

# Offshore Wind – Recent Developments

Developing Trends  
and Inflation  
Reduction Act  
Incentives

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# Please note:

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# Agenda

- ❖ Current U.S. Offshore Wind Industry Overview
- ❖ Inflation Reduction Act
- ❖ Terminology
- ❖ Tax Credit Incentives

# Offshore Wind Leasing Authority

- ❖ 2005: Energy Policy Act – Bureau of Ocean Energy Management, a division of the Department of the Interior, has the authority to issue leases, easements and rights of way for renewable energy development on the Outer Continental Shelf. Pub. L. No. 109-58.
- ❖ March 2009: Memorandum of Understanding between Federal Energy Regulatory Commission and DOI giving DOI exclusive jurisdiction over offshore wind.
- ❖ April 2009: DOI announced final regulations of Outer Continental Shelf Renewable Energy Program. 74 Fed. Reg. 19638.
- ❖ Renewable Energy Project Regulations – 30 C.F.R. Part 585

# Inflation Reduction Act – Offshore Wind Leasing

- ❖ Sets limits to Offshore Wind Leases in the Outer Continental Shelf. I.R.A. Section 50365.
  - ❖ During 10-year period following enactment, BOEM may not issue an offshore wind lease unless the agency offered at least 60 million acres for oil and gas leasing on the outer continental shelf.
- ❖ Reinstated BOEM Offshore Wind Leasing Authority in the Mid to South Atlantic and Eastern Gulf of Mexico OCS areas. Section 50251.
  - ❖ OCS leases were suspended by Presidential Memoranda dated September 8, 2020 and September 25, 2020.
  - ❖ Oil and Gas leases are still suspended.

# BOEM's Leasing Process

## BOEM Process for Authorizing Wind Energy Leases

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### Round 1 of NEPA Review and Consultation: Planning and Analysis

- Identify suitable areas to be considered for wind energy project leases through collaborative, consultative, and analytical processes, including using the Intergovernmental Task Force, public information meetings and input from federal, state and local governments, Federally Recognized Tribes and other stakeholders.
- BOEM prepares an Environmental Assessment (EA) for Lease Issuance, Site Characterization and Site Assessment Activities.

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### Lease Issuance

- Issuance of commercial wind energy lease.
- Gives lessee exclusive right to seek BOEM approval for the development of the leasehold.
- Lease does not grant the lessee the right to construct any facilities, but does grant them the right to develop the plans (see Step 3) which must be approved by BOEM before the lessee can move on to the next stage of the process.

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### Round 2 of NEPA Review and Consultations: Approval of Site Assessment Plan

- Site Characterization – Lessee conducts site characterization activities and desktop studies (e.g., shallow hazards, geological, geotechnical, biological conditions, environmental conditions and hazards, etc.).
- Site Assessment Plan (SAP) – Lessee submits SAP detailing installation and operation plans for meteorological towers and/or buoys.
- Once a SAP is submitted, BOEM will conduct a categorical exclusion review for met buoys, prepare a determination of NEPA adequacy for met towers, or conduct site-specific NEPA analyses if the proposed activities and/or effects are outside the scope of BOEM's previous analysis (which occurs under the Planning and Analysis stage).
- Site Assessment – Lessee conducts site assessment upon SAP approval.

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### Round 3 of NEPA Review and Consultations: Approval of Construction & Operations Plan

- Construction and Operations Plan (COP) – Lessee develops and submits COP.
- COP – BOEM will prepare a project-specific NEPA analysis, which may take the form of an Environmental Impact Statement (EIS).
- First COP EIS comment period – BOEM publishes a Notice of Intent in the Federal Register to prepare an EIS. Comment period = 30 days
- COP EIS comment period – BOEM publishes a Notice of Availability (NOA) in Federal Register of draft EIS for public comment. Comment period = 45 days
- Final EIS – BOEM publishes the Final EIS and ROD (Record of Decision). BOEM approves, approves with modification or disapproves the COP.

