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# Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief

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## **Contents**

Leasing Program Status.....	2
Selected Issues for Congress .....	3
Timing Considerations for the Five-Year Program .....	3
Potential for Zero-Lease Program .....	4
Regional Leasing Decisions .....	5
Gulf of Mexico Region .....	6
Alaska Region.....	7
Atlantic Region .....	9
Pacific Region.....	10
Role of Congress .....	10

## **Figures**

Figure 1. Potential Lease Areas in the 2023-2028 Proposed Program .....	5
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## **Contacts**

Author Information.....	11
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Under the Outer Continental Shelf Lands Act (OCSLA), as amended,<sup>1</sup> the Bureau of Ocean Energy Management (BOEM) within the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by BOEM as *national programs* or *five-year programs*—to schedule proposed oil and gas lease sales on the U.S. outer continental shelf (OCS). The most recent five-year program, covering the period from mid-2017 to mid-2022, expired on June 30, 2022.<sup>2</sup> On July 1, 2022, BOEM released a proposed program (PP) for the 2023-2028 period.<sup>3</sup> The PP proposes as many as 11, or as few as 0, offshore oil and gas lease sales during the 2023-2028 period. The maximum of 11 lease sales would consist of 10 sales in the Gulf of Mexico region and 1 in the Alaska region. Final program decisions will be made at a later stage of action.

BOEM's development of a new five-year program typically takes place over the preceding two or three years, during which successive drafts of the program are published for review and comment. All available leasing areas are initially examined, and the selection may then be narrowed based on economic and environmental analysis, including environmental review under the National Environmental Policy Act (NEPA),<sup>4</sup> to arrive at a final leasing schedule. Because the program is developed through a winnowing process, the final program may remove sales proposed in earlier drafts but generally will not add any sales that were not previously proposed. At the end of the process, the Secretary of the Interior must submit each program to the President and to Congress for a period of at least 60 days, after which the proposal may be approved by the Secretary and may take effect with no further regulatory or legislative action.

The leasing decisions in BOEM's five-year programs may affect the economy and environment of individual coastal states and of the nation as a whole. Accordingly, Congress has expressed ongoing interest in the planning and implementation of the five-year programs. The following discussion summarizes developments regarding the next leasing program and analyzes selected issues for congressional consideration. The history, legal and economic framework, and process for developing the programs are discussed in more detail in CRS Report R44504, *Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022*.

The 117<sup>th</sup> Congress could influence the next five-year program through oversight or by enacting legislation with requirements for the program. For example, Members could enact legislation to address the timing for publishing a new program, or could add new sales or remove scheduled sales from an active program, or could change other terms of program development under the OCSLA. Congress also could impose leasing moratoria on new areas or, alternatively, could end existing moratoria imposed by Congress or the President and could mandate lease sales in these previously unavailable areas.

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<sup>1</sup> 43 U.S.C. §§1331-1356b; see especially §1344.

<sup>2</sup> Bureau of Ocean Energy Management (BOEM), *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program*, November 2016, at <https://www.boem.gov/oil-gas-energy/leasing/2017-2022-ocs-oil-and-gas-leasing-pfp>; hereinafter referred to as 2017-2022 PFP.

<sup>3</sup> BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, July 2022, at <https://www.boem.gov/oil-gas-energy/national-program/2023-2028-proposed-program>; hereinafter referred to as 2023-2028 PP.

<sup>4</sup> National Environmental Policy Act (NEPA), 42 U.S.C. §4321. For more information, see CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

## Leasing Program Status

BOEM published the 2023-2028 PP on July 1, 2022. The PP is the second stage of program development, following an earlier draft proposed program (DPP) prepared under the Trump Administration.<sup>5</sup> The Trump Administration DPP had proposed a total of 47 OCS oil and gas lease sales over a five-year period: 12 in the Gulf of Mexico region, 19 in the Alaska region, 9 in the Atlantic region, and 7 in the Pacific region.<sup>6</sup> By comparison, the Biden Administration's PP proposes a maximum of 11 OCS oil and gas lease sales over five years: 10 in the Gulf of Mexico region, 1 in the Cook Inlet planning area of the Alaska region, and none in the Atlantic or Pacific regions. The PP also states that fewer lease sales—and potentially no lease sales—might be included in the final version of the program.

Along with the PP, BOEM published a draft programmatic environmental impact statement (PEIS).<sup>7</sup> The PP and draft PEIS were released with a public comment period of 90 days, ending on October 6, 2022. After consideration of public comments and any additional analysis, BOEM publishes a proposed final program (PFP) and final PEIS. The PFP is submitted to the President and Congress for a period of 60 days, after which the Secretary of the Interior can issue a record of decision to finalize the program.

