

## **Response to Comments and Explanation of Changes from the Rhode Island and Massachusetts Proposed Sale Notice to the Final Sale Notice**

BOEM received eighty-two comments in response to the *Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts* comment period that closed February 1, 2013. The comments addressed many aspects of this lease sale, and this document was prepared in response to a number of comment questions asked and issues raised. BOEM's responses to the comments are organized into five categories: (1) Auction Procedures, (2) Fiscal Terms, (3) BOEM's procedures, (4) Lease Stipulations, and (5) Miscellaneous.

### **1. Comments Related to Auction Procedures**

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***Comment:* Instead of a monetary auction that also considers non-monetary factors, BOEM should use a process that does not rely on cash bidding.**

The auction process proposed in this notice is the result of a lengthy and thorough analysis of options dating to early 2011. The comments are correct that BOEM has the ability to conduct an auction that is not based on cash bidding through its Multiple Factor Auction format. It has chosen to include a cash element to the auction for several policy reasons:

- Cash bidding is objective;
- Cash bidding minimizes the risk that BOEM will issue leases based on project proposals and cost estimates that the lessee may not ultimately be able to deliver;
- Cash bidding eliminates the difficulty BOEM would have in subjectively determining which bidder is best equipped to construct a project; and
- Cash bidding provides a fair return to the government, as required by the Outer Continental Shelf Lands Act (OCSLA).

***Comment:* BOEM should give the full 25% non-monetary credit to the holder of a Joint Development Agreement (JDA).**

In the PSN, BOEM proposed a 15% non-monetary credit for the holder of a qualifying JDA. We have determined that although the full 25% credit should be limited to situations where a bidder has secured a guaranteed off-take agreement, a 20% non-monetary credit is justified in this case, because of the unique role that Rhode Island has long played in promoting offshore wind development, and because of a provision of Rhode Island State law that BOEM had not fully considered before publication of the PSN.

BOEM limits the non-monetary credits that any single bidder may receive in a multiple factor auction on the recommendation of a study commissioned by BOEM. See Ausubel, Lawrence and Peter Cramton, *Multiple Factor Auction Design for Wind Rights*, p. 25, Sept. 17, 2011 ("We would recommend that the total bid [credit from non-monetary factors] be no more than 25%, as has typically been the approach with State and Federal programs in the past"). To

credit non-monetary factors more than 25% risks jeopardizing the competitiveness of the auction.

BOEM values an enforceable off-take agreement (such as a PPA or OREC) higher than other factors, including possession of a JDA. Because the maximum credit that any bidder should have in our auction is 25%, if we give that credit to what we value most—a PPA, then a JDA must receive something less. Several commenters implied that a provision of Rhode Island State Law, (R.I. General Laws 39-26.1-8) made possession of a JDA as valuable as a PPA. Upon review of this section, and discussion with the State as to its meaning, BOEM has concluded that while this provision is of some value to the possessor of a JDA insofar as it provides expedited procedures for “the developer selected by the state to develop a utility-scale offshore wind farm,” the provision falls short of assuring approval of a long-term PPA for the project, and so does not justify a non-monetary factor credit of the full 25%. However, the possessor of a JDA who has been identified as a preferred developer by the State of Rhode Island through a competitive process would have devoted significant time and money in satisfying State procedures and regulations toward the advancement of an offshore wind project. Furthermore, the possessor of a JDA is permitted exclusive rights to all marine spatial planning exercises, identified commercial and ecological exclusions, and spatial area management planning studies conducted by Rhode Island as part of their Special Area Management Plan (SAMP). BOEM has therefore decided to set the percentage credit for the possession of a JDA at 20%.

BOEM has included a 25% non-monetary credit for a qualifying power purchase agreement (PPA), in order to signal its intention to credit such PPAs in future lease sales. The 20% credit for the JDA in this lease sale is not intended to signal a corresponding intent to credit JDAs in other states in the same manner. The 20% level was determined for this lease sale based on non-replicable criteria, including the fact that Rhode Island’s JDA process predated publication of BOEM’s regulatory framework. In the preamble to BOEM’s renewable energy regulations, we referenced the unique circumstances that have led us to the 20% determination in this case:

Notably, during the time that [BOEM] has been promulgating this rule, the States of Delaware, New Jersey, and Rhode Island have conducted competitive processes and have selected companies to develop wind resources on the OCS. We believe that the pre-existing State processes are relevant to the competitive processes that BOEM is required to conduct following approval of this rule. We intend to do so by using a competitive process that considers, among other things, whether a prospective lessee has a power purchase agreement or is the certified winner of a competitive process conducted by an adjacent State.” *Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Final Rule*, 74 FR 19638, 19663 (Apr. 29, 2009).

While the preamble left open the possibility that BOEM may recognize state competitions in other lease sales, state policymakers should not expect BOEM to assign as high a credit to future analogous public-private agreements.

**Comment: BOEM should offer non-monetary credits for other factors, such as Community Benefits, and environmentally-friendly practices.**

Many commenters suggested offering non-monetary auction credits to those bidders that have executed Community Benefit Agreements. At this time, it is not clear to BOEM what the standards for such an agreement would be, or how the execution of such an agreement would make a developer more likely to successfully see a project through to completion. BOEM has opted not to credit such agreements in this lease sale, though it may consider such agreements, or other factors, in the future, if the following concerns can be addressed:

- Any non-monetary factors that BOEM credits should be objectively defined, so that the panel can evaluate each bidder on a yes/no basis.
- Non-monetary factors should reflect a real development advantage for bidders receiving the credit. BOEM does not want to create an incentive for bidders to seek out artificial community partnerships that do not make development of a project more likely.

**Comment: BOEM should apply non-monetary credits to all lease areas (LAs) won by a bidder holding such credits.**

BOEM chose to limit the non-monetary factor credits to one LA because the auction credit should roughly correspond to the development advantage that corresponds to the credit. In other words and for example, if each LA can comfortably support more than 600 MW of offshore wind generation, a leasing credit given to a PPA representing 300 MW of off-take should not be usable on two LAs. Accordingly, a JDA that represents support for a 500 MW project should not be leveraged to two LAs each capable of supporting more than 500 MW of generation. It is true that the auction procedures, as currently written, would not allow a bidder with a long-term PPA for the development of 1,000 MW to use a bidding credit for more than one LA, even though one LA may not be large enough to support 1,000 MW of generation. If it appears that bidders may come to BOEM auctions with very large PPAs in the future, BOEM will need to revisit its policy on non-monetary bid credits.

For economic reasons, very large PPAs are unlikely for the foreseeable future. However, BOEM has made an adjustment to the auction procedures to better accommodate small PPAs. As described in the PSN, a PPA for 350 MW would qualify the bearer for a 25% credit. However, a PPA for 349 MW would qualify the bearer for a 0% credit. This was done to prevent bidders from obtaining a very small PPA for the sole purpose of receiving full credit in BOEM's auction. However, because a PPA for 350 MW is not significantly more advantageous for a developer than a 349 MW PPA, BOEM has decided to recognize a bidding credit for PPAs smaller than 350 MW. A bidder with a PPA for less than 350 MW will be eligible for a credit corresponding to that percentage of the 350 MW's credit. For example, a bidder with a PPA for 175 MW (half of 350 MW) will be eligible for a bidding credit of 12.5% (half of 25%). The formula for this determination is provided below.

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 350 MW
- Full Credit = 25%
- Partial PPA = amount (less than 350 MW) of power under contract

Using this formula, a PPA for 349 MW is worth approximately 24.9%, and a PPA for 1 MW is worth less than 0.1%.

***Comment:* BOEM should lease four smaller lots instead of the two that have been proposed.**

BOEM has retained the LAs as proposed in the Proposed Sale Notice for a number of reasons. Most importantly, larger size LAs will allow bidders to adjust the layout of their projects if future use conflicts are identified that may restrict turbine arrangement. Additionally, BOEM does not presume to know how a developer may arrange turbines for maximum efficiency within an LA, and wants to provide the winning bidder(s) flexibility in this regard. Finally, BOEM wanted to avoid the complexity of an auction where some bidders feel the need to win more than one adjacent LA in order to support a project.

***Comment:* BOEM should treat a bid on two LAs as two individual bids rather than a package bid that would stand or fall together.**

BOEM chooses to treat bids on multiple LAs as a single package bid for several reasons. During an auction, bidders need to know what the maximum liability associated with their bids could be.