# Phase 1: Planning and Analysis

- ❖ BOEM publishes a Call for Information and Nominations for leasing in specified areas (30 C.F.R. 585.211(a)).
- ❖ Based on comments received, BOEM identifies priority Wind Energy Areas (“WEAs”) that appear most suitable for wind energy development (30 C.F.R. 585.211(b)).
- ❖ BOEM prepares Environmental Assessment, and conducts site characterization surveys and site assessment activities (30 C.F.R. 585.211(b)). First round of National Environmental Policy Act (“NEPA”) review.

# Phase 2: Leasing

- ❖ BOEM issues a Request for Interest (“RFI”) to determine competitive interest.
- ❖ If BOEM determines competitive interest exists, BOEM conducts a competitive lease sale in accordance with §§ 585.211 through 585.225 (30 C.F.R. 585.212).
- ❖ BOEM publishes a Proposed Sale Notice followed by a Final Sale Notice no less than 30 days before the scheduled lease sale (30 C.F.R. 585.211(c)).
- ❖ BOEM grants lease to the highest qualified bidder (30 C.F.R. 585.222).
- ❖ A lease gives the lessee the exclusive right to conduct preliminary activities and seek BOEM approval for the development of the leasehold; it does not convey any rights to actually develop the lease (see 30 C.F.R. 585.610(b)).



# Phase 3: Site Assessment

- ❖ Lessee must submit a Site Assessment Plan (“SAP”) either before or after the lease is issued (30 C.F.R. 585.605, 585.612).
- ❖ BOEM must approve a SAP before lessee can begin any activities. Second round of NEPA review.
- ❖ Describes the activities the lessee plans to perform for the characterization of the lease and how the lessee will conduct the resource assessment (30 C.F.R. 585.605).
- ❖ Must demonstrate that the activities are safe, conform to all applicable laws, does not unreasonably interfere with other OCS activities, collects the necessary data required for the Construction and Operations Plan (“COP”), etc. (30 C.F.R. 585.606).
- ❖ Must include the information listed in 30 C.F.R. 585.610 to allow BOEM to conduct technical and environmental reviews.
- ❖ Any changes or deviations must be authorized in writing by BOEM.

# Phase 4: Construction and Operations

- ❖ Prior to beginning any construction or operation activities, BOEM must approve a COP (30 C.F.R. 585.620). Third round of NEPA review.
- ❖ Describes the construction, operations and conceptual decommissioning plans, and all planned facilities to be constructed.
- ❖ Must demonstrate that the activities are safe, conform to all applicable laws, does not unreasonably interfere with other OCS activities , etc., and provides data for BOEM to conduct its NEPA review (30 C.F.R. 585.621, 585.626).
- ❖ Lessee must submit Facility Design Report (“FDR”) and Fabrication and Installation Report (“FIR”) and Safety management System (“SMS”) prior to installing facilities (30 C.F.R. 585.632).
- ❖ Deviations from or revisions to a COP require written BOEM approval (30 C.F.R. 585.634).

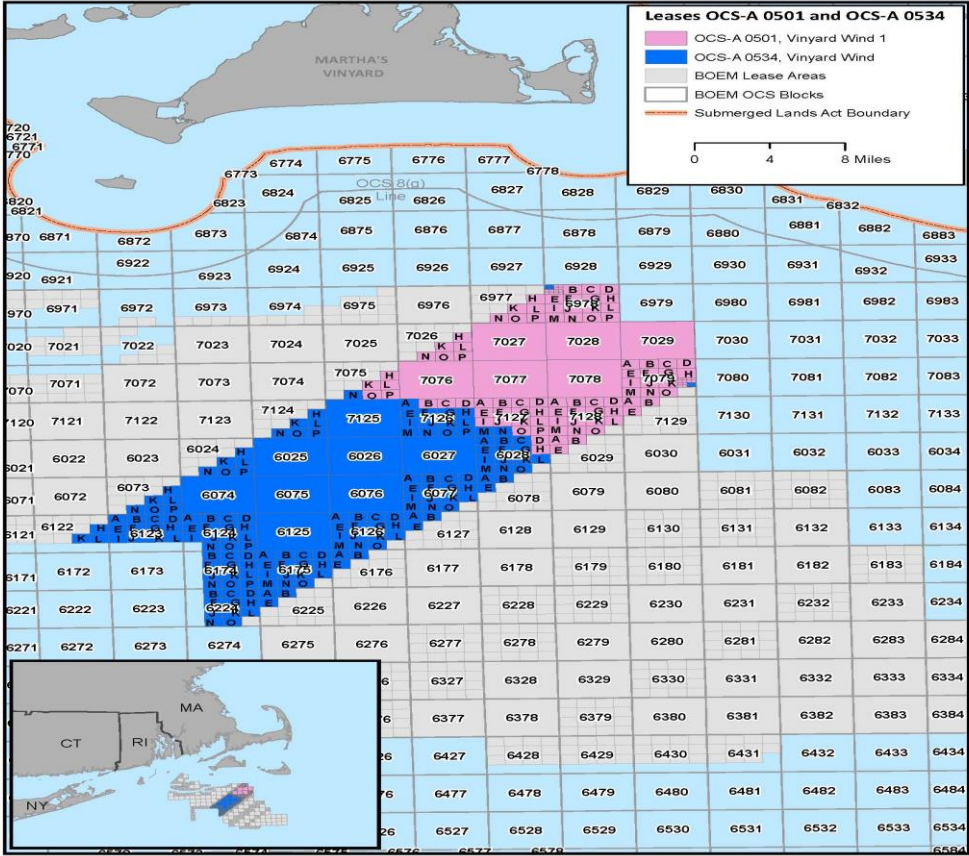
# Current U.S. Offshore Wind Industry Overview

- ❖ Goal - 30 gigawatts of domestic offshore wind operational by 2030
  - ❖ East Coast Activity –11 leases and 10 projects:
    - ❖ Vineyard Wind 1 – 800-megawatt project 12 nautical miles offshore Martha’s Vineyard, Massachusetts – COPs approved on July 15, 2021.
    - ❖ Anticipated project completion in 2023.
    - ❖ <https://www.boem.gov/vineyard-wind>
    - ❖ NY Bight Wind Sale – Public comment period ended August 30, 2022. <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>
    - ❖ Kitty Hawk Offshore Wind Project, North Carolina – 27 miles from the Outer Banks – 3,500-megawatts - COPs submitted. <https://www.boem.gov/renewable-energy/state-activities/kitty-hawk-north-wind-project>

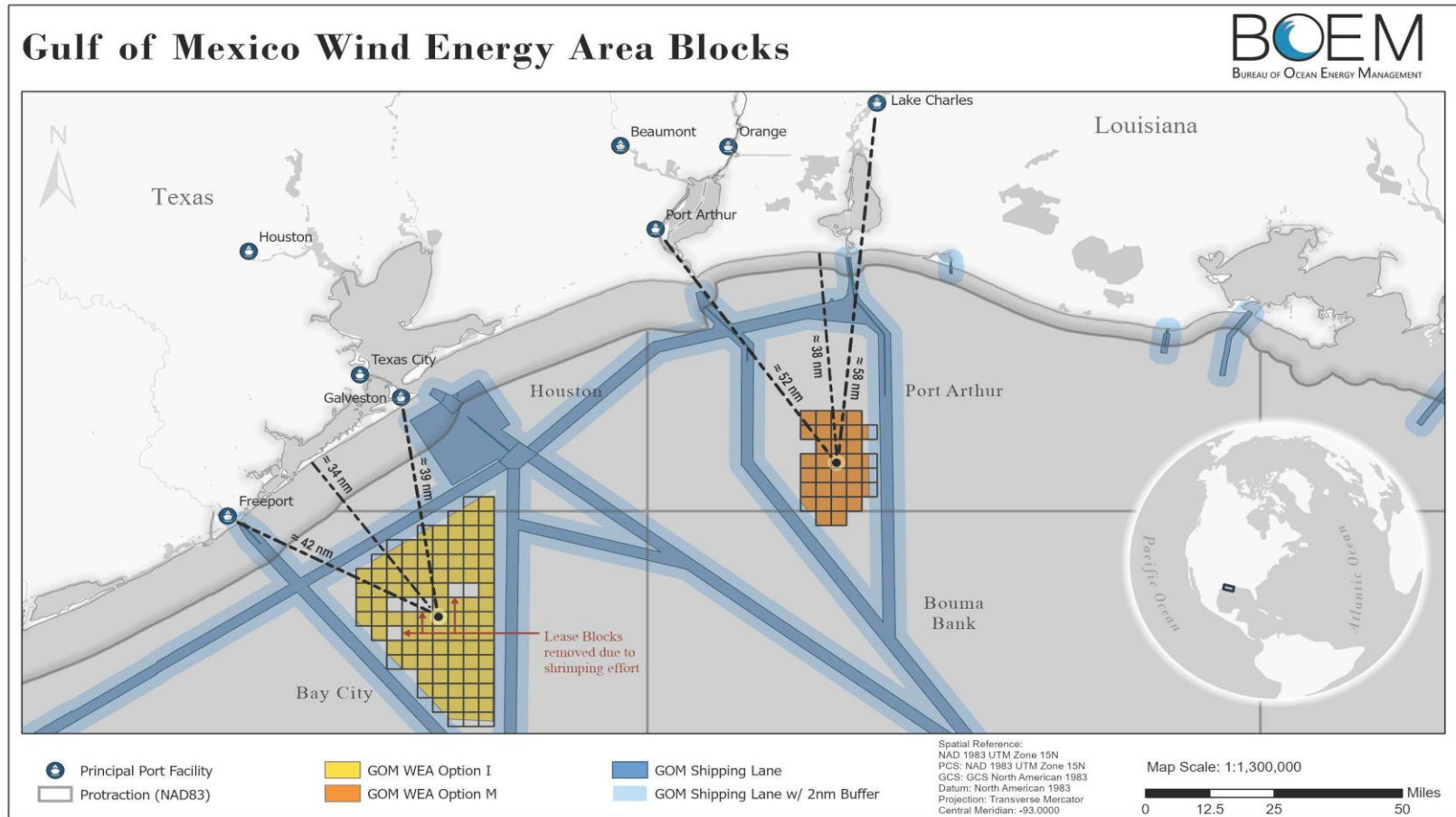
# Current U.S. Offshore Wind Industry Overview (cont'd)

- ❖ Goal - 30 gigawatts of domestic offshore wind operational by 2030
  - ❖ Gulf Coast Activity – 0 leases and 0 projects
    - ❖ October 31, 2022 – BOEM announced two finalized Wind Energy Areas
    - ❖ January 11, 2023 – BOEM initiates Environmental Assessment (still in round 1)

# Vineyard Wind I



# Gulf of Mexico – Designated Wind Energy Areas



# State Activities

- ❖ Nine states have formed Climate Initiative Task Forces, including Louisiana.
- ❖ June 15, 2022 – Governor Edwards signed into law House Bill 165 establishing a general framework for offshore leasing in state coastal waters as well.
  - ❖ Maximum 25,000 acres for wind energy production leases.
  - ❖ State Mineral and Energy Board may enter into operating agreements for wind energy production leases.
  - ❖ Louisiana Department of Natural Resources may receive part of the project revenue and charge for wind energy leases.

