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# Five-Year Offshore Oil and Gas Leasing Program: History and Background

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## Summary

Under Section 18 of the Outer Continental Shelf Lands Act, as amended (OCSLA; 43 U.S.C. §§1331-1356b), the Secretary of the Interior must prepare and maintain forward-looking plans—typically referred to as *national programs* or *five-year programs*—that indicate proposed public oil and gas lease sales in U.S. waters. In doing so, the Secretary must balance national interests in energy supply and environmental protection. The lead agency within DOI responsible for the program is the Bureau of Ocean Energy Management (BOEM).

BOEM’s development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment. 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. BOEM also develops a programmatic environmental impact statement (PEIS) for the leasing program, as required by the National Environmental Policy Act (NEPA; 42 U.S.C. §4321). The PEIS examines the potential environmental impacts from oil and gas exploration and development on the outer continental shelf (OCS) and considers a reasonable range of alternatives to the proposed plan.

Congress typically has been actively involved during the planning phases of BOEM’s five-year leasing programs. For example, some Members of Congress have conveyed their views on the Administration’s proposals by submitting public comments on draft versions of programs during formal comment periods, and have evaluated programs in committee oversight hearings. Further, although Congress’s role under the OCSLA does not include direct approval or disapproval of the program, Members have sometimes influenced the terms of five-year programs through legislation, such as legislation to mandate or prohibit lease sales in certain offshore areas.

Since 1980, nine distinct five-year programs and a revised version of one program have been submitted to Congress. The five-year programs have reflected the offshore oil and gas leasing policies of different presidential administrations, along with input from states, Members of Congress, and other stakeholders. Most recently, in November 2016, then-Secretary of the Interior Sally Jewell submitted BOEM’s offshore oil and gas leasing program for 2017-2022, and issued a record of decision approving the program in January 2017. The 2017-2022 program expired on June 30, 2022. As of the date of this CRS report, the program for 2023-2028 was under development. For information on recent activities, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*.

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## Introduction

Under the Outer Continental Shelf Lands Act (OCSLA), as amended,<sup>1</sup> the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by DOI as *national programs* or *five-year programs*—that indicate proposed public oil and gas lease sales on the U.S. outer continental shelf (OCS) over a five-year period.<sup>2</sup> In preparing each program, DOI must balance national interests in energy supply and environmental protection.<sup>3</sup> The lead agency within DOI responsible for the program is the Bureau of Ocean Energy Management (BOEM).<sup>4</sup>

BOEM’s development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment. All available leasing areas are initially examined,<sup>5</sup> and the selection may then be narrowed based on economic and environmental analysis to arrive at a final leasing schedule. 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.<sup>6</sup>

As required by the National Environmental Policy Act (NEPA), the planning process includes a programmatic environmental impact statement (PEIS).<sup>7</sup> The PEIS examines the potential environmental impacts from oil and gas exploration and development on the OCS and considers a reasonable range of alternatives to the proposed plan. Public comments from stakeholders, including state governors, companies, individuals, and public interest organizations, are addressed in both the PEIS and the five-year program itself. Because of the stages of review and comment required under both the OCSLA and NEPA, the Administration generally could not revise a finalized program—for example, to add new sales—without restarting the program development process.<sup>8</sup> However, scheduled sales could potentially be cancelled (but not added) during implementation of the program, based on requirements for environmental review that are associated with each individual sale.

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<sup>1</sup> 43 U.S.C. §§1331-1356b. The leasing program requirements were added in a 1978 amendment (P.L. 95-372; 92 Stat. 629).

<sup>2</sup> 43 U.S.C. §1344. The outer continental shelf, or OCS (43 U.S.C. §1331(a)), is an area of submerged lands, subsoil, and seabed that lies between the outer seaward reaches of a state’s jurisdiction and the outer seaward reaches of U.S. jurisdiction.

<sup>3</sup> The Secretary of the Interior must ensure, “to the maximum extent practicable,” that the timing and location of leasing occurs so as to “obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone” (43 U.S.C. §1344(a)(3)).

<sup>4</sup> Prior to 2010, the Secretary of the Interior delegated this responsibility to the Minerals Management Service, and then to the Service’s successor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). The Bureau of Ocean Energy Management (BOEM), one of three successor agencies to BOEMRE, has had the responsibility since a departmental reorganization in October 2012.

<sup>5</sup> Some areas of the OCS may be unavailable for leasing because of presidential or congressional leasing moratoria or other types of protection.

<sup>6</sup> 43 U.S.C. §1344(d). Congress does not approve or reject the program during the review period, but congressional review may lead to separate legislative action.

<sup>7</sup> 42 U.S.C. §4321. For more information on environmental impact statements, see CRS In Focus IF11549, *The Legal Framework of the National Environmental Policy Act*, by Nina M. Hart and Linda Tsang; and CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

<sup>8</sup> The OCSLA states that the Secretary of the Interior “may revise and reapprove such program, at any time,” but that “such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed” (43 U.S.C. §1344(e)).