First, in a format where bids on both LAs are evaluated individually rather than as a package, situations frequently arise where bidders do not know the maximum liability associated with their past bids, which makes it risky to formulate future bids. For example, when a bidder switches from bidding on both LAs in the sale to just one of them, the bidder cannot know in advance if it will win the LA it is no longer bidding on, which makes it difficult to know how to structure its bidding strategy going forward. In fact, this uncertainty could persist, if no further bids are placed on the LA that the bidder is no longer bidding on, and bidding continues on the single LA that the bidder continues to bid on. The bidder's current competition for the contested bid might switch LAs, in which case the bidder will lose the LA remaining in the sale that it left behind. Alternatively, the bidder's current competition could drop out, in which case the bidder would win both LAs in the sale. In fact, the situation described above could occur any time a bidder switches its bid from one LA to the other. As soon as the bidder switches to another LA, the bidder cannot know whether it will win the LA that it has stopped bidding on, in addition to the LA that it continues to bid on. This uncertainty makes it difficult for the bidder to decide how high to bid on the remaining LA.

Second, the current auction format allows a bidder to express a desire to win both LAs, or none at all. Such a situation could arise if a bidder feels that economies of scale make development of only one area uneconomic, or if a bidder would like to develop a project, but

only if it can be assured that the other lessee in the area will not be the possessor of a JDA. It would be rational in either case for a bidder to be interested in winning two leases, but not one. If a multiple-LA bid submitted by a bidder is considered as a single package bid composed of multiple LAs, these problems are solved.

***Comment:* Do not use an auction format where the high bidder would not win.**

We believe the comment refers to the theoretical possibility that BOEM's auction could result in a lease award that does not result in the highest revenue to the government, rather than the highest bid for a specific LA. This could happen, for example, in an auction with two bidders. In Round 1, one bidder bid on both LAs and the other bidder bid on one LA. In Round 2, the bidder that submitted the bid on both LAs dropped out, and the other bidder submitted a live bid on one LA. In such a situation, the bidder that did not drop out of the auction would win, and one LA would go unsold, despite the fact that the bidder on both LAs had offered a higher monetary bid. In an example such as this one, BOEM favors the bidder that did not exit the auction over the bidder that did.

First, to do otherwise would mean that the bidder who stayed in the auction until the last round was doomed from the start—in other words, short of bidding on two LAs, there is nothing the bidder could have done to win the LA it was bidding on. This fact would have been apparent to the bidder on both LAs as soon as BOEM released the results of the first round. Second, although the losing bid was for a higher monetary amount, it was for two LAs, not one. On an LA-to-LA basis, BOEM received a higher bid on the LA that was won than was offered in the previous round by the bidder who dropped out. The bidder that lost had an opportunity to match that winning bidder's offer for the contested LA, and declined.

***Comment:* BOEM should make auction information, such as the winning bid, available to the public.**

BOEM intends to do so. Although the specifics of the timing and content of the information to be released to the public have not been finalized, at a minimum, BOEM will identify the winning bidder and indicate the amount of the winning bid.

***Comment:* BOEM should hold the auction no sooner than 60 days following publication of the FSN in the *Federal Register*. BOEM should require bid deposits 30 days following publication of the FSN in the *Federal Register*.**

BOEM agrees that although BOEM's regulations require the FSN and the sale to be separated by at least 30 days, that period is a minimum. Under the schedule described in the FSN, bidders will have more than 30 days to establish bid deposits. The auction will take place 54 days from the FSN publication date.

***Comment:* BOEM should conduct a generic mock auction prior to the auction. This mock auction should be open to a larger set of participants, e.g., any company that has been qualified by BOEM to hold an offshore renewable energy lease or grant.**

BOEM has endeavored to deliver a variety of ways for the regulated public to learn about BOEM's auctions, and contribute to their design. BOEM commissioned three white papers on auction formats that were published in September 2011. BOEM held a public workshop on auction formats followed by a series of webinars and a notice with public comment period in December 2011. In January 2012, BOEM held public Auction Seminars in Narragansett, RI and Richmond, VA. Although the mock auction that BOEM plans to hold on July 24, 2013, is the only outreach in which a bidder will be able to use the auction software, we believe that the public outreach conducted to date has been adequate to ensure that the public can understand BOEM's process, and bidders understand the auction environment well enough to participate meaningfully. Moreover, the contract that BOEM has with the auction services contractor does not include a mock auction such as was requested in the comments. Still, the demand for additional opportunities to participate in this kind of event is noted, and BOEM will consider adding other opportunities for participation of the kind requested.

***Comment:* BOEM should conduct additional rounds of bidding in the event of a tie.**

BOEM understands the preference for a transparent process to resolve ties. BOEM has decided not to add additional rounds to auctions to avoid ties for several reasons. In most cases, a tie in the auction reflects a situation where each tied bidder is willing to pay, at most, the exact same amount as other bidder(s) with whom it is tied. If bidders are bidding strategically, it may take many additional rounds to resolve the tie. In any case, in such situations, the economic value of the lease to each bidder is—if not precisely equal—substantially so. It should also be noted that adding complexity to the auction format is not itself without a cost. Who should be able to bid in such a tie-breaker? If bidders remain tied after an additional round, should BOEM hold additional rounds until the tie is resolved? The cost of implementing such additional rules and the cost of educating the bidders on such rules masks the fact that BOEM expects such ties to be extremely rare. BOEM and its predecessor agencies have been holding oil and gas lease sales involving thousands of tracts for dozens of years, and ties have occurred very rarely. Moreover, one of the reasons for allowing Intra-Round Bids is to mitigate the likelihood of a tie by letting bidders express their willingness to pay down to the dollar. Accordingly, unless BOEM finds that ties are more common than anticipated in renewable energy auctions, we do believe the proposed approach for resolving them is adequate and fair.

***Comment:* BOEM should allow more than one registered representative of a bidder to be logged in at once.**

Multiple authorized users from the same bidder are permitted to be logged in at the same time. Bidders designate up to three authorized users on the Bidder's Financial Form. These users can be logged in simultaneously. If more than one bidder submits a bid, the system will register the last bid placed before the end of the round. The login procedures were determined in consultation with the auction services contractor and the Bureau of Safety and Environmental Enforcement's information technology security staff. Moreover, many aspects of the system's

design are in place to meet security and legal requirements such as FISMA (Federal Information Security Management Act, 44 U.S.C. 3541 et. seq.).

***Comment: BOEM should lower the minimum bid.***

BOEM proposed a minimum bid of \$5 per acre in the PSN. Based on observations made by several commenters, and in light of the findings contained in the National Renewable Energy Laboratory's Final Technical Evaluation Report of the two LAs (<http://www.nrel.gov/docs/fy13osti/58091.pdf>), BOEM has decided to lower the minimum bids for each of the two LAs. One conclusion of the report is that the North and South LAs have "significantly dissimilar attributes," and "taken together, these differing attributes tend to indicate that the North LA is a more competitive and cost effective area for near term commercial development." Accordingly, BOEM has lowered the minimum bid for the North LA to \$2 per acre, and it has lowered the minimum bid for the South LA to \$1 per acre. BOEM has decided that further lowering of minimum bids would run the risk of unnecessarily prolonging the duration of the auction.

In addition, BOEM is making several other relevant changes to the terms of the lease sale. First, in the PSN, BOEM proposed to make the minimum bid the same amount as the bid deposit. BOEM has decided to keep the bid deposit near the \$5 per acre described in the PSN. Instead of \$5 per acre, the bid deposit will be \$450,000 per unit of desired initial eligibility. This means a bidder that would like to bid on a single LA in the first round of the auction must submit a bid deposit of \$450,000. A bidder that would like the ability to bid on both LAs in the first round of the auction must submit a bid deposit of \$900,000. Because bidders can decrease, but not increase, the number of LAs they are bidding on over the course of the auction, this initial bid eligibility is also the maximum eligibility that the bidder will have at any later point the auction. BOEM has not substantially reduced the bid deposits because the bid deposit is the primary way that BOEM discourages bidders from bidding beyond their ability to pay. If a bidder cannot or will not pay its bid, BOEM will not execute a lease with that bidder, and BOEM will retain that bidder's bid deposit. Moreover, BOEM may later determine that this reflects poorly on a company's financial qualifications to acquire other OCS renewable energy leases. Because relatively few leases are available in any given lease sale, this situation would be a serious setback to a lease sale. Accordingly, BOEM has substantively preserved the amount of the bid deposit while modifying its form. BOEM has chosen to require a fixed bid deposit amount rather than a per acre bid deposit to simplify determination of required bid deposit amounts.

Second, in the PSN, BOEM expected to increase LA asking prices by a certain percentage that is tied to the number of companies that bid on that LA in the previous round. BOEM had proposed to increase asking prices at a rate of 4% per unit of excess demand, as follows:

- by 4% if the LA had been included in two bids during the previous round,
- by 8% if the LA had been included in three bids during the previous round,
- by 12% if the LA had been included in four bids during the previous round,
- by 16% if the LA had been included in five bids during the previous round, and

- by 20% if the LA had been included in six or more bids during the previous round.

BOEM is concerned that by lowering the minimum bid, it is also lowering the increments by which it will raise asking prices, which could unduly prolong the auction. Accordingly, until asking prices have surpassed \$5 per acre, BOEM plans to increase asking prices at a rate of 20% to 50% to advance the auction more quickly. Once the asking prices have risen to \$5 per acre, BOEM plans to use smaller increments—closer to the 4% to 20% schedule published in the PSN. However, the increments remain in the sole discretion of BOEM at all times, and BOEM will adjust these increments as it deems appropriate to speed or slow the pace of the auction.

***Comment:* The award procedures in Stage 2 should be clarified.**

The Auction Procedures section of this notice has been rewritten for clarity.

***Comment:* BOEM should clarify the review of anticompetitive behavior and rejection authority in the FSN.**

OCSLA requires BOEM to afford the Department of Justice (DOJ), in consultation with the Federal Trade Commission, 30 days in which to complete an antitrust review of BOEM's lease sales. This review could entail issues such as competition, concentration and collusion. At the end of the 30-day period, the DOJ will send a recommendation to BOEM. Any post-auction decision not to issue leases will be made by BOEM and/or the panel.

***Comment:* BOEM should avoid withdrawing blocks prior to lease execution, but should establish procedures for doing so.**

BOEM does not anticipate withdrawing blocks or reducing their size prior to lease execution. BOEM reserves this right to preserve its flexibility in the event of some unanticipated event. However, in the unlikely event that a LA included in a winning bid is withdrawn or reduced the winning bidder will be given the right to renege without penalty on the remaining LAs in its bid. Should the bidder choose to acquire the remaining LAs, the purchase price will be scaled down on a pro rata basis reflecting the most recent round's asking prices for the LAs included in the winning bid and the pro rata reduction in LA acreage.

## **2. Comments Related to Fiscal Terms**

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***Comment:* BOEM should adjust its operating fee annually based on the escalation established by the lessee's power sales agreement or reference to Mass-Hub energy pricing.**

Per BOEM's regulations at 30 CFR 585.506(a)(5), one component of BOEM's operating fee is P, "a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour..." Absent a change to or departure from BOEM's regulations, BOEM cannot issue a lease in which the price of power in BOEM's operating fee formula is defined to mean the price of power in the lessee's power sales agreement. Moreover, in most cases, bidders are not expected to have executed PPAs or sales agreement before BOEM issues leases. This would mean that the operating fee formula would need to reference a variable that will not be known

until a PPA is executed, and might need to be adjusted each time the developer signs a new power sales agreement. Sales outside such an agreement would further complicate the matter. BOEM believes that using a proxy, even an imperfect one, for the price that the lessee will receive for the power, is justified based on its administrative simplicity.

***Comment: BOEM should prorate rent in the year in which commercial operations begin.***

BOEM has decided not to prorate the final year's rent before commercial operations. Before commercial operations on a lease begin, a lessee pays rent. Once commercial operations have begun, the lessee stops paying rent and starts paying operating fees. This comment addresses the fact that BOEM does not prorate the final year of rent before operations begin. If a lessee starts operations on the day after it pays rent, it would pay the same rent as a lessee that started operations, say, three hundred days later. However, the situation is not as stark as it appears. BOEM allows a lessee to construct its project in phases, and expects most lessees to do so. A lessee who constructs 1/5 of its project in the first year would start paying operating fees for 1/5 of its project, and rent for 4/5. If rent for the entire LA is approximately \$300,000 per year, then in the first year, someone installing 1/5 of the capacity would forgo paying between \$0 and \$60,000 in prorated rent for each year that new capacity is added. This will have an averaging effect. Moreover, for phased development projects, BOEM determines rent based on the MWs in commercial operations divided by the MWs an operator specifies as "total project size" in its Construction and Operations Plan (COP), instead of on the actual acres used for each project phase or on a MW/block (or acre) basis. As a result, a lessee that has developed most of the capacity of a proposed project on a relatively small part of the LA can keep a large portion of unused acreage while paying no rent once he is at "full operations", even if full operation does not use nearly the entire LA.

