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Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief

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SUMMARY

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May 10, 2023

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Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief

Under the Outer Continental Shelf Lands Act (OCSLA), as amended, the Bureau of Ocean Energy Management (BOEM) within the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by BOEM as *national programs* or *five-year programs*—to schedule proposed oil and gas lease sales on the U.S. outer continental shelf (OCS). The most recent five-year program, covering the period from mid-2017 to mid-2022, expired on June 30, 2022. On July 1, 2022, BOEM released a proposed program (PP) for the 2023-2028 period. The PP proposed as many as 11, or as few as zero, offshore oil and gas lease sales during the 2023-2028 period. The maximum of 11 lease sales would consist of 10 sales in the Gulf of Mexico region and 1 in the Alaska region. Final program decisions will be made at a later stage of action.

BOEM's development of a new five-year program typically takes place over the preceding two or three years, during which successive drafts of the program are published for review and comment. All available leasing areas are initially examined, and the selection may then be narrowed based on economic and environmental analysis, including environmental review under the National Environmental Policy Act (NEPA), to arrive at a final leasing schedule. The final program is submitted to the President and to Congress for at least 60 days (although the President and Congress do not have formal approval roles). The proposal may then receive final approval from the Secretary of the Interior and may take effect.

The 118th Congress could influence the next five-year program through oversight or by enacting legislation with requirements for the program. For example, House-passed H.R. 1 and House-passed H.R. 2811 would mandate certain lease sales, set a deadline for BOEM to release the next five-year program, and set new terms for program development under the OCSLA. Other introduced bills would impose leasing moratoria on new areas or make other types of changes.

The following discussion summarizes developments regarding the next leasing program, analyzes selected issues for congressional consideration, and discusses pending legislation. The history, legal and economic framework, and process for developing the programs are discussed in CRS Report R44504, *Five-Year Offshore Oil and Gas Leasing Program: History and Background*.

*****Note to Reviewers and PUB: summary is for metadata purposes only and is suppressed in final product, per guidance for In Brief products.*****

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Under the Outer Continental Shelf Lands Act (OCSLA), as amended,[1] the Bureau of Ocean Energy Management (BOEM) within the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by BOEM as *national programs* or *five-year programs*—to schedule proposed oil and gas lease sales on the U.S. outer continental shelf (OCS). The most recent five-year program, covering the period from mid-2017 to mid-2022, expired on June 30, 2022.[2] On July 1, 2022, BOEM released a proposed program (PP) for the 2023-2028 period.[3] The PP proposed as many as 11, or as few as zero, offshore oil and gas lease sales during the 2023-2028 period. The maximum of 11 lease sales would consist of 10 sales in the Gulf of Mexico region and 1 in the Alaska region. Final program decisions would be made at a later stage of action.

BOEM's development of a new five-year program typically takes place over the preceding two or three years, during which successive drafts of the program are published for review and comment. All available leasing areas are initially examined, and the selection may then be narrowed based on economic and environmental analysis, including environmental review under the National Environmental Policy Act (NEPA),[4] to arrive at a final leasing schedule. The final program is submitted to the President and to Congress for at least 60 days (although the President and Congress do not have formal approval roles). The proposal may then receive final approval from the Secretary of the Interior and may take effect.

The 118th Congress could influence the next five-year program through oversight or by enacting legislation with requirements for the program. For example, House-passed H.R. 1 and House-passed H.R. 2811 would mandate certain lease sales, set a deadline for BOEM to release the next five-year program, and set new terms for program development under the OCSLA. Other introduced bills would impose leasing moratoria on new areas or make other types of changes.

The following discussion summarizes developments related to the 2023-2028 leasing program, analyzes selected issues for congressional consideration, and discusses pending legislation. The broader history, legal and economic framework, and process for developing the five-year programs are discussed in CRS Report R44504, *Five-Year Offshore Oil and Gas Leasing Program: History and Background*.

Leasing Program Status

BOEM published the 2023-2028 PP on July 1, 2022. The PP is the second stage of program development, following an earlier draft proposed program (DPP) prepared under the Trump Administration.[5] The Trump Administration DPP had proposed a total of 47 OCS oil and gas

[1] 43 U.S.C. §§1331-1356b; see especially §1344.

[2] Bureau of Ocean Energy Management (BOEM), *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program*, November 2016, at https://www.boem.gov/oil-gas-energy/leasing/2017-2022-ocs-oil-and-gas-leasing-pfp; hereinafter referred to as 2017-2022 PFP.

[3] BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, July 2022, at https://www.boem.gov/oil-gas-energy/national-program/2023-2028-proposed-program; hereinafter referred to as 2023-2028 PP.

