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Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022

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Summary

Under Section 18 of the Outer Continental Shelf Lands Act, as amended (OCSLA; 43 U.S.C. §§1331-1356b), the Secretary of the Interior must prepare and maintain forward-looking plans—typically referred to as *five-year programs*—that indicate proposed public oil and gas lease sales in U.S. waters. In doing so, the Secretary must balance national interests in energy supply and environmental protection. The lead agency within DOI responsible for the program is the Bureau of Ocean Energy Management (BOEM).

BOEM's development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment. At the end of the process, the Secretary of the Interior must submit each program to the President and to Congress for a period of at least 60 days, after which the proposal may be approved by the Secretary and may take effect with no further regulatory or legislative action. BOEM also develops a programmatic environmental impact statement (PEIS) for the leasing program, as required by the National Environmental Policy Act (NEPA; 42 U.S.C. §4321). The PEIS examines the potential environmental impacts from oil and gas exploration and development on the outer continental shelf (OCS) and considers a reasonable range of alternatives to the proposed plan.

Since 1980, nine distinct five-year programs and a revised version of one program have been submitted to Congress. The five-year programs have reflected the offshore oil and gas leasing policies of different presidential administrations, along with input from states, Members of Congress, and other stakeholders. In November 2016, then-Secretary of the Interior Sally Jewell submitted BOEM's final offshore oil and gas leasing program for 2017-2022, and issued a record of decision approving the program in January 2017. The 2017-2022 program scheduled 11 lease sales in particular *regions* and *planning areas* of the OCS. BOEM identifies four OCS regions—the Gulf of Mexico region, the Alaska region, the Atlantic region, and the Pacific region—comprising a total of 26 planning areas. The 2017-2022 final program scheduled lease sales in two of these regions (10 sales in the Gulf of Mexico region and 1 in the Alaska region). No lease sales were scheduled for the other two regions of the OCS, the Atlantic region and the Pacific region. An Atlantic lease sale and two Alaska lease sales proposed in earlier versions of the program were not ultimately included.

On January 4, 2018, the Trump Administration released a draft proposed five-year program for 2019-2024, which would replace the final years of the Obama Administration program. The draft proposes a total of 47 lease sales during the five-year period, covering all four OCS regions. For more information on the 2019-2024 draft proposed program, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief*.

Congress has typically been actively involved during the planning phases of BOEM's five-year leasing programs. For example, some Members of Congress have conveyed their views on the Administration's proposals by submitting public comments on draft versions of programs during formal comment periods, and have evaluated programs in committee oversight hearings. Further, although Congress's role under the OCSLA does not include direct approval or disapproval of the program, Members may directly influence the terms of a program through legislation. With respect to the 2017-2022 program, various Members have pursued all these types of influence. Relevant bills have included those to add new lease sales to the program, to prohibit scheduled lease sales, and to make other programmatic changes. To date, such legislation has not been enacted, and the program has proceeded as finalized by the Secretary of the Interior, pending any potential replacement by the proposed new program for 2019-2024.

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Introduction

Under the Outer Continental Shelf Lands Act (OCSLA), as amended,[1] the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by DOI as *five-year programs*—that indicate proposed public oil and gas lease sales in U.S. waters over a five-year period.[2] In preparing each program, DOI must balance national interests in energy supply and environmental protection.[3] The lead agency within DOI responsible for the program is the Bureau of Ocean Energy Management (BOEM).[4]

BOEM's development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment. All available leasing areas are initially examined,[5] and the selection may then be narrowed based on economic and environmental analysis to arrive at a final leasing schedule. At the end of the process, the Secretary of the Interior must submit each program to the President and to Congress for a period of at least 60 days, after which the proposal may be approved by the Secretary and may take effect with no further regulatory or legislative action.[6]

As required by the National Environmental Policy Act (NEPA), the planning process includes a programmatic environmental impact statement (PEIS).[7] The PEIS examines the potential environmental impacts from oil and gas exploration and development on the outer continental shelf (OCS) and considers a reasonable range of alternatives to the proposed plan. Public comments from stakeholders, including state governors, companies, individuals, and public interest organizations, are addressed in both the PEIS and the five-year program itself. Because of the stages of review and comment required under both the OCSLA and NEPA, the Administration could not revise a finalized program—for example, to add new sales—without restarting the program development process. However, scheduled sales could potentially be cancelled (but not added) during implementation of the program, based on requirements for environmental review that are associated with each individual sale.

On November 18, 2016, then-Secretary of the Interior Sally Jewell submitted to Congress the third and final version of BOEM's oil and gas leasing program for 2017-2022.[8] The Secretary

[1] 43 U.S.C. §§1331-1356b. The leasing program requirements were added in a 1978 amendment (P.L. 95-372; 92 Stat. 629).

[2] 43 U.S.C. §1344. U.S. waters comprise an area referred to as the outer continental shelf, or OCS (43 U.S.C. §1331(a)). The OCS is an area of submerged lands, subsoil, and seabed that lies between the outer seaward reaches of a state's jurisdiction and the outer seaward reaches of U.S. jurisdiction.

[3] The Secretary of the Interior must ensure, "to the maximum extent practicable," that the timing and location of leasing occurs so as to "obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone." 43 U.S.C. §1344(a)(3).

[4] Prior to 2010, the Secretary of the Interior delegated this responsibility to the Minerals Management Service, and then to the Service's successor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). The Bureau of Ocean Energy Management (BOEM), one of three successor agencies to BOEMRE, has had the responsibility since a departmental reorganization in October 2012.

[5] Some areas of the OCS may be unavailable for leasing because of presidential or congressional leasing moratoria or other types of protection.

[6] 43 U.S.C. §1344(d). Congress does not approve or reject the program during the review period, but congressional review may lead to separate legislative action.

[7] 42 U.S.C. §4321. For more information on environmental impact statements, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

[8] BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program*, November 2016, at https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP/, hereinafter cited as "2017-2022 PFP." Along with

issued a record of decision approving the final program on January 17, 2017.[9] The final program was revised from a March 2016 proposed program (PP)[10] and a January 2015 draft proposed program (DPP).[11] The final program scheduled 11 lease sales on the OCS: 10 in the Gulf of Mexico region, 1 in the Alaska region, and none in the Atlantic or Pacific regions. Three sales proposed in earlier versions of the program—one in the Atlantic and two off of Alaska—were not ultimately included in the program. On January 4, 2018, the Trump Administration released a DPP for a five-year program for 2019-2024, which would replace the final years of the Obama Administration program.[12] This DPP proposes a total of 47 lease sales during the five-year period, covering all four OCS regions.

The leasing decisions in BOEM's five-year programs may affect the economy and environment of individual coastal states and of the nation as a whole. Accordingly, Congress has typically been actively involved in the planning process for the five-year programs. Under the OCSLA, Congress's review of BOEM's final program does not include approval or disapproval of the program. However, Members of Congress may influence the program in other ways. Members may convey their views on the Administration's proposals by submitting public comments on draft versions of the program during formal comment periods, and they may evaluate the program in committee oversight hearings. More directly, Members may introduce legislation to set or alter a program's terms. Various Members of Congress pursued all these types of influence with respect to the proposed program for 2017-2022.

The first three sections of this report discuss the history and legal framework for BOEM's five-year leasing programs and outline the agency's development process. Subsequent sections briefly summarize previous programs and analyze the program for 2017-2022. The final section of the report discusses the role of Congress, with a focus on congressional oversight and legislation related to the 2017-2022 program. For a status report on the 2019-2024 program and issues for Congress, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief*.

Historical Background[13]

In 1953, Congress enacted two laws that addressed jurisdiction and rights off the coasts of the United States, including rights to regulation of subsurface oil and natural gas exploration and production. The first of these acts, the Submerged Lands Act,[14] provides that coastal states are generally entitled to an area extending 3 geographical miles[15] from their officially recognized

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the PFP, BOEM released a final programmatic environmental impact statement for the 2017-2022 program. The final program is published under the title "proposed final program," or PFP, because it must be reviewed by Congress and the President and approved by the Secretary of the Interior. Given the approval of the program on January 17, 2017, this report typically refers to the PFP as the "final program," except in citations.

[9] DOI, *Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program*, January 17, 2017, at https://www.boem.gov/2017-2022-Record-of-Decision/.

[10] BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, March 2016, at http://www.boem.gov/2017-2022-Proposed-Program-Decision/, hereinafter referred to as "2017-2022 PP."

[11] BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, January 2015, at http://www.boem.gov/2017-2022-DPP/, hereinafter referred to as "2017-2022 DPP."

[12] BOEM, *2019-2024 National Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, Section 4.3, January 2018, at https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024/ (hereinafter referred to as "2019-2024 DPP").

[13] This section was prepared by Adam Vann, Legislative Attorney.

[14] 43 U.S.C. §§1301 et seq.

[15] The SLA does not further define a "geographical mile," and the phrase is not defined elsewhere in the *U.S. Code*.

coasts (or baselines).[16] The second, the OCSLA, defined the OCS as "all submerged lands lying seaward of" state coastal waters that are subject to the jurisdiction and control of the United States.[17] The OCSLA has as its primary purpose "expeditious and orderly development [of OCS resources], subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs."[18]

As offshore activities expanded in the years following adoption of the OCSLA, Congress sought a means by which to allow for expedited exploration and production in order to achieve national energy goals while also providing for environmental protection, opportunities for state and local governments affected by offshore activity to have their voices heard, and a competitive bidding and leasing process.[19] The product was the Outer Continental Shelf Lands Act Amendments of 1978.[20] This legislation added a number of new provisions to the OCSLA, including Section 18, which mandates the creation and maintenance of an OCS leasing program to "best meet national energy needs for the five-year period following its approval or reapproval."[21] These five-year programs, which include schedules for lease auctions, have provided the framework for OCS oil and gas exploration and production ever since the first one was adopted by DOI in 1980.

Although the 1978 amendments were the last major overhaul to the OCSLA, Congress has taken other actions since that time that have altered the scope of offshore oil and gas exploration and production. The Deep Water Royalty Relief Act of 1995 attempted to encourage exploration and production in deep water by providing relief from otherwise applicable royalty payment requirements for some deepwater oil and natural gas production.[22] The Gulf of Mexico Energy Security Act of 2006 directed the leasing of certain regions of the Gulf of Mexico for oil and gas exploration and production and placed a moratorium on leasing in other regions.[23] It also created a mechanism for sharing revenues from leasing in the region with Gulf states and the Land and Water Conservation Fund.[24] Also, starting in 2008, Congress removed language from annual Interior appropriations legislation that had been in place to bar leasing and related activities in certain OCS regions.[25] These legislative actions helped to shape subsequent five-year programs.