# Inflation Reduction Act – Wind Tax Credit Incentives - Terminology

❖ Tax deduction – Offset against taxable income

❖ Example 1:

❖ \$100 Income

❖ 20% Tax Rate

❖ \$20 Deduction

❖ \$100 income minus \$20 deduction

❖ \$80 taxable income times 20%

❖ Tax = \$16

❖ Tax Credit – Offset against tax liability

❖ Example 2:

❖ \$100 Income

❖ 20% Tax Rate

❖ \$20 Tax Credit

❖ \$100 taxable income times 20%

❖ \$20 tax liability minus \$20 tax credit

❖ Tax = \$0



# Offshore Wind Tax Credits

- ❖ Goal: To incentivize developers to construct and operate renewable energy-producing facilities
- ❖ Primary Tax Credits Available:
  - ❖ Renewable Energy Production Tax Credit (“PTC”). I.R.C. Section 45
    - ❖ Pre-IRA – 1.5 cents per megawatt hour of renewable energy produced at a qualified facility.
    - ❖ Adjusted for inflation.
  - ❖ Renewable Energy Investment Tax Credit (“ITC”). I.R.C. Section 48.
    - ❖ Pre-IRA – 26% of cost basis in a project allowable in the year the project is placed in service.
  - ❖ The PTC and the ITC are mutually exclusive.

# Inflation Reduction Act – Production Tax Credit (I.R.C. Section 45)

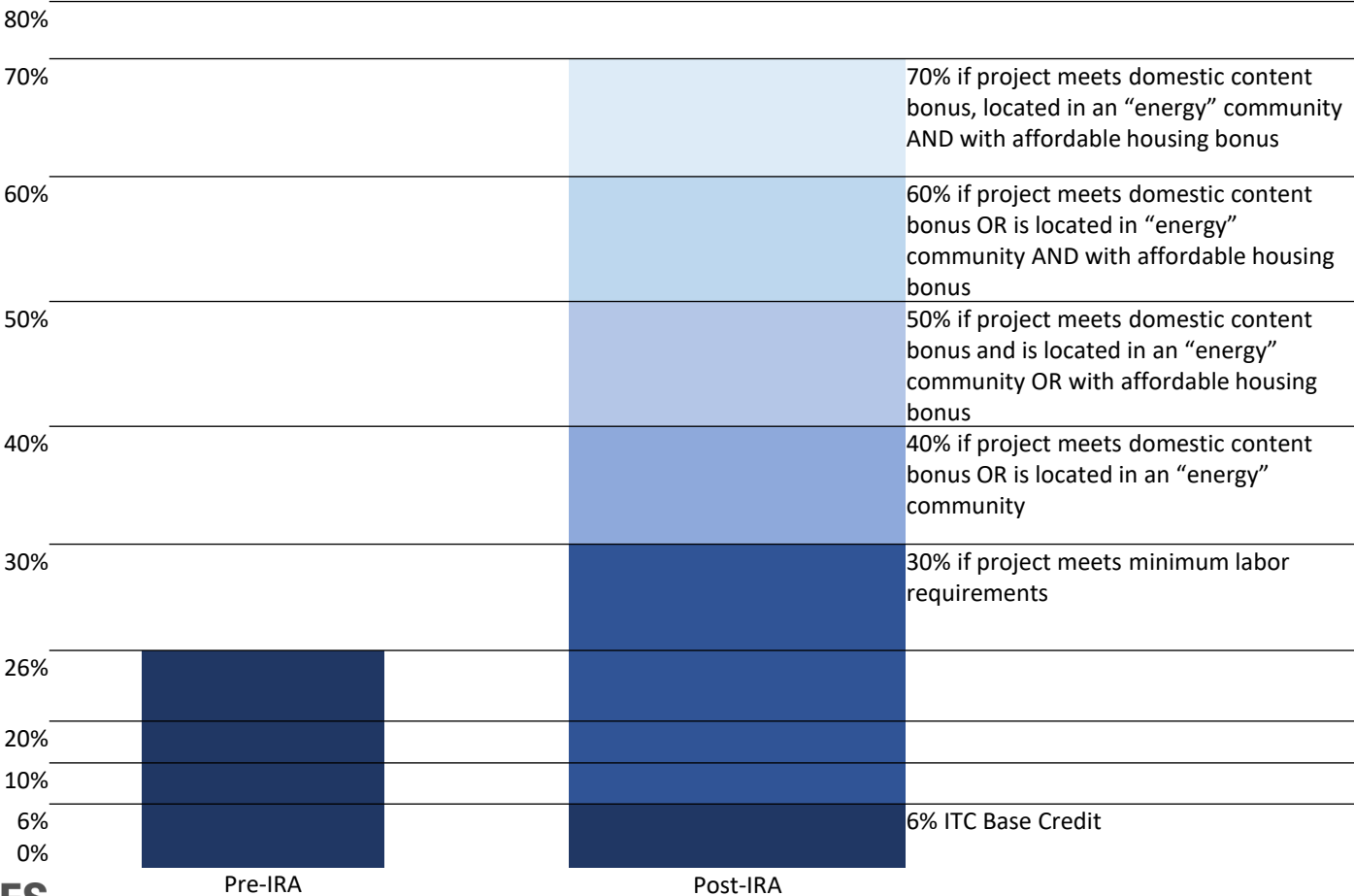
- ❖ Reduces base credit down to .6 cents, increased to 1.5 cents if certain apprenticeship and wage requirements are met.
- ❖ PTC extended for facilities beginning construction after January 1, 2022 through the end of 2024.
- ❖ Available for solar developers in lieu of the ITC.
- ❖ IRA introduces tax credit increases for PTC for certain projects.
  - ❖ 10% domestic content bonus
  - ❖ 10% if located in an “energy” community