Separately, the previous five-year program, covering the period from mid-2017 through mid-2022, expired on June 30, 2022. That program, prepared under the Obama Administration, resembled the maximum-sale scenario of the current PP, in that it scheduled a total of 11 sales, with 10 in the Gulf of Mexico and 1 in Alaska's Cook Inlet.<sup>8</sup> However, toward the end of the program's implementation, the final three scheduled sales—two for the Gulf of Mexico and the Cook Inlet sale—were canceled.<sup>9</sup> Further, the eighth (and most recent) sale that BOEM conducted under the 2017-2022 program—Lease Sale 257 for the Gulf of Mexico, held on November 17, 2021—was later vacated by a judicial order.<sup>10</sup> Thus, federal offshore oil and gas leases have not been issued since the program's seventh sale, Lease Sale 256 for the Gulf of Mexico, which took place in November 2020.

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<sup>5</sup> BOEM, *2019-2024 National Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, January 2018, at <https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024/>; hereinafter referred to as the 2019-2024 DPP. This draft program would have applied to the five-year period from late 2019 through mid-2024, replacing the final years of the 2017-2022 program. Although previous five-year programs (since 1982) have not overlapped in this way, the George W. Bush Administration issued a DPP for a 2010-2015 program that would have replaced the final years of the 2007-2012 program (but, like the 2019-2024 DPP, was not finalized for that period).

<sup>6</sup> The full leasing schedule is available on p. 8 of the 2019-2024 DPP, or at <https://www.boem.gov/NP-DPP-Lease-Sale-Schedule-2019-2024/>.

<sup>7</sup> BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing Program: Draft Programmatic Environmental Impact Statement*, July 2022, at <https://www.boem.gov/oil-gas-energy/national-program/2023-2028-national-ocs-oil-gas-leasing-draft-peis-vol1>. A programmatic EIS typically evaluates the effects of broad proposals or planning-level decisions.

<sup>8</sup> 2017-2022 PFP, p. S-4.

<sup>9</sup> The canceled sales included Lease Sales 259 and 261 for the Gulf of Mexico and Lease Sale 258 for Alaska's Cook Inlet. Reasons for the cancellations included timing issues (stemming partly from President Biden's "pause" of oil and gas leasing in Executive Order 14008), multiple court rulings related to the lease sales, and BOEM's finding of a lack of industry interest in the Cook Inlet sale. See, for example, BOEM, "Sale 258 Status Update," at <https://www.boem.gov/oil-gas-energy/leasing/sale-258-status-update>; and Anna Phillips, "Biden Pulls 3 Offshore Oil Lease Sales, Curbing New Drilling This Year," *Washington Post*, May 11, 2022, at <https://www.washingtonpost.com/climate-environment/2022/05/11/gulf-of-mexico-leasing-canceled/>.

<sup>10</sup> *Friends of the Earth v. Haaland*,—F. 3d.—, 2022 WL 254526 (D.D.C. 2022). For more information on Lease Sale 257, see BOEM, "Lease Sale 257," at <https://www.boem.gov/Sale-257>.

## Selected Issues for Congress

### Timing Considerations for the Five-Year Program

Development of the upcoming five-year program has proceeded more slowly than for previous programs. In almost all previous program transitions, a new program has been finalized by the time the earlier one expired, allowing a new leasing schedule to take effect immediately.<sup>11</sup> By contrast, the federal government currently is experiencing a gap between leasing programs, during which no offshore oil and gas leasing may take place.<sup>12</sup>

Given timing requirements associated with the remaining stages of program development, it is unlikely a new program would be finalized before the end of 2022. The OCSLA's implementing regulations call for a public comment period of at least 90 days on the PP and draft PEIS.<sup>13</sup> BOEM then would consider and incorporate comments before publishing a PFP and final PEIS. The PFP must be submitted to Congress and the President for 60 days before final secretarial approval and implementation.<sup>14</sup> BOEM reflects these timing requirements in the PP by scheduling the first proposed lease sale under the new program for 2023. It thus appears that 2022 will be the first year since 1959 that DOI will not hold an offshore oil and gas lease sale.<sup>15</sup>

It is unclear how the current gap between programs may interact with requirements of the OCSLA. The OCSLA states that the Secretary of the Interior must “prepare and periodically revise, and maintain an oil and gas leasing program.”<sup>16</sup> Stakeholders have differed in their interpretations of the extent to which this and other language in the act would require that a program must continuously be in force.<sup>17</sup> Some bills introduced in the 117<sup>th</sup> Congress would explicitly prohibit a future gap between five-year programs.<sup>18</sup> These bills would mandate required timing for the Secretary of the Interior to begin preparation of a new program and to approve a final version.

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<sup>11</sup> An exception is the transition to the 2012-2017 program. The 2012-2017 PFP was published on June 28, 2012, two days before the previous program expired, but because of the required 60-day waiting period before final secretarial approval, the program did not officially take effect until August 27, 2012 (BOEM, “2012-2017 OCS Oil and Gas Leasing Program,” at <https://www.boem.gov/oil-gas-energy/leasing/2012-2017-ocs-oil-and-gas-leasing-program>). However, this timing still allowed for the program's first scheduled sale to be held as planned in November 2012.

<sup>12</sup> The OCSLA does not establish a federal authority for offshore oil and gas lease sales outside of a five-year program.

<sup>13</sup> 30 C.F.R. §556.204(b). The closing date of the comment period is October 6, 2022.

