



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
WASHINGTON, DC 20240-0001

April 22, 2024

MEMORANDUM

SUBJECT: Meeting Notes for the Tribal engagement with the CTCLUSI, Hoh, Makah, and Shinnecock Tribes on April 22, 2024, on the Renewable Energy Modernization Final Rule

FROM: Nabanita Modak Fischer (DOI/BOEM/OOR)

To: Docket No. BOEM-2023-0005

This memorandum summarizes Tribal engagement with the CTCLUSI, Hoh, Makah, and Shinnecock Tribes, the Bureau of Ocean Energy Management (BOEM), and the Bureau of Safety and Environmental Enforcement (BSEE) on April 22, 2024, via Teams. BOEM requested this meeting with the CTCLUSI, Hoh, Makah, Resighini, Shinnecock, and Mashpee Tribes to discuss how the comments and feedback from Tribes have informed the Renewable Energy Modernization Final Rule. The Resighini and Mashpee Tribes were not able to join the meeting.

Consultation Attendees:

Brad Kneaper	CTCLUSI
Julie Siestreem	CTCLUSI
Enna Helms	CTCLUSI
Lee Ann Wander	CTCLUSI
Bernard Afterbuffalo	Hoh
Bob Smith	Hoh
Liliana Elliott	Makah
Jason Hansana-Cofield	Shinnecock
Bernard Howard	BOEM
Bronia Ashford	BSEE
Christy Lan	BSEE
Doug Boren	BOEM
Doug Jones	BSEE
Emily Hildreth	BOEM
Gigi Modrich	BSEE
Jill Head	BSEE
John Bain	BSEE

Karen Thundiyil	BOEM
Kirk Malstrom	BSEE
Mary Borcharding	BOEM
Nabanita Modak Fischer	BOEM
Sara Guiltinan	BSEE
Walter Cruickshank	BOEM

Discussion Points:

- BOEM and BSEE presented the background for the Renewable Energy Modernization Final Rule, discussed proposed regulatory provisions, provided a summary of the comments from Tribes on each provision, explained how the final rule addressed the comments and incorporated input from Tribes.
- Tribes requested BOEM and BSEE to share the slides with them. The slides and the link to the pre-publication version of the final rule were shared with Tribes on April 24, 2024.
- BOEM stated that they would welcome additional Tribal engagements in future to discuss the final rule, if requested by Tribes.

Attachment (1)

Attachment 1



BOEM
BUREAU OF OCEAN ENERGY MANAGEMENT

Renewable Energy Modernization Final Rule

April 22, 2024

Agenda

□ Background

- BOEM Renewable Energy Modernization NPRM
- BOEM/BSEE Reorganization Final Rule

□ NPRM Provisions, Comments from Tribes, and Final Rule Provisions

□ Q/A and Discussion

- **BOEM's Renewable Energy Modernization Rule NPRM**
 - Published January 30, 2023
 - Received ~230 comments
- **BOEM/BSEE Reorganization Final Rule**
 - Published January 31, 2023
 - Administrative action—no public comment period



NPRM Provisions, Comments from Tribes, and Final Rule Provisions

- **Elimination of BOEM permitting requirements for meteorological (met) buoys:** This provision focused on improving process efficiency and elimination of duplicative offshore wind development approvals. Met buoys would still require a permit under the U.S. Army Corps of Engineers (USACE) permitting processes for scientific measurement devices.
 - Comments: BOEM received comments seeking more clarity on how this provision would work in practice. Tribes expressed concern that eliminating requirements for the deployment of met buoys would limit environmental reviews, data collection, siting considerations, and buoy removal planning requirements. Tribes expressed concerns on the abandonment of anchors.
 - Final Rule: This provision is finalized as proposed. BOEM worked closely with USACE to provide additional clarity and explanation in the preamble addressing the Tribes' concerns, including that BSEE will retain the authority to require that structures be safely decommissioned, if USACE decided not to require decommissioning.



NPRM Provisions, Comments from Tribes, and Final Rule Provisions

- **Geophysical and Geotechnical Surveys:** Currently, BOEM requires detailed geotechnical survey data for each proposed wind turbine location in the plan submitted by the lessee before project construction is authorized. BOEM proposed to defer certain geophysical and geotechnical survey and data submission requirements, such as engineering site-specific data, until the submission of the Facility Design Report (FDR) which is reviewed by BSEE and BOEM prior to construction.
 - Comments: Tribes expressed concerns that proposed changes to geophysical survey requirements may result in less information being available at the earliest stages of leasing and permitting and would affect consulting parties' review of proposed projects.
 - Final Rule: BOEM agrees with the Tribes that the proposed changes could have allowed a lessee to defer too much information to the FDR stage. Geophysical data is needed in the COP so it can inform BOEM's EIS and consultations. Accordingly, BOEM decided not to finalize the case-by-case deferral of geophysical survey data to the FDR stage. However, we believe that the deferral of a portion of the geotechnical data to the FDR stage is appropriate, and this part of the proposed regulations was included in the final rule.



NPRM Provisions, Comments from Tribes, and Final Rule Provisions

- **Establishing a public renewable energy leasing schedule:** This proposed change introduced a new commitment by the Secretary to publish a schedule of anticipated lease sales that BOEM intends to hold in the subsequent 5 years. This would be done at least once every 2 years.
 - Comments: BOEM received supportive comments from the Tribes. However, they wanted to know how their input would be incorporated before public release of the schedule. They also sought an opportunity to comment through G2G consultations held prior to releasing the schedule to public. Tribes wanted more frequent updates (once in a year in lieu of 2-year update).
 - Final Rule: This provision is finalized as proposed. BOEM believes the schedule adds sufficient clarity by providing additional information on the area covered by each proposed lease sale, the calendar year in which it is projected to occur, and reasons for any changes to the previously published schedule. The Bureaus also reaffirm their commitment to the DOI Consultation with Tribes policy.



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- **Lease Issuance Procedures:** This proposed change addressed the leasing process including bidding process, and more clearly outlined auction processes and requirements.
 - Comments: Tribes stated that the *Call for Information and Nominations* should be revised to require BOEM to request additional socio-economic information such as potential impacts associated with housing, Tribal revenues, worker's camps, traditional gathering, first foods, and other disproportionate impacts felt by Tribal members.
 - Final Rule: BOEM specifically requests this kind of information (and much more) when it issues such *Calls*. The *Call* for California areas in Morro Bay is an example for this. As a practical matter, BOEM is already requesting the kind of information the Tribes asked for, though BOEM did not revise the regulations to require it in all cases.
 - Comments: Tribes requested more project information be made available to Tribes as early as possible, and recommended BOEM build in clear triggers for tribal consultation at every stage.
 - Final Rule: BOEM makes project information available as soon as possible and will continue to do so. The final rule reiterates that BOEM will consult with affected Tribes at several points during the OSW leasing process and BOEM welcomes additional tribal consultation requests at any time. The regulations require Tribal coordination and consultation with the Tribal leadership for Tribes that may be affected by any leases, easements or ROWs BOEM issues (§ 585.102(e)); prior to the issuance of any lease (§ 585.203); and during the area identification process that takes place prior to the competitive issuance of leases (§ 585.211(b)). BOEM also consults with tribal historic preservation officers pursuant to the NHPA at the leasing and plan review stages.



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- **Financial Assurance and Credit Ratings:** The proposed change allows for incremental funding of decommissioning accounts in accordance with a BOEM-approved schedule during the lease term.
 - Comments: Tribes were concerned that relying on the financial strength of co-lessees for determining financial assurance undermines the security provided by the imposition of joint and several liability because the financial health of co-lessees may decline over time. Additionally, they opposed staged funding of financial assurance, particularly considering unforeseen circumstances, such as storms that result in major damage to turbines.
 - Final Rule: This provision is finalized as proposed. While the financial health of co-lessees may change over time, BOEM's assessments of lessees' financial health also changes over time. BOEM evaluates all lessees at least annually and examines multi-year performance trends. As for staged funding of decommissioning financial assurance, BOEM seeks to maintain a balance between protecting the taxpayer from costs associated with development on the OCS and not being unnecessarily burdensome to industry. BOEM reserves the right to require additional financial assurance at any point in the project's life, and actively monitors risks associated with offshore development.



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- **Other Changes:** BOEM made other changes to address comments from Tribes.
 - Comments: Tribes stated that section 585.611 should require an applicant to include information about sites that have religious or cultural significance to Tribes, including viewsheds and traditional cultural landscapes and properties while submitting for a SAP to assist BOEM in complying with NEPA and other applicable laws. They also commented that sections 585.616 and 585.617 should be revised to add “culturally significant sites, including viewsheds and traditional cultural landscapes and properties; or subsistence rights of a federally- recognized Tribe.”
 - Final Rule: BOEM reviewed these requests for additions to BOEM’s SAP, COP, and GAP requirements, and revised the final rule to require this information to be included in such plans. For example, the regulations in 30 CFR 585.627 (for COPs) require lessees to submit detailed information and analysis “to assist BOEM in complying with NEPA and other applicable laws.” The regulations, as revised, require information about “archaeological resources use, or historic property use, Indigenous traditional cultural use, or use pertaining to treaty and reserved rights with Native Americans or other Indigenous peoples, including required information to conduct review of the [plan] under the NHPA or other applicable laws or policies, including treaty and reserved rights with Native Americans or other Indigenous peoples.” We have not adopted the precise wording proposed in the comment, but we believe the language, as revised, will achieve the same result.



