-Energy-Qualification-Guidelines>. BOEM will inform you if you are qualified to participate in the auction.

iv. *Confidential information.* If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption “Contains Confidential Information” and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in section XXI entitled “Protection of Privileged or Confidential Information.” Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

b. End of PSN Comment Period to FSN Publication:

i. *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.

ii. *Finalize Qualifications Reviews:* Prior to the publication of the FSN, BOEM will complete review of bidder qualification materials submitted during the PSN comment period. The final list of eligible bidders will be published in the FSN.

iii. *Prepare the FSN:* BOEM will prepare the FSN by updating or modifying information contained in the PSN where necessary.

iv. *Publish FSN:* BOEM will publish the FSN in the **Federal Register** at least 30 days before the date of the sale.

c. *FSN Waiting Period:* During the period between FSN publication and the lease auction, qualified bidders would be required to take several steps to remain eligible to participate in the auction.

i. *Bidder’s Financial Form:* Each bidder must submit a BFF to BOEM to participate in the auction. The BFF must include the bidder’s Conceptual Strategy for each non-monetary bidding credit for which that bidder wishes to be considered. If a bidder seeks to qualify for the same bidding credit in *more than one* region, the bidder must submit one bidding credit Conceptual Strategy. If, for a given bidding credit, there are any differences in the strategy for each region, the bidder must explicitly identify them in the Conceptual Strategy. BOEM must receive each bidder’s BFF no later than the date listed in the FSN. BOEM may consider extensions to this deadline only if BOEM determines that the failure to timely submit a BFF was caused by events beyond the bidder’s control. The proposed BFF can be downloaded at: <https://www.boem.gov/renewable->

energy/state-activities/maine/gulf-maine.

(1) Once BOEM has processed a bidder's BFF, the bidder will be allowed to log into <https://www.pay.gov> and submit a bid deposit. For purposes of this auction, BOEM will not consider BFFs submitted by bidders for previous lease sales. An original signed BFF may be mailed to BOEM's Office of Renewable Energy Programs for certification. A signed copy of the form may be submitted in PDF format to renewableenergy@boem.gov. A faxed copy will not be accepted. BFF submissions must be accompanied by a transmittal letter on company letterhead.

(2) The BFF must be executed by an authorized representative listed on the bidder's legal qualifications in the BFF, in accordance with 18 U.S.C. 1001 (fraud and false statements).

(3) Additional information regarding the BFF may be found below in section IX entitled "Bidder's Financial Form."

ii. *Bid Deposit:* Each qualified bidder must submit a bid deposit of \$2,000,000 for one Lease Area. If the FSN allows bidders to bid for and potentially win more than one Lease Area, each qualified bidder must submit a bid deposit of \$2,000,000 per Lease Area sought. For example, if a qualified bidder wants to bid for and seek to win two Lease Areas, they will need to submit a bid deposit of \$4,000,000. Further information about bid deposits can be found below in section X "Bid Deposit."

d. *Notification of Eligibility for Non-Monetary Credits:* BOEM will notify each bidder of their eligibility for bidding credits prior to the Mock Auction.

e. *Mock Auction:* BOEM will hold a Mock Auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. The Mock Auction is intended to give bidders an opportunity to clarify auction rules, test the functionality of the auction software, and identify any potential issues that may arise during the auction. Final details of the Mock Auction will be provided in the FSN.

f. *The Auction:* BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30 days following the publication of the FSN in the **Federal Register**. The estimated timeframes described in this PSN assume the auction will take place approximately 45 days after the publication of the FSN. Final dates will be included in the FSN. BOEM will

announce the provisional winners of the lease sale after the auction ends.

g. *From the Auction to Lease Execution:*

i. *Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and will return their bid deposits.

ii. *Department of Justice (DOJ) Review:* DOJ will have up to 30 days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c).

iii. *Delivery of the Lease:* BOEM will send three lease copies to each provisional winner, with instructions on how to execute the lease. Once the lease has been fully executed, a provisional winner becomes an auction winner. The first year's rent is due 45 days after the auction winners receive the lease copies for execution.

iv. *Return the Lease:* Within 10-business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their winning bids (*i.e.*, winning bids minus applicable bid deposit and any applicable non-monetary bidding credits), and sign and return the three executed lease copies. The winners may request extensions and BOEM may grant such extensions if BOEM determines the delay was caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).

v. *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

VI. Withdrawal of Blocks

BOEM reserves the right to withdraw all or portions of the Lease Areas prior to executing the leases with the winning bidders.

VII. Lease Terms and Conditions

Along with this PSN, BOEM has made available the proposed terms, conditions, and stipulations for the commercial leases that would be offered through this proposed sale. BOEM reserves the right to require compliance with additional terms and conditions associated with the approval of a site assessment plan (SAP) and COP. The proposed lease may be found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Each lease would include the following attachments:

- a. Addendum A ("Description of Leased Area and Lease Activities");
 - b. Addendum B ("Lease Term and Financial Schedule");
 - c. Addendum C ("Lease-Specific Terms, Conditions, and Stipulations"); and
 - d. Addendum D ("Project Easement").
- Addenda "A," "B," and "C" provide detailed descriptions of proposed lease terms and conditions. Addendum "D" will be completed at the time of COP approval or approval with modifications. After considering comments on the PSN and the proposed lease, BOEM will publish final lease terms and conditions in the FSN.

