



## The Sheppard Mullin Six

GROUNDBREAKING BOEM LEASE SALE IN NEW YORK BIGHT  
FURTHER ACCELERATES OFFSHORE WIND DEVELOPMENT IN THE ATLANTIC

On January 12, 2022, the Bureau of Ocean Energy Management (“BOEM”) issued its [Final Sale Notice](#) for the auction of six offshore wind lease areas in federal waters off the coasts of New York and New Jersey (the “NY Bight FSN”), totaling more than 480,000 acres and up to 7 gigawatts (“GW”) of capacity. This will be the first offshore wind auction to take place under the Biden-Harris Administration, as well as the largest number of U.S. offshore wind lease areas ever offered as part of a single auction.

### Here are six things to be aware of regarding the auction of offshore wind leases in the New York Bight:

1. On February 23, 2022, BOEM will auction six leases: Lease OCS-A 0537, Lease OCS-A 0538, Lease OCS-A 0539, Lease OCS-A 0541, Lease OCS-A 0542, and Lease OCS-A 0544 (the “Lease Areas”). A map of the Lease Areas may be found on BOEM’s [website](#). These Lease Areas were selected by BOEM following an extensive notice and comment process. In response to feedback from various stakeholder groups including the National Marine Fisheries Service and the fishing industry, the U.S. Coast Guard and navigation interests, and the Department of Defense, the Lease Areas were reorientated and reduced in size by 22% compared to the area originally identified for development in BOEM’s [Proposed Sale Notice](#) (“PSN”).
2. In a move intended to encourage competition and diversification, BOEM will limit the number of leases that any bidder can win under the auction to one and will restrict bidding to single entities, since a joint venture can qualify as the entity bidding on behalf of parties wishing to act as co-lessees. According to BOEM, these requirements, which came in response to widespread comments on the PSN, are expected to pave the way for new entrants to make inroads into the nascent U.S. offshore wind market, which has largely been dominated by a few major players.
3. BOEM is also requiring certain lease stipulations that are intended to encourage U.S.-manufactured and union-built projects. Lessees must “make every reasonable effort” to enter a project labor agreement covering the construction stage and are required to provide a “statement of goals” that details the project’s plans for contributing to a “robust and resilient U.S.-based offshore wind industry supply chain,” including—for the first time—investments in “installation, downpipe, survey and other vessels”, as well as other key maritime infrastructure such as ports, dry docks and navigation channels. Additionally, each lessee may be eligible for an operating fee of 1% (compared to a base operating fee of 0.2%) for a period of up to five years if the lessee “meaningfully and substantially” assembles or manufactures certain major components in the United States, including nacelles, blades, foundations, transition pieces, inter-array cables, export cables, and offshore substations. These provisions supplement and do not supplant federal law already in place – the Jones Act regime. That group of laws restricts carriage of goods and passengers between U.S. points, as well as dredging and towing in U.S. waters, to U.S. owned, U.S. built, and U.S. documented vessels.
4. Together with the announcement of the NY Bight FSN, United States Interior Secretary Deb Haaland, New York Governor Kathy Hochul, New Jersey Governor Phil Murphy, and AFL-CIO President Liz Shuler jointly announced a [“Shared Vision on the Development of an Offshore Wind Supply Chain”](#) whereby New York, New Jersey, and BOEM will “undertake complementary actions, policies, and guidance” to help “drive benefits [from offshore wind] to underserved, disadvantaged, and overburdened communities.” As part of this shared vision, investments by lessees under the NY Bight FSN must cover workforce diversity and training, and ensure equal access to contracting opportunities. The NY Bight lease stipulations also require lessees to report regularly on efforts to engage with underserved communities potentially affected by the project. These stipulations build on the 2020 offshore wind project solicitation of the New York State Energy Research and Development Authority (“NYSERDA”), which required prevailing wages and investments in environmental justice communities and minority-owned businesses.
5. BOEM’s announcement comes just days after Governor Hochul [pledged](#) the investment of \$500 million for port, manufacturing and supply chain enhancements to further support the development of offshore wind. Currently, NYSERDA has approved almost 4.3 GW of offshore wind capacity to provide power to New York City and Long Island, and is expected to issue another Request for Proposal in 2022 for up to an additional 2 GW. NYSERDA is also planning to initiate a master plan for deep water offshore wind to mirror the anticipated development of floating offshore wind projects off the coast of California. See [Six Key Things to be Aware of in the Development of Floating Offshore Wind in California](#).

6. The State of New Jersey has committed to build the New Jersey Wind Port, a new 200-acre facility in Salem County in southern New Jersey for manufacturing, marshalling and assembly to support offshore wind projects. The first phase (30 acres) costing more than \$400 million is expected to be operational in early 2024. Currently, New Jersey has approved approximately 3.75 GW of offshore wind capacity off its shores in the Atlantic. Governor Murphy has announced plans for another New Jersey Board of Public Utilities solicitation in 2022 for at least another 1.2 GW. In November 2021, New Jersey also enacted a \$350 million Offshore Wind Tax Credit which provides reimbursement for capital investments in offshore wind industry-specific facilities located in New Jersey and which demonstrate a net positive economic benefit for the State.

## Key Contacts - Offshore Wind



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Ben helps developers, utilities, infrastructure funds, banks and institutional investors finance, buy and sell infrastructure projects, and advises the companies that develop and own those projects, across the United States. While his experience spans asset classes and transaction types, he focuses on tax credit monetization transactions and renewable energy generation facilities.



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Paul has been an energy lawyer since 1984. Over a career of almost 30 years, he has negotiated all manner of project contracts, including power purchase agreements, hedges, interconnection and transmission agreements and equipment procurement and construction contracts. He represents parties in M&A transactions involving development and operating wind and solar generating projects. He works with renewable energy technologies, including on large wind, solar and biomass projects, and on conventional power plants using fossil fuels, as well as gas storage projects.



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Gail has more than 35 years of experience in all facets of environmental and energy law and policy. Her practice includes permitting and compliance, transactional due diligence, litigation and legislative matters. She works closely with traditional, renewable energy and energy storage developers on environmental and land use matters, including issues relating to climate resiliency, carbon emission reductions and community outreach, and advises on energy transactions, including commodity trading of environmental attributes. Gail also works with a non-profit organization and New York City's Office of Sustainability to advance energy efficiency in existing and new buildings. She sat on Mayor Bloomberg's Energy Task Force for a decade.



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Charles' practice focuses on international and domestic finance, leasing and related arbitration and litigation, with particular emphasis on transportation matters. He has extensive experience in negotiation of international agreements. He has lectured and written on topics relating to international law, ocean shipping, air and land transport, satellites, and cross-border leasing.



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Nick is an associate in the Finance and Bankruptcy Practice Group and a member of the firm's Energy, Infrastructure, and Project Finance Team. Nick has represented clients from the maritime, energy, and aviation industries including lenders and borrowers, issuers, lessors and lessees, sellers and buyers, and equity investors in a range of sale, lease, and financing transactions. Nick previously worked on a range of Jones Act-related transactions and litigation as a law clerk at a leading maritime law firm, and currently serves as the Young Lawyer's Committee liaison to the Maritime Law Association of the United States' Bankruptcy and Insolvency Committee.

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