One section of the BOEM regulations notes that 50 "geographic miles" is equal to 92.7 kilometers, which would make a single geographic mile equal to 1.854 kilometers. 30 C.F.R. §551.14(b)(7)(ii). The same section of the BOEM regulations subsequently provides that 3 geographic miles are equal to 5.6 kilometers, which would make a single geographic mile equal to roughly 1.867 kilometers. Ibid at §551.14(d).

The Submerged Lands Act (SLA) also provides for an extended seaward boundary if a state can show such a boundary was provided for by the state's "constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress." 43 U.S.C. §§1301(b), 1312. After enactment of the SLA, the Supreme Court of the United States held that the Gulf coast boundaries of Florida and Texas extend to the 3-marine-league limit (a marine league is 3 nautical miles). Other Gulf coast states were unsuccessful in their challenges. See U.S. v. Louisiana, 363 U.S. 1, 66 (1960), U.S. v. Florida, 363 U.S. 121, 129 (1960).

[16] 43 U.S.C. §1312.

[17] 43 U.S.C. §1331(a).

[18] 43 U.S.C. §1332(3).

[19] P.L. 95-372, §102 (43 U.S.C. §1802).

[20] P.L. 95-372.

[21] 43 U.S.C. §1344(a).

[22] P.L. 104-58.

[23] P.L. 109-432.

[24] Ibid. For more information on the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

[25] For further discussion of this appropriations-based moratorium, see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

Legal Framework[26]

The statutory framework governing BOEM's development of a five-year offshore oil and gas leasing program includes the OCSLA as well as other federal statutes, particularly NEPA and the Coastal Zone Management Act (CZMA).[27]

Outer Continental Shelf Lands Act

Section 18 of the OCSLA provides:

> The Secretary [of the Interior] ... shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this subchapter. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval.[28]

Section 18 further provides that the OCS is to be managed in a manner "which considers economic, social, and environmental values" of the resources of the OCS as well as the potential impact of oil and gas exploration on the marine, coastal, and human environments.[29]

Specifically, Section 18 directs the Secretary to schedule the timing and location of oil and gas exploration and production among the regions of the OCS based on consideration of a variety of factors, including existing geographical, geological, and ecological characteristics of the regions; relative environmental and other natural resource considerations of the regions; the relative interest of oil and natural gas producers in the regions; and the laws, goals, and policies of the states that would be affected by offshore exploration and production in the region. In addition to striking this balance, leasing under the five-year program must also "be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government."[30] The OCSLA also requires that the five-year program include estimates on appropriations and staffing needs.[31]

The OCSLA also imposes a number of consultation requirements. During preparation of the five-year program, the Secretary of the Interior must "invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program."[32] In addition to these mandatory consultation requirements, the Secretary may choose to consult with local government officials in affected states.[33]

Once the Secretary has satisfied these consultation and other requirements and prepared a proposed program, that program must be submitted to the governor of each affected state for further comments at least 60 days prior to publication of the proposed program in the *Federal*

[26] This section was prepared by Adam Vann, Legislative Attorney.

[27] 16 U.S.C. §§1451-1464.

[28] 43 U.S.C. §1344(a).

[29] 43 U.S.C. §1344(a)(1).

[30] 43 U.S.C. §1344(a)(4).

[31] 43 U.S.C. §1344(b).

[32] 43 U.S.C. §1344(c)(1).

[33] Ibid.

Register.[34] The OCSLA also authorizes the Attorney General, in coordination with the Federal Trade Commission, to submit comments regarding potential effects of the proposed program on competition.[35] Subsequently, at least 60 days prior to its approval, the Secretary must submit the proposed program to Congress and the President, along with an explanation as to why any specific recommendation of the Attorney General or a state or local government was not accepted.[36] Once these steps have been completed, the Secretary is free to approve a final five-year program. The OCSLA also authorizes the Secretary to revise the five-year program at any time pursuant to a mandated review, although any revision that is "significant" must go through the process for the initial five-year program described above.[37]

The responsibilities of the Secretary of the Interior with respect to the five-year program under the OCSLA are carried out by BOEM. The regulations applicable to BOEM's preparation of the five-year program include details regarding these consultation requirements. For example, BOEM is required to send letters to governors of affected states requesting that they identify specific laws, goals, and policies that they would like BOEM to consider during preparation of the five-year program.[38] The regulations also outline requirements for publication of the proposed program in the *Federal Register*.

Other Federal Statutes

While the OCSLA and the applicable regulations guide the five-year planning process, other federal statutes also play a role in the program's formation. Two federal statutes that play a prominent role in the preparation of the five-year program are NEPA and the CZMA.

National Environmental Policy Act

Section 102(2)(C) of NEPA requires all federal agencies to prepare a detailed statement of the environmental impact of and alternatives to major federal actions significantly affecting the environment.[39] In many cases the process for compliance with this requirement includes an environmental assessment (EA) that determines whether an action is a major federal action significantly affecting the environment.[40] However, if the agency has determined that the proposed action is a major federal action without conducting an EA, then the agency moves directly to preparing the statement of the environmental impact of and alternatives to the proposed federal action, known as an environmental impact statement (EIS).[41] This is the case with BOEM's five-year programs; the significance of the program's impact on the environment is assumed. Therefore, BOEM prepares a programmatic EIS (PEIS)[42] concurrently with preparation of the five-year program. This process is explained in further detail throughout this report.

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[34] 43 U.S.C. §1344(c)(2).

[35] 43 U.S.C. §1344(d)(1).

[36] 43 U.S.C. §1344(d)(2).

[37] 43 U.S.C. §1344(e).

[38] 30 C.F.R. §556.16(b).

[39] 43 U.S.C. §1332(2)(C). For more information on NEPA, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

[40] 40 C.F.R. §1501.3(a).

[41] Ibid.

[42] A programmatic environmental impact statement (PEIS) evaluates the environmental impact of the federal program in question from a broad regional perspective; more detailed and geographically focused analyses in compliance with

Coastal Zone Management Act[43]

Under the CZMA,[44] states are encouraged to enact coastal zone management plans to coordinate protection of habitats and resources in coastal waters.[45] The CZMA establishes a policy of preservation alongside sustainable use and development compatible with resource protection.[46] State coastal zone management programs that are approved by the Secretary of Commerce are eligible to receive federal monetary and technical assistance. State programs must designate conservation measures and permissible uses for land and water resources[47] and must address various sources of water pollution.[48]

The CZMA also requires that the federal government and federally permitted activities comply with these state programs.[49] To that end, the BOEM regulations governing the five-year program provide that "[i]n development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State."[50] The regulations require BOEM to request information concerning the relationship between a state's coastal zone management program and OCS oil and gas activity from both the governors of affected coastal states and the Secretary of Commerce prior to development of the leasing program.[51]

Five-Year Program Development Process[52]

BOEM's development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment. The drafts are also submitted to state governors and federal agencies and, in later stages, to Congress and the President (see discussion of consultation requirements in the "Legal Framework" section, above). Each step of the process involves additional public comment and environmental review. After the program takes effect, individual lease sales also undergo environmental review and public comment, as do companies' exploration and development plans on leased tracts. **Figure 1** outlines the steps from development of the five-year program to actual oil and gas production in an individual well.

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the requirements of NEPA are also conducted at the planning, leasing, and exploration and development stages.

[43] For additional information on the CZMA, see CRS Report R45460, *Coastal Zone Management Act (CZMA): Overview and Issues for Congress*, by Eva Lipiec.

[44] 16 U.S.C. §§1451-1464.

[45] Coastal U.S. states and territories, including the Great Lakes states, are eligible to receive federal assistance for their coastal zone management programs. Currently, there are 35 approved state and territorial plans. See National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, State and Territory Coastal Management Program Summaries, at https://coast.noaa.gov/czm/mystate/.

[46] 16 U.S.C. §1452(1), (2).

[47] 16 U.S.C. §1455(d)(2), (9)-(12).

[48] 16 U.S.C. §1455(d)(16).

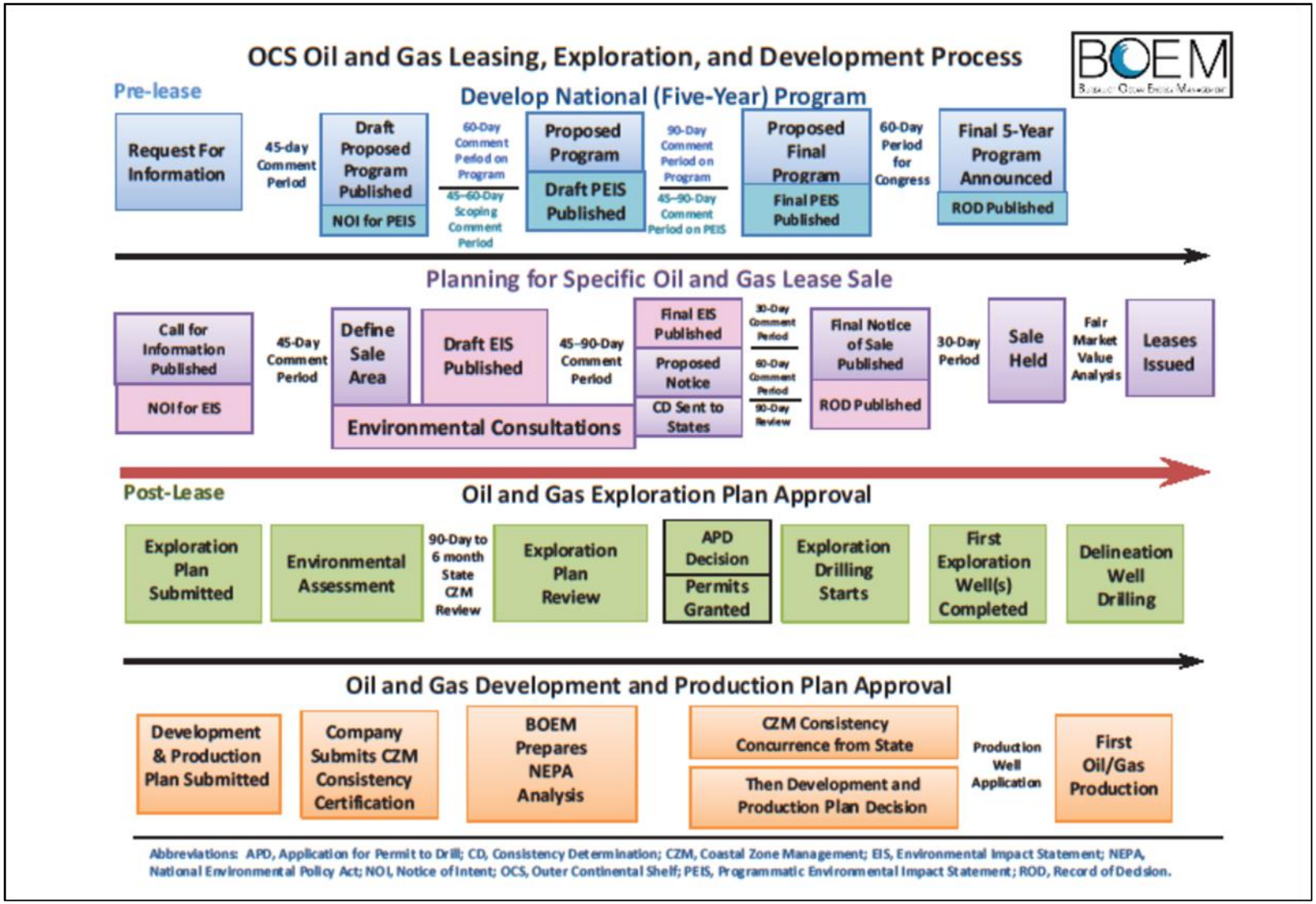
[49] 16 U.S.C. §1456(c).

[50] 30 C.F.R. §556.19.

[51] Ibid.

[52] This section was prepared by Laura Comay, Specialist in Natural Resources Policy.

Figure 1. OCS Oil and Gas Leasing, Exploration, and Development Process



Source: BOEM oil and gas leasing flow chart, at https://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/BOEM-OCS-Oil-and-Gas-Leasing-Process-Diagram.aspx.

Because of the analysis and review undertaken at each stage of drafting the five-year program, the successive drafts represent a winnowing process. The initial draft proposed program (DPP) examines all of the agency's available planning areas for oil and gas leasing,[53] analyzing them according to factors in Section 18 of the OCSLA and considering public input, in order to develop an initial schedule of proposed lease sales. In subsequent versions of the program, BOEM might remove proposed sales on the basis of further analysis, but could not add new sales without reverting to an earlier stage of the process and undertaking new environmental reviews. The steps of the process are discussed in greater detail below.

- **Step 1. Request for Information.** BOEM initiates development of a new five-year program by publishing in the *Federal Register* a request for information (RFI) from interested parties concerning regional and national energy needs for the next five-year period; leasing interests of possible oil and gas producers; environmental concerns; and concerns of state and local governments, tribes, and the public, among other issues. The RFI for the 2017-2022 leasing program was published on June 16, 2014, and was followed by a comment period during which the agency received more than half a million comments.[54]
- **Step 2. Draft Proposed Program/Notice of Intent for PEIS.** BOEM publishes a draft proposed program (DPP), the first of three decision documents leading up to BOEM's eventual final program.[55] The DPP analyzes all OCS planning areas available for leasing, taking into account comments received on the RFI, and identifies a preliminary lease schedule. BOEM published its DPP for 2017-2022 on January 29, 2015, with a comment period that closed on March 30, 2015.[56] BOEM received more than 1 million comments on the DPP.

  When the DPP is published, BOEM also issues a notice of intent (NOI) to publish a programmatic environmental impact statement (PEIS) for the proposed lease areas and seeks public input (through a scoping process) on the issues that should be analyzed in the PEIS. The NOI for the 2017-2022 program was published on January 29, 2015, along with the DPP.[57]
- **Step 3. Proposed Program/Draft PEIS.** After further analyzing the lease sale areas proposed in the DPP according to the required factors in Section 18 of the OCSLA, and taking into account the public comments received on the DPP, BOEM publishes a proposed program (PP). This second version refines the proposed locations and timing for OCS oil and gas lease sales. BOEM submits

[53] BOEM divides the U.S. OCS into 26 planning areas in four regions (the Atlantic, Pacific, Arctic, and Gulf of Mexico regions). The draft proposed program analyzes all of the planning areas except those that are closed to oil and gas leasing activities by congressional or presidential moratoria.

[54] BOEM, "Request for Information and Comments on the 2017-2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program," 79 *Federal Register* 34349, June 16, 2014. A summary of the comments BOEM received is available in the 2017-2022 DPP, Appendix A.

[55] A decision document is one on which the Secretary of the Interior must issue a decision.

[56] BOEM, 2017-2022 DPP, at http://www.boem.gov/2017-2022-DPP/. Also see BOEM, "Notice of Availability (NOA) of and Request for Comments on the Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program from 2017-2022 (DPP)," 80 *Federal Register* 4941, January 29, 2015.

[57] BOEM, "Outer Continental Shelf (OCS), 2017-2022 Oil and Gas Leasing Program," 80 *Federal Register* 4939. Public scoping meetings were announced for Alaska, Virginia, Maryland, North Carolina, South Carolina, Florida, Texas, Louisiana, Alabama, and Washington, DC. Additional public scoping meetings were later planned for New Jersey and Georgia (BOEM, "Outer Continental Shelf (OCS), 2017-2022 Oil and Gas Leasing Program," 80 *Federal Register* 12204, March 6, 2015).

the PP to Congress, state governors, and relevant federal agencies and also solicits public comment on the program. BOEM published the PP for 2017-2022 on March 15, 2016, with a comment period that closed on June 16, 2016.[58]

The PP is accompanied by a draft PEIS analyzing the OCS areas that were identified for leasing at the DPP stage. The comment period for the 2017-2022 draft PEIS closed on May 2, 2016.[59]

- **Step 4. Proposed Final Program/Final PEIS.** The final document published by BOEM is the PFP, which is based on additional analysis of the factors in Section 18 of the OCSLA, along with analysis of the public comments received on the PP. The PFP is announced in the *Federal Register* and submitted to the President and Congress for a period of at least 60 days. Although Congress does not have an approval role for the PFP, the 60-day review period could allow for legislation to be introduced that would influence the outcome of the program. BOEM published the PFP for 2017-2022 on November 18, 2016.[60]

  Along with the PFP, BOEM publishes a final PEIS that concludes the analysis of the areas proposed for leasing. The final PEIS is submitted to the President and Congress along with the PFP. BOEM released the final PEIS for the 2017-2022 program on November 18, 2016.[61]

- **Step 5. Approval of PFP by Secretary of the Interior.** At least 60 days after the PFP is submitted to the President and Congress, the Secretary of the Interior may approve the PFP, which then becomes final. The Secretary publishes a record of decision for the final program. Former Secretary of the Interior Sally Jewell issued a record of decision approving the final program for 2017-2022 on January 17, 2017.[62]

Five-Year Programs Submitted in Earlier Years[63]

Since 1980, nine distinct five-year programs and a revised version of one program have been submitted to Congress. Following the 60-day review period required by the OCSLA, each of these five-year programs has taken effect as an approved program. This section briefly discusses the previous submissions, dating back to 1980, as shown in **Table 1**.

[58] 2017-2022 PP, at http://www.boem.gov/2017-2022-Proposed-Program-Decision/.

[59] BOEM, "Outer Continental Shelf Oil and Gas Leasing Program, 2017-2022: Draft Programmatic Environmental Impact Statement," March 2016, at http://boemoceaninfo.com/u/dpeis/dpeis_volume_I.pdf, hereinafter referred to as 2017-2022 Draft PEIS. BOEM published a notice of availability of the PEIS in the *Federal Register* (BOEM, "Draft Programmatic Environmental Impact Statement for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program: 2017-2022," 81 *Federal Register* 14885, March 18, 2016, at http://www.boem.gov/81-FR-14885/).

[60] 2017-2022 PFP, at https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP/. Also see BOEM, "Notice of Availability of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program," 81 *Federal Register* 84612, November 23, 2016, at https://www.gpo.gov/fdsys/pkg/FR-2016-11-23/pdf/2016-28296.pdf.

[61] BOEM, *Outer Continental Shelf Oil and Gas Leasing Program, 2017-2022: Final Programmatic Environmental Impact Statement*, March 2016, at http://boemoceaninfo.com/fpeis/; hereinafter referred to as 2017-2022 Final PEIS.

[62] DOI, *Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program*, January 17, 2017, at https://www.boem.gov/2017-2022-Record-of-Decision/.

[63] This section was prepared by Laura Comay, Specialist in Natural Resources Policy, and Marc Humphries, Specialist in Energy Policy.

Table 1. OCSLA Five-Year Programs Submitted to Congress Since 1980

Years	Administration Submitting Plan	Congress	Number of Sales Listed in Submission	Number of Sales Held	Approximate Acres Leased (in millions)[a]
2017-2022	Obama	114th	11	4 (through July 2019)	3.3[b] (through July 2019)
2012-2017	Obama	112th	15	13	7.4
2007-2012[c]	Obama / G. W. Bush[c]	111th / 110th	16 / 21[c]	11	21.7
2002-2007	G. W. Bush	107th	20	15	20.5
1997-2002	Clinton	105th	16	12	22.9
1992-1997	G. H. W. Bush	102nd	18	12	22.6
1987-1992	Reagan	100th	42	17	24.7
1982-1987	Reagan	97th	41	23	21.0
1980-1982[d]	Carter	96th	36	12	4.1

Source: CRS.

a. Acreage leased is shown in BOEM, OCS Lease Sale Statistics, "All Lease Offerings," at http://www.boem.gov/OCS-Lease-Sale-Statistics-All-Lease-Offerings/.

b. The acreage total reflects *acres leased* for three of the sales (lease sales 249, 250, and 251) but *acres bid on* for one sale (lease sale 252), because acres leased were not yet available. Not all acres bid on are necessarily leased.

c. The George W. Bush Administration developed the original program for 2007-2012 and submitted it to the 110th Congress with a lease schedule containing 21 sales. Following a court order in 2009, DOI revised the program under the Obama Administration and resubmitted it to the 111th Congress with a revised lease schedule containing 16 sales.

d. This program was originally referred to as the Comprehensive Program 1980-1985, but the covered years were changed to 1980-1982 due mainly to judicial activity. *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

The five-year programs have reflected the offshore oil and gas leasing policies of different presidential administrations, along with input from states, Members of Congress, and other stakeholders.

- **2017-2022 Program.** The 2017-2022 program was prepared and submitted to Congress by the Obama Administration. The program included 11 lease sales: 10 region-wide sales in the Gulf of Mexico and 1 sale in Alaska's Cook Inlet. As of early August 2019, 4 sales had been held.
- **2012-2017 Program.** The 2012-2017 program was prepared and submitted to Congress by the Obama Administration.[64] The program reflected the Administration's policies on offshore energy development in the aftermath of the *Deepwater Horizon* oil spill and subsequent management reforms.[65] The

[64] BOEM, *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017*, June 2012, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/2012-2017_Five_Year_Program/PFP%2012-17.pdf.

[65] The *Deepwater Horizon* events resulted in 11 worker fatalities, a massive oil release, and a national response effort in the Gulf of Mexico led by the federal government. Based on estimates from the U.S. Geological Survey, the oil spill was the largest in U.S. waters. For more information, see CRS Report R42942, *Deepwater Horizon Oil Spill: Recent*

submission consisted of 15 lease sales, including 12 sales in the Gulf of Mexico and 3 sales in the Alaska region. Two of the three Alaska sales were later canceled; 13 lease sales were held.[66]

- **2007-2012 Program.**[67] The George W. Bush Administration prepared and submitted the 2007-2012 five-year program to Congress. The program went into effect in July 2007 with a schedule of 21 sales. DOI subsequently revised the schedule in accordance with a 2009 court order.[68] The Obama Administration resubmitted the program to Congress in 2010, replacing the original lease sale schedule with a schedule consisting of 16 sales.[69] Eleven of the 16 sales were held. This five-year program expired in June 2012.
- **2002-2007 Program.** The 2002-2007 OCS oil and gas leasing plan was submitted to Congress in 2002 under the George W. Bush Administration.[70] The proposal consisted of a schedule of 20 lease sales, 15 of which were held before the program expired in June 2007.
- **1997-2002 Program.** The five-year program for the 1997-2002 period was submitted to Congress in 1996 under the Clinton Administration.[71] The submission listed 16 sales, 12 of which were held before the program expired in June 2002.
- **1992-1997 Program.** The five-year program for the 1992-1997 period was presented to Congress in 1992 under the George H. W. Bush Administration.[72] A schedule of 18 sales was submitted. Twelve sales were held before the program expired in June 1997.

Activities and Ongoing Developments, by Jonathan L. Ramseur.

[66] DOI, "Interior Department Cancels Arctic Offshore Lease Sales," press release, October 6, 2015, at https://www.doi.gov/pressreleases/interior-department-cancels-arctic-offshore-lease-sales.

[67] During the 2007-2012 time frame, the George W. Bush Administration initiated an effort, beginning in August 2008, to modify the then-current five-year leasing program. The Administration published a DPP for 2010-2015 based on President Bush's lifting of the oil and gas leasing moratoria on areas in the Atlantic and Pacific planning areas. The 2010-2015 leasing program would have held 31 lease sales, including two in the Eastern Gulf of Mexico that would have required Congress to lift existing leasing restrictions under the Gulf of Mexico Energy Security Act of 2006 (P.L. 109-432). The DPP was published on January 21, 2009, but the time period was shifted by the Obama Administration from 2010-2015 to 2012-2017, and the 2012-2017 final program contained only 15 lease sales, as discussed above.

[68] Center for Biological Diversity, et al. v. Department of the Interior, 563 F.3d 466 (D.C. Cir. 2009).

[69] BOEMRE, *Revised Program, Outer Continental Shelf Oil and Gas Leasing Program, 2007-2012*, December 2010, at http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/RP-pdf.aspx. See also DOI history of related litigation, available at http://www.boem.gov/5-year/2007-2012FiveYearProgram.htm.

[70] Minerals Management Service, *Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 2002-2007*, April 2002, at http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/Proposed-Final-Program-pdf.aspx.

[71] Minerals Management Service, *Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 1997 to 2002*, August 1996, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2097-02.pdf. 59 *Federal Register* 59328 (November 16, 1996).

[72] Minerals Management Service, *Proposed Final Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management: Program, 1992-1997*, April 1992, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2092-97.pdf. 57 *Federal Register* 19308 (May 5, 1992).

- **1987-1992 Program.** This five-year program was presented to Congress in 1987 under the Reagan Administration.[73] The approved lease sale schedule contained 42 sales, 17 of which were held before the program expired in June 1992.
- **1982-1987 Program.** This submission was presented to Congress in 1982 under the Reagan Administration.[74] The plan consisted of 41 sales, 23 of which were held before the program expired in June 1987.
- **1980-1982 Program.** The original Section 18 submission for domestic oil and gas leasing was envisioned during the passage of the 1978 Amendments to the OCSLA and was prepared starting in October 1978.[75] The program was presented to Congress in April 1980, consistent with President Carter's "Energy Message" of April 5, 1979.[76] The proposal took effect as an approved plan in June 1980. Under this plan, DOI proposed 36 sales, 12 of which were held.
- **Lease Sales Held Prior to 1980.** The domestic program for oil and gas leasing prior to 1980 encompassed almost 30 years of federal government lease sales conveying more than 3,000 tracts from October 1954 through September 1980.

Five-Year Program for 2017-2022

The final version of BOEM's offshore oil and gas leasing program for 2017-2022 was approved in January 2017.[77] It scheduled 11 lease sales in particular *regions* and *planning areas* of the OCS. BOEM identifies four OCS regions—the Gulf of Mexico region, the Alaska region, the Atlantic region, and the Pacific region—comprising a total of 26 planning areas (see **Figure 2** and **Figure 3**). The 2017-2022 final program schedules lease sales in two of these regions (Gulf of Mexico and Alaska). The sections below discuss BOEM's decisions for each region—and the market conditions, resource estimates, and other factors affecting the proposals—in greater detail.

Market Conditions Affecting the 2017-2022 Program[78]

During development of the 2017-2022 program, U.S. offshore crude oil production was declining in absolute terms and as a percentage of total U.S. production. Offshore production volumes declined by about 12% between 2010 and 2015, whereas U.S. total crude oil production increased by about 73% over 2010 levels.[79] Offshore natural gas production also fell—by nearly 50%—

[73] Minerals Management Service, *Outer Continental Shelf Oil and Gas: 5-Year Leasing Program, Mid-1987 to Mid-1992*, April 1987, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2087-92.pdf. 50 *Federal Register* 11585-11595 (March 22, 1985).

[74] DOI, *Tentative Proposed Final 5-Year OCS Leasing Program (1982-1987)*, March 1982, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2082-87.pdf.

[75] This program was originally referred to as the Comprehensive Program 1980-1985. It was later renamed the Comprehensive Program 1980-1982. *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

[76] See DOI, *5-Year OCS Program*, at http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2080-82.pdf.

[77] 2017-2022 PFP, available at https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP/. See the section of this report titled "Five-Year Program Development Process" for more information on the publication process.

[78] This section was prepared by Marc Humphries, Specialist in Energy Policy.

[79] EIA, *Monthly Energy Review*, February 2016, p. 49, at https://www.eia.gov/totalenergy/data/monthly/archive/00351602.pdf; and EIA, *Monthly Energy Review*, February 2011, p. 37, at https://www.eia.gov/totalenergy/data/monthly/archive/00351102.pdf.

between 2010 and 2015,[80] while during the same period, U.S. total annual natural gas production rose by more than 30%.[81] The surge in total U.S. crude oil and natural gas production was the result of increased production of shale gas and shale oil in several unconventional onshore formations throughout the United States (e.g., Marcellus, Bakken, Permian Basin, and Eagle Ford). The onshore shale oil plays have lower production costs than the deepwater plays being explored and developed offshore. A low oil and natural gas price environment during the period of the program's development also contributed to softer demand for the acquisition of new offshore leases. Numbers of active and producing offshore leases declined between 2010 and 2015, and the Energy Information Administration (EIA) anticipated lower domestic investment in oil and gas projects over the 2015-2020 period.[82]

Nonetheless, offshore oil and gas production was projected to continue to make a significant contribution to the U.S energy supply picture. Despite the trend of production decline offshore in the early part of the decade, the EIA anticipated that offshore crude oil production in the Gulf of Mexico would recover to record levels in 2017, because of a number of deepwater oil projects expected to come online based on earlier discoveries.[83] BOEM stated in the 2017-2022 PP that "energy diversification, including continued oil and natural gas production in the GOM [Gulf of Mexico], the primary OCS region currently available for energy production and development activities, remains vital ... and new production from other OCS regions can also contribute to meeting the country's energy needs."[84]

Offshore Resource Estimates for the 2017-2022 Program[85]

Oil and gas exploration and production proceed in stages, during which added data provide growing certainty about the volume of resources present. Prior to discovery by drilling wells, estimated volumes of oil and gas are termed *undiscovered resources*. When oil or gas is discovered, the volumes are measured within pools or fields via well penetration or other technology, and are called *reserves*. Well owners report measured reserves to the Securities and Exchange Commission.[86] Reserves have been reported for U.S. OCS areas that have been developed, such as the Central and Western Gulf of Mexico and some parts of the California coast, but no reserves of oil or gas have been reported along the Atlantic OCS, because there have been no discoveries. Only modest oil reserves have been reported on the Alaska OCS. Altogether, BOEM estimates that the U.S. OCS has 4.1 billion barrels of proven oil reserves and 6.7 trillion cubic feet (Tcf) of dry gas, nearly all of which are located in the Central and Western Gulf of Mexico.[87]

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[80] ONRR, "Production Data," at http://www.onrr.gov/About/production-data.htm.

[81] EIA, *Monthly Energy Review*, February 2016, p. 83, at https://www.eia.gov/totalenergy/data/monthly/archive/00351602.pdf.

[82] BOEM, "Combined Leasing Status Reports," at https://www.boem.gov/Combined-Leasing-Report/. EIA, *Today in Energy*, September 24, 2015, at http://www.eia.gov/todayinenergy/detail.cfm?id=23072.

[83] EIA, *Today in Energy*, February 18, 2016, at http://www.eia.gov/todayinenergy/detail.cfm?id=25012.

[84] 2017-2022 PP, p. 1-4.

[85] This section was prepared by Marc Humphries, Specialist in Energy Policy.

[86] For a glossary of oil and gas reporting terms, see Securities and Exchange Commission, "Modernization of the Oil and Gas Reporting Requirements," 17 C.F.R. Parts 210, 229, and 249 (Release Nos. 33-8935; 34-58030; File No. S7-15-08), RIN 3235-AK00.

[87] BOEM, Estimated Oil and Gas Reserves, Gulf of Mexico, Pacific OCS Regions, as of December 31, 2017.

According to BOEM, the U.S. OCS contains estimated *undiscovered technically recoverable resources* (UTRR) of 89.9 billion barrels of oil (Bbo) and 327.5 Tcf of natural gas (see **Table 2**).[88] The Gulf of Mexico contains about 54% of the UTRR for oil and an estimated 43% of the natural gas, with the vast majority of the resources in the Central Gulf of Mexico. About 90% of Alaska's UTRR estimates for oil and 80% for natural gas are contained in the Chukchi and Beaufort Seas. In preparing its five-year programs under the OCSLA, BOEM must consider the resource potential of individual OCS regions and planning areas along with other factors, such as potential environmental and socioeconomic impacts of oil and gas leasing.

Table 2. Oil and Gas Resource Estimates for the U.S. OCS, 2016
(undiscovered technically recoverable resources)

OCS Region	Oil (Bbo)	Natural Gas (Tcf)
Alaska	26.61	131.45
Atlantic	4.59	38.17
Gulf of Mexico	48.46	141.76
Pacific	10.20	16.10
Total	**89.87**	**327.49**

Source: BOEM, "Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf, 2016," Fact Sheet, at http://www.boem.gov/National-Assessment-2016/. For a discussion of undiscovered technically recoverable resources, see footnote 88.
Notes: OCS = outer continental shelf; Bbo = billion barrels of oil; Tcf = trillion cubic feet. BOEM has not updated its estimates since 2016.

Moratoria and Withdrawals Affecting the 2017-2022 Program[89]

Some portions of the U.S. OCS were not available for leasing consideration in the 2017-2022 five-year program because U.S. presidents had withdrawn them from consideration,[90] Congress had placed a moratorium on leasing in the areas, or the areas had a protected status that does not allow for oil and gas leasing. These unavailable areas, which BOEM did not consider for the 2017-2022 program, included the following.

- **Areas in the Eastern and Central Gulf of Mexico.** The Gulf of Mexico Energy Security Act of 2006 (GOMESA) placed a moratorium on oil and gas leasing in almost all of the Gulf's Eastern planning area and a small portion of its Central planning area through 2022.[91]

[88] BOEM, "Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf, 2016," Fact Sheet, at http://www.boem.gov/National-Assessment-2016/. BOEM defines undiscovered technically recoverable resources (UTRR) as "oil and gas that may be produced as a consequence of natural pressure, artificial lift, pressure maintenance, or other secondary recovery methods, but without any consideration of economic viability." By contrast, *undiscovered economically recoverable resources* (UERR) are defined as "the portion of the undiscovered technically recoverable resources that is economically recoverable under imposed economic and technologic conditions." Estimations of UERR will differ under different economic scenarios.

[89] This section was prepared by Laura Comay, Specialist in Natural Resources Policy.

[90] Under the OCSLA (43 U.S.C. §1341(a)), the President may, "from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf," meaning that BOEM cannot conduct new oil and gas lease sales in those areas. The withdrawals do not affect valid existing rights under previously existing leases. Presidential withdrawals may be for a specified or an indefinite time period.

[91] P.L. 109-432. See BOEM, "Gulf of Mexico Energy Security Act (GOMESA)," at http://www.boem.gov/Revenue-Sharing/. Specifically, the law bans oil and gas leasing in that portion of the Eastern Gulf of Mexico planning area

- **Alaska Withdrawal Areas.** President Obama withdrew from disposition for leasing certain ocean areas in the Alaska region. Alaska withdrawals that affected the 2017-2022 program included those for the North Aleutian Basin planning area, the Hanna Shoal portion of the Chukchi Sea planning area, and the Barrow and Kaktovik whaling areas in the Beaufort Sea.[92] In December 2016, after BOEM's publication of the final program, President Obama made additional Arctic withdrawals under the OCSLA,[93] but these did not directly affect the 2017-2022 program, because none of the withdrawn areas overlapped with areas that BOEM had scheduled for leasing in the final program.[94]
- **National Marine Sanctuaries and Marine Monuments.** National marine sanctuaries designated by the Secretary of Commerce, as well as national marine monuments established by U.S. presidents, are withdrawn from future oil and gas leasing activities.[95] Such protected areas have been designated in parts of the Atlantic Ocean, the Pacific Ocean, and the Gulf of Mexico.

Proposed Leasing Schedule by Region

On the basis of its regional analyses, BOEM included in the final program a total of 11 lease sales, all of which take place in either the Gulf of Mexico region or the Alaska region (**Figure 2**, **Figure 3**, and **Table 3**). No lease sales were scheduled for the other two regions of the OCS, the Atlantic region and the Pacific region. An Atlantic lease sale and two Alaska lease sales proposed

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within 125 miles of the coast of Florida, all areas in the Gulf of Mexico east of a prescribed "Military Mission Line," and in the part of the Central Gulf of Mexico planning area that is within 100 miles of Florida, through June 30, 2022.

[92] Presidential Memoranda, "Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," December 16, 2014, at http://www.whitehouse.gov/the-press-office/2014/12/16/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con; and "Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition," January 27, 2015, at http://www.whitehouse.gov/the-press-office/2015/01/27/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con.

[93] The President withdrew much of the U.S. Arctic from leasing disposition for an indefinite time period, including the entire Chukchi Sea planning area, almost all of the Beaufort Sea planning area, and planning areas in the North Bering Sea. The President also withdrew from leasing consideration certain areas of the Atlantic Ocean associated with major canyons and canyon complexes. Presidential Memorandum, "Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf from Mineral Leasing," December 20, 2016, at https://www.whitehouse.gov/the-press-office/2016/12/20/presidential-memorandum-withdrawal-certain-portions-united-states-arctic. Earlier, President Obama had indefinitely withdrawn from leasing disposition certain smaller areas in the Beaufort and Chukchi Seas, including the Hanna Shoal region of the Chukchi Sea and other areas. Presidential Memorandum, "Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition," January 27, 2015, at http://www.whitehouse.gov/the-press-office/2015/01/27/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con. For the North Bering Sea withdrawals, see Executive Order 13754, "North Bering Sea Climate Resilience," December 9, 2016, at https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-30277.pdf. Presidential Memorandum, "Withdrawal of Certain Areas Off the Atlantic Coast on the Outer Continental Shelf from Mineral Leasing," December 20, 2016, at https://www.whitehouse.gov/the-press-office/2016/12/20/presidential-memorandum-withdrawal-certain-areas-atlantic-coast-outer.

[94] An April 2017 executive order by President Trump (Executive Order 13795, "Implementing an America-First Offshore Energy Strategy," April 28, 2017, 82 *Fed. Reg.* 20815) effectively revoked President Obama's withdrawals, and portions of the withdrawn areas were included in BOEM's draft proposed program (DPP) for 2019-2024. However, in March 2019, the U.S. District Court for the District of Alaska vacated this portion of the executive order and ruled that President Obama's withdrawals remained in force (League of Conservation Voters v. Trump, 363 F.Supp.3d 1013 (D.Alaska 2019)). For discussion of the issue, see CRS Legal Sidebar WSLG1799, *Trump's Executive Order on Offshore Energy: Can a Withdrawal be Withdrawn?*, by Adam Vann.

[95] For more information, see CRS Report RL32154, *Marine Protected Areas: An Overview*, by Harold F. Upton. For a list of national marine sanctuaries, see http://sanctuaries.noaa.gov/. For a list of presidentially proclaimed national monuments, including marine monuments, see https://www.nps.gov/archeology/sites/antiquities/MonumentsList.htm.

in earlier versions of the program were not ultimately included. BOEM stated that, altogether, the program makes available for leasing almost half of the undiscovered technically recoverable oil and gas resources on the U.S. OCS.[96]

[96] 2017-2022 PFP, p. S-2. Although these resources are estimated to be *technically* recoverable, not all of them may be *economically* viable to recover (see footnote 88). The final program estimates a range of resources that would be economically recoverable under various oil and gas price points and cost conditions.

Figure 2. BOEM's OCS Regions and Planning Areas, Lower 48 States

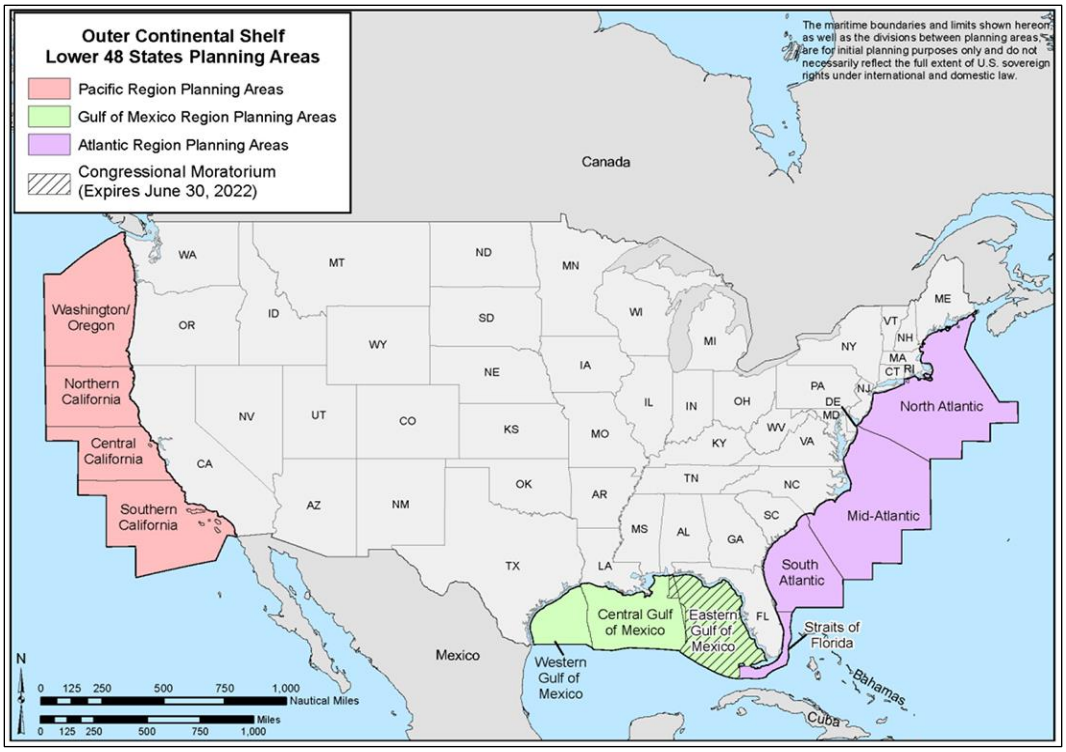
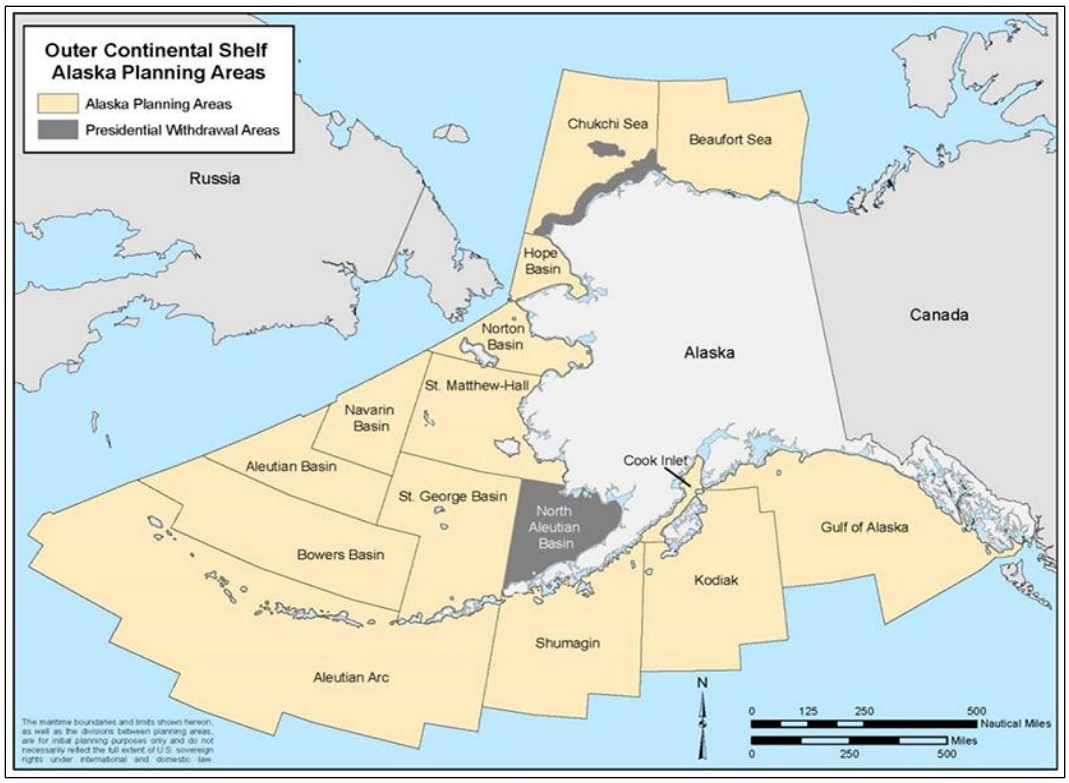


Figure 3. BOEM's OCS Alaska Region and Planning Areas



Source: Both figures are from BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, March 2016, p. 1-2, at http://www.boem.gov/2017-2022-Proposed-Program-Decision/.

Table 3. BOEM's Lease Sale Schedule in the 2017-2022 Final Program

	Year	Program Area	Sale Number[a]
1.	2017	Gulf of Mexico	249
2.	2018	Gulf of Mexico	250
3.	2018	Gulf of Mexico	251
4.	2019	Gulf of Mexico	252
5.	2019	Gulf of Mexico	253
6.	2020	Gulf of Mexico	254
7.	2020	Gulf of Mexico	256
8.	2021	Gulf of Mexico	257
9.	2021	Alaska - Cook Inlet	258
10.	2021	Gulf of Mexico	259
11.	2022	Gulf of Mexico	261

Source: 2017-2022 PFP, p. S-3.

a. Sales in a BOEM lease sale schedule may not be listed in numeric sequence for various reasons. For example, some sales may be carried over from previous plans, and sales proposed in previous versions of a plan may be removed.

Gulf of Mexico Region: Ten Lease Sales

The Gulf of Mexico is the most mature BOEM region, with "the most abundant proven and estimated oil and gas resources, broad industry interest, and well-developed infrastructure."[97] The region accounts for about 97% of all U.S. offshore and gas production.[98] Also, the Central and Western Gulf states (Louisiana, Texas, Mississippi, and Alabama) are supportive of offshore oil and gas activities. For all these reasons, the majority of the lease sales in the 2017-2022 program, as in previous programs, were scheduled in the Gulf region (10 of 11 proposed sales).[99]

The region includes three BOEM planning areas: the Western Gulf, the Central Gulf, and the Eastern Gulf (see **Figure 4**). Almost all of the Eastern Gulf and a small portion of the Central Gulf are closed to oil and gas leasing by the congressional moratorium imposed under GOMESA (see "Moratoria and Withdrawals Affecting the 2017-2022 Program," above). In earlier five-year programs, BOEM and its predecessor agencies scheduled separate sales in each of the three Gulf planning areas. For the 2017-2022 program, BOEM replaced these area-specific sales with region-wide sales that offer all available lease blocks in the Gulf in each sale. BOEM stated that the change was intended "to provide greater flexibility to industry, including more frequent opportunities to bid on rejected, relinquished, or expired OCS lease blocks, as well as facilitating better planning to explore resources that may straddle the U.S.-Mexico boundary."[100]

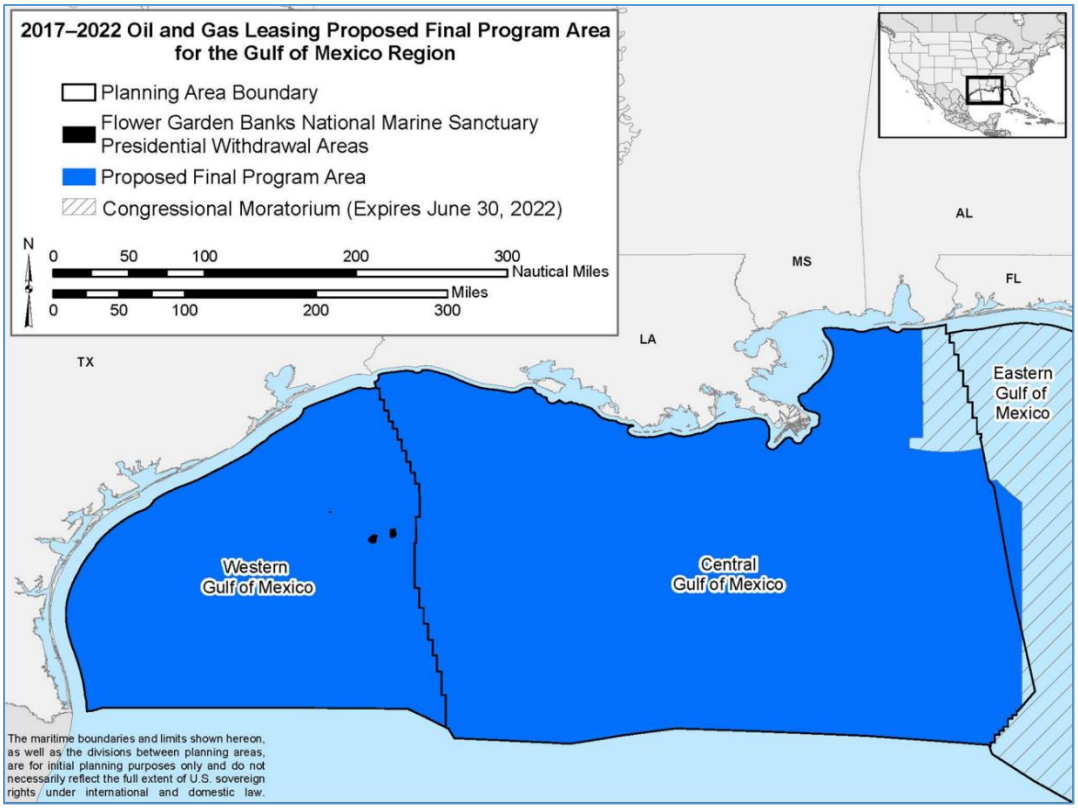
[97] 2017-2022 PP, p. S3.

[98] BOEM, "Gulf of Mexico OCS Region," at http://www.boem.gov/Gulf-of-Mexico-Region/.

[99] Under the provisions of GOMESA, revenues from the federal offshore oil and gas lease sales in the Gulf are shared with the four Gulf producing states for coastal conservation, restoration, and hurricane protection. For more information, see CRS Report R43891, *Mineral Royalties on Federal Lands: Issues for Congress*, by Marc Humphries; and BOEM, "Gulf of Mexico Energy Security Act (GOMESA)," at http://www.boem.gov/Revenue-Sharing/.

[100] 2017-2022 PFP, p. S-5. BOEM stated that if circumstances warrant, it could scale back any individual lease sale to focus on a specific planning area, similar to the traditional sales.

Figure 4. BOEM's Final Program Area for Offshore Oil and Gas Leasing in the Gulf of Mexico



Source: BOEM, 2017-2022 PP, "Maps," at http://www.boem.gov/Gulf-of-Mexico-Region-Program-Area/.

The final program scheduled fewer lease sales in the Gulf—and fewer lease sales generally—than were contained in previous five-year programs (see **Table 1**). For example, the five-year program for 2012-2017 included 12 sales in the Gulf, and the revised program for 2007-2012 also contained 12 Gulf sales. Some Members of Congress expressed concerns about the lower number of lease sales during congressional hearings on the 2017-2022 program.[101] BOEM attributed the decrease to the consolidation of area-specific sales in the Gulf. With all available Gulf blocks offered at each sale, BOEM stated, each individual planning area is made available more times, even though the overall number of lease sales has decreased.[102]

Alaska Region: One Lease Sale

Interest in exploring for offshore oil and gas in the Alaska region of the U.S. OCS has grown as the region sees decreases in the areal extent of summer polar ice, allowing for a longer drilling season. Recent estimates of substantial undiscovered oil and gas resources in Arctic waters have

[101] See, e.g., House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, hearing, "Examining the Future Impacts of President Obama's Offshore Energy Plan," April 15, 2015, at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94270/pdf/CHRG-114hhrg94270.pdf, hereinafter referred to as 2015 House Offshore Energy Plan hearing. Also see the hearing memo (available at http://naturalresources.house.gov/uploadedfiles/hrgmemoemr4_15.pdf), which stated: "The draft plan we examine this week has the lowest number of lease sales in the history of the planning process and does very little to expand access to our nation's OCS resources."