VIII. Lease Financial Terms and Conditions

This section provides an overview of the required annual payments and financial assurances under the lease. Please see the proposed lease for more detailed information, including any changes from past practices.

a. *Rent:* Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of \$3 per acre is due within 45 days after the lessee receives the unexecuted lease copies from BOEM. Lease area acreage is delineated in Addendum A of the lease and, if applicable, includes portions of a lease that do not allow surface occupancy. Thereafter, annual rent payments are due on the anniversary of the effective date of the lease (the "Lease Anniversary"). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the Lease Area remaining undeveloped (*i.e.*, non-generating acreage), as described in the lease. For example, for the 121,339 acres of Lease OCS-A 0562, the rent payment would be \$364,017 per year until commercial operations begin.

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45 days after receiving the lease copies from BOEM and BOEM approves that application, no rent payment would be due on the relinquished portion of the Lease Area. Later relinquishments of any portion of the Lease Area would reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

A lease issued under this part confers on the Lessee the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease. A Lessee must apply for the project easement as part of the COP or SAP, as

provided under subpart F of 30 CFR part 585.

The lessee also must pay rent for any project easement associated with the lease. Rent commences on the date that BOEM approves the COP that describes the project easement (or any modification of such COP that affects the easement acreage), as outlined in 30 CFR 585.507. If the COP revision results in increased easement acreage, additional rent would be due at the time the COP revision is approved. Annual rent for a project easement is the greater of \$5 per acre per year or \$450 per year.

b. *Operating Fee:* For purposes of calculating the initial annual operating fee under 30 CFR 585.506, BOEM

applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee must be paid within 90 days of the commencement of commercial operations. Thereafter, subsequent annual operating fees must be paid on or before the Lease Anniversary.

The subsequent annual operating fees will be calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected

annual electric power production. For the purposes of this calculation, the imputed market value will be the product of the project's annual nameplate capacity, the total number of hours in a year (8,760), the capacity factor, and the annual average price of electricity derived from a regional wholesale power price index. For example, the annual operating fee for a 976-megawatt (MW) wind facility operating at a 40 percent capacity (*i.e.*, capacity factor of 0.4) with a regional wholesale power price of \$40 per megawatt hour (MWh) and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 976 \text{ MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times$$

$$\frac{\$40}{\text{MWh}} \text{ Power Price} \times 0.02 = \$2,735,923.20$$

i. *Operating Fee Rate:* The operating fee rate is the share of the imputed wholesale market value of the projected annual electric power production due to the Office of Natural Resources Revenue (ONRR) as an annual operating fee. For the Lease Areas, BOEM proposes to set the fee rate at 0.02 (2 percent) for the entire life of commercial operations.

ii. *Nameplate Capacity:* Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer.

iii. *Capacity Factor:* BOEM proposes to set the capacity factor at 0.4 (*i.e.*, 40 percent) for the year in which the commercial operations *begin* and for the first 6 years of commercial operations on the lease. At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous 5 years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every 5 years thereafter.

iv. *Wholesale Power Price Index:* Under 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MWh, is determined at the time each annual operating fee payment is due. For the leases offered in this sale, BOEM proposes to use the ISO New England H.INTERNAL HUB. A similar price dataset may also be used and may be posted by BOEM at boem.gov for reference.

c. *Financial Assurance:* Within 10-business days after receiving the unexecuted lease copies and pursuant to 30 CFR 585.515–585.516, the provisional winners would be required to provide an initial lease-specific bond or other BOEM-approved financial assurance instrument in the amount of \$100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or other financial assurance instrument or alternative as detailed in 30 CFR 585.526–585.529. BOEM encourages the provisional winners to discuss financial assurance requirements with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of financial assurance (for all SAP, COP, and decommissioning activities) on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum "B" of the lease, which is available at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

IX. Bidder's Financial Form

Each bidder must submit to BOEM the information listed in the BFF referenced in this PSN. A copy of the proposed form is available at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. BOEM recommends that each bidder designate

an email address in its BFF that the bidder will use to create an account in <https://www.pay.gov> (if it has not already done so). BOEM will not consider previously submitted BFFs for previous lease sales to satisfy the requirements of this auction. BOEM must receive each BFF, including any Conceptual Strategy(ies), by the deadline set in the FSN. BOEM may consider BFFs, including any Conceptual Strategy(ies), that are submitted after the deadline set in the FSN if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. The BFF is required to be executed by an authorized representative listed in the bidder's qualification package on file with BOEM.

X. Bid Deposit

Each qualified bidder must submit a bid deposit no later than the date listed in the FSN. Typically, the deadline is approximately 30 days after the publication of the FSN. BOEM may consider requests for extensions of this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

Following the auction, bid deposits will be applied against the winning bid and other obligations owed to BOEM. If a bid deposit exceeds that bidder's total financial obligation, BOEM will refund the balance of the bid deposit to the bidder. BOEM will refund bid deposits to the unsuccessful bidders once BOEM has announced the provisional winners.

