



OFFSHORE WIND:

OBSTACLES AND OPPORTUNITIES

PRESENTED BY: TED BOLING

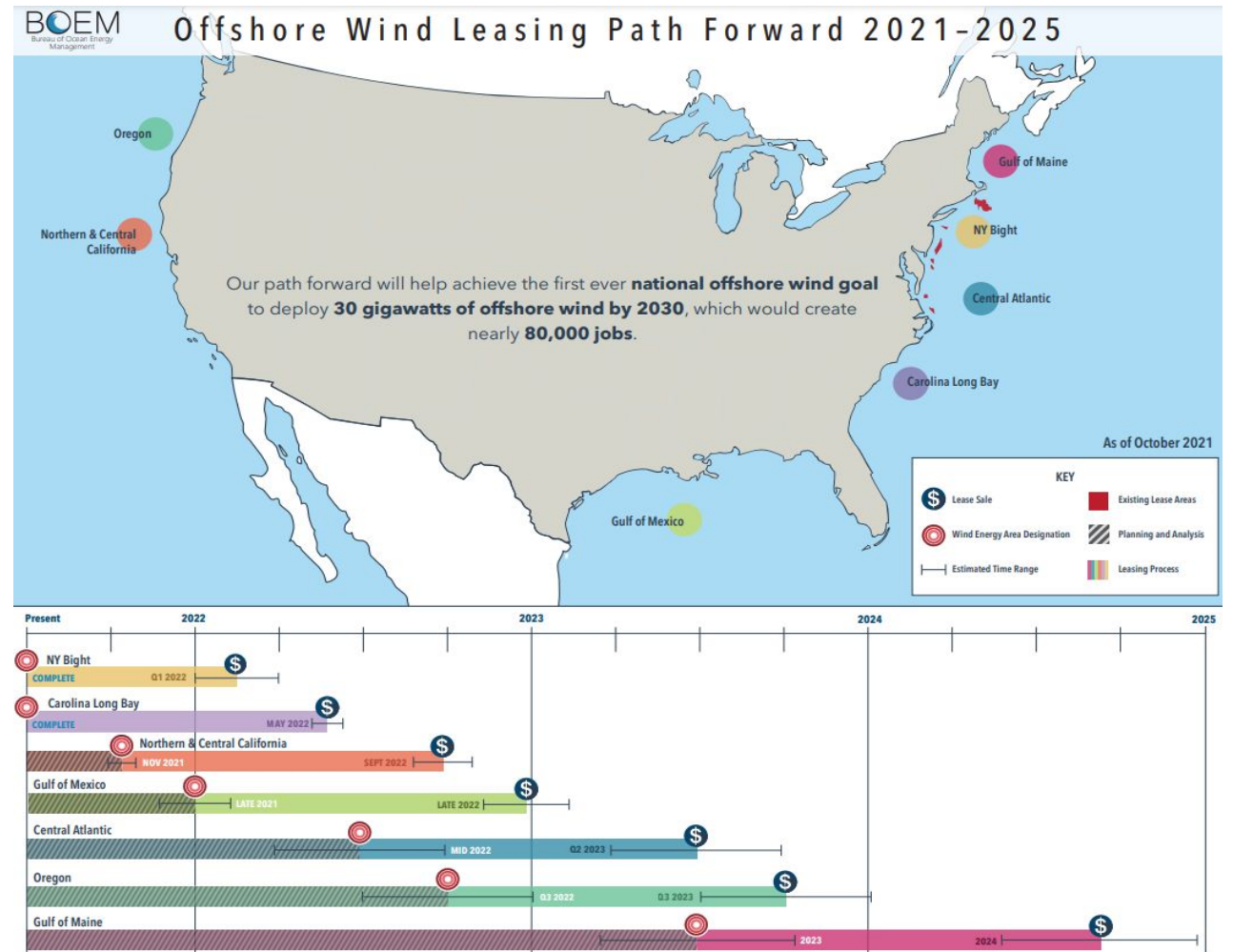
[EDWARD BOLING | PERKINS COIE](#)

APRIL 20, 2023

Leasing Path Forward

Leasing schedule:

- NY Bight - Sale held Feb. 2022
- North Carolina – May 2022
- California – Dec. 2022
- Gulf of Mexico – PSN Feb. 2023
- Central Atlantic - mid 2023
- Oregon - late 2023
- Gulf of Maine - late 2024



Outer Continental Shelf Lands Act (OCSLA)

OCS Lands Act policy: offshore energy is a “vital national resource ... available for expeditious and orderly development, subject to environmental safeguards...”

Section 8(p)(1): “the secretary... may grant a lease, easement, or right-of-way on the outer continental shelf for activities not otherwise authorized in this subchapter... if those activities... produce or support production, transportation, or transmission of energy from sources other than oil and gas[.]”

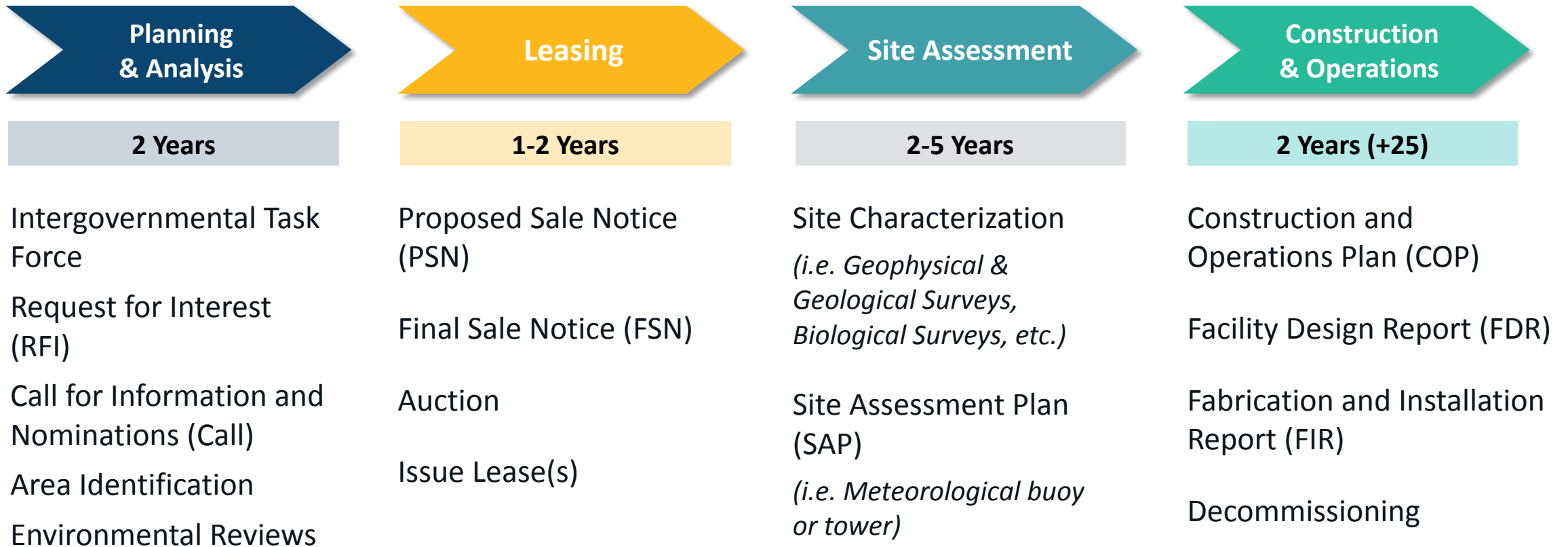
OCSLA Section 8(p)

8(p)(3): leases must be issued competitively unless BOEM finds no competitive interest. [*Cape Wind was exempted from this process.*]

8(p)(4): lists factors secretary must “provide for” in issuing leases and approving activities on them, including:

- Safety
- Environmental protection
- Prevention of waste
- Fair return to U.S. Government
- Protection of national security interests
- “prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas”
- Consideration of... any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation

OCS Renewable Energy Authorization Process



Planning & Analysis



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PATH 1

- Intergovernmental Task Force formed
- Request for Interest (RFI) – optional step
- Call for Information (Call) – determine if competitive interest
- Creation of Wind Energy Area (WEA) through Area Identification
 - This is what is analyzed for leasing under NEPA
- Competitive lease sale (auction)

PATH 2

- Unsolicited lease request
- Request for Competitive Interest (RFCI)
- If yes, go to PATH 1
- If no, analyze lease issuance under NEPA & commence negotiations

Lease Issuance - parallel paths



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- Proposed Sale Notice (PSN)
 - Proposed areas to lease
 - Draft lease for comment
 - Lease is just an exclusive option to submit a plan (no construction rights)
- Final Sale Notice (FSN)
 - Final areas to lease
 - Final lease
 - Auction format
- NEPA review
 - Environmental Assessment (EA) only analyzes surveys and site assessment
- BOEM must consult pursuant to:
 - The Endangered Species Act (ESA)
 - The Magnuson-Stevens Fishery Conservation & Management Act (MSFCMA)
 - National Historic Preservation Act (NHPA)
 - Coastal Zone Management Act (CZMA)
- Informal coordination
 - Department of Defense (DoD),
 - U.S. Coast Guard (USCG)

Lease Auction



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- All lease sales thus far have been “ascending bid” online auctions.
- BOEM may institute “bidding credits” - discounts based on beneficial aspects like PPAs or community benefits agreements.

BOEM Bureau of Ocean Energy Management																					
Pacific Wind Lease Sale 1																					
December 6-7, 2022																					
Round	Bidder	Lease OCS-P 0561				Lease OCS-P 0562				Lease OCS-P 0563				Lease OCS-P 0564				Lease OCS-P 0565			
		Bid Type	Imputed Price	Cash Bid	Bidding Credit	Bid Type	Imputed Price	Cash Bid	Bidding Credit	Bid Type	Imputed Price	Cash Bid	Bidding Credit	Bid Type	Imputed Price	Cash Bid	Bidding Credit	Bid Type	Imputed Price	Cash Bid	Bidding Credit
1	Avangrid Renewables, LLC					Live	\$6,903,100	\$5,310,077	\$1,593,023												
	California North Floating LLC					Live	\$6,903,100	\$5,310,077	\$1,593,023												
	Castle Wind LLC																				
	Central California Offshore Wind LLC									Live	\$8,006,200	\$6,404,960	\$1,601,240								
	Equinor Wind US LLC									Live	\$8,006,200	\$6,158,615	\$1,847,585								
	Invenergy California Offshore LLC RWE Offshore Wind Holdings, LLC	Live	\$6,333,800	\$4,872,154	\$1,461,646									Live	\$8,041,800	\$6,186,000	\$1,855,800				
2	Avangrid Renewables, LLC					Live	\$13,800,000	\$10,615,385	\$3,184,615												
	California North Floating LLC																				
	Castle Wind LLC																				
	Central California Offshore Wind LLC													Live	\$8,041,800	\$6,433,440	\$1,608,360				
	Equinor Wind US LLC									Live	\$16,000,000	\$12,307,692	\$3,692,308								
	Invenergy California Offshore LLC RWE Offshore Wind Holdings, LLC	Live	\$6,333,800	\$4,872,154	\$1,461,646									Live	\$8,041,800	\$6,186,000	\$1,855,800				

Vineyard Wind – site assessment

- This is what they requested to deploy (LiDAR Buoy)
- Submitted a SAP for BOEM review.
- Took over 1 year for BOEM to review and approve deployment
- BOEM proposes to eliminate SAP
 - Use USACE Nationwide Permit 5
 - Met buoys no longer an “OCS source” under Clean Air Act



Site Characterization Surveys



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- Geophysical (sound waves mapping seabed and subsurface) - ground model and marine archaeological
- Geotechnical (e.g., boreholes, vibracores, and cone penetration)
 - Technical question— how many samples do you need to do your engineering?
 - Regulatory question—when do you need to do them? You may not have a final layout yet when you submit your Construction and Operation Plan (COP)
- Precise location of wind turbines may change after approval of COP

What's in a COP?



Planning & Analysis | Leasing | Site Assessment | Construction & Operations

- Geological reports (Geophysical and geotechnical)
- Biological reports (species, sensitive habitats)
- Archaeological reports (onshore and sea floor)
- Location plat for onshore and offshore facilities
- List of vessels, vehicles, aircraft used
- List of wastes generated and chemical products used
- List of all permits needed
- *BOEM proposes greater reliance on certified verification agents (CVA) for critical safety systems*

- Proposed measures for avoiding, minimizing, reducing, eliminating, and monitoring environmental impacts.
- Construction schedule
- Air quality information
- Water quality information
- Socio-economic resources
- Coastal and marine uses
- CZMA consistency certification
- “Additional information as required by BOEM”

COP Project Design Envelope (PDE)



Planning & Analysis | Leasing | Site Assessment | Construction & Operations

- Lessee may propose a range of design parameters for approval; BOEM analyzes “maximum-case scenario”
- Example: monopile and gravity base foundations
 - Preserves flexibility at engineering/installation phase (long timelines and rapid technology development)
 - Minimizes risk of permitting delays
- 2016 [draft guidance](#) based on environmental reviews experience in Europe
- Proposed regulations codify PDE by reference to “ranges” of design parameters or locations



- NEPA review
 - Environmental Impact Statement (EIS)
- BOEM required to consult pursuant to: ESA, MSFCMA, NHPA, CZMA
- Informal coordination
 - DOD, BSEE, USCG, Intergovernmental Task Force

OTHER PERMITS OR AUTHORIZATIONS

- USCG approval of PATON
- EPA issuance of OCS air permit
- USACE issuance of a Clean Water Act, Section 404 permit; River and Harbors Act, Section 10 permit
- MMPA ITA issued by NMFS
- FAA Notice of Proposed Construction or Alteration (w/in 12 NM)

Common Environmental Consultation Requirements

Regulatory Process

ESA Section 7 Consultation

CWA Sections 404 and 401 (401 delegated to state)

NHPA Section 106

Clean Air Act “Conformity” requirements

Coastal Zone Management Act consistency

Executive Orders on wetlands, floodplains,
environmental justice

State “little NEPA” laws

Consulting Agencies

U.S. Fish and Wildlife Service, National Marine Fisheries Service

U.S. Army Corps of Engineers,
State departments of water quality

State or Tribal Historic Preservation Offices, Advisory Council on Historic Preservation; Tribes, Native Hawaiian and Alaskan Natives; may also include National Park Service Preservation Program, National Historical Landmarks Program, Archaeological Program; other consulting parties

State Air Quality Districts

State Coastal Zone Management Programs

Varies

CEQA in California; Massachusetts Environmental Policy Act (MEPA); Washington State Environmental Policy Act (SEPA); North Carolina SEPA; etc.

See nepa.gov for current list:

<https://ceq.doe.gov/laws-regulations/states.html>

NEPA Streamlining- FAST Act

Title 41 of the “Fixing America’s Surface Transportation Act,” also known as FAST – 41, 42 U.S.C. § 4370m et seq.

FAST-41 “covered project” - any activity that requires authorization or environmental review by a Federal agency involving construction of infrastructure for

- renewable or conventional energy production,
- electricity transmission,
- surface transportation, aviation, ports and waterways,
- water resource projects,
- broadband,
- pipelines,
- manufacturing, and any other sectors added by the Federal Permitting Improvement Steering Council

FAST-41 for INFRASTRUCTURE PERMITTING
A COORDINATED FRAMEWORK FOR IMPROVING THE FEDERAL ENVIRONMENTAL REVIEW AND AUTHORIZATION PROCESS

Large, complex infrastructure projects in the United States may benefit from a new process designed to enhance coordination, transparency, predictability, and accountability of Federal environmental reviews and authorizations required prior to construction.