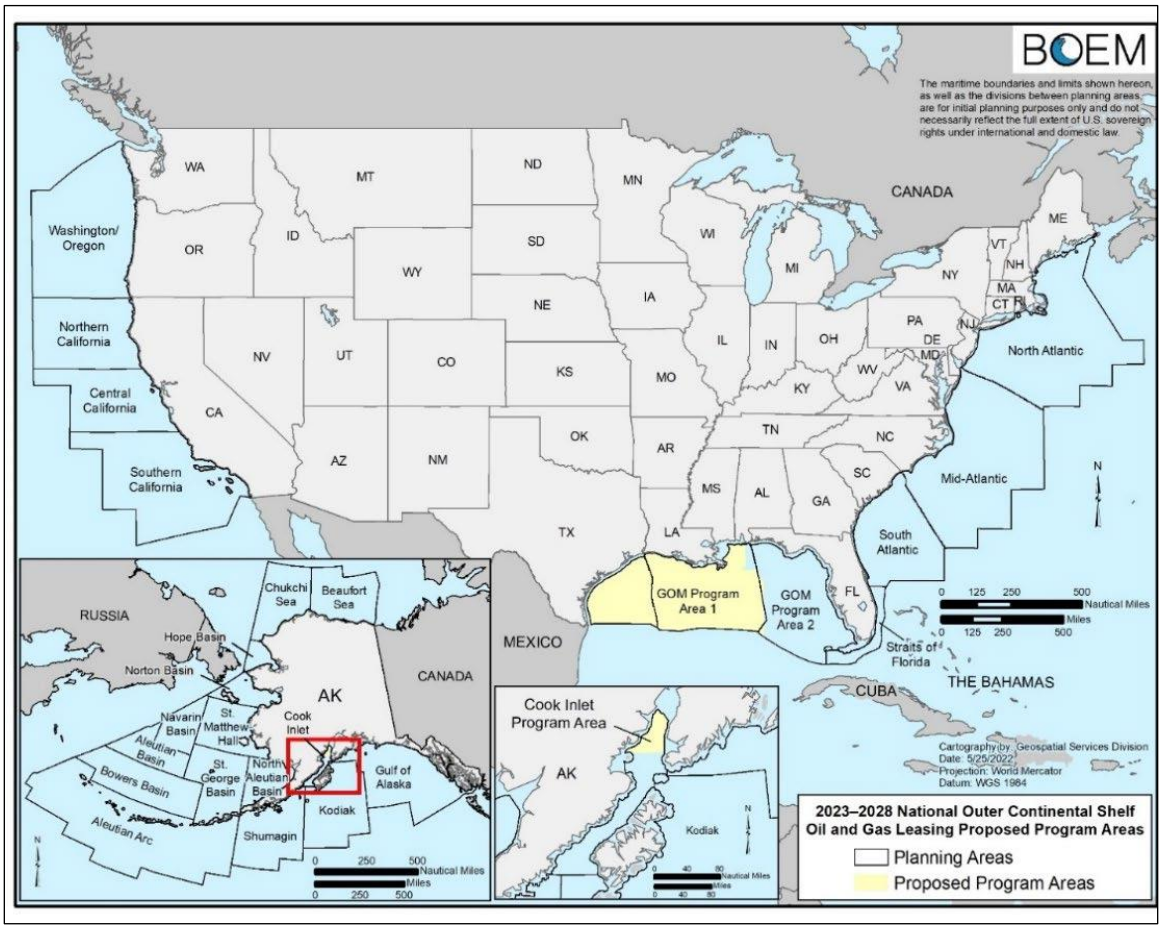
[4] National Environmental Policy Act (NEPA), 42 U.S.C. §4321. For more information, see CRS In Focus IF11549, *The Legal Framework of the National Environmental Policy Act*, by Nina M. Hart and Linda Tsang.

[5] BOEM, *2019-2024 National Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, January 2018, at https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024/; hereinafter referred to as the 2019-2024 DPP. This draft program would have applied to the five-year period from late 2019 through mid-2024, replacing the final years of the 2017-2022 program. Although previous five-year programs (since 1982) have not overlapped in this way, the George W. Bush Administration issued a DPP for a 2010-2015 program that would have replaced the final years of the 2007-2012 program (but, like the 2019-2024 DPP, was not finalized for that period).

lease sales over a five-year period: 12 in the Gulf of Mexico region, 19 in the Alaska region, 9 in the Atlantic region, and 7 in the Pacific region.[6] By comparison, the Biden Administration's PP proposes a maximum of 11 OCS oil and gas lease sales over five years: 10 in the Gulf of Mexico region, 1 in the Cook Inlet planning area of the Alaska region, and none in the Atlantic or Pacific regions **Figure 1**). The PP also states that fewer lease sales—and potentially no lease sales—might be included in the final version of the program.

Figure 1. Potential Lease Areas in the 2023-2028 Proposed Program

(shown in yellow)



Source: BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, July 2022, p. 5, at https://www.boem.gov/oil-gas-energy/national-program/2023-2028-proposed-program.

Along with the PP, BOEM published a draft programmatic environmental impact statement (PEIS).[7] The PP and draft PEIS were released with a public comment period of 90 days, which ended on October 6, 2022. After consideration of public comments and any additional analysis, BOEM would next publish a proposed final program (PFP) and final PEIS. At a March 2023

[6] The full leasing schedule is available on p. 8 of the 2019-2024 DPP, or at https://www.boem.gov/NP-DPP-Lease-Sale-Schedule-2019-2024/.

[7] BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing Program: Draft Programmatic Environmental Impact Statement*, July 2022, at https://www.boem.gov/oil-gas-energy/national-program/2023-2028-national-ocs-oil-gas-leasing-draft-peis-vol1. A programmatic EIS typically evaluates the effects of broad proposals or planning-level decisions.

hearing of the House Committee on Appropriations, the Secretary of the Interior stated that BOEM anticipates releasing the PFP and final PEIS in September 2023.[8] The PFP must be submitted to the President and Congress for at least 60 days, after which the Secretary of the Interior can issue a record of decision to finalize the program.[9]

Separately, the previous five-year program, covering the period from mid-2017 through mid-2022, expired on June 30, 2022. That program, prepared under the Obama Administration, resembled the maximum-sale scenario of the current PP, in that it scheduled a total of 11 sales, with 10 in the Gulf of Mexico and 1 in Alaska's Cook Inlet.[10] However, toward the end of the program's implementation, the final three scheduled sales—two for the Gulf of Mexico and the Cook Inlet sale—were canceled.[11] Further, another sale that BOEM had conducted under the 2017-2022 program—Lease Sale 257 for the Gulf of Mexico, held on November 17, 2021—was later vacated by a judicial order.[12]