<sup>14</sup> 30 C.F.R. §556.205. The President and Congress do not need to affirmatively approve the program for it to take effect, but the 60-day period could potentially offer time for legislative responses.

<sup>15</sup> For a record of all previous DOI offshore oil and gas lease sales, see BOEM, “All Lease Offerings,” at <https://www.boem.gov/sites/default/files/documents/about-boem/Table%201%20SwilerTable%2024FEB2021.pdf>.

<sup>16</sup> 43 U.S.C. §1344(a).

<sup>17</sup> For the view that the OCSLA prohibits a gap between programs, see, for example, DOI Solicitor's Memorandum M-37062, “Secretarial Discretion in Promulgating a National Outer Continental Shelf Oil and Gas Leasing Program,” January 13, 2021, at <https://www.doi.gov/sites/doi.gov/files/m-37062.pdf>; hereinafter cited as January 2021 DOI Solicitor's Memorandum. This memorandum, issued by the DOI Solicitor toward the end of the Trump Administration, was withdrawn by the Principal Deputy Solicitor during the Biden Administration. For the view that the OCSLA does not clearly prohibit a gap between programs, see, for example, remarks of Earthjustice attorney Brettny Hardy in “Biden faces legal fight over delayed offshore leasing plan,” *E&E News EnergyWire*, April 21, 2022, at <https://www.eenews.net/articles/biden-faces-legal-fight-over-delayed-offshore-leasing-plan/>.

<sup>18</sup> See, for example, H.R. 6858, H.R. 7012, S. 3214, and S. 3752. Also see the “Role of Congress” section.

## Potential for Zero-Lease Program

In each successive stage of development of the five-year program (DPP, PP, and PFP), some sales proposed in an earlier version of the program might be removed from consideration, on the basis of further analysis and public comments.<sup>19</sup> For example, for the 2017-2022 program, the DPP's proposed 14 lease sales eventually were winnowed to 11 sales in the PFP. For the upcoming program, as discussed, the DPP proposed 47 lease sales, which were narrowed to 11 sales for consideration in the PP.

The PP notes that these 11 proposed sales represent the maximum that could be finalized and that some sales may be removed at the PFP stage.<sup>20</sup> Further, the PP and accompanying DOI materials state that the final program might contain no lease sales at all.<sup>21</sup> As with the question of a program gap, stakeholders have disagreed about whether the OCSLA would allow for a zero-lease program. The question has not been tested, because no previous program has been finalized without any scheduled sales. Some have contended that the OCSLA's statement that the program "shall consist of a schedule of proposed lease sales" indicates that a zero-lease program would not be allowed.<sup>22</sup> Others have interpreted the OCSLA as accommodating a zero-lease choice.<sup>23</sup> Although no previous five-year program has contained a zero-lease schedule, the possibility has been contemplated in past programs as a reference scenario (for example, in the context of the PEIS's required consideration of a "no-action" alternative).<sup>24</sup>

A number of bills in the 117<sup>th</sup> Congress would effectively prohibit a no-leasing outcome in future programs.<sup>25</sup> Typically, these bills would require that the Secretary conduct a minimum number of lease sales each year in specified areas, such as the Central and Western Gulf of Mexico and/or the Alaska region. By contrast, other legislation in the 117<sup>th</sup> Congress would effectively mandate a no-leasing program by banning offshore oil and gas leasing throughout the OCS.<sup>26</sup>

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<sup>19</sup> By contrast, it is difficult to add sales at the later program stages that did not appear in earlier versions, because analyses conducted at the earlier stages would need to be revised to reflect the new proposed sales.

<sup>20</sup> See, for example, 2023-2028 PP, pp. 2-3: "The inclusion of an area for analysis in this Proposed Program is not a final determination that the area will be included in the PFP, or ultimately offered in a future lease sale. The Secretary may decide to reduce or completely remove an area from potential leasing at the PFP stage or decide in the future not to conduct a lease sale that was included in the PFP."

<sup>21</sup> See, for example, 2023-2028 PP, p. 4 ("this Proposed Program retains the Secretary's discretion at the PFP stage to determine that no OCS oil and gas lease sales in any planning area should be scheduled during the 2023–2028 period"); and DOI press release, July 1, 2022, at <https://www.doi.gov/pressreleases/interior-department-invites-public-comment-proposed-five-year-program-offshore-oil-0> ("The Final Program also may include fewer potential lease sales, including no lease sales").

<sup>22</sup> 43 U.S.C. §1344(a). See, for example, January 2021 DOI Solicitor's Memorandum.

<sup>23</sup> See, for example, Earthjustice and Evergreen Collaborative, *Meeting the Moment: How President Biden Can Align the Federal Fossil Fuel Program to Deliver on Climate and Put People Over Profits*, June 2022, p. 16, at <https://earthjustice.org/documents/report/meeting-the-moment-how-president-biden-can-align-the-federal-fossil-fuel-program-to-deliver-on-climate>.