NPRM Provisions, Comments, and Final Rule Provisions

- ❑ **Clarification of FDR/FIR Review Period:** The proposed rule included a 60-calendar day FDR and FIR review period.
 - Comments: Several commenters suggested the Final Rule clarify that data submitted after the COP approval is not required for the Facility Design Report (FDR)/Facility and Installation Report (FIR) to avoid delays in completion of the FDR/FIR process within “60 days”.
 - Final Rule: BSEE considered comments related to the time for completing the FDR/FIR review and is clarifying that the review period is 60 business days.

- ❑ **Definition of Commercial Operations:** The proposed change modified the definition of “commercial operations” to state that the term means the generation of electricity or other energy product for commercial use, sale, and distribution on a commercial lease, but does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis.
 - Comments: BSEE received several comments on the proposed definition of commercial operations, including a request to clarify that “commercial operations” does not include energy produced after commissioning and testing but prior to the commencement of such operations.
 - Final Rule: BSEE is revising the definition of “commercial operations” by removing the proposed language “does not mean either generation needed to prepare a final FIR or generation for testing purposes, provided the electricity generated for such testing is not sold on a commercial basis” and adding transmission to the list of operations.



NPRM Provisions, Comments, and Final Rule Provisions

- ❑ **Safety Management Systems:** The proposed change addressed how SMS engagement with the lessee or grant holders will focus on risk identification and how the safety system is designed to reduce or negate those risks to people, property, and the environment. The proposed rule clarified the information requirements for safety management systems, added certain safety reporting requirements, and incentivized lessees and grant holders to obtain a safety management certification from an accredited conformity assessment body (CAB).
 - Comments: Multiple commenters expressed support for the proposed shift to performance-based approaches for SMS, particularly related to incentives for obtaining certification or accreditation for SMS, streamlined oversight, clearer safety expectations, coordination of enforcement within the Department, requirements for more detail to be included in the SMS, and reporting requirements to allow comparisons of safety industry-wide.
 - Final Rule: Consistent with the proposed rule, BSEE is finalizing the information requirements for safety management systems and the proposed provision to incentivize lessees and grant holders to obtain a safety management certification from recognized accreditation organizations and to ensure the applicability of an SMS to all OCS activities undertaken pursuant to a lease, from site assessment through decommissioning.



NPRM Provisions, Comments, and Final Rule Provisions

- ❑ **Inspection:** The proposed change allowed the Department to focus resources on conducting inspections based on designated criteria such as operational risk severity and probability, industry trends, incident data, analytical data, safety management system implementation and audits, and other observations.
 - Comments: Several commenters stated that more clarity is needed regarding which vessels would be subject to Department inspections; the roles of BOEM, BSEE, USCG, and independent inspection companies contracted by lessees to conduct inspections; the intensity and focus of inspections; and how inspections would address operational safety, environmental risk, and engineering.
 - Final Rule: Consistent with the proposed rule, BSEE is finalizing the requirement for lessees to conduct an onsite inspection of each of their facilities at least once a year and allow BSEE to conduct both scheduled and unscheduled inspections. BSEE is also clarifying that BSEE may inspect OCS facilities and any vessels engaged in activities authorized under § 285.820.

- ❑ **Certified Verification Agent:** The proposed change included reliance on CVAs to provide an independent source of review for key stages of project development and helps to establish public confidence in the renewables industry.
 - Comments: Multiple commenters requested that the Department further clarify the role of the CVA in verifying a facility's safety by incorporating appropriate consideration for human and occupational safety through verification of adherence to industry codes and standards to reduce confusion regarding CVA review of a facility.
 - Final Rule: BSEE is expanding the role of the certified verification agent (CVA) to include verification of the design and commissioning of the critical safety systems to ensure that any activities authorized by BSEE are carried out safely with certain clarifications. BSEE is changing the CVA review standard to conform with industry practice and provide flexibility in the CVA nomination and engineering report submittal process.



Q/A and Discussion

- Questions?
- Discussion



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