On August 16, 2022, the President signed into law P.L. 117-169, commonly known as the Inflation Reduction Act (IRA). The law contained several provisions relevant to the five-year program. First, Section 50264 reinstated the vacated Lease Sale 257, requiring BOEM to issue the leases from that auction.[13] It also required that BOEM hold the three other canceled lease sales from the 2017-2022 program by specified dates. In accordance with this requirement, BOEM conducted Lease Sale 258 for Alaska's Cook Inlet on December 30, 2022,[14] and Lease Sale 259 for the Gulf of Mexico on March 29, 2023.[15] BOEM has released a proposed sale notice for the remaining sale required by the IRA, Lease Sale 261 in the Gulf, for September 27, 2023.[16]

Additionally, Section 50265 of the IRA requires minimum amounts of offshore oil and gas leasing as a precondition for BOEM's authority to issue leases for offshore wind development. Specifically, for the 10 years following enactment of the law, BOEM may not issue an offshore wind lease unless the agency has held an oil and gas lease sale in the previous year and has offered at least 60 million acres for oil and gas development on the OCS. (For comparison, each

[8] Testimony of Secretary of the Interior Deb Haaland at House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *Budget Hearing—Fiscal Year 2024 Budget Request for the Department of the Interior*, March 28, 2023, at https://appropriations.house.gov/legislation/hearings/budget-hearing-fiscal-year-2024-budget-request-department-interior.

[9] The President and Congress have no formal approval or comment role at this stage under the OCSLA, but Congress could potentially mandate legislative changes to the program either during or outside this period.

[10] 2017-2022 PFP, p. S-4.

[11] The canceled sales included Lease Sales 259 and 261 for the Gulf of Mexico and Lease Sale 258 for Alaska's Cook Inlet. Reasons for the cancelations included timing issues (stemming partly from President Biden's "pause" of oil and gas leasing in Executive Order 14008), multiple court rulings related to the lease sales, and BOEM's finding of a lack of industry interest in the Cook Inlet sale. See, for example, BOEM, "Sale 258 Status Update," at https://www.boem.gov/oil-gas-energy/leasing/sale-258-status-update; and Anna Phillips, "Biden Pulls 3 Offshore Oil Lease Sales, Curbing New Drilling This Year," *Washington Post*, May 11, 2022, at https://www.washingtonpost.com/climate-environment/2022/05/11/gulf-of-mexico-leasing-canceled/.

[12] Friends of the Earth v. Haaland,—F. 3d.—, 2022 WL 254526 (D.D.C. 2022). For more information on Lease Sale 257, see BOEM, "Lease Sale 257," at https://www.boem.gov/Sale-257.

[13] In accordance with the law's requirement, BOEM announced on September 14, 2022, that it had accepted the high bids from Lease Sale 257 in preparation for issuing the leases. BOEM, "In Compliance with IRA, BOEM Reinstates Lease Sale 257 Bids," September 14, 2022, at https://www.boem.gov/newsroom/press-releases/compliance-ira-boem-reinstates-lease-sale-257-bids.

[14] BOEM, "Lease Sale 258," at https://www.boem.gov/oil-gas-energy/leasing/lease-sale-258. At the auction, BOEM received less than $100,000 in high bids on one tract.

[15] BOEM, "Lease Sale 259," at https://www.boem.gov/oil-gas-energy/leasing/lease-sale-259. At the auction, BOEM received $263.8 million in high bids on 313 tracts covering 1.6 million acres.

[16] BOEM, "Lease Sale 261," at https://www.boem.gov/oil-gas-energy/leasing/lease-sale-261.

of the seven Gulf of Mexico lease sales held in the 2017-2022 program offered 75 million-80 million OCS acres.) Under these provisions, if the 2023-2028 PP were finalized with the maximum scenario of 10 region-wide lease sales in the Gulf and 1 in Alaska's Cook Inlet, the precondition for offshore wind leasing likely would be satisfied, as this typically would result in two Gulf lease sales per year, each offering more than 60 million acres.[17] However, if the size or frequency of Gulf lease sales were significantly reduced, or if BOEM chose the zero-lease option, this could affect the agency's authority under the IRA to lease for offshore wind.

Selected Issues for Congress

Timing Considerations for the Five-Year Program

Development of the upcoming five-year program has proceeded more slowly than for previous programs. In almost all previous program transitions, a new program has been finalized by the time the earlier one expired, allowing a new leasing schedule to take effect immediately.[18] By contrast, the federal government currently is experiencing a gap between leasing programs, with a new leasing program not expected to be finalized until late 2023 (given the expectation of a PFP by September 2023 and the subsequent required 60-day waiting period).[19]

It is unclear how the current gap between programs may interact with requirements of the OCSLA. The OCSLA states that the Secretary of the Interior must "prepare and periodically revise, and maintain an oil and gas leasing program."[20] Stakeholders have differed in their interpretations of the extent to which this and other language in the act would require that a program must continuously be in force.[21] Some bills introduced in the 117th and 118th Congresses would explicitly prohibit a future gap between five-year programs.[22] These bills would mandate required timing for the Secretary of the Interior to begin preparation of a new program and to approve a final version.

Despite the current gap between programs, the IRA required that BOEM conduct three offshore oil and gas lease sales in 2022 and 2023, two of which have been held to date, as discussed above

[17] The proposed sale for the Cook Inlet likely would not contribute significantly to the required total, as previous Cook Inlet sales have ranged from 0.4 million to 2.2 million acres offered. BOEM, table of "All Lease Offerings," at https://www.boem.gov/sites/default/files/documents/about-boem/Table%201%20SwilerTable%2024FEB2021.pdf. The December 2022 Cook Inlet lease sale—Lease Sale 258—offered approximately 1.0 million acres (BOEM, "Lease Sale 258," at https://www.boem.gov/oil-gas-energy/leasing/lease-sale-258).

[18] An exception is the transition to the 2012-2017 program. The 2012-2017 PFP was published on June 28, 2012, two days before the previous program expired, but because of the required 60-day waiting period before final secretarial approval, the program did not officially take effect until August 27, 2012 (BOEM, "2012-2017 OCS Oil and Gas Leasing Program," at https://www.boem.gov/oil-gas-energy/leasing/2012-2017-ocs-oil-and-gas-leasing-program). However, this timing still allowed for the program's first scheduled sale to be held as planned in November 2012.

[19] 43 U.S.C. §1344(d)(2). Also see footnote 8.

[20] 43 U.S.C. §1344(a).

[21] For the view that the OCSLA prohibits a gap between programs, see DOI Solicitor's Memorandum M-37062, "Secretarial Discretion in Promulgating a National Outer Continental Shelf Oil and Gas Leasing Program," January 13, 2021, at https://www.doi.gov/sites/doi.gov/files/m-37062.pdf; hereinafter cited as January 2021 DOI Solicitor's Memorandum. This memorandum, issued toward the end of the Trump Administration, was withdrawn during the Biden Administration. For the view that the OCSLA does not clearly prohibit a gap between programs, see remarks of Earthjustice attorney Brettny Hardy in "Biden faces legal fight over delayed offshore leasing plan," *EnergyWire*, April 21, 2022, at https://www.eenews.net/articles/biden-faces-legal-fight-over-delayed-offshore-leasing-plan/.

[22] See, for example, H.R. 1 and H.R. 2811 in the 118th Congress and H.R. 6858, H.R. 7012, S. 3214, and S. 3752 in the 117th Congress. Also see the "Role of Congress" section.

(see section on "Leasing Program Status"). These are the sales from the 2017-2022 program that BOEM had canceled as that program approached expiration.

In addition to questions about the timing for publication of the final 2023-2028 program, some Members of Congress have raised questions about BOEM's timing with respect to preparing for any individual lease sales that may be included that program, especially lease sales occurring toward the start of the program period.[23] Typically, BOEM initiates planning and environmental compliance for proposed sales in a new program before the program is finalized.[24] This is because the planning process involves multiple steps that may take more than a year to complete.[25] At an April 2023 hearing of the House Committee on Natural Resources, the BOEM Director stated that no "specific environmental reviews" for the 2023-2028 program had been initiated as of that date.[26] Some Members have noted that a lack of such initial planning steps for proposed sales could result in delays in executing sales once the program is finalized.[27]

Potential for Zero-Lease Program

In each successive stage of developing the five-year program (DPP, PP, and PFP), some sales proposed in an earlier version of the program might be removed from consideration, based on further analysis and public comments.[28] For example, for the 2017-2022 program, the DPP's proposed 14 lease sales eventually were winnowed to 11 sales in the PFP. For the upcoming program, as discussed, the DPP proposed 47 lease sales, which were narrowed to 11 sales for consideration in the PP. The PP notes that these 11 proposed sales represent the maximum that could be finalized and that some sales may be removed at the PFP stage.[29] Further, the PP and accompanying DOI materials state that the final program might contain no lease sales at all.[30]

As with the question of a program gap, stakeholders have disagreed about whether the OCSLA would allow for a zero-lease program. The question has not been tested, because no previous program has been finalized without any scheduled sales. Some have contended that the OCSLA's

[23] See remarks of Rep. Bruce Westerman and Rep. Garret Graves at House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, "Examining the President's FY 2024 Budget Request for the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the U.S. Geological Survey," oversight hearing, April 26, 2023, at https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=413082, hereinafter referred to as "House Natural Resources Committee April 2023 budget hearing."

[24] For example, the 2017-2022 program was finalized on January 17, 2017, but BOEM issued a call for information and nominations for some proposed sales in the program on September 4, 2015 (80 *Federal Register* 53565) and a notice of availability of a draft environmental impact statement for these sales on April 22, 2016 (81 *Federal Register* 23700). The 2012-2017 program was finalized on August 27, 2012, but BOEM issued a call for information and nominations for proposed sales in the program on November 18, 2011 (76 *Federal Register* 71595) and a notice of availability of a draft environmental impact statement for these sales on December 30, 2011 (76 *Federal Register* 82296).

[25] For a diagram showing steps in the process, see BOEM, "OCS Oil and Gas Leasing, Exploration, and Development Process," at https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/Process-Diagram.pdf.

[26] Testimony of BOEM Director Elizabeth Klein at House Natural Resources Committee April 2023 budget hearing.

[27] See, for example, remarks of Rep. Pete Stauber, Rep. Bruce Westerman, and Rep. Garret Graves at House Natural Resources Committee April 2023 budget hearing.

[28] By contrast, it is difficult at the later program stages to add sales that did not appear in earlier versions, because analyses conducted at the earlier stages would need to be revised to reflect the new proposed sales.

[29] See, for example, 2023-2028 PP, pp. 2-3.