<sup>24</sup> See, for example, BOEM, *Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022 Draft Programmatic Environmental Impact Statement*, March 2016, p. xiii, at <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Resource-Evaluation/Resource-Assessment/Draft-Programmatic-Environmental-Impact-Statement-VolumnI.pdf>. The PEIS states: "The evaluation of a No Action Alternative (Alternative C) is required by the CEQ regulations implementing NEPA (40 CFR 1502.14(d)).... The eventual selection of Alternative C [the no-leasing option] would be a major departure from past Program decisions, but it must remain a possibility."

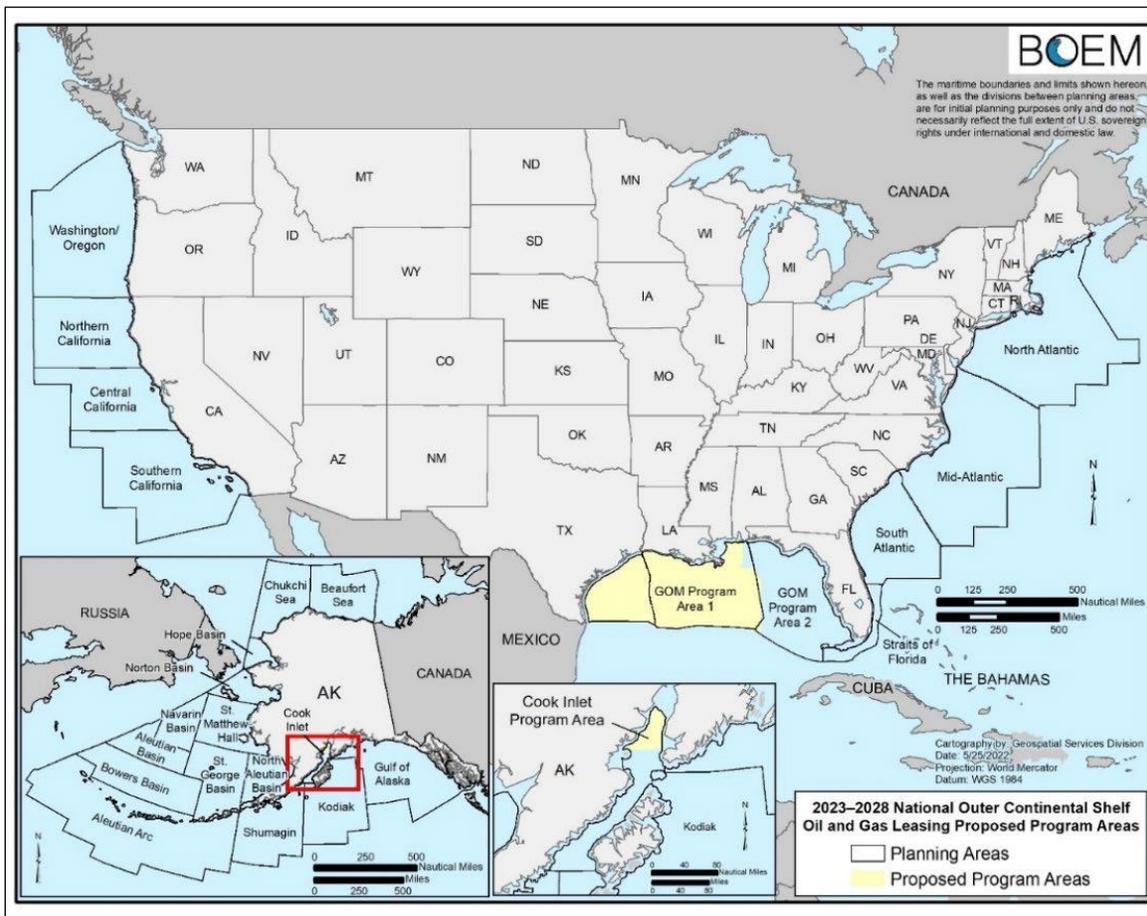
<sup>25</sup> See, for example, H.R. 6858, H.R. 7012, S. 3214, and S. 3752. Also see the "Role of Congress" section.

<sup>26</sup> See, for example, H.R. 2519 and S. 1115. Also see the "Role of Congress" section.

## Regional Leasing Decisions

Under the OCSLA, BOEM must take into account economic, social, and environmental values in making its leasing decisions.<sup>27</sup> The balancing of these factors could lead to various decisions regarding leasing in each of the four OCS *regions*—the Atlantic, Pacific, Alaska, and Gulf of Mexico regions—and their component *planning areas*. The regional leasing proposals in the PP differ from those in the Trump Administration’s DPP. Whereas the DPP proposed lease sales in all four regions and in every available planning area (where leasing is not prohibited by executive or congressional action), the PP would allow sales in a maximum of two regions (Gulf of Mexico and Alaska) with a maximum of one planning area in the Alaska region. **Figure 1** shows the PP’s proposal.

**Figure 1. Potential Lease Areas in the 2023-2028 Proposed Program**  
(shown in yellow)



**Source:** BOEM, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, July 2022, p. 5, at <https://www.boem.gov/oil-gas-energy/national-program/2023-2028-proposed-program>.

