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Locke Lord QuickStudy: If at First You Succeed, Try Try Again: BOEM Wastes No Time Queuing up Another Central Atlantic Lease Sale

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Fast on the heels of a small but successful sale of two leases off Delaware and Virginia, the Bureau of Ocean Energy Management (BOEM) has issued a Call for Information (“Call”) to kick off another round of leasing in the Central Atlantic region, with a second sale currently slated for some time between mid-2025 and mid-2026 according to BOEM’s latest offshore wind leasing plan. Why is BOEM moving so quickly, what is different this time around, and what is the outlook for a second Central Atlantic leasing process?

Lightning Speed

There is no question that BOEM had this Call ready to go well in advance of the recent lease sale, and was just waiting to complete that sale to wrap before starting the process anew. The rush to forge ahead with the new lease sale makes sense for several reasons.

First, the Central Atlantic is regarded as the last region with significant leasable acreage in waters (a) adjacent to states with offshore wind procurement goals and/or mandates, and (b) shallow enough to support fixed-bottom foundations, which is the most commercially and technically mature technology in the industry. This is a recipe for success for offshore wind leases, as evidenced by the strong participation in the recent auction despite the well-publicized challenges and political uncertainty the industry currently faces. Although unleased areas in the shallower parts of the New York Bight and Southern New England also fit these criteria, those areas have generally been withheld out of concern over other uses or impacts, such as avoiding vessel transit corridors, sensitive habitat, prime fishing grounds, and coastal visual impacts. Thus, BOEM is unlikely to dip its toe back in those waters anytime soon, although it is not necessarily foreclosed from doing so.^[1]

Second, BOEM received criticism from states and the offshore wind industry for not offering enough leases for sale in the first Central Atlantic auction. Maryland, in particular, had anticipated that multiple leases in the Central Atlantic would facilitate its ability to meet its newly expanded goal of deploying 8.5 GW of offshore wind by 2031—and that was before Delaware enacted its own mandate to procure up to 1.2 GW of offshore wind. For reasons discussed below, BOEM could not satisfy these state objectives and still meet the December 2024 deadline imposed by the Inflation Reduction Act.^[2] But BOEM was under significant pressure to start its next round of leasing as soon as possible.

Third, BOEM likely wants to leave itself as much time as possible to deconflict the new Central Atlantic lease areas before the next sale, because the process of deconflicting these areas is not expected to be an easy one. The Department of Defense (DoD) and U.S. Coast Guard (USCG) pushed back hard on the vast majority of the areas analyzed as a result of BOEM's initial Central Atlantic Call for Information in 2022, largely due to conflicts with U.S. Navy activities and proposed vessel transit routes.

Casting A Wider Net

One key change BOEM has made this time around is to start with a more comprehensive Call Area that captures virtually every inch of ocean between Delaware and North Carolina that isn't already occupied by a BOEM lease or a formally designated vessel transit lane (see Figure 1).

Figure 1

This approach stands in contrast to BOEM's approach in designated the first Central Atlantic Call Areas, which were tailored around the USCG's anticipated proposal for a much more expansive network of vessel transit lanes (called "fairways") (see Figure 2). USCG ended up significantly altering its proposal and BOEM was effectively left with a choice to either fight USCG's proposal, start its leasing process from scratch, or scale back its leasing ambitions in the short term. It chose door number three, but clearly learned its lesson from the experience.

Figure 2

The 2022 map also included large swaths of the Atlantic located in ultradeep waters—areas designated Call Areas E and F, far offshore in water depths greater than 1,300 meters. BOEM opted not to lease those areas this year, and they were not included in the new Call Area—presumably in response to the National Renewable Energy Labs' recent study indicating that there are presently significant technical barriers to offshore wind development at those depths. However, we note that the Call requests nominations of commercial interest not just within the Call Area but also the former Call Areas E and F in ultradeep water.

Put simply, the expansive approach that BOEM has adopted in its most recent Call provides it with much greater flexibility at later stages of the leasing process. BOEM considers the Call Area(s) to be the outer bounds within which BOEM can further narrow down the areas under consideration at subsequent stages of the process. By soliciting public input and expressions of commercial interest on the largest possible area, BOEM can be much more agile in responding to information submitted by the public, developers, and government agencies while staying within the Call Area and select areas even further offshore. Moreover, this landscape-scale approach is road-tested: BOEM has already deployed it to positive effect in its [Gulf of Mexico](#) and [Gulf of Maine](#) leasing processes.

So how much leasing this time... and where?

BOEM has set itself up for greater success this time around, but it remains to be seen whether that will result in more coveted Central Atlantic leases. The outcome largely depends on three factors:

- *This November's election.* A Trump victory could result in a pause on Central Atlantic (and potentially all) leasing, while a Harris victory will likely mean BOEM adhering to something close to its current leasing schedule.
- *DoD and USCG.* DoD has been vocal in expressing its concerns about the national security implications of further offshore wind development off Maryland, Virginia, and North Carolina. The federal family will need to reach a détente—potentially including the possibility of mitigation measures and indemnifications—in order to unlock substantial acreage this time around. The USCG issued a proposed rule in January of this year that would formally establish a network of fairways on the Atlantic Coast^[3] and is expected to finalize these fairway designations in the coming months. Since the primary intent of this network is to ensure that tug and barge and deep draft vessel transit can coexist with major offshore wind development, USCG should presumably have far fewer objections to leasing outside of its designated fairways.
- *State interest.* As noted above, Maryland and Delaware have recently ratcheted up their commitments to offshore wind. Virginia could follow suit in the next few years, particularly if Democrats recapture the Governor's Mansion in 2025. North Carolina is a wild card: it has a non-enforceable 8 GW planning goal, and Duke Energy has dangled the prospect of a procurement process at an indeterminate point in the future. But the state is experiencing a rapid increase in load demand, and a more forceful pro-offshore wind policy would likely incentivize BOEM to consider leasing more acreage off the state's extensive coastline to meet future needs.

It's clear that BOEM's approach to offshore wind leasing is maturing as it learns from past experience and gains a better understanding of the market and what drives demand. Although the upcoming election will have a major impact on whether a second Central Atlantic sale occurs, if it does it will likely dwarf the successful auction that BOEM completed just two short weeks ago.

For questions about federal offshore wind leasing and development, please contact the authors.

[1] Notably, BOEM has recently acknowledged that due to the intensifying effects of climate change, areas that were previously deemed unsuitable for offshore wind development might become more suitable due to changing habitats for fish and marine mammal species. Gulf of Maine Area Identification Memorandum (March 2024) at

20, available [here](#). So, unless a part of the ocean has legally designated in a way that forecloses offshore wind development—say, a US Coast Guard fairway or a National

Marine Sanctuary—it might still be on the table for future consideration.

[2] ⁴³ U.S.C. § 3006(b)(2).

[3] Shipping Coast Fairways Along the Atlantic Coast, Notice of Proposed Rulemaking, 89 FR 3587 (January 2024), available [here](#).

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