If BOEM offers a lease to a provisional winner and that bidder fails to timely return the signed lease, establish financial assurance, or pay the balance of its bid, BOEM will retain the bidder's \$2,000,000 bid deposit for the Lease Area. In such a circumstance, BOEM reserves the right to offer a lease for that Lease Area to the next highest bidder as determined by BOEM.

XI. Minimum Bid

The minimum bid is the lowest dollar amount per acre that BOEM will accept as a winning bid and is the amount at which BOEM will start the bidding in the auction. BOEM proposes a minimum bid of \$50.00 per acre for this lease sale.

XII. Auction Procedures

a. *Multiple-Factor Bidding Auction:* As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM proposes to use a multiple-factor auction format for this lease sale. Under BOEM's proposal, the bidding system for this lease sale will be a combination of monetary and non-monetary factors. The bid made by a particular bidder in each round will represent the sum of the monetary factor (cash bid) and the value of any non-monetary factors in the form of bidding credits. BOEM proposes to start the auction using the minimum bid price for the Lease Areas and to increase these prices incrementally until no more than one bidder remains bidding on each Lease Area in the auction. For this sale, BOEM is calculating bidding credits as a percentage of the whole bid, which is a change from the method used in sales held prior to 2024, where bidding credits were calculated as a percentage of the cash portion of the bid. The intended purpose of this change is to simplify the bidding credit calculation. BOEM is proposing to grant bidding credits to bidders that commit to one or both of the following:

i. supporting workforce training programs for the floating offshore wind industry or supporting the development of a domestic supply chain for the floating offshore wind industry, or a combination of both; or

ii. establishing and contributing to a fisheries compensatory mitigation fund or contributing to an existing fund to mitigate potential negative impacts to commercial and for-hire recreational fisheries caused by offshore wind development in the Gulf of Maine.

These bidding credits are intended to:

i. enhance, through training, the floating offshore wind workforce and/or enhance the establishment of a domestic supply chain for floating offshore wind manufacturing, assembly, or services, both of which will contribute to the expeditious and orderly development of offshore wind resources on the OCS;

ii. support the expeditious and orderly development of OCS resources by mitigating potential direct impacts from proposed projects and encouraging the investment in infrastructure germane to the floating offshore wind industry; and

iii. minimize potential economic effects on commercial fisheries impacted by potential floating offshore wind development, as cooperation with commercial fisheries impacted by OCS operations will enable development of the Lease Area to advance.

If a bidder qualifies to bid for a Lease Area in more than one region and seeks to qualify for a bidding credit, the bidder must submit one bidding credit Conceptual Strategy, which must explicitly identify any differences in the strategy for each region.

b. *Changes to Auction Rules:* BOEM will be employing new auction software for sales held in 2024. The auction format remains an ascending clock auction with multiple-factor bidding. The new software makes five primary changes have been made to the

ascending clock auction rules in the new software, described below.

i. If a bidder decides to bid on a different Lease Area in a given round of the auction, it may submit a bid to reduce demand for the Lease Area it bid on in the previous round and, simultaneously, submit a bid to increase demand for another Lease Area. This allows a bidder the option to switch to another Lease Area if the price of the first Lease Area exceeds the specified bid price.

ii. Provisional winners will no longer be determined using a two-step process. The auction rules are implemented in a way such that, when the auction concludes, the bidder who remains on a Lease Area after the final round becomes its provisional winner. There will be no additional processing step.

iii. The auctions will use a 'second price' rule. A given Lease Area will be won by the bidder that submitted the highest bid amount for the Lease Area, but the winning bidder will pay the highest bid amount at which there was competition (*i.e.*, the 'second price').

iv. Each bidder's bidding credit will be expressed directly as a percentage of the final price for the lease.

v. For sales in which bidders are allowed to bid for and potentially acquire two or more Lease Areas, any bid for two or more Lease Areas will be treated as independent bids for those Lease Areas, rather than as a package bid.

All five of these changes are applicable to the ATLW-11 sale, as proposed in this PSN. All potential bidders should review the complete Auction Procedures for Offshore Wind Lease Sales (Version 1) located at: <https://www.boem.gov/renewable-energy/lease-and-grant-information>.

c. *The Auction:* Using an online bidding system to host the auction, BOEM will start the bidding for the Lease Areas as described below.

TABLE 4—GULF OF MAINE PROPOSED LEASE AREAS AND MINIMUM BIDS

Lease area ID	Region	Acres	Minimum bid
OCS-A 0562	North	121,339	6,066,950
OCS-A 0563	North	132,369	6,618,450
OCS-A 0564	South	110,308	5,515,400
OCS-A 0565	South	115,290	5,764,500
OCS-A 0566	South	127,388	6,369,400
OCS-A 0567	South	123,118	6,155,900
OCS-A 0568	South	134,149	6,707,450
OCS-A 0569	South	106,038	5,301,900

BOEM is proposing to allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area

in the North Region as shown in Table 4. As proposed, a bidder can bid for and win a maximum of two South Region leases, or one North Region lease and

one South Region lease—but cannot bid for or win both North Region leases. BOEM is also soliciting comments on an

alternative approach with three regions as discussed in section IV.f.