***Comment: Operating fees should not increase from 2% to 4% in the ninth year of commercial operations.***

Several commenters recommended keeping the operating fee rate at 2% throughout the lease term, instead of raising the operating fee rate to 4% in the ninth year of operations, as proposed in the PSN. Pursuant to the OCSLA, BOEM must ensure that the government receives a fair return for leases and grants issued on the OCS. BOEM has determined that a 2% operating fee rate throughout the term of the lease does not threaten the government's ability to receive a fair return and is in accordance with the default operating fee specified in CFR 585.506. Previous offshore wind lease agreements that incorporated an increasing operating fee rate were issued through BOEM's noncompetitive lease negotiations process. Lower revenues to the government resulting from a lower operating fee rate may be at least partially offset by higher bids received through the lease sale. Accordingly, the leases to be offered in this auction feature a flat 2% operating fee rate throughout the term of the lease.

***Comment: Only six months' rent should be due 45-days after the lease copies are sent to the lessee.***

The comment correctly notes that per BOEM's regulations at 30 CFR 585.224(b), only the first six months' rent is due. The lease published concurrently with the PSN stated that the

first year's rent is due. We have decided to reduce the first payment to a six month payment, with another six month payment due six months after the Effective Date of the lease. One effect of a proposed rule change published by BOEM (78 FR 12676) is that the first rent payment would cover the first year's rent, as BOEM proposed in the PSN. However, because the rule change has not yet been finalized, BOEM will not require the second six months' rent to be paid until the six month lease anniversary.

***Comment: The capacity factor used in the operating fee should be able to change by more than 10%.***

The 10% band was included to smooth out excessive variability that might occasionally occur from one performance period to the next. BOEM's wind simulation data and resource modeling indicate that averaging the previous five years' worth of actual metered electricity generation delivered to the electrical grid when setting the capacity factor in each subsequent performance period most often results in variations of less than 10%. This finding is consistent with the results found from a review of capacity utilization for existing wind energy projects, which indicated that variations from one five-year period to the next rarely exceeded the 10% band. So, it can be inferred that adjustments of over 10% would be largely anomalous and not due to the natural variance that is to be expected from changes in resource strength, operational issues, etc. Accordingly, adjustments of over 10% are not likely to accurately represent electrical generation in the next performance period, and even less likely to accurately reflect any one year's result within the next performance period. Moreover, applying a 10% band on adjustments mitigates the incentive that a lessee might otherwise have to deliberately underperform during one performance period to secure a lower operating fee following the capacity factor adjustment. Accordingly, in setting the capacity factor for each year in an upcoming performance period, using the average value over the previous five-year performance period, in combination with a maximum adjustment of 10% from one performance period to another, results in an applicable annual capacity factor that is a less volatile and more accurate representation of future performance compared to alternative formulations, e.g., annual unconstrained measures.

### **3. Comments on BOEM's Leasing Process**

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***Comment: BOEM's process leaves little room for State governments to participate in the selection of projects/developers.***

OCSLA requires BOEM to issue leases competitively unless, after public notice of proposed lease area, BOEM makes a determination that no competitive interest exists. BOEM was statutorily required to proceed with the competitive leasing process offshore RI/MA because there was competitive interest for commercial wind energy leasing in the area as indicated by the eight geographically overlapping nominations of interest received in response to BOEM's Call for Information and Nominations for Commercial Leasing for Wind Power on the OCS Offshore Rhode Island and Massachusetts published in the Federal Register in August 2011. BOEM has chosen to acknowledge the competitive process conducted by the State of Rhode Island by implementing a multiple-factor auction approach that considers both monetary and non-monetary

factors. The non-monetary factor that BOEM will consider in the auction is whether a bidder holds a Joint Development Agreement or a Power Purchase Agreement. The Final Sale Notice provides a complete description of how these non-monetary factors will be considered in the auction