[30] See 2023-2028 PP, p. 4 ("this Proposed Program retains the Secretary's discretion at the PFP stage to determine that no OCS oil and gas lease sales in any planning area should be scheduled during the 2023–2028 period"); and DOI press release, July 1, 2022, at https://www.doi.gov/pressreleases/interior-department-invites-public-comment-proposed-five-year-program-offshore-oil-0 ("The Final Program also may include fewer potential lease sales, including no lease sales").

statement that the program "shall consist of a schedule of proposed lease sales" indicates that a zero-lease program would not be allowed.[31] Others have interpreted the OCSLA as accommodating a zero-lease choice.[32] Although no previous five-year program has contained a zero-lease schedule, the possibility has been contemplated in past programs as a reference scenario (for example, in the context of the PEIS's required consideration of a "no-action" alternative).[33]

The August 2022 enactment of the IRA complicates the option for a zero-lease program as considered in the PP. As noted above, the IRA mandates that over the next 10 years, BOEM may not issue offshore wind leases unless the agency has offered at least 60 million acres for offshore oil and gas leasing during the previous year. For 2022 and 2023, the IRA requires BOEM to hold specific lease sales (from the earlier 2017-2022 program), and some of these required sales fulfill the minimum oil and gas leasing amounts, allowing for offshore wind leasing in the near term.[34] Subsequent offshore wind leasing, however, would depend on decisions about oil and gas lease sales in the 2023-2028 program. It appears that a zero-lease program—or even a program that scheduled some lease sales but curtailed their acreage to a point below the IRA's minimum threshold—would result in periods where offshore wind leasing was not authorized.

A number of bills in the 117th and 118th Congresses would effectively prohibit a no-leasing outcome in future programs.[35] Typically, these bills would require that the Secretary conduct a minimum number of lease sales each year in specified areas, such as the Central and Western Gulf of Mexico and/or the Alaska region. Other bills from recent Congresses would essentially mandate a no-leasing program by banning offshore oil and gas leasing throughout the OCS.[36]

Regional Leasing Decisions

Under the OCSLA, BOEM must take into account economic, social, and environmental values in making its leasing decisions.[37] The balancing of these factors could lead to various decisions regarding leasing in each of the four OCS *regions*—the Atlantic, Pacific, Alaska, and Gulf of Mexico regions—and their component *planning areas*. The regional leasing proposals in the PP

[31] 43 U.S.C. §1344(a). See, for example, January 2021 DOI Solicitor's Memorandum.

[32] See, for example, Earthjustice and Evergreen Collaborative, *Meeting the Moment: How President Biden Can Align the Federal Fossil Fuel Program to Deliver on Climate and Put People Over Profits*, June 2022, p. 16, at https://earthjustice.org/documents/report/meeting-the-moment-how-president-biden-can-align-the-federal-fossil-fuel-program-to-deliver-on-climate.

[33] See, for example, BOEM, *Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022 Draft Programmatic Environmental Impact Statement*, March 2016, p. xiii, at https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Resource-Evaluation/Resource-Assessment/Draft-Programmatic-Environmental-Impact-Statement-VolumnI.pdf ("The evaluation of a No Action Alternative (Alternative C) is required by the CEQ regulations implementing NEPA (40 CFR 1502.14(d))…. The eventual selection of Alternative C [the no-leasing option] would be a major departure from past Program decisions, but it must remain a possibility").

[34] In particular, Lease Sale 259 and proposed Lease Sale 261 in the Gulf of Mexico each encompass more than the required 60 million acres. By contrast, Lease Sale 258 in Alaska's Cook Inlet did not meet this condition, offering fewer than 1 million acres.

[35] See, for example, H.R. 1, H.R. 356, H.R. 1335, and H.R. 2811 in the 118th Congress, and H.R. 6858, H.R. 7012, S. 3214, and S. 3752 in the 117th Congress. Also see the "Role of Congress" section.

[36] See, for example, H.R. 2519 and S. 1115 in the 117th Congress. Also see the "Role of Congress" section.

[37] 43 U.S.C. §1344(a). Factors that the Secretary of the Interior must consider include the geographical, geological, and ecological characteristics of the regions; the 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 regions, among others. Leasing also must be conducted to ensure the federal government receives fair market value for leased tracts.

differ from those in the Trump Administration's DPP. Whereas the DPP proposed lease sales in all four regions and in every available planning area (where leasing is not prohibited by executive or congressional action), the PP would allow sales in a maximum of two regions (Gulf of Mexico and Alaska) with a maximum of one planning area included for the Alaska region (**Figure 1**).

Gulf of Mexico Region

Almost all U.S. offshore oil and gas production takes place in the Gulf of Mexico.[38] The Gulf has the most mature oil and gas development infrastructure of the four planning regions and some of the highest concentrations of oil and gas resources, according to BOEM estimates.[39]

The PP's maximum proposal of 10 region-wide lease sales for the Gulf, supporting a semiannual auction schedule, accords with the 2017-2022 program, which scheduled the same number of Gulf sales. Although the PP retains a *maximum* scenario matching the earlier program, with 10 sales and a region-wide leasing approach (under which all eligible areas of the region would be offered at each lease sale), it also contemplates two other, more restricted Gulf leasing scenarios.[40] In the "Subarea Option," the PP would narrow the available areas within the Gulf to a more targeted set of lease blocks to be auctioned at each sale. For example, a targeted approach could exclude "acreage that has not recently seen extensive bidding activity," "biologically sensitive areas," and "areas of potential conflict with other uses and users of the marine environment."[41] This approach draws on recommendations that DOI promulgated in its November 2021 comprehensive review of the federal onshore and offshore oil and gas programs.[42] However, depending on the acreage that BOEM would offer for lease under the Subarea Option, this option could trigger the IRA's restriction against offshore wind leasing if fewer than 60 million offshore acres are offered for oil and gas leasing in a given year.

The other scenario in the PP would be the "No Sale Option," where no sales at all would be scheduled for the Gulf. This would be a departure from past programs, which have scheduled at least two and sometimes more Gulf lease sales annually. Also, if no Gulf sales were conducted under the 2023-2028 program, this would appear to prohibit offshore wind leasing under the IRA during the program period.[43]

In calculations conducted for the PP, BOEM estimated that there would be "incremental net benefits" from the proposed Gulf lease sales as opposed to a no-sale option, taking into account the energy substitutes that would replace the OCS production in a no-leasing scenario.[44] However,

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[38] The Gulf accounts for about 99% of U.S. offshore oil and gas production. BOEM, 2023-2028 PP, p. 7.

[39] BOEM, "Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf," 2021, at https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/2021_National_Assessment_Map_BTU.pdf; hereinafter cited as BOEM, 2021 UTRR map. BOEM estimates the *undiscovered, technically recoverable resources* (UTRR) for each region—resources that could be produced using conventional techniques without any economic considerations. BOEM estimates the Gulf of Mexico to have the highest UTRR of any OCS region with regard to oil; the Gulf is second to the Alaska region in terms of UTRR for natural gas.

[40] For discussion, see 2023-2028 PP, Chapter 2.

[41] 2023-2028 PP, pp. 7-8.

[42] DOI, *Report on the Federal Oil and Gas Leasing Program: Prepared in Response to Executive Order 14008*, November 2021, at https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo14008.pdf. The report recommended (p. 13) that BOEM reconsider its traditional practice of area-wide leasing and instead consider sales for "smaller areas" based on specified criteria.

[43] Although the IRA does not require that the acreage offered for oil and gas leasing be in the Gulf of Mexico, the only other area proposed for sale in the PP is Alaska's Cook Inlet, whose relatively small size would limit its ability to contribute to the required acreage.

[44] 2023-2028 PP, Section 5.3.4. BOEM defines "incremental net benefits" as the net benefits value of a leasing option minus the net benefits value of a no-sale option. For further discussion, see Section 5.3.1 of the PP.

BOEM stated that if "the U.S. and other nations move towards a net-zero future," the agency's calculations "would likely be significantly different."[45]

One part of the Gulf that is not analyzed for potential leasing under any scenario in the PP is the Eastern Gulf near the state of Florida. The Gulf of Mexico Energy Security Act of 2006 (GOMESA) prohibited leasing in a defined area of the Gulf off the Florida coast.[46] Although the GOMESA moratorium expired on June 30, 2022, President Trump effectively extended this moratorium through June 2032 by withdrawing this area from leasing consideration until that time, using his presidential authority under Section 12(a) of the OCSLA.[47] Some Members of Congress and other stakeholders wish to make the Eastern Gulf leasing moratorium permanent. Among other concerns, they contend that oil and gas leasing in Gulf waters around Florida could damage the state's beaches and fisheries, which support strong tourism and fishing industries, and could jeopardize mission-critical defense activities such as those at Pensacola's Eglin Air Force Base. By contrast, others have advocated for shrinking the area covered by the ban, or eliminating the ban before its scheduled expiration date. They emphasize the economic significance of oil and gas resources off the Florida coast and contend that development would create jobs, strengthen the state and national economies, and contribute to U.S. energy security.

Alaska Region

Congress has debated offshore leasing in the Alaska region. Decreases in the areal extent of summer polar ice, along with estimates of substantial undiscovered oil and gas resources in Arctic waters, have contributed to increased interest by some in offshore oil and gas exploration in the region.[48] However, the region's severe weather and perennial sea ice, and its relative lack of infrastructure to extract and transport offshore oil and gas, continue to pose technical and financial challenges to new exploration. Previous periods of low energy prices have diminished short-term incentives for development in the Alaska region because Alaskan production is relatively costly. Among Alaska's 15 BOEM planning areas, the Beaufort Sea and Cook Inlet are the only two areas with existing federal leases, and only the Beaufort Sea has producing wells in federal waters. Some stakeholders, including the State of Alaska and some Members of Congress, seek to expand offshore oil and gas activities in the region. Other Members of Congress and many environmental groups oppose offshore oil and gas drilling in the region, due to concerns about potential oil spills and the possible contributions of these activities to climate change.

[45] 2023-2028 PP, Sections 5.3.4 and 5.3.5. BOEM noted that its finding of incremental net benefits is based on current baseline data and assumes continuation of current laws and policies. BOEM stated that if energy markets "change substantially over the next few years," this could impact the anticipated substitutions and thus the net benefits. BOEM provided a separate, qualitative discussion of potential costs and benefits of Gulf leasing (and OCS leasing generally) if the United States pursued the goal of net-zero emissions by 2050. In this scenario, BOEM anticipated that there could "still be a role" for oil and gas leasing in the Gulf but that the incremental net benefits of leasing likely would decrease, taking into account economic values and environmental and social costs, among other factors.

[46] P.L. 109-432. For more information on GOMESA, see CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background and Current Issues*, by Laura B. Comay. Specifically, GOMESA banned oil and gas leasing in the Eastern Gulf of Mexico Planning Area within 125 miles of the coast of Florida, in 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. This report refers to the GOMESA moratorium area as the "Eastern Gulf" moratorium area for simplicity.

[47] President Trump withdrawal memorandum, September 8, 2020. Section 12(a) of the OCSLA (43 U.S.C. §1341(a)) provides that "[t]he President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf."