The auction will be conducted in a series of rounds. Before each round, the auction system will announce the prices for each Lease Area offered in the auction. In Round 1, there is a single price for each Lease Area equal to the minimum bid price (also known as the 'opening price' or 'clock price of Round 1'). Each bidder can bid, at the opening prices, for as many Lease Areas as allowed by the FSN and the bidder's bid deposit. After Round 1, the bidder's processed demand is one for each Lease Area for which the bidder bid in Round 1.⁷ The bidder's eligibility for Round 2 equals the number of Lease Areas for which the bidder bid in Round 1.

Starting in Round 2, each Lease Area is assigned a range of prices for the round. The start-of-round price is the lowest price in the range, and the clock price is the highest price in the range. A bidder still eligible to bid after the previous round can either (i) continue bidding at the new round's clock price(s) for the Lease Area(s) for which the bidder's processed demand is one or (ii) submit a bid(s) to reduce demand for one (or more) Lease Area(s) at any price(s) in the range(s) for that round. A bid to reduce demand at some price indicates that the bidder is not willing to acquire that Lease Area at a price exceeding the specified bid price. A bidder that bids to reduce demand for one or two Lease Areas could bid to increase demand up to the same number of other Lease Areas in the same round.

If an eligible bidder does not place a bid during the round for a Lease Area for which the bidder's processed demand is one, the auction system will consider this a request to reduce demand for that Lease Area at the round's start-of-round price. The bidder can nonetheless win that Lease Area if it is the last remaining bidder for that Lease Area.

After each round, the auction system processes the bids and determines each bidder's processed demand for each Lease Area and the posted prices for the Lease Areas. The bidder's eligibility for the next round will equal the number of Lease Areas for which the bidder had processed demand of one. If, after any round, a bidder's processed demand is zero for every Lease Area, the bidder's eligibility drops to zero and the bidder can no longer participate in the auction. The posted price is the price determined

for each Lease Area after processing of all bids for a round. If only one bidder remains on a Lease Area, the posted price reflects the "second price" (*i.e.*, the highest price at which there was competition for the Lease Area).⁸ The posted price for a Lease Area after each round becomes the start-of-round price for that Lease Area in the next round.

If, after the bids for the round have been processed, there is no Lease Area with excess demand (*i.e.*, no lease areas have more than one bidder), the auction will end. When this occurs, each bidder with processed demand of one for a Lease Area will become the provisional winner for that Lease Area. Otherwise, the auction will continue with a new round in which the start-of-round price for each Lease Area equals the posted price of the previous round.

The increment by which the clock price exceeds the start-of-round price will be determined based on several factors including, but not necessarily limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease the increment as it deems appropriate.

The provisional winner of each Lease Area will pay the final posted price (less any applicable bidding credit) or risk forfeiting its bid deposit. A provisional winner will be disqualified if it is subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder must sign the applicable lease documents, post financial assurance, and submit the outstanding balance of its winning bid (*i.e.*, winning bid minus the applicable bid deposit and any applicable credits) within 10-business days of receiving the lease copies, pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to: timely execute three copies of the lease and return them to BOEM, timely post adequate financial assurance, timely pay the balance of its winning bid, or otherwise comply with applicable regulations or the terms of the FSN. In any of these cases, the bidder will forfeit its bid deposit and BOEM reserves the right to offer a lease to the next highest eligible bidder as determined by BOEM.

BOEM will publish the names of the provisional winners of the Lease Areas and the associated prices shortly after the conclusion of the sale. Full bid results, including round-by-round results of the entire sale, will be published on BOEM's website after a review of the results and announcement of the provisional winners.

Additional information regarding the auction format:

i. *Authorized Individuals and Bidder Authentication:* An entity that is eligible to participate in the auction will identify on its BFF up to three individuals who will be authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. All individuals will log into the auction system using login.gov. Prior to the auction, each individual listed on the BFF form must obtain a Fast Identity Online (FIDO)-compliant security key, and must register this security key on login.gov using the same email address that was listed in the BFF. The login.gov registration, together with the FIDO-compliant security key, will enable the individual to log into the auction system. BOEM will provide information on this process on its website.

After BOEM has processed the bid deposits, the auction contractor will send an email to the authorized individuals, inviting them to practice logging into the auction system on a specific day in advance of the mock auction. The login.gov login process, along with the authentication for the auction helpdesk, will also be tested during the mock auction.

If an eligible bidder fails to submit a bid deposit or does not participate in the first round of the auction, BOEM will deactivate that bidder's login information.

ii. *Timing of Auction:* The FSN will provide specific information regarding when bidders will be able to log into the auction system and when the auction will start.

iii. *Messaging Service:* BOEM and the auction contractors will use the auction system's messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM could change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging service to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging service for other updates during the auction.

iv. *Bidding Rounds:* Bidders are allowed to place bids or to change their bids at any time during the round. At

⁷ Bidders specify their demand for a lease area with either a 0 or 1 in the auction system. A demand of 1 indicates the lease area that they are bidding on. Processed demand is the demand, either 0 or 1, of a bidder for a lease area following the processing of the bids for the round.