<sup>27</sup> 43 U.S.C. §1344(a). Factors that the Secretary of the Interior must consider include the geographical, geological, and ecological characteristics of the regions; the relative environmental and other natural resource considerations of the regions; the relative interest of oil and natural gas producers in the regions; and the laws, goals, and policies of the states that would be affected by offshore exploration and production in the regions, among others. Leasing also must be conducted to ensure the federal government receives fair market value for leased tracts.

## Gulf of Mexico Region

Almost all U.S. offshore oil and gas production currently takes place in the Gulf of Mexico.<sup>28</sup> The Gulf has the most mature oil and gas development infrastructure of the four planning regions and some of the highest concentrations of oil and gas resources, according to BOEM estimates.<sup>29</sup> The PP’s maximum proposal of 10 region-wide lease sales for the Gulf, supporting a semiannual auction schedule, accords with the 2017-2022 program, which scheduled the same number of Gulf sales.

Although the PP retains the earlier program’s 10 sales and its region-wide leasing approach—under which all eligible lease areas in the region would be offered at each lease sale—as a *maximum* scenario, it also contemplates two other, more restricted Gulf leasing scenarios.<sup>30</sup> In the “Subarea Option,” the PFP would narrow the available areas within the Gulf to a more targeted set of lease blocks to be auctioned at each sale. For example, a targeted approach could exclude “acreage that has not recently seen extensive bidding activity,” “biologically sensitive areas,” and “areas of potential conflict with other uses and users of the marine environment.”<sup>31</sup> This approach draws on recommendations that DOI promulgated in its November 2021 comprehensive review of the federal onshore and offshore oil and gas programs.<sup>32</sup> The other scenario in the PP would be the “No Sale Option,” where no sales at all would be scheduled for the Gulf. This would be a departure from past programs, which have scheduled at least two and sometimes more Gulf lease sales annually.

BOEM is to make a final recommendation on the number and location of Gulf sales at the PFP stage, after further analysis of the economic, social, and environmental factors, as well as analysis of public comments on the PP. In calculations conducted for the PP, BOEM estimates that there would be “incremental net benefits” from the proposed Gulf lease sales as opposed to a no-sale option, taking into account economic values and environmental and social costs, among other factors.<sup>33</sup> However, BOEM notes that this calculation is based on current baseline data and assumes continuation of current laws and policies. BOEM states that if energy markets “change substantially over the next few years,” this could impact the results.<sup>34</sup> BOEM further states that if “the U.S. and other nations move towards a net-zero future,” the agency’s calculations “would likely be significantly different.”<sup>35</sup> BOEM provides a separate, qualitative discussion of potential costs and benefits of Gulf leasing (and OCS leasing generally) if the United States pursued the

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<sup>28</sup> The Gulf accounts for about 99% of U.S. offshore oil and gas production. BOEM, 2023-2028 PP, p. 7.

<sup>29</sup> BOEM, “Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation’s Outer Continental Shelf,” 2021, at [https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/2021\\_National\\_Assessment\\_Map\\_BTU.pdf](https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/2021_National_Assessment_Map_BTU.pdf); hereinafter cited as BOEM, 2021 UTRR map. BOEM estimates the *undiscovered, technically recoverable resources* (UTRR) for each region—resources that could be produced using conventional techniques without any economic considerations. BOEM estimates the Gulf of Mexico to have the highest UTRR of any OCS region with regard to oil; the Gulf is second to the Alaska region in terms of UTRR for natural gas.

<sup>30</sup> For discussion, see 2023-2028 PP, Chapter 2.

<sup>31</sup> 2023-2028 PP, pp. 7-8.

<sup>32</sup> DOI, *Report on the Federal Oil and Gas Leasing Program: Prepared in Response to Executive Order 14008*, November 2021, at <https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo14008.pdf>. The report recommended (p. 13) that BOEM reconsider its traditional practice of area-wide leasing and instead consider sales for “smaller areas” based on specified criteria.

<sup>33</sup> 2023-2028 PP, Section 5.3.4. BOEM defines “incremental net benefits” as the net benefits value of a leasing option minus the net benefits value of a no-sale option, taking into account the energy substitutes that would replace the OCS production in a no-leasing scenario. For further discussion, see Section 5.3.1 of the PP.

<sup>34</sup> *Ibid.*

<sup>35</sup> 2023-2028 PP, Section 5.3.5.

goal of net-zero emissions by 2050.<sup>36</sup> In this scenario, BOEM anticipates there could “still be a role” for oil and gas leasing in the Gulf but the incremental net benefits of leasing likely would decrease.<sup>37</sup>

One part of the Gulf that is not analyzed as a potential leasing area under any scenario in the PP is the Eastern Gulf close to the state of Florida. The Gulf of Mexico Energy Security Act of 2006 (GOMESA) had prohibited leasing in a defined area of the Gulf off the Florida coast.<sup>38</sup> Although the GOMESA moratorium expired on June 30, 2022, President Trump effectively extended this moratorium through June 2032 by withdrawing the area from leasing consideration until that time, using his presidential authority under Section 12(a) of the OCSLA.<sup>39</sup> Some Members of Congress and other stakeholders wish to make the Eastern Gulf leasing moratorium permanent. Among other concerns, they contend that oil and gas leasing in Gulf waters around Florida could damage the state’s beaches and fisheries, which support strong tourism and fishing industries, and could jeopardize mission-critical defense activities such as those at Pensacola’s Eglin Air Force Base. By contrast, others advocate for shrinking the area covered by the ban, or eliminating the ban before its scheduled expiration date. They emphasize the economic significance of oil and gas resources off the Florida coast and contend that development would create jobs, strengthen the state and national economies, and contribute to U.S. energy security.