# Inflation Reduction Act – Investment Tax Credit (I.R.C. Section 48)

- ❖ Reduces base credit down to 6%, increased to 30% if certain apprenticeship and wage requirements are met.
- ❖ ITC extended for facilities beginning construction through the end of 2032.
- ❖ Subject to numerous tax credit increases:
  - ❖ 10% domestic content bonus.
  - ❖ 10% if located in an “energy” community – brownfield sites, coal communities, catch-all energy community.
  - ❖ 10% - 20% affordable housing bonus for qualified low-income residential building project.

# Inflation Reduction Act – ITC Changes

**Inflation Reduction Act - ITC Credit Schedule**



# Inflation Reduction Act – ITC Example

- ❖ Offshore Wind Project
  - ❖ Project meets apprenticeship and wage requirements and all other bonus tax credit qualifiers.
  - ❖ Cost - \$1,000,000
  - ❖ Tax credit eligibility – 40% of cost basis
  - ❖ Tax credit generated – \$400,000 in the year the project is placed in service
  - ❖ Depreciation deductions are also available

# Inflation Reduction Act - Additional Credits

- ❖ Advanced Manufacturing Production Tax Credit I.R.C. Section 45X.
  - ❖ IRA created new tax credit for domestic manufacturers producing components for offshore wind projects:
    - ❖ Wind installation vessels – 10% of sales price
    - ❖ Other components – equals total rated capacity of the project multiplied by the component's credit:
      - ❖ Blades – 2 cents
      - ❖ Nacelles – 5 cents
      - ❖ Towers – 3 cents
      - ❖ Fixed platform – 2 cents
      - ❖ Floating platform - 4 cents

# Inflation Reduction Act – Additional Provisions

- ❖ Direct Pay Option - I.R.C. Section 6417
  - ❖ Allows certain taxpayers to receive a direct payment in lieu of any applicable credit, including the PTC, ITC and AMPTC.
  - ❖ Generally limited to tax-exempt entities, state and local governments and political subdivisions, the Tennessee Valley Authority, Alaska Native Corporations and cooperatives furnishing electricity to rural areas.
- ❖ Transferability – I.R.C. Section 6418
  - ❖ Allows taxpayers to transfer the PTC, ITC and AMPTC to an unrelated tax payer.
  - ❖ Tax-exempt entities may not transfer these credits.

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# Questions?



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