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 typically has been actively involved in the planning process for the five-year programs. Under the OCSLA, Congress’s review of BOEM’s final program does not include approval or disapproval of the program. However, Members of Congress may influence the program in other ways. Members may convey their views on the Administration’s proposals by submitting public comments on draft versions of the program during formal comment periods, and they may evaluate the program in committee oversight hearings. More directly, Members may introduce legislation to set or alter a program’s terms.

This report discusses the history and legal framework for BOEM’s five-year leasing programs, outlines the agency’s development process, summarizes previous programs, and discusses the role of Congress. The most recent five-year program was the program for 2017-2022, approved by then-Secretary of the Interior Sally Jewell in January 2017.<sup>9</sup> The 2017-2022 program scheduled 11 lease sales in particular *regions* and *planning areas* of the OCS. (BOEM identifies four OCS regions—the Gulf of Mexico region, the Alaska region, the Atlantic region, and the Pacific region—comprising a total of 26 planning areas.) The 2017-2022 program expired on June 30, 2022, with 8 of the 11 scheduled sales having been held, one of which was vacated by a court decision. Subsequently, P.L. 117-169, commonly known as the Inflation Reduction Act of 2022 (IRA 2022), was enacted on August 16, 2022; it directed BOEM to hold the remaining lease sales in the 2017-2022 program despite the program’s expiration and directed the agency to issue the leases from the vacated lease sale.<sup>10</sup>

As of the date of this CRS report, the five-year program for 2023-2028 was under development. For further discussion of the 2023-2028 program and recent actions, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*.

## Historical Background<sup>11</sup>

In 1953, Congress enacted two laws that addressed jurisdiction and rights off the coasts of the United States, including rights to regulation of subsurface oil and natural gas exploration and production. The first of these acts, the Submerged Lands Act,<sup>12</sup> provides that coastal states are generally entitled to an area extending 3 geographical miles<sup>13</sup> from their officially recognized

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<sup>9</sup> BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Final Program*, November 2016, at <https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP/>, hereinafter cited as “2017-2022 PFP”; and DOI, *Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program*, January 17, 2017, at <https://www.boem.gov/2017-2022-Record-of-Decision/>. The final version of a five-year program is published under the title “proposed final program,” or PFP, because it must be reviewed by Congress and the President before final approval by the Secretary of the Interior.

<sup>10</sup> P.L. 117-169, Section 50264.

<sup>11</sup> This section was prepared by Adam Vann, Legislative Attorney.

<sup>12</sup> 43 U.S.C. §§1301 et seq.

<sup>13</sup> The SLA does not further define a “geographical mile,” and the phrase is not defined elsewhere in the *U.S. Code*. One section of the BOEM regulations notes that 50 “geographic miles” is equal to 92.7 kilometers, which would make a single geographic mile equal to 1.854 kilometers. 30 C.F.R. §551.14(b)(7)(ii). The same section of the BOEM regulations subsequently provides that 3 geographic miles are equal to 5.6 kilometers, which would make a single geographic mile equal to roughly 1.867 kilometers. *Ibid* at §551.14(d).

The Submerged Lands Act (SLA) also provides for an extended seaward boundary if a state can show such a boundary was provided for by the state’s “constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.” 43 U.S.C. §§1301(b), 1312. After enactment of the SLA, the Supreme Court of the United States held that the Gulf coast boundaries of Florida and Texas extend to the 3-marine-

coasts (or baselines).<sup>14</sup> The second, the OCSLA, defined the OCS as “all submerged lands lying seaward and outside of” state coastal waters that are subject to the jurisdiction and control of the United States.<sup>15</sup> The OCSLA has as its primary purpose “expeditious and orderly development [of OCS resources], subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.”<sup>16</sup>

As offshore activities expanded in the years following adoption of the OCSLA, Congress sought a means by which to allow for expedited exploration and production in order to achieve national energy goals while also providing for environmental protection, opportunities for state and local governments affected by offshore activity to have their voices heard, and a competitive bidding and leasing process.<sup>17</sup> The product was the Outer Continental Shelf Lands Act Amendments of 1978.<sup>18</sup> This legislation added a number of new provisions to the OCSLA, including Section 18, which mandates the creation and maintenance of an OCS leasing program to “best meet national energy needs for the five-year period following its approval or reapproval.”<sup>19</sup> These five-year programs, which include schedules for lease auctions, have provided the framework for OCS oil and gas exploration and production since the first one was adopted by DOI in 1980.

Although the 1978 amendments were the last major overhaul to the OCSLA, Congress has taken other actions since that time that have altered the scope of offshore oil and gas exploration and production. For example, the Deep Water Royalty Relief Act of 1995 attempted to encourage exploration and production in deep water by providing relief from otherwise applicable royalty payment requirements for some deepwater oil and natural gas production.<sup>20</sup> The Gulf of Mexico Energy Security Act of 2006 directed the leasing of certain regions of the Gulf of Mexico for oil and gas exploration and production and placed a moratorium on leasing in other regions.<sup>21</sup> It also created a mechanism for sharing revenues from leasing in the region with Gulf states and the Land and Water Conservation Fund.<sup>22</sup> Also, starting in 2008, Congress removed language from annual Interior appropriations legislation that had been in place to bar leasing and related activities in certain OCS regions.<sup>23</sup> These legislative actions helped to shape subsequent five-year programs.