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

The Trump Administration had stated its interest in promoting offshore development in the Alaska region, and the 2019-2024 DPP scheduled lease sales in all 15 Alaska planning areas. Among others, the DPP included three sales in the Beaufort Sea and three in the Chukchi Sea, the areas of the Alaska region estimated to have the highest concentrations of undiscovered oil and gas resources.[49] (Industry interest in some other Alaska region planning areas may be lower, as many are thought to have relatively low or negligible petroleum potential.) However, the Beaufort and Chukchi Sea planning areas are now withdrawn indefinitely from leasing disposition following a March 2019 judicial ruling and executive actions by President Biden.[50] The Biden Administration's PP, in contrast to the DPP, includes a potential sale in one Alaska planning area—Cook Inlet—which is adjacent to existing areas of natural gas production in state waters.

Supporters of increased leasing in the Alaska OCS region contend that growth in offshore oil and gas development is critical for Alaska's economic health as the state's onshore oil fields mature. They further assert that offshore energy development in the region could play a growing role nationally by reducing U.S. dependence on oil and gas imports and supporting U.S. interests in the Arctic economy as other nations, including Russia and China, invest in Arctic projects. These stakeholders contend that oil and gas activities can be conducted safely in the region and point to a history of successful well drilling in the Beaufort and Chukchi Seas in the 1980s and 1990s.

Those who favor few or no Alaska offshore lease sales, by contrast, are concerned that it would be challenging to respond to a major oil spill in the region, because of the icy conditions and lack of spill-response infrastructure.[51] Opponents of increased leasing in the region also express concern that it would represent a long-term investment in oil and gas as an energy source, which could slow national efforts to address climate change. They contend, too, that new leasing opportunities are unnecessary, since industry has pulled back on investing in the Arctic.[52] Others assert, however, that tepid industry interest in the region has been due more to the overly demanding federal regulatory environment than to market conditions.[53]

Among those favoring expanded leasing in the region are some Alaska Native communities, who see offshore development as a source of jobs and investment in financially struggling localities. Other Alaska Native communities have opposed offshore leasing, citing concerns about environmental threats to subsistence lifestyles. Alaska's governor submitted comments on the PP supporting additional sales in Cook Inlet and analysis of potential leasing in the Beaufort and Chukchi Seas despite leasing withdrawals.[54]

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[49] BOEM, 2021 UTRR map.

[50] League of Conservation Voters v. Trump, 363 F.Supp.3d 1013 (D.Alaska 2019); Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," Section 4(b), January 20, 2021, 86 *Federal Register* 7037; and Presidential Memorandum, "Withdrawal of Certain Areas Off the United States Arctic Coast of the Outer Continental Shelf from Oil or Gas Leasing," March 13, 2023.

[51] For more information, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke, sections on "Oil, Gas, and Mineral Exploration" and "Oil Pollution and Response." The Obama Administration issued Arctic offshore drilling regulations that focused on ways in which companies would need to compensate for the lack of spill-response infrastructure, such as by having a separate rig available at drill sites to drill a relief well in case of a loss of well control. DOI, "Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," 81 *Federal Register* 46477, July 15, 2016.

[52] For example, the 2017-2022 final program stated that active leases on the Arctic OCS had declined by more than 90% between February 2016 and November 2016, as companies relinquished leases in the face of low oil prices and Shell Oil Company's disappointing exploratory drilling effort in the Chukchi Sea in 2015 (2017-2022 PFP, p. S-7).

[53] 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."

[54] Letter from Alaska Governor Mike Dunleavy to BOEM, October 6, 2022, at https://www.regulations.gov/comment/BOEM-2022-0031-6328.

Atlantic Region

No offshore oil and gas lease sales have occurred in the Atlantic region since 1983, due in part to congressional bans on Atlantic leasing in annual Interior appropriations acts from FY1983 to FY2008, along with presidential leasing withdrawals for the region during those years. Starting with FY2009, Congress no longer included an Atlantic leasing moratorium in appropriations acts. In 2008, President George W. Bush also removed the long-standing administrative withdrawal for the region.[55] These changes meant that lease sales could potentially be conducted for the Atlantic. However, no Atlantic lease sale has taken place in the intervening years.[56]

Political leaders in the Atlantic states, and stakeholders within each state, disagree about whether oil and gas drilling should occur in the region.[57] Supporters of leasing contend that oil and gas development would lower energy costs for regional consumers, bring jobs and economic investment, and strengthen U.S. energy security. Opponents express concerns that oil and gas development would undermine national and state clean energy goals and that oil spills could threaten coastal communities. Also of concern for leasing opponents is the potential for oil and gas activities to damage the tourism and fishing industries in the Atlantic region and to conflict with military and space-related activities of the Department of Defense and National Aeronautics and Space Administration (NASA). In recent years, the Atlantic region has been a focus for BOEM's offshore wind leasing; some see this as potentially compatible with oil and gas development, some favor one or the other type of energy for the region, and some oppose both wind and oil and gas development as conflicting with other uses of the Atlantic.[58]

The Trump Administration's DPP proposed nine lease sales for the Atlantic region, including sales in all Atlantic region planning areas. However, subsequent to publication of the DPP, President Trump withdrew from leasing consideration, from July 2022 through June 2032, certain waters off of North Carolina, South Carolina, Georgia, and Florida.[59] Thus, these areas are no longer eligible for consideration in the PP or PFP. The PP, while analyzing several options, proposed no Atlantic lease sales. The PP stated that "frontier areas" such as the Atlantic, with no recent history of leasing, are less certain to yield production benefits than the better-explored Gulf of Mexico, would require higher-impact infrastructure buildout, and would likely be of lower interest to industry "under a scenario in which domestic fossil energy needs fall in response to global decarbonization."[60]

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

[56] 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.