#### **4. Comments Related to Lease Specific Terms, Conditions, and Stipulations**

***Comment: Several commenters recommended that BOEM adopt additional stipulations for the protection of North Atlantic right whales similar to those contained in a voluntary agreement for the Mid-Atlantic Wind Energy Areas.***

BOEM has incorporated into the lease stipulations that were developed in consultation with NOAA for the protection of North Atlantic right whales. BOEM is supportive of the collaborative efforts between environmental non-governmental organizations and offshore wind developers to pursue novel mitigation measures. BOEM's standard operating conditions and the environmental non-governmental organizations' voluntary agreement are similar in regard to sound source verification for survey equipment and vessel strike avoidance measures. At this point, the measures in the environmental non-governmental organizations' agreement are voluntary and reflect the commitment of the offshore wind industry, in some instances, to go above and beyond existing requirements developed by BOEM in consultation with NOAA. For any voluntary measures that may be less restrictive than those described by BOEM, BOEM's environmental requirements and lease stipulations must be followed.

#### **5. Miscellaneous: Other Changes Not Prompted by Proposed Sale Notice Comments**

***The PSN refers to "Zones," whereas the FSN refers to "Lease Areas" (LAs). Why the difference?***

Although BOEM initially framed the auction discussion in terms of "Zones," BOEM has since changed the terminology to "Lease Areas." LA is more descriptive of the geographic area that will be leased in each instrument. Moreover, it was brought to BOEM's attention that the term "Zone" might inappropriately evoke "zoning." Whatever similarities BOEM's area identification process share with the land-use practices of local governments, in this instance, BOEM meant only to designate the area encompassed by each lease.

***Why did BOEM make changes to certain lease specific terms, conditions and stipulations in Addendum C?***

BOEM published the PSN prior to concluding formal consultations with National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act. BOEM concluded formal consultations with NMFS on April 10, 2013. The Biological Opinion, titled "*Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf in the Massachusetts, Rhode Island, New York, and New Jersey Wind Energy Areas*," is available via the following link: [http://www.nero.noaa.gov/protected/section7/bo/actbiops/boem\\_ocs\\_wind\\_energy\\_april\\_20](http://www.nero.noaa.gov/protected/section7/bo/actbiops/boem_ocs_wind_energy_april_20)

[13.pdf](#). As a result of the Biological Opinion, BOEM updated the stipulations in Addendum C as well as the revised Environmental Assessment published concurrently with the Final Sale Notice.

***What happened to Appendix A to Addendum C: High Resolution Geophysical Surveys & Analysis for the Identification or Reporting of Archaeological Resources?***

BOEM has elected to remove Appendix A “High Resolution Geophysical Surveys & Analysis for the Identification or Reporting of Archaeological Resources” and remove reference to Appendix A from Addendum C (at stipulations 4.2.1 and 4.2.4). These changes allow BOEM greater flexibility in efforts to identify historic properties, results in better protection for historic properties, and are consistent with the consultations held under Section 106 of the National Historic Preservation Act and resulting programmatic agreement. Including Appendix A in the lease binds BOEM and the developers to those exact survey parameters for the life of the lease and does not allow the flexibility of updating the survey methodologies as technology changes, new methods are developed, and other recommendations are considered. For example, input from the BOEM-funded studies and subsequent consultations with consulting parties may result in additional changes to BOEM’s *Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 585* (see <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/GGARCH.aspx>). BOEM has sufficient opportunity to communicate to lessees its current minimum survey standards (as defined in the latest version of the *Guidelines*) at the required pre-survey meeting and through review of lessees’ required survey plans. The removal of Appendix A does not release lessees from the necessity of survey; it simply removes the expectation that an inflexible set of standards, codified in unchangeable lease stipulations, will be required of lessees. Instead, if a lessee provides data that are not in-line with BOEM’s *Guidelines* (in other words, insufficient data), BOEM will reject the survey information and cite the regulations which require the lessee to provide the results of surveys. This approach is valid because it is implied in the regulations that the surveys will be sufficient for BOEM's decision making purposes. Thus, the removal of Appendix A and its associated references in Addendum C result in better protection of historic properties while remaining consistent with the intention of the regulations and the Section 106 consultations to date.