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league limit (a marine league is 3 nautical miles). Other Gulf coast states were unsuccessful in their challenges. See *U.S. v. Louisiana*, 363 U.S. 1, 66 (1960), *U.S. v. Florida*, 363 U.S. 121, 129 (1960).

<sup>14</sup> 43 U.S.C. §1312.

<sup>15</sup> 43 U.S.C. §1331(a).

<sup>16</sup> 43 U.S.C. §1332(3).

<sup>17</sup> P.L. 95-372, §102 (43 U.S.C. §1802).

<sup>18</sup> P.L. 95-372.

<sup>19</sup> 43 U.S.C. §1344(a).

<sup>20</sup> P.L. 104-58.

<sup>21</sup> P.L. 109-432. For more information, see CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background, Status, and Issues*, by Laura B. Comay and Marc Humphries.

<sup>22</sup> *Ibid.* For more information on the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

<sup>23</sup> For further discussion of this appropriations-based moratorium, see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

## Legal Framework<sup>24</sup>

The statutory framework governing BOEM's development of a five-year offshore oil and gas leasing program includes the OCSLA as well as other federal statutes, particularly NEPA and the Coastal Zone Management Act (CZMA).<sup>25</sup>

### Outer Continental Shelf Lands Act

Section 18 of the OCSLA provides:

The Secretary [of the Interior] ... shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this subchapter. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval.<sup>26</sup>

Section 18 further provides that the OCS is to be managed in a manner “which considers economic, social, and environmental values” of the resources of the OCS as well as the potential impact of oil and gas exploration on the marine, coastal, and human environments.<sup>27</sup>

Specifically, Section 18 directs the Secretary to schedule the timing and location of oil and gas exploration and production among the regions of the OCS based on consideration of a variety of factors, including existing geographical, geological, and ecological characteristics of the regions; 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 region. In addition to striking this balance, leasing under the five-year program must also “be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.”<sup>28</sup> The OCSLA also requires that the five-year program include estimates on appropriations and staffing needs.<sup>29</sup>

The OCSLA also imposes a number of consultation requirements. During preparation of the five-year program, the Secretary of the Interior must “invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program.”<sup>30</sup> In addition to these mandatory consultation requirements, the Secretary may choose to consult with local government officials in affected states.<sup>31</sup>

Once the Secretary has satisfied these consultation and other requirements and prepared a proposed program, that program must be submitted to the governor of each affected state for further comments at least 60 days prior to publication of the proposed program in the *Federal*

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<sup>24</sup> This section was prepared by Adam Vann, Legislative Attorney.

<sup>25</sup> 16 U.S.C. §§1451-1464.

<sup>26</sup> 43 U.S.C. §1344(a).

<sup>27</sup> 43 U.S.C. §1344(a)(1).

<sup>28</sup> 43 U.S.C. §1344(a)(4).

<sup>29</sup> 43 U.S.C. §1344(b).

<sup>30</sup> 43 U.S.C. §1344(c)(1).

<sup>31</sup> *Ibid.*



*Register*.<sup>32</sup> The OCSLA also authorizes the Attorney General, in coordination with the Federal Trade Commission, to submit comments regarding potential effects of the proposed program on competition.<sup>33</sup> Subsequently, at least 60 days prior to its approval, the Secretary must submit the proposed program to Congress and the President, along with an explanation as to why any specific recommendation of the Attorney General or a state or local government was not accepted.<sup>34</sup> Once these steps have been completed, the Secretary is free to approve a final five-year program. The OCSLA also authorizes the Secretary to revise the five-year program at any time pursuant to a mandated review, but any revision that is “significant” must go through the process for the initial five-year program described above.<sup>35</sup>

The responsibilities of the Secretary of the Interior with respect to the five-year program under the OCSLA are carried out by BOEM. The regulations applicable to BOEM’s preparation of the five-year program include details regarding these consultation requirements. For example, BOEM is required to send letters to governors of affected states requesting that they identify specific laws, goals, and policies that they would like BOEM to consider during preparation of the five-year program.<sup>36</sup> The regulations also outline requirements for publication of the proposed program in the *Federal Register*.

## Other Federal Statutes

While the OCSLA and the applicable regulations guide the five-year planning process, other federal statutes also play a role in the program’s formation. Two federal statutes that play a prominent role in the preparation of the five-year program are NEPA and the CZMA.

## National Environmental Policy Act

Section 102(2)(C) of NEPA requires all federal agencies to prepare a detailed statement of the environmental impact of and alternatives to major federal actions significantly affecting the environment.<sup>37</sup> In many cases the process for compliance with this requirