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Locke Lord QuickStudy: Furling the Sales: Offshore Wind Developers Are Tacking Away From Higher Risk Auctions

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Going into 2024, the Biden Administration was primed to hold four offshore wind lease sales during the one-year window established by the Inflation Reduction Act.^[1] But the recent announcement by the Bureau of Ocean Energy Management (BOEM) that it would be postponing its auction off the Oregon coast, coupled with BOEM's July cancellation of a second sale in the Gulf of Mexico, pares the number of lease sales this year down to two: the Central Atlantic sale this past August and the upcoming Gulf of Maine sale in October. So, are BOEM's decisions to scale back its 2024 leasing ambitions (a) regional in nature, or (b) a symptom of the industry's larger struggles over the last two years? Our answer: mostly (a), but with a healthy dose of (b).

Cancel culture... or just a local problem?

First things first: the Oregon and Gulf of Mexico lease sales were on track to go forward had there been competitive commercial interest. Thus, the key question: why didn't BOEM receive sufficient expressions of commercial interest in advance of those sales?

For Oregon, the answer is multi-faceted. As we stated in our QuickStudy comparing Oregon and the Gulf of Maine, Oregon lacks many of the factors conducive to building a financeable offshore wind project—including the lack of a clear path to market, local opposition, and technical challenges owing to deeper waters. These three challenges are interrelated: Oregon's state and federal leaders have been bombarded by vocal hostility from local residents, fishing groups, and tribal nations that has drowned out the advocacy of clean energy proponents seeking to ramp up deployment to mitigate the effects of climate change. This opposition, in turn, has complicated efforts to enact the types of pro-offshore wind policies in Oregon that have facilitated project development in many other states. At the same time, BOEM has tried to accommodate offshore wind opponents' concerns by pushing leases further offshore and constraining their size—thereby increasing development costs.

BOEM sited its two Oregon lease areas 18 and 32 miles from shore respectively, conducted visual simulations that showed minimal impacts even on the clearest days, and avoided nearly all commercial fishing and cultural resources. BOEM only proposed its Oregon lease sale after supervising [more than a dozen studies](#) of the effects of wind development off Oregon and conducting [over 13 years of stakeholder meetings](#). BOEM was rewarded with a sharp rebuke from Governor Tina Kotek, who sought to withdraw Oregon from BOEM's intergovernmental task

force and demanded that BOEM cancel the auction altogether. Two weeks earlier, BOEM was also sued by several local tribal nations, who alleged that BOEM violated several statutes by failing to analyze the effects of building floating wind farms prior to issuing leases off Oregon. This lawsuit is likely to be dismissed in short order, as the D.C. Circuit has already ruled that BOEM's offshore wind leases do not create any rights to construct offshore wind turbines; as a result, BOEM does not need to conduct a full analysis of the buildout of its leases until it receives a construction and operations plan from a lessee. Nonetheless, the willingness of offshore wind opponents to go to court at this early stage, combined with a lack of state-level support, portend a rocky road for potential lessees.

In the Gulf of Mexico, the challenges are different, but the result is the same. Unlike in Oregon, the Gulf Coast is blessed with a robust existing maritime supply chain and workforce to power an offshore wind industry. Local opposition has not been a major issue either, given the existing industrialization of the waters off Louisiana and Texas. However, the Gulf currently lacks a ready market for offshore wind energy—due largely to low energy prices and a political climate that is not conducive to clean energy incentives. The wind resource in the lease areas proposed by BOEM in the Gulf of Mexico is also lower than in leases it has issued on the East and West Coasts—as well as the proposed Oregon lease areas. (It is perhaps no accident that while there was a lack of commercial interest in BOEM's proposed leases, a developer sought to acquire a lease further to the west off Corpus Christi, Texas where the wind speeds are much stronger.) Wind turbines in the Gulf of Mexico must also contend with increasingly frequent and ferocious hurricanes, an engineering challenge that is also likely to increase costs.

Of course, the offshore wind industry has long been aware of these challenges. And yet until recently, multiple developers had publicly expressed interest in bidding into auctions in these regions.^[2] In the interim, however, the industry has been buffeted by rising costs due to global inflation and a spike in interest rates. The upcoming election also adds to the risk profile, given that Donald Trump's consistent antipathy to wind energy could force developers to pause development of their leases. This doesn't mean developers are completely averse to expanding their offshore wind portfolios: just two months ago, there was brisk competition for shallow water leases in the Central Atlantic with multiple paths to offtake. The Gulf of Maine presents another lower risk opportunity, as it presents some of the highest wind speeds in the U.S. and close proximity to states with strong demand for offshore wind energy and plans to aggressively expand port infrastructure. The recent lack of commercial interest in Oregon and the Gulf of Mexico seems to demonstrate that companies are primarily focused on developing their existing leases and have a lower appetite than they did a year or two ago for entering higher risk markets.

Oregon and the Gulf of Mexico: Still In the Mix, But Time for a New Focus?

These delays are almost certainly not the last word on offshore wind in these two regions. A victory by Kamala Harris this November would give BOEM and offshore wind advocates at least another four years to convene support within Oregon state government and its coastal communities, and a longer runway for developers to decide whether offshore wind leases off Oregon are worth the financial risk. In the interim, California is making major strides in developing an offtake mechanism and port infrastructure to support its five offshore wind leases—including two that are close to the Oregon border. The synergistic effects of a maturing industry to the south could convince Oregonians that the benefits of offshore wind outweigh any potential impacts—or persuade developers to bypass the Oregon coast altogether by just sending energy from Oregon leases directly to California.

By the same token, BOEM has already scheduled two additional lease sales in the Gulf of Mexico—so the “cancellation” of this year’s sale could amount to mere postponement of further leasing activity. Meanwhile, Louisiana now has three sophisticated developers with offshore wind leases off its coast, and is in the early stages of crafting an Offshore Wind Roadmap that could provide a path to resolve the challenges described above. As for Texas, its posture toward offshore wind certainly can’t get any worse... right?

Finally, while these cancellations are largely the product of market forces beyond its control, we hope that they force BOEM to put a greater emphasis on commercial buildability when delineating its lease areas. To date, BOEM and its state and federal partners expend far more effort *removing* areas from consideration due to concerns over public opposition, ocean user conflicts, and potential environmental effects. We would be well served if they spent as much time determining which lease blocks would be most technically and commercially feasible to build offshore wind, and at the lowest cost to consumers. A more balanced approach may result in more commercial interest in leases and fewer postponed auctions.^[3]

For questions regarding upcoming BOEM offshore wind lease sales and the regulatory challenges facing the industry, please contact the authors.

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[1] 43 U.S.C. § 3006(b)(2).

[2] For instance, five developers qualified for the Oregon lease sale (read more [here](#)) and a whopping 15 companies qualified for the first Gulf of Mexico lease sale held by BOEM in 2023 (read more [here](#)).

[3] We note that BOEM’s recent Modernization Rule underscored the need for such balance by including “feasibility of development” as an explicit factor in determining wind energy areas. See 30 CFR 585.212(c)(2).

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