[102] 2015 House Offshore Energy Plan hearing, p. 22.

also contributed to the increased interest.[103] However, the region's severe weather and perennial sea ice, and its lack of infrastructure to extract and transport offshore oil and gas, continue to pose challenges to new exploration. Among 15 BOEM planning areas in the region, the Beaufort and Chukchi Seas are the only two areas with existing federal leases, and only the Beaufort Sea has any producing wells in federal waters (from a joint federal-state unit). Stakeholders including the State of Alaska, as well as some Members of Congress, seek to expand offshore oil and gas activities in the region. Other Members of Congress as well as some environmental groups oppose offshore oil and gas drilling in the Arctic, due to concerns about potential oil spills and about the possible contributions of these activities to climate change.

The Obama Administration at times expressed support for expanding offshore oil and gas exploration in the Arctic, while also pursuing safety regulations that aim to minimize the potential for oil spills.[104] In the five-year program for the period 2012-2017, BOEM included lease sales in three planning areas of the Alaska region: the Beaufort Sea, the Chukchi Sea, and Cook Inlet. However, in October 2015 BOEM canceled its scheduled Chukchi and Beaufort Sea lease sales for 2016 and 2017, citing difficult market conditions and low industry interest.[105]

BOEM's earlier program drafts for 2017-2022 also included three Alaska lease sales—again, one each in the Beaufort Sea, Chukchi Sea, and Cook Inlet planning areas. However, for the final program, BOEM removed the sales for the Beaufort and Chukchi Seas, and retained only the sale for Cook Inlet (see **Figure 5**). BOEM stated that it weighed factors that favored sales in the Beaufort and Chukchi planning areas, including the significant hydrocarbon resources in those waters and the support of the State of Alaska for the sales. Nonetheless, BOEM ultimately decided against the sales based on other factors, including "opportunities for exploration and development on [already] existing leases, the unique nature of the Arctic ecosystem, recent demonstration of constrained industry interest in undertaking the financial risks that Arctic exploration and development present, current market conditions, and sufficient existing domestic energy sources already online or newly accessible."[106]

BOEM noted evidence of a declining industry interest in the Arctic OCS, in the face of low oil prices and Shell Oil Company's disappointing exploratory drilling effort in the Chukchi Sea in 2015.[107] The agency stated that the number of active leases on the Arctic OCS declined by more than 90% between February 2016 and November 2016, as companies relinquished leases they had acquired in previous years rather than incurring the costs of continued investment.[108] Additionally, BOEM concluded that, because of the current overall strength of the domestic energy supply, the two Arctic lease sales were not immediately needed to satisfy U.S. energy needs.[109]

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[103] For more information, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke, section on "Oil, Gas, and Mineral Exploration."

[104] DOI, "Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," final rule, 81 *Federal Register* 46477, July 15, 2016.

[105] DOI, "Interior Department Cancels Arctic Offshore Lease Sales," press release, October 16, 2015, at https://www.doi.gov/pressreleases/interior-department-cancels-arctic-offshore-lease-sales.

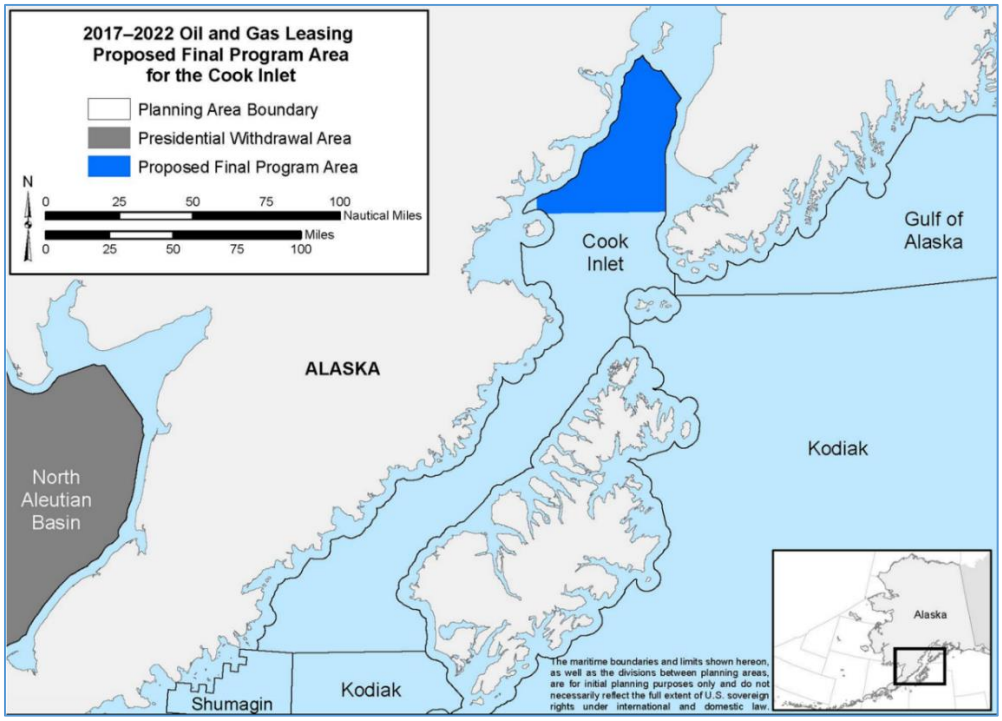
[106] 2017-2022 PFP, p. S-3.

[107] 2017-2022 PFP, p. S-7. Shell began exploratory drilling in summer 2015 but announced in late September 2015 that it would cease further exploration activity in offshore Alaska for the foreseeable future. Shell cited several reasons for the decision, including insufficient indications of oil and gas at its Burger J well, the high costs associated with the project, and the "challenging and unpredictable" federal regulatory environment for offshore Alaska. Royal Dutch Shell, PLC, "Shell Updates on Alaska Exploration," press release, September 28, 2015, at http://www.shell.com/global/aboutshell/media/news-and-media-releases/2015/shell-updates-on-alaska-exploration.html.

[108] 2017-2022 PFP, p. S-7.

[109] 2017-2022 PFP, p. S-7. BOEM estimated that "without the Arctic OCS lease sales, cumulative U.S. oil and gas

Figure 5. BOEM's Final Program Area for Offshore Oil and Gas Leasing in Alaska



Source: BOEM, 2017-2022 PP, "Maps," at http://www.boem.gov/Alaska-Program-Areas/.

Subsequent to BOEM's publication of the final program, President Obama withdrew large portions of the Arctic OCS from future leasing consideration for an indefinite time period.[110] The withdrawn areas did not overlap with BOEM's scheduled Alaska lease sale.

Atlantic Region: No Lease Sales

The final program for 2017-2022 excluded a lease sale in the Atlantic region that had been proposed in the DPP version of the program. If conducted, it would have been the first offshore oil and gas lease sale in the Atlantic since 1983. The lack of oil and gas activity in the Atlantic region in the past 30 years was due in part to congressional bans on Atlantic leasing imposed in annual Interior appropriations acts from FY1983 to FY2008, along with presidential moratoria on offshore leasing in the region during those years. Starting with FY2009, Congress no longer included an Atlantic leasing moratorium in annual appropriations acts. In 2008, President George W. Bush also removed the long-standing administrative withdrawal for the region.[111] These changes meant that lease sales could now potentially be conducted for the Atlantic. However, no Atlantic lease sale has taken place in the intervening years.[112]

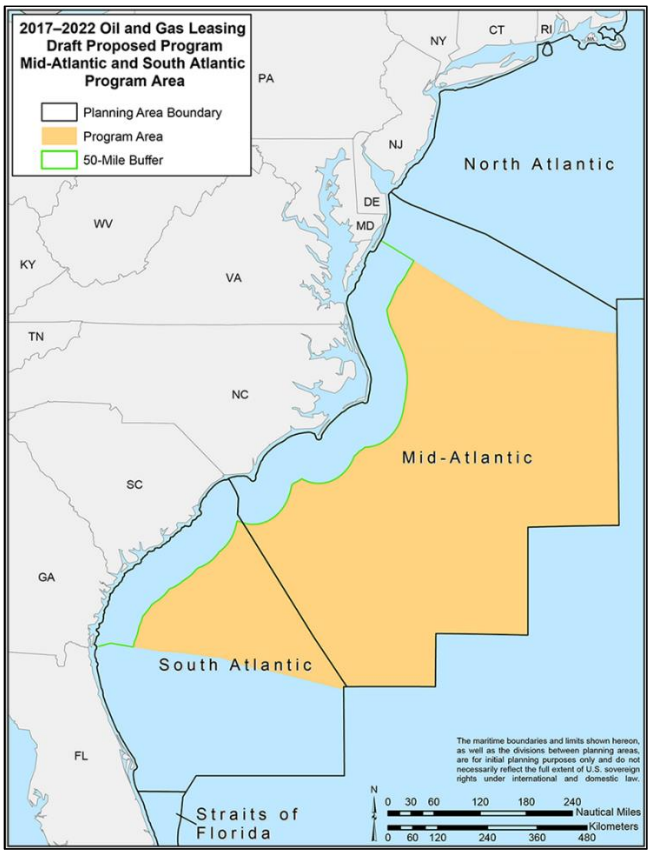
production will be less than one percent lower over the 70-year life of projected activity and only four percent lower during the 2017-2022 Program's years of peak production."

[110] For more information, see the section on "Moratoria and Withdrawals Affecting the 2017-2022 Program."

[111] President George W. Bush, "Modification of the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," *Weekly Compilation of Presidential Documents*, vol. 44 (July 14, 2008).

[112] An Atlantic lease sale (Sale #220) was scheduled in the five-year program for 2007-2012, but it was canceled by then-Secretary of the Interior Ken Salazar following the April 2010 *Deepwater Horizon* oil spill. See BOEM, "Virginia Lease Sale 220 Information," at https://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Lease-Sales/220/Virginia-Lease-Sale-220-Information.aspx.