⁸ The Auction Procedures for Offshore Wind Lease Sales provides details on how bids are prioritized and processed.

the top of the bidding page, a countdown clock shows how much time remains in each round. Bidders will have until the end of the round to place bids. Bidders should do so according to the procedures described in the FSN and the Auction Procedures for Offshore Wind Lease Sales. Information about the round results will be made available only after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The Auction Procedures for Offshore Wind Lease Sales elaborate on the auction process described in this PSN. In the event of any inconsistency among the Auction Procedures for Offshore Wind Lease Sales, the Bidder Manual, and the FSN, the FSN is controlling.⁹

v. Alternate Bidding Procedures: Redundancy is the most effective way to mitigate technical and human issues during an auction. BOEM strongly recommends that bidders consider authorizing more than one individual to bid in the auction and confirming during the Mock Auction that each authorized individual is able to access the auction system. A mobile hotspot or other form of wireless access is helpful in case a company's main internet connection should fail. As a last resort, an authorized individual facing technical issues may request to submit its bid by telephone. To be authorized to place a telephone bid, an authorized individual must call the help desk number listed in the auction manual before the end of the round. BOEM will authenticate the caller's identity. The caller must also explain the reasons why a telephone bid is necessary. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate telephonic bidding procedure. The auction help desk requires codes from the Google Authenticator mobile application as part of its procedure for identifying individuals who call for assistance. Prior to the auction, all individuals listed on the BFF should download the Google Authenticator mobile application¹⁰ onto their smartphone or tablet.¹¹ The first time the individual logs into the auction system, the system will provide a QR token to be read into the Google Authenticator application. This token is unique to the individual and enables the Google Authenticator application to

generate time-sensitive codes that will be recognized by the auction system. When an individual calls the auction help desk, the current code from the application must be provided to the help desk representative as part of the user authentication process. BOEM will provide information on this process on its website.

d. 12.5 Percent Bidding Credit for Workforce Training or Supply Chain Development or a Combination of Both: This proposed bidding credit will allow a bidder to receive a credit of 12.5 percent in exchange for a commitment to make a qualifying monetary contribution ("Contribution"), in the same amount as the bidding credit received, to programs or initiatives that support workforce training programs for the U.S. floating offshore wind industry or development of a U.S. domestic supply chain for the floating offshore wind industry, or both, as described in the BFF Addendum and the lease. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

i. As proposed, the Contribution to workforce training must result in a better trained and/or larger domestic floating offshore wind workforce that will provide for more efficient operations via increasing the supply of fully trained personnel. Training of existing lessee employees, lessee contractors, or employees of affiliated entities will not qualify as an appropriate contribution toward fulfilling this bidding credit commitment.

ii. The Contribution to domestic supply chain development must result in overall benefits to the U.S. floating offshore wind supply chain available to all potential purchasers of floating offshore wind services, components, or subassemblies, not solely the lessee's project; and either: (i) the demonstrable development of new domestic capacity (including vessels) or the demonstrable buildout of existing capacity; or (ii) an improved floating offshore wind domestic supply chain by reducing the upfront capital or certification cost for manufacturing floating offshore wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities.

iii. Contributions cannot be used to satisfy private cost shares for any Federal tax or other incentive programs where cost sharing is a requirement. No portion of the Contribution may be used to meet the requirements of any other

bidding credits for which the lessee qualifies.

iv. Bidders interested in obtaining a bidding credit could choose to contribute to workforce training programs, domestic supply chain initiatives, or a combination of both. The Conceptual Strategy must describe verifiable actions that the lessee will take that will allow BOEM to confirm compliance once the lessee has submitted documentation that shows it has satisfied the bidding credit commitment. The Contribution must be tendered in full, and the lessee must provide documentation evidencing it has made the Contribution and complied with applicable requirements, no later than the date the lessee submits its first Facility Design Report (FDR).

v. As proposed, Contributions to workforce training must promote and support one or more of the following purposes: (i) Union apprenticeships, labor management training partnerships, stipends for workforce training, or other technical training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States; (ii) Maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (iii) Training workers in skills or techniques necessary to manufacture or assemble floating offshore wind components, subcomponents, or subassemblies (examples of areas involving these skills and techniques include welding; wind energy technology; hydraulic maintenance; braking systems; mechanical systems, including blade inspection and maintenance; or computers and programmable logic control systems); (iv) Tribal floating offshore wind workforce development programs or training for employees of an Indian Economic Enterprise¹² in skills necessary in the floating offshore wind industry; or (v) Training in any other job skills that the lessee can demonstrate are necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States.

vi. As proposed, Contributions to domestic supply chain development must promote and support one or more of the following: (i) Development of a

⁹The Bidder Manual is provided to the auction participants in advance of the auction.

¹⁰The Google Authenticator app must be installed from either the Apple App Store or the Google Play Store.

¹¹Installing the Google Authenticator app is required only if the app has not already been installed on the smartphone or tablet.