## Alaska Region

Congress has debated offshore leasing in the Alaska region. Decreases in the areal extent of summer polar ice, along with estimates of substantial undiscovered oil and gas resources in Arctic waters, have contributed to increased interest by some in offshore oil and gas exploration in the region.<sup>40</sup> However, the region’s severe weather and perennial sea ice, and its relative lack of infrastructure to extract and transport offshore oil and gas, continue to pose technical and financial challenges to new exploration. Previous periods of low energy prices have diminished short-term incentives for development in the Alaska region because Alaskan production is relatively costly. Among Alaska’s 15 BOEM planning areas, the Beaufort Sea and Cook Inlet are the only two areas with existing federal leases, and only the Beaufort Sea has producing wells in federal waters. Some stakeholders, including the State of Alaska and some Members of Congress, seek to expand offshore oil and gas activities in the region. Other Members of Congress and many environmental groups oppose offshore oil and gas drilling in the region, due to concerns about potential oil spills and the possible contributions of these activities to climate change.

The Trump Administration had stated its interest in promoting offshore development in the Alaska region, and the 2019-2024 DPP scheduled lease sales in all 15 Alaska planning areas. Among others, the DPP included three sales in the Beaufort Sea and three in the Chukchi Sea, the areas of the Alaska region estimated to have the highest concentrations of undiscovered oil and

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<sup>36</sup> 2023-2028 PP, Section 5.3.5.

<sup>37</sup> Ibid.

<sup>38</sup> P.L. 109-432. Specifically, the law banned oil and gas leasing in the Eastern Gulf of Mexico Planning Area within 125 miles of the coast of Florida, in all areas in the Gulf of Mexico east of a prescribed “Military Mission Line,” and in the part of the Central Gulf of Mexico Planning Area that is within 100 miles of Florida, through June 30, 2022. This report refers to the GOMESA moratorium area as the “Eastern Gulf” moratorium area for simplicity.

<sup>39</sup> President Trump withdrawal memorandum, September 8, 2020. Section 12(a) of the OCSLA (43 U.S.C. §1341(a)) provides that “[t]he President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.”

<sup>40</sup> For more information, see the section on “Oil, Gas, and Mineral Exploration” in CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O’Rourke.

gas resources.<sup>41</sup> (Industry interest in some other Alaska region planning areas may be lower, as many are thought to have relatively low or negligible petroleum potential.) However, large parts of the Beaufort and Chukchi Sea planning areas are now withdrawn indefinitely from leasing disposition following a March 2019 judicial ruling and a January 2021 executive order by President Biden.<sup>42</sup> The Biden Administration's PP, in contrast to the DPP, includes a potential sale in one Alaska planning area—the Cook Inlet planning area—which is adjacent to existing areas of natural gas production in state waters.

Supporters of increased leasing in the Alaska OCS region contend that growth in offshore oil and gas development is critical for Alaska's economic health as the state's onshore oil fields mature. They further assert that offshore energy development in the region will play a growing role nationally by reducing U.S. dependence on oil and gas imports and supporting U.S. interests in the Arctic economy, as other nations, including Russia and China, invest in Arctic projects. These stakeholders contend that oil and gas activities can be conducted safely in the region and point to a history of successful well drilling in the Beaufort and Chukchi Seas in the 1980s and 1990s.

Those who favor few or no Alaska offshore lease sales, by contrast, are concerned that it would be challenging to respond to a major oil spill in the region, because of the icy conditions and lack of spill-response infrastructure.<sup>43</sup> Opponents of increased leasing in the region also express concern that it would represent a long-term investment in oil and gas as an energy source, which could slow national efforts to address climate change. They contend, too, that new leasing opportunities are unnecessary, since industry has pulled back on investing in the Arctic.<sup>44</sup> Others assert, however, that tepid industry interest in the region is due more to the overly demanding federal regulatory environment than to market conditions.<sup>45</sup>

Among those favoring expanded leasing in the region are some Alaska Native communities, who see offshore development as a source of jobs and investment in financially struggling localities. Other Alaska Native communities have opposed offshore leasing, citing concerns about environmental threats to subsistence lifestyles. Alaska's former governor submitted comments on the DPP supporting sales in Cook Inlet and the Beaufort and Chukchi Seas but opposing sales in the other Alaska planning areas.<sup>46</sup>

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<sup>41</sup> BOEM, 2021 UTRR map.

<sup>42</sup> League of Conservation Voters v. Trump, 363 F.Supp.3d 1013 (D.Alaska 2019). Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," Section 4(b), 86 *Federal Register* 7037. Also see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke, section on "Oil, Gas, and Mineral Exploration."

