

October 6, 2023

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Questions for the Record

Energy and Mineral Resources Subcommittee
September 28, 2023 legislative hearing on:

- **H.R. 1121 (Rep. Duncan), “Protecting American Energy Production Act”;** and
- **H.R. 5616 (Rep. Graves of Louisiana), “BRIDGE Production Act of 2023.”**

1. *Even with the inclusion of the 2017–2022 ROD, will BOEM still be required to conduct site-specific NEPA reviews, including EAs or EISs, to assess the unique environmental conditions and potential impacts of individual lease sales?*

Once a Programmatic EIS (PEIS) and ROD for a proposed program are completed, site-specific NEPA reviews are conducted for individual lease sales or other actions. This review can take the form of a new EIS, a Supplemental EIS, or an Environmental Assessment (EA) depending on the potential impacts of the specific action. The site-specific review will consider the unique environmental conditions and potential impacts of the specific lease sale or action, so there could not be leasing without additional EA, potentially EIS, or utilization of CX (which doesn't exist for site specific, so no option there).

2. *Can you elaborate on how the site-specific NEPA reviews will ensure that environmental safeguards are in place for each individual lease sale, even after the application of the 2017–2022 ROD?*

There are 5 major steps for the leasing process:

1. BOEM issues a Call for Information and Nominations [(30 Code of Federal Regulations [CFR] 556.301)]— (Call) in the Federal Register on an area proposed for leasing. Potential bidders are invited to submit nominations or indications of interest in specific OCS blocks within the Call Area. The Call also solicits comments about geological conditions; archaeological sites; potential multiple uses of the area including navigation, recreation, and fisheries; socioeconomic, biological, and other environmental information; and asks the public for information on areas of special concern that should be analyzed.

2. Area Identification (30 CFR 556.302)—Area Identification (Area ID) is the second major step in BOEM's oil and gas lease sale process. During Area ID, BOEM uses information and comments received in response to a Call, and in consultation with appropriate Federal agencies, develops a recommendation to the Secretary for the area(s) to be subject to further leasing consideration and environmental analyses. The Area ID decision is announced in the Federal Register.

3. Review under NEPA—BOEM performs a NEPA review for each lease sale. This typically includes an EIS that considers the impacts associated with oil and gas activities for a given region or program area. The NEPA for subsequent lease sales in the same region or program area may rely on that EIS as appropriate, after BOEM confirms through a DNA or EA that EIS supplementation is not required.

4. Government-to-Government Consultations—Under Executive Order (E.O.) 13175 and the Department of the Interior Policy on Consultation with Indian Tribes, BOEM is obligated to engage in government-to-government consultations with Tribes on any Departmental action with Tribal implications. This includes federally recognized Tribes with current and historic interests in coastal areas of Alaska, the Pacific, the GOM, and the Atlantic. In Alaska, BOEM additionally consults with Alaska Native Claims Settlement Act (ANCSA) Corporations. These consultations are conducted on additional approvals (e.g., plans and permits) as appropriate throughout the life of an OCS oil and gas lease.

5. Environmental Consultations—Consultations under various environmental statutes occur, such as the Endangered Species Act (ESA) of 1973 (16 U.S.C. §§ 1531 et seq.) and Section 305(b) of the Magnuson--Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.). Pursuant to these environmental statutes, BOEM is required to consult with agencies such as the U.S. Fish and Wildlife Service (USFWS) 12 Solicitor's M Opinion 36954, Whether the Department May Issue a Call for Information & Nominations for Outer Continental Shelf Lease Sale 91, 93 I.D. 125 (1986). USDO I 2024–2029 National OCS Oil and Gas Leasing Proposed Final Program BOEM OCS Oil & Gas Leasing Program Development Process 1-22 September 2023 and National Marine Fisheries Service (NMFS). BOEM also consults, as appropriate, under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108).

6. Proposed Notice of Sale (NOS) (30 CFR 556.304)—The proposed NOS describes the timing, size, and location of a proposed oil and gas lease sale. It also provides potential bidders with information on proposed economic terms and conditions and any proposed mitigation measures (i.e., lease stipulations), which are typically designed to reduce potential conflicts with other ocean uses and to protect the environment. BOEM publishes a notice of availability of the proposed NOS in the Federal Register.

7. Coordination with Governors of Affected States (30 CFR 556.304-307)—Section 19 of the OCS Lands Act (43 U.S.C. § 1345) requires BOEM to solicit input on the size, timing, and location of lease sales from governors of affected states. BOEM sends the proposed NOS to governors of affected states requesting their recommendations on the proposed size, timing, and location of the lease sale. The governors have 60 days to submit their recommendations to BOEM. Prior to holding the lease sale, BOEM sends each governor written reasons for USDO I's determination to accept or reject that governor's recommendation.

8. Consistency Determination (30 CFR 556.305(b))—All Federal activities affecting the coastal zone, including OCS oil and gas lease sales, must be consistent to the maximum extent practicable with the enforceable policies of an affected state's coastal zone management (CZM) program (see 16 U.S.C. § 1456(c)(1) and (2)). BOEM provides coastal states with a consistency determination on whether the proposed lease sale is consistent, to the maximum extent practicable, with the enforceable policies of federally approved state Coastal Management Plans. That is not done, however, for Alaska lease sales since the State of Alaska no longer has a federally approved Coastal Management Plan. For more information on BOEM's CZM work, see https://link.edgepilot.com/s/75ed2c3d/r_tC9ED_9Eqts_k0zdsj-A?u=https://www.boem.gov/CoastalZone-Management-Act/.

9. Issuance of a ROD (EIS-level), Finding of No New Significant Impact (FONSI; EA level) or DNA—Upon completion of the NEPA review for each individual lease sale, a determination is made as to the significance, or lack thereof, of potential environmental impacts. Depending on the type of NEPA review undertaken for a lease sale, the NEPA review process is completed through the issuance of a ROD, a FONSI, or a DNA.

10. Final NOS (30 CFR 556.308(a))—BOEM will publish a final NOS at least 30 days before a lease sale is held. The final NOS includes information on how to submit bids; the date, time, and location of the bid opening and reading; the OCS blocks being offered; and terms and conditions of the lease sale, including lease stipulations.

11. Holding the Lease Sale (30 CFR 556.516)—BOEM opens the sealed bids at the place, date, and hour specified in the final NOS for the sole purpose of publicly announcing and recording the bids. BOEM does not accept or reject any bids at that time. USDO I 2024–2029 National OCS Oil and Gas Leasing Proposed Final Program BOEM OCS Oil & Gas Leasing Program Development Process 1-23 September 2023

12. Lease Issuance (30 CFR 556.520-522)—Before a lease can be issued, high bids are subject to evaluation regarding the receipt of fair market value (FMV) and analysis confirming that the award of any tract to the highest bidders in the lease sale would not create or maintain a situation inconsistent with anti-trust laws. BOEM will issue a lease following completion of its FMV analysis and the anti-trust review conducted by the Department of Justice in consultation with the Federal Trade Commission.