¹² [https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18\(Reload\).pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18(Reload).pdf).

domestic supply chain for the floating offshore wind industry, including manufacturing of components and sub-assemblies and the expansion of related services; (ii) Domestic Tier 2 and Tier 3 floating offshore wind component suppliers and domestic Tier-1 supply chain efforts, including quay-side fabrication;¹³ (iii) Technical assistance grants to help U.S. manufacturers re-tool or certify (e.g., ISO-9001) for floating offshore wind manufacturing; (iv) Development of Jones Act-compliant vessels for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (v) Purchase and installation of lift cranes or other equipment capable of lifting or moving foundations, towers, and nacelles quayside, or lift cranes on vessels with these capabilities; (vi) Port infrastructure directly related to floating offshore wind component manufacturing or assembly of major floating offshore wind facility components; (vii) Establishing a new or existing bonding support reserve or revolving fund available to all businesses providing goods and services to offshore wind energy companies, including disadvantaged businesses and/or Indian Economic Enterprises; or (viii) Other supply chain development efforts that the lessee can demonstrate advance the manufacturing of floating offshore wind components or subassemblies or the provision of floating offshore wind services in the United States.

vii. Documentation: If a lease is issued pursuant to a winning bid that includes a bidding credit for workforce training or supply chain development, the lessee must provide documentation showing that the lessee has met the financial commitment before the lessee submits the first FDR for the lease. The documentation must allow BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution.

At a minimum, the documentation must include: all written agreements between the lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contribution(s) and how it will be used by the beneficiaries of the Contribution(s) to satisfy the goals of the bidding credit for which the Contribution was made; all receipts documenting the amount, date, financial

institution, and the account and owner of the account to which the Contribution was made; and sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution attesting that all information provided in the above documentation is true and accurate. The documentation would need to describe how the funded initiative or program has advanced, or is expected to advance, U.S. floating offshore wind workforce training or supply chain development. The documentation must also provide qualitative and/or quantitative information that includes the estimated number of trainees or jobs supported, or the estimated leveraged supply chain investment resulting or expected to result from the Contribution. The documentation must contain any information called for in the Conceptual Strategy that the lessee submitted with its BFF and to allow BOEM to objectively verify (i) the amount of the Contribution and the beneficiary(ies) of the Contribution, and (ii) compliance with the bidding credit criteria provided in Addendum “C” of the lease. If the lessee’s implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain the changed approach. BOEM reserves all rights to determine that bidding credit criteria have not been satisfied if changes from the lessee’s Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum “C” of the lease.

viii. Enforcement: The commitment for the bidding credit must be made in the BFF and would be included in a lease addendum that would bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded would be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

e. *12.5 percent Bidding Credit for Fisheries Compensatory Mitigation*

Fund: The second bidding credit proposed would allow a bidder to receive a credit of 12.5 percent of its bid in exchange for a commitment to establish and contribute to a Fisheries Compensatory Mitigation Fund, or to contribute to a similar existing fund, to compensate for potential negative impacts to commercial and for-hire recreational fisheries. The term “commercial fisheries” refers to commercial and processing businesses engaged in the act of catching and marketing fish and shellfish for sale from the Gulf of Maine. The term “for-hire recreational fisheries” refers to charter and headboat fishing operations involving vessels-for-hire engaged in recreational fishing in the Gulf of Maine that are hired for a charter fee by an individual or group of individuals for the exclusive use of that individual or group of individuals. Lessees are encouraged to contribute to a regional fund, such as the initiative by eleven East Coast states to establish a regional fund that would provide financial compensation for economic loss from offshore wind development off the Atlantic Coast. At a minimum, the compensation must address the following:

- (1) Gear loss or damage; and
- (2) Lost fishing income in Gulf of Maine wind energy Lease Areas.

The fisheries compensatory mitigation fund would assist commercial and for-hire recreational fisheries directly impacted by income or gear losses due to offshore wind activities on offshore wind leases or easements and is intended to address the impacts identified in BOEM’s environmental and project reviews. The compensatory mitigation must cover impacts that result directly from the preconstruction, construction, operations and decommissioning of an offshore wind project being developed in the Gulf of Maine wind energy leases or easements. The fund must be established and the Contribution made before the lessee submits the lease’s first FDR or before the fifth Lease Anniversary, whichever is sooner. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

Bidders applying for the fisheries compensatory mitigation fund bidding credit must submit their Conceptual Strategy along with their BFF, further described below and in the BFF Addendum. The Conceptual Strategy would describe the actions that the lessee intends to take that would allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction

¹³ Tier-1 denotes the primary floating offshore wind components such as the blades, nacelles, towers, foundations, and cables. Tier 2 subassemblies are the systems that have a specific function for a Tier 1 component. Tier 3 subcomponents are commonly available items that are combined into Tier 2 subassemblies, such as motors, bolts, and gears.

of the requirements for the bidding credit. The lessee would be required to provide documentation showing that the lessee has met the commitment and complied with the applicable bidding credit requirements before the lessee submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner.

As proposed, gear loss, damage, and fishing income loss claims should be prioritized at each phase of offshore wind project development, including impacts from surveys conducted before the establishment of the fund. BOEM encourages lessees to coordinate with other lessees to establish or contribute to a regional fund. A regional fund should be flexible enough to incorporate future contributions from future lease auctions and actuarially sound enough to recognize the multi-decade life of offshore wind projects in the Gulf of Maine. While the fund's first priority is to compensate for gear loss or damage and income loss, funds that have been determined to be excess based on an actuarial accounting may be used to:

i. Promote participation of fishers and fishing communities in the project development process or other programs that better enable the fishing and offshore wind industries to co-exist;

ii. Offset the cost of gear upgrades and transitions for operating within a wind facility.

Any fund established or selected by the lessee to meet this bidding credit requirement must include a process for evaluating the actuarial status of funds at least every 5 years and publicly reporting information on fund disbursement and administrative costs at least annually.