[57] See, for example, summaries of state comments in the 2019-2024 DPP, pp. A-19 to A-23; and PP, pp. A-10 to A-16.

[58] For more information on offshore wind leasing, see CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark.

[59] President Trump withdrawal memorandum, September 8, 2020; and President Donald Trump, "Presidential Determination on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," September 25, 2020, at https://trumpwhitehouse.archives.gov/presidential-actions/presidential-determination-withdrawal-certain-areas-united-states-outer-continental-shelf-leasing-disposition/.

[60] 2023-2028 PP, p. 4.

Pacific Region

The DPP proposed seven lease sales in the Pacific region, including sales in all of the region's planning areas, but the PP proposed no Pacific lease sales. No federal oil and gas lease sales have been held for the Pacific since 1984, although active leases with production remain in the Southern California planning area.[61] As in the Atlantic region, the Pacific region was subject to congressional and presidential leasing moratoria for much of the past 40 years.[62] These restrictions were lifted in FY2009, but no lease sales have since taken place for the Pacific. The governors of California, Oregon, and Washington have expressed their opposition to new offshore oil and gas leasing in the region.[63] (Administratively, the Pacific region also includes the state of Hawaii, but Hawaii is not part of the oil and gas leasing program because no known hydrocarbon resources are present offshore of the state.)

Congressional stakeholders have disagreed over whether oil and gas leasing should occur in the Pacific. Members of Congress who favor broad oil and gas leasing across the entire OCS have introduced legislation in previous Congresses that would have required BOEM to hold sales in the Pacific region.[64] Members concerned about environmental damage from oil and gas activities in the region have introduced legislation that would permanently prohibit Pacific oil and gas leasing.[65]

Role of Congress

Congress can influence the Administration's development and implementation of a five-year program by submitting public comments during formal comment periods, by evaluating programs in committee oversight hearings, and, more directly, by enacting legislation with program requirements.[66] Some Members of Congress have pursued these types of influence with respect to the upcoming five-year program. For example, Members submitted public comments on both the PP and DPP, and the House Natural Resources Committee held a hearing to examine DOI's priorities for the program.[67]

Some Members also have proposed legislative modifications to the five-year program. One measure, the IRA (P.L. 117-169), was enacted in the 117th Congress. As discussed above, the IRA required that BOEM conduct remaining lease sales from the 2017-2022 program despite the program's expiration, and it conditioned future offshore wind leasing on minimum levels of oil

[61] A federal oil and natural gas lease is for a specific 5-10 year period, but if a discovery is made within the term of the lease, the lease is extended for as long as oil and/or natural gas is produced in paying quantities or approved drilling operations are conducted.

[62] Different portions of the Pacific region were subject to different restrictions during this period.

[63] See, for example, 2023-2028 PP, pp. A-6 to A-9.

[64] See, for example, H.R. 1487 and S. 791 in the 114th Congress.

[65] See, for example, H.R. 279, H.R. 310, H.R. 1941, and S. 2013 in the 116th Congress, and H.R. 653, H.R. 3048, and S. 58 in the 117th Congress. For 118th Congress bills, see the "Role of Congress" section.

[66] 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. Congress could make changes to the final program during or after the 60-day review period through legislation.

[67] For Members' comments on the DPP, see 2023-2028 PP, pp. A-125 to A-133. For Members' comments on the PP, see comments at Regulations.gov (https://www.regulations.gov/docket/BOEM-2022-0031/comments). For the oversight hearing, see House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, *Evaluating Federal Offshore Oil and Gas Development on the Outer Continental Shelf*, oversight hearing, July 12, 2017, at https://www.govinfo.gov/content/pkg/CHRG-115hhrg26252/pdf/CHRG-115hhrg26252.pdf.

and gas lease sales under the five-year program. In the 118th Congress, some bills (H.R. 1, H.R. 356, H.R. 1335, H.R. 1559, H.R. 2811, S. 879) would mandate minimum numbers of oil and gas lease sales in the Gulf of Mexico and/or Alaska regions (not tied to a wind leasing condition).[68] Some of these bills would additionally require that future five-year programs be prepared and approved within a timeframe that would prevent gaps between programs. H.R. 1559 would allow state governors to nominate areas for inclusion in a five-year program. H.R. 1067 and H.R. 2811 would limit judicial authority to vacate lease sales under a program. H.R. 923 would facilitate wider options for leasing by restricting the President's authority to withdraw areas from leasing consideration. By contrast, other bills in the 118th Congress—H.R. 470, H.R. 956, H.R. 970, H.R. 1172, H.R. 1320, H.R. 1327, H.R. 1443, S. 22, S. 67—would establish new moratoria or extend existing moratoria on oil and gas leasing, thus curtailing leasing options in the upcoming program and future five-year programs. Some of these bills would permanently prohibit leasing in large areas, such as throughout the Pacific or Atlantic regions.

Either during development or after final publication of the upcoming program, Congress could affect the program by pursuing bills such as these or other legislation. Alternatively, Congress could choose not to intervene, allowing the new program to proceed as developed by BOEM.

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[68] Other proposals from earlier Congresses would have facilitated additional sales in five-year programs in other ways (e.g., by making it easier for the Interior Secretary to add new sales to programs or by requiring that the Secretary include in each program unexecuted lease sales from earlier programs). See, for example, H.R. 4239 and S. 665 in the 115th Congress.