Figure 6. BOEM's Originally Proposed Program Area for Offshore Oil and Gas Leasing in the Atlantic
(subsequently removed from the five-year program)



Source: 2017-2022 PP, p. 4-12.

For both the DPP and PP versions of the 2017-2022 program, BOEM analyzed of a variety of factors for the Atlantic region under Section 18 of the OCSLA. These factors included the region's resource potential and infrastructure needs, ecological and safety concerns, competing uses of the areas—especially by the Department of Defense and the National Aeronautics and Space Administration (NASA)—and state and local attitudes toward drilling, among others. The initial analysis for the DPP resulted in a planned lease sale in a combined portion of the Mid- and South Atlantic planning areas in 2021 (see **Figure 6**). However, after the comment period and further analysis, BOEM removed the Atlantic sale in the PP. BOEM gave several reasons for the removal, including "strong local opposition, conflicts with other ocean uses, ... current market dynamics, ... [and] careful consideration of the comments received from Governors of affected states."[113] In particular, BOEM cited conflicts with existing uses, including ocean-dependent tourism, commercial and recreational fishing, commercial shipping and transportation, and Department of Defense and NASA uses.[114]

[113] 2017-2022 PP, p. S-2.

[114] The Department of Defense (DOD) identified much of the area off of Virginia, as well as parts of the area off of North Carolina, as places where offshore oil and gas development would be incompatible with DOD activities. See 2017-2022 PP, p. S-9. BOEM's Atlantic lease sale proposal in the DPP included a 50-mile buffer zone off the coast where leasing would not take place, in order to reduce conflicts with DOD activities as well as other ocean uses. However, on further analysis, BOEM assessed that the areas of DOD concern "significantly overlap the known

BOEM further cited the broader U.S. energy situation as a factor in its decision not to hold an Atlantic lease sale in the 2017-2022 period. The agency observed that the increases over the past decade in onshore oil and gas production have made national energy needs less pressing. BOEM stated that "domestic oil and gas production will remain strong without the additional production from a potential lease sale in the Atlantic."[115]

Environmental Analysis for the 2017-2022 Program

Programmatic Environmental Impact Statement (PEIS). Along with BOEM's preparation of the five-year oil and gas leasing program for 2017-2022, the agency prepared a PEIS for the program, as required under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321-4347). This document evaluates the potential environmental and socioeconomic impacts associated with the program and considers alternatives that may avoid or reduce impacts.

BOEM released its final PEIS for the 2017-2022 program on November 18, 2016. Although the PEIS process is separate from that of the five-year program, it informs the implementation of the leasing program. For example, when implementing the program, BOEM may apply exclusions or mitigation measures identified in the PEIS to avoid or reduce program impacts.

In addition to the environmental analysis contained in the PEIS, which is associated with publication of the five-year program, later steps in the offshore leasing and production process also require environmental evaluation under NEPA. For example, NEPA reviews are required at the pre-lease sale, exploration, and development and production stages. See **Figure 1** for more information.

Mitigation Strategy. The final program also responded to President Obama's November 2015 memorandum on environmental mitigation strategies (*Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment*, November 3, 2015). Under this memorandum and other DOI policy guidance, BOEM was required to apply a landscape-scale approach to mitigating environmental damage from agency actions. The approach was to follow a "mitigation hierarchy," starting with avoidance of impacts as the first preference, followed by minimization of impacts that are unavoidable, and then compensation to protect resources impacted by activities.

BOEM stated that the process prescribed by the OCSLA for developing the five-year program largely met the criteria of President Obama's memorandum and related DOI policy guidance. The OCSLA requires a "landscape-level" approach to determine the areas most suitable for ocean energy development. In terms of the preferred strategies of avoidance and minimization, BOEM "eliminated numerous planning areas from potential leasing and minimized effects to certain areas through the Secretary's size, timing, and location decisions" (2017-2022 PFP, p. 1-14). Following program approval, BOEM stated, the agency would "integrate the mitigation hierarchy into the entire leasing process" to avoid, minimize, or compensate for impacts of the program (p. 1-14). However, an April 2017 executive order from President Trump on "Promoting Energy Independence and Economic Growth" subsequently repealed the Obama Administration mitigation policy.

Sources: 2017-2022 PFP; 2017-2022 Final PEIS; CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther; Presidential Memorandum, *Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment*, November 3, 2015, at https://www.whitehouse.gov/the-press-office/2015/11/03/mitigating-impacts-natural-resources-development-and-encouraging-related; Executive Order 13868, *Promoting Energy Independence and Economic Growth*, March 28, 2017, at https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-energy-independence-economic-growth/.

geological plays and available resources" (2017-2022 PP, p. S-10). Additionally, NASA's concerns about potential conflicts with activities at its Wallops Island flight facility (VA) influenced BOEM's decision.

[115] 2017-2022 PP, p. S-10. Specifically, BOEM estimated that U.S. oil production would be only 0.10% lower, and U.S. natural gas production 0.06% lower, without the production anticipated from a lease sale in the Mid- and South Atlantic Program Area.

Pacific Region: No Lease Sales

Like other recent five-year programs, the 2017-2022 program scheduled no lease sales for the Pacific region. No federal oil and gas lease sales have been held for the region since 1984, although some active leases with production remain in the Southern California planning area. Like the Atlantic region, the Pacific region was subject to congressional and presidential leasing moratoria for most of the past 30 years.[116] Although these restrictions were lifted in FY2009, the governors of California, Oregon, and Washington continue to oppose offshore oil and gas leasing in the region.[117]

Role of Congress

Congress can influence the Administration's development of a five-year program in a number of ways. Members of Congress may convey their views on the Administration's proposal by submitting public comments on a draft program during the formal comment periods, or they may evaluate the program in committee oversight hearings. More directly, Members may introduce legislation to set or alter a program's terms. Congress pursued all these types of influence with respect to the proposed program for 2017-2022. Congress also has a role under the OCSLA of reviewing each five-year program once it is finalized, but the OCSLA does not require that Congress directly approve the final program in order for it to be implemented.

Public Comment

Members of Congress, along with other stakeholders such as state governors, interested agencies and organizations, and members of the public, may submit comments on draft versions of five-year programs. For the 2017-2022 program, BOEM received 15 comments from Members of Congress on its initial request for information (RFI), 12 comments from Members on the DPP, and 5 comments from Members on the PP. Some of these comments came from one or a few Members, and others had many signers (in some cases, 150 Members or more).[118] Some comments opposed the inclusion of certain regions in the program, whereas others supported the proposed lease sales or sought an expansion of lease areas and a higher number of sales. The comments also addressed related issues such as seismic testing in the Atlantic.

BOEM takes the public comments into account when developing successive drafts of a five-year program. Each draft contains an appendix summarizing the substantive comments that BOEM received on the previous version, including those from Members of Congress, and explaining BOEM's response to each.[119] BOEM may revise the program to partially or fully adopt a suggestion, or may explain why it declined to do so.

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[116] Different portions of the Pacific region were subject to different restrictions during this period. The Washington/Oregon planning area and the Central California planning area were under annual congressional moratoria from FY1991 through FY2008, the Northern California planning area from FY1982 through FY2008, and much of the Southern California planning area from FY1985 through FY2008. Additionally, all these areas were under presidential withdrawal from 1990 to July 2008 (2017-2022 DPP, p. 3-6).

[117] 2017-2022 PFP, Appendix A. Administratively, the Pacific region also includes the state of Hawaii, but Hawaii is not part of the oil and gas leasing program because hydrocarbon resources are not present offshore of the state. 2017-2022 PFP, Chapter 1, p. 1.

[118] The 15 congressional comments received on the RFI are discussed on pp. A-46 to A-49 of the 2017-2022 DPP. The 12 congressional comments received on the DPP are discussed on pp. A-24 to A-26 of the 2017-2022 PP. The 5 congressional comments received on the PP are discussed on pp. A-49 to A-50 of the 2017-2022 PFP.

[119] See Appendix A of each version of the program: the 2017-2022 DPP (summarizing comments on the RFI), the

Oversight Hearings

The House or Senate may hold oversight hearings to evaluate a proposed five-year oil and gas leasing program. Such hearings help to inform Members in their legislative decisionmaking concerning the program and provide an opportunity for BOEM to hear Members' views. After BOEM released the DPP for 2017-2022, the House Natural Resources Committee held a hearing on the program on April 15, 2015.[120] Members and witnesses addressed issues such as the overall number of lease sales proposed for the program, whether leasing should occur in the Atlantic and Arctic, and whether seismic surveying should occur in the Atlantic, among others. On May 19, 2016, the Senate Energy and Natural Resources Committee held a hearing on the PP version of the program.[121] Members and witnesses discussed, among other issues, the PP's proposal for targeted rather than area-wide lease sales in Alaska and the factors that contributed to BOEM's decision to remove its earlier-proposed Atlantic lease sale from the 2017-2022 program.

Legislation

Under the OCSLA, the final version of each five-year program must be submitted to Congress for a period of 60 days before the Secretary of the Interior can approve and implement the program.[122] However, Congress does not directly approve or disapprove the program during this period. Instead, either during or outside the 60-day period, Congress could introduce legislation to alter the program. Legislation could, for example, remove a scheduled lease sale, add a new lease sale, or make broader changes to the program.

The 114th, 115th, and 116th Congresses all have considered legislation to alter implementation of the 2017-2022 program. Proposals have included bills to add specific lease sales to the program or require a different set of lease sales, to require certain minimum numbers of acres to be leased, to prohibit leasing in certain OCS areas, to defund the planning program, and to prohibit any revisions to the program, among other topics. Such bills have not been enacted to date. Additional legislation could potentially be considered as implementation of the program continues.

2017-2022 PP (summarizing comments on the DPP), and the 2017-2022 PFP (summarizing comments on the PP).

[120] House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, oversight hearing, "Examining the Future Impacts of President Obama's Offshore Energy Plan," April 15, 2015, at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94270/pdf/CHRG-114hhrg94270.pdf.

[121] U.S. Congress, Senate Committee on Energy and Natural Resources, "Hearing to Examine the Bureau of Ocean Energy Management's 2017-2022 OCS Oil and Gas Leasing Program," 114th Cong., 2nd sess., May 19, 2016, at http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=110E5E8F-3A65-4BEC-9D25-5D843A0284D3.

[122] 43 U.S.C. §1344(d)(2). The final program is also submitted to the President during this period.

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