The Fisheries Compensatory Mitigation Fund must be independently managed by a third party and designed with fiduciary governance and strong internal controls while minimizing administrative expenses. The Contribution may be used for fund startup costs, but the Fund should minimize costs by leveraging existing processes, procedures, and information from the BOEM Draft Fisheries Mitigation Guidance, the Eleven Atlantic States' Fisheries Mitigation Project, or other sources.

i. *Documentation:* As proposed, if a lease is awarded pursuant to a winning bid that includes a Fisheries Compensatory Mitigation Fund Bidding Credit, the lessee must provide written documentation to BOEM that demonstrates that it completed the fund Contribution before it submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner. The documentation must enable BOEM to

objectively verify the Contribution has met all applicable requirements as outlined in Addendum "C" of the lease.

ii. At a minimum, this documentation must include:

(1) The procedures established to compensate for gear loss or damage resulting from all phases of the project development on the Lease Area (pre-construction, construction, operation, and decommissioning);

(2) The Fisheries Compensatory Mitigation Fund charter, including the governance structure, audit and public reporting procedures, and standards for paying compensatory mitigation for impacts to fishers from development on wind energy Lease Areas in the Gulf of Maine;

(3) All receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and

(4) Sworn statements by the entity that made the Contribution, attesting to:

i. The amount and date(s) of the Contribution;

ii. That the Contribution is being (or will be) used in accordance with the bidding credit requirements in the lease; and

iii. That all information provided is true and accurate.

The documentation must contain any information specified in the Conceptual Strategy that was submitted with the BFF. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum "C" of the lease.

iii. *Enforcement:* The commitment to the Fisheries Compensatory Mitigation Fund Bidding Credit will be made in the BFF. It will be included in Addendum "C" of the lease and will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the commitment at the time the first FDR is submitted, or by the fifth Lease Anniversary, whichever is sooner, the amount corresponding to the bidding credit awarded would be immediately due and payable to ONRR with interest from the lease effective date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements by the time the first FDR is submitted, or the fifth Lease Anniversary,

whichever is sooner. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR or beyond the 5-year timeframe.

XIII. Rejection or Non-Acceptance of Bids

BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the auction, the FSN, or applicable regulations and statutes.

XIV. Anti-Competitive Review

Bidding behavior in this sale is subject to Federal antitrust laws. Following the auction, but before the acceptance of bids and the issuance of the lease, BOEM must "allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of [the] lease sale." 43 U.S.C. 1337(c)(1). If a provisional winner is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM may reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense against violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

1. An express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;
2. An agreement among bidders not to bid against each other; or
3. Other agreements among bidders that have the potential to affect the final auction price.

Pursuant to 43 U.S.C. 1337(c)(3), BOEM may decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease may be inconsistent with antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see <https://www.justice.gov/atr> and consult legal counsel.

XV. Process for Issuing the Lease

Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to the provisional winner. Within 10-business days after receiving the lease copies, the provisional winner must:

1. Execute and return the lease copies on the bidder's behalf;

2. File financial assurance as required under 30 CFR 585.515–537, as applicable; and

3. Pay by electronic funds transfer (EFT) the balance owed (the winning cash bid less the applicable bid deposit), if any. BOEM would require bidders to use EFT procedures (not <https://www.pay.gov>, the website bidders used to submit bid deposits) for payment of the balance, following the detailed instructions contained the “Instructions for Making Electronic Payments” available on BOEM’s website at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/EFT-Payment-Instructions.pdf>.

BOEM will not execute the lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder’s financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder’s payment. BOEM may extend the 10-business-day deadline for signing a lease, filing the required financial assurance, and paying the balance owed if BOEM determines, in its sole discretion, that the provisionally winning bidder’s inability to comply with the deadline was caused by events beyond the provisionally winning bidder’s control pursuant to 30 CFR 585.224(e).

If the provisional winner does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case, the provisional winner will forfeit its bid deposit. Also, in such a case, BOEM reserves the right to offer the lease to the next highest eligible bidder as determined by BOEM.

Within 45 days after receiving the lease copies, the provisional winner must pay the first year’s rent using the “ONRR Renewable Energy Initial Rental Payments” form available at: <https://www.pay.gov/public/form/start/27797604>. Subsequent annual rent payments must be made following the detailed instructions available on ONRR’s website at: <https://onrr.gov/paying/payment-options?tabs=rent-payments>.

XVI. Non-Procurement Debarment and Suspension Regulations

Pursuant to 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior’s non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does

business relating to this lease by including this requirement as a term or condition in their contracts and other transactions.

XVII. Final Sale Notice

The development of the FSN will be informed through the EA, related consultations, and comments received during the PSN comment period. The FSN will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease for the Lease Areas in the Gulf of Maine. The FSN will be published in the **Federal Register** at least 30 days before the lease sale is conducted and will provide the date and time of the auction.

XVIII. Changes to Auction Details

BOEM has the discretion to change any auction detail specified in the FSN, including the date and time, if events outside BOEM’s control have been found to interfere with a fair and proper lease sale. Such events may include, but are not limited to, natural disasters (*e.g.*, earthquakes, hurricanes, floods, and blizzards), wars, riots, act of terrorism, fire, strikes, civil disorder, Federal Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM’s website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Bidders should call BOEM’s Auction Manager at (703) 787–1121 if they have concerns.