<sup>43</sup> For more information, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke, sections on "Oil, Gas, and Mineral Exploration" and "Oil Pollution and Response." The Obama Administration issued Arctic offshore drilling regulations that focused on ways in which companies would need to compensate for the lack of spill-response infrastructure, such as by having a separate rig available at drill sites to drill a relief well in case of a loss of well control. DOI, "Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," 81 *Federal Register* 46477, July 15, 2016.

<sup>44</sup> For example, the 2017-2022 final program stated that active leases on the Arctic OCS had declined by more than 90% between February 2016 and November 2016, as companies relinquished leases in the face of low oil prices and Shell Oil Company's disappointing exploratory drilling effort in the Chukchi Sea in 2015 (2017-2022 PFP, p. S-7).

<sup>45</sup> For more information, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke, section on "Oil, Gas, and Mineral Exploration."

<sup>46</sup> Letter from Governor Bill Walker to BOEM, March 9, 2018, at <https://www.regulations.gov/document?D=BOEM-2017-0074-10660>.

## Atlantic Region

No offshore oil and gas lease sales have occurred in the Atlantic region since 1983, due in part to congressional bans on Atlantic leasing in annual Interior appropriations acts from FY1983 to FY2008, along with presidential moratoria on leasing in the region during those years. Starting with FY2009, Congress no longer included an Atlantic leasing moratorium in appropriations acts. In 2008, President George W. Bush also removed the long-standing administrative withdrawal for the region.<sup>47</sup> These changes meant that lease sales could potentially be conducted for the Atlantic. However, no Atlantic lease sale has taken place in the intervening years.<sup>48</sup>

Political leaders in the Atlantic states, and stakeholders within each state, disagree about whether oil and gas drilling should occur in the region.<sup>49</sup> Supporters of leasing contend that oil and gas development would lower energy costs for regional consumers, bring jobs and economic investment, and strengthen U.S. energy security. Opponents express concerns that oil and gas development would undermine national and state clean energy goals and that oil spills could threaten coastal communities. Also of concern for leasing opponents is the potential for oil and gas activities to damage the tourism and fishing industries in the Atlantic region and to conflict with military and space-related activities of the Department of Defense and National Aeronautics and Space Administration (NASA). In recent years, the Atlantic region has been a focus for BOEM's offshore wind leasing; some see this as potentially compatible with oil and gas development, some favor one or the other type of energy for the region, and some oppose both wind and oil and gas development as conflicting with other uses of the Atlantic.<sup>50</sup>

The Trump Administration's DPP proposed nine lease sales for the Atlantic region, including sales in all Atlantic region planning areas. However, subsequent to publication of the DPP, President Trump withdrew from leasing consideration, from July 2022 through June 2032, the waters off of North Carolina, South Carolina, Georgia, and Florida.<sup>51</sup> Thus, these areas are no longer eligible for consideration in the PP or PFP. The PP, while analyzing several options, proposes no Atlantic lease sales. The PP states that "frontier areas" such as the Atlantic, with no recent history of leasing, are less certain to yield production benefits than the better-explored Gulf of Mexico, would require higher-impact infrastructure buildout, and would likely be of lower interest to industry "under a scenario in which domestic fossil energy needs fall in response to global decarbonization."<sup>52</sup>

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<sup>47</sup> President George W. Bush, "Memorandum on Modification of the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," *Weekly Compilation of Presidential Documents* 44 (July 14, 2008).

<sup>48</sup> An Atlantic lease sale (Sale #220) was scheduled in the five-year program for 2007-2012, but it was canceled by then-Secretary of the Interior Ken Salazar following the April 2010 *Deepwater Horizon* oil spill. See BOEM, "Virginia Lease Sale 220 Information," at <https://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Lease-Sales/220/Virginia-Lease-Sale-220-Information.aspx>.

<sup>49</sup> See, for example, summaries of state comments in the 2019-2024 DPP, pp. A-19 to A-23; and the PP, pp. A-10 to A-16.

<sup>50</sup> For more information on offshore wind leasing, see CRS Report R46970, *Offshore Wind Energy: Federal Leasing, Permitting, Deployment, and Revenues*, by Laura B. Comay and Corrie E. Clark.

<sup>51</sup> President Trump withdrawal memorandum, September 8, 2020; and President Donald Trump, "Presidential Determination on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," September 25, 2020, at <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-determination-withdrawal-certain-areas-united-states-outer-continental-shelf-leasing-disposition/>.

<sup>52</sup> 2023-2028 PP, p. 4.