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST) Act was signed into law. Title 41 of this Act (42 U.S.C. § 4370m et seq.), referred to as “FAST-41,” created a new governance structure, set of procedures, and funding authorities to improve the Federal environmental review and authorization process for covered infrastructure projects.

FAST-41 KEY COMPONENTS

High-level oversight for covered projects. FAST-41 created the Federal Permitting Improvement Steering Council (Permitting Council) composed of representatives at the agency Deputy Secretary-level and chaired by an Executive Director appointed by the President. The Executive Director supports the Council in overseeing FAST-41 implementation, enhancing interagency coordination, resolving disputes, and ensuring covered projects receive the benefits provided by FAST-41.

Environmental review and authorization process improvement. FAST-41 works to improve the permitting process within the structure of existing Federal environmental reviews and authorizations. FAST-41 calls for the designation of a lead Federal agency and promotes early consultation and enhanced interagency coordination by requiring the development of a project-specific plan and timetable for the completion of environmental reviews and authorizations. This coordinated project plan may also include approaches and schedules for public and tribal outreach and coordination, as well as discussion of potential avoidance, minimization, and mitigation strategies.

Online Permitting Dashboard. The lead Federal agency for all FAST-41 covered projects is required to post the project environmental review and authorization target completion dates on the Permitting Dashboard. This allows stakeholders to track the status of Federal permitting activities to improve coordination, transparency, predictability, and accountability.

Funding authority for governance, oversight, and processing. FAST-41 creates a new authority for the Federal government to collect fees from project sponsors, which, if implemented, will allow the Permitting Council's Executive Director to direct resources to critical functions across the Federal environmental review process.

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

FAST-41 established the Permitting Council as an oversight council to oversee the cross-agency Federal environmental review and authorization process. The Permitting Council consists of members from 13 Federal agencies, the Council on Environmental Quality, and the Office of Management and Budget.

- Advisory Council on Historic Preservation
- Department of Agriculture
- Department of the Army
- Department of Commerce
- Department of Defense
- Department of Energy
- Department of Homeland Security
- Department of Housing and Urban Development
- Department of the Interior
- Department of Transportation
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission

FOR MORE INFORMATION

For additional information, visit the Federal Permitting Dashboard at:
<https://www.permits.performance.gov>

For questions related to FAST-41 or the Permitting Council, email:
FAST.FortyOne@fpisc.gov

 **PERMITTING COUNCIL**
Transparency • Efficiency • Accountability

IIJA's Modifications to the FAST Act / FAST-41

- IIJA removed the 7-year “sunset” provision, making FAST-41 permanent.
- IIJA requires preparation of a single, joint, interagency EIS, unless the lead agency provides justification in the coordinated project plan that multiple environmental documents are more efficient.
- IIJA envisions even more aggressive timelines:
 - The Permitting Council must aim to develop recommended performance schedules that do not exceed 2 years and provide an explanation if a recommended performance schedule exceeds 2 years.
 - Federal agencies must, “to the maximum extent practicable,” issue a ROD within 90 days of issuance of a final EIS.
 - Shortens to 21 days the timeframe to identify all federal and nonfederal agencies likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project.
 - Makes the process of amending a permitting timetable more onerous.

EIS Model Timeline



- Agencies shall complete the EIS “within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit.” 40 CFR 1501.10(b)(2) (2 years from NOI to ROD)

Minimum timeframes (40 CFR 1506.11):

- Draft EIS is published for public comment for at least 45 days.
- 30-day EIS review period between publishing a final EIS and signing a record of decision (ROD).
- ROD can be signed no sooner than 90 days after publishing a draft EIS.
- EPA may reduce minimum periods based on compelling reasons of national policy

Questions?