XIX. Appeals

Reconsideration of rejected bid procedures are provided for in BOEM’s regulations at 30 CFR 585.225 and 585.118(c). BOEM’s decision on a bid is the final action of the Department of the Interior, and is not subject to appeals to the Office of Hearings and Appeals, but an unsuccessful bidder may apply for reconsideration by the Director under 30 CFR 585.225 as follows:

1. If BOEM rejects a bid, BOEM will provide the bidder a written statement of the reasons for rejection and will refund any money deposited with the bid, without interest.

2. A bidder may ask the BOEM Director for reconsideration, in writing, within 15-business days of bid rejection. The Director will send the bidder a written response either affirming or reversing the rejection.

XX. Public Participation

BOEM will make all comments on the PSN publicly available on <https://www.regulations.gov> under the docket

number and will consider each comment prior to publication of the FSN. BOEM discourages anonymous comments; please include your name, address, and telephone number or email address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information (PII) included in your comment, may be made publicly available at any time.

For BOEM to consider withholding from disclosure your PII, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this PSN, your comment is subject to the Freedom of Information Act (FOIA). If your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA’s exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior’s FOIA regulations and applicable law.

Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

XXI. Protection of Privileged and Confidential Information

BOEM will protect privileged and confidential information that you submit consistent with FOIA and 30 CFR 585.114. Exemption 4 of FOIA applies to “trade secrets and commercial or financial information obtained from a person” that is privileged or confidential. (5 U.S.C. 552(b)(4)). If you wish to protect the confidentiality of such information, clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise non-confidential information.

a. *Access to Information (54 U.S.C. 307103)*: BOEM may, after consultation with the Secretary of the Interior, withhold the location, character, or ownership of historic properties if the Secretary and BOEM determine that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribes and other interested parties should designate such information that they wish to be withheld as confidential and provide the reasons why BOEM should do so.

Authority: 43 U.S.C. 1337(p); 30 CFR 585.211 and 585.216.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024-09390 Filed 4-30-24; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1341]

Certain Video Processing Devices and Products Containing the Same; Notice of a Commission Determination To Review in Part a Final Initial Determination, and on Review, To Find No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review the Administrative Law Judge’s (“ALJ”) final initial determination (“ID”), issued on February 5, 2024, and on review, to find no violation of section 337 in the above-referenced investigation. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the

Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2022, based on a complaint filed on behalf of VideoLabs, Inc. of Palo Alto, California (“VideoLabs”). 87 FR 73329 (Nov. 29, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video processing devices and products containing the same by reason of infringement of claims of U.S. Patent Nos. 7,769,238 (“the ’238 patent”), 8,139,878 (“the ’878 patent”), and 8,208,542 (“the ’542 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as the sole respondent HP Inc. of Palo Alto, California (“HP”). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On July 27, 2023, and August 25, 2023, the ALJ issued Order No. 20 and Order No. 23, respectively, granting VideoLabs’ motions to terminate the investigation with regards to the ’238 patent and the ’878 patent. Order No. 20 (July 11, 2023), *unreviewed by Comm’n* Notice (July 27, 2023); Order No. 23 (Aug. 7, 2023), *unreviewed by Comm’n* Notice (Aug. 25, 2023). Accordingly, the ’542 patent is the sole remaining patent at issue.

The ALJ held a *Markman* hearing on June 7, 2023. On September 22, 2023, the ALJ issued Order No. 27, in which the ALJ construed certain claim terms while reserving construction of other terms until after the evidentiary hearing due to underlying fact issues. *See* Order No. 27 (Sept. 22, 2023).

The ALJ held an evidentiary hearing from October 23-26, 2023. The parties filed their post-hearing opening briefs and replies on November 13, 2023, and November 29, 2023, respectively.

On February 5, 2024, the ALJ issued the final ID in this investigation, which found no violation of section 337 as to any of the asserted claims of the ’542 patent.

On February 20, 2024, VideoLabs petitioned for review of the final ID. On February 28, 2024, HP filed a response opposing VideoLabs’ petition.

On March 25, 2024, the Commission determined to extend the date by which it must determine whether to review the final ID to April 25, 2024.

Having examined the record of this investigation, including the ID, the

petition for review, and the response thereto, the Commission has determined not to review and thus adopts, the ID’s claim construction findings and the ID’s finding that the asserted claims are invalid as indefinite. Those findings are sufficient to support the ID’s ultimate finding of no violation of section 337, which the Commission also adopts. Given the finding that the asserted claims are indefinite, the Commission cannot conduct a complete analysis of the other issues raised in this investigation, *e.g.*, infringement, obviousness, and domestic industry. Accordingly, the Commission has determined to review the remaining findings in the ID and on review take no position on those findings. This investigation is terminated.

The Commission vote for this determination took place on April 25, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-09362 Filed 4-30-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-688 and 731-TA-1612-1613 and 1615-1617 (Final)]

Brass Rod From Brazil, India, Mexico, South Africa, and South Korea; Scheduling of the Final Phase of the Antidumping and Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: April 22, 2024

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708-2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the