## Pacific Region

The DPP proposed seven lease sales in the Pacific region, including sales in all of the region's planning areas, but the PP proposes no Pacific lease sales. No federal oil and gas lease sales have been held for the Pacific since 1984, although active leases with production remain in the Southern California planning area.<sup>53</sup> Like the Atlantic region, the Pacific region was subject to congressional and presidential leasing moratoria for most of the past 40 years.<sup>54</sup> These restrictions were lifted in FY2009, but no lease sales have since taken place for the Pacific. The governors of California, Oregon, and Washington have expressed their opposition to new offshore oil and gas leasing in the region.<sup>55</sup> (Administratively, the Pacific region also includes the state of Hawaii, but Hawaii is not part of the oil and gas leasing program because hydrocarbon resources are not present offshore of the state.)<sup>56</sup>

Congressional stakeholders disagree over whether leasing should occur in the Pacific. Members of Congress who favor broad leasing across the entire OCS have introduced legislation in previous Congresses that would have required BOEM to hold lease sales in the Pacific region.<sup>57</sup> Members concerned about environmental damage from oil and gas activities in the region have introduced legislation that would prohibit Pacific oil and gas leasing.<sup>58</sup>

## Role of Congress

Congress can influence the Administration's development and implementation of a five-year program by submitting public comments during formal comment periods, by evaluating programs in committee oversight hearings, and, more directly, by enacting legislation with program requirements.<sup>59</sup> Some Members of Congress have pursued these types of influence with respect to the upcoming five-year program. For example, Members submitted public comments on both the DPP and a previous request for information (RFI), and the House Natural Resources Committee held a hearing to examine DOI's priorities for the program.<sup>60</sup>

Some Members also have proposed legislative modifications to the five-year program. Some bills in the 117<sup>th</sup> Congress (H.R. 6858, H.R. 7012, H.R. 7094, H.R. 7292, S. 3214, S. 3752, S. 3762, S. 4228) would require that BOEM conduct the canceled lease sales from the 2017-2022 program

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<sup>53</sup> A federal oil and natural gas lease is for a specific 5-10 year period, but if a discovery is made within the term of the lease, the lease is extended for as long as oil and/or natural gas is produced in paying quantities or approved drilling operations are conducted.

<sup>54</sup> Different portions of the Pacific region were subject to different restrictions during this period.

<sup>55</sup> See, for example, 2023-2028 PP, pp. A-6 to A-9.

<sup>56</sup> 2019-2024 DPP, Chapter 1, p. 2.

<sup>57</sup> See, for example, H.R. 1487 and S. 791 in the 114<sup>th</sup> Congress.

<sup>58</sup> See, for example, H.R. 3927 in the 114<sup>th</sup> Congress, H.R. 169, H.R. 731, and S. 31 in the 115<sup>th</sup> Congress, and H.R. 279, H.R. 310, H.R. 1941, and S. 2013 in the 116<sup>th</sup> Congress. For 117<sup>th</sup> Congress bills, see the "Role of Congress" section.

<sup>59</sup> Congress also has a role under the OCSLA of reviewing each five-year program once it is finalized, but the OCSLA does not require that Congress directly approve the final program in order for it to be implemented. Congress could make changes to the final program during or after the 60-day review period through legislation.

<sup>60</sup> For Members' comments on the DPP, see 2023-2028 PP, pp. A-125 to A-133. For Members' comments on the RFI, see 2019-2024 DPP, pp. A-75 to A-77. For the oversight hearing, see House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, *Evaluating Federal Offshore Oil and Gas Development on the Outer Continental Shelf*, oversight hearing, July 12, 2017, at <https://www.govinfo.gov/content/pkg/CHRG-115hhrg26252/pdf/CHRG-115hhrg26252.pdf>.

even after expiration, and that future five-year programs be prepared and approved within a time frame that would prevent gaps between programs. These and other bills (H.R. 4334, S. 69) also would mandate minimum numbers of oil and gas lease sales in the Gulf of Mexico and/or Alaska regions.<sup>61</sup> H.R. 1325 would allow state governors to nominate areas for inclusion in a five-year leasing program; and H.R. 543, H.R. 859, H.R. 4266, H.R. 4344, S. 76, S. 3752, S. 3762, and others would facilitate wider options for leasing by restricting the President's authority to withdraw areas from leasing consideration. By contrast, other bills in the 117<sup>th</sup> Congress—H.R. 455, H.R. 544, H.R. 569, H.R. 653, H.R. 2519, H.R. 2836, H.R. 3048, H.R. 3053, H.R. 3116, H.R. 3764, H.R. 5376, H.R. 5707, S. 58, S. 1115, and S. 1851—would establish new moratoria or extend existing moratoria, thus curtailing leasing options in the upcoming program and future five-year programs. Some of these bills would permanently prohibit leasing in large areas, such as throughout the Pacific and Atlantic regions or throughout the entire OCS.

Either during development or after final publication of the upcoming program, Congress could affect the program by pursuing bills such as these or other legislation. Alternatively, Congress could choose not to intervene, allowing the new program to proceed as developed by BOEM.

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<sup>61</sup> Also see, for example, H.R. 1756 and S. 883 in the 115<sup>th</sup> Congress, and H.R. 4294 in the 116<sup>th</sup> Congress. Some proposals from earlier Congresses would have facilitated additional sales in five-year programs in other ways (e.g., by making it easier for the Interior Secretary to add new sales to programs or by requiring that the Secretary include in each program unexecuted lease sales from earlier programs). See, for example, H.R. 4239 and S. 665 in the 115<sup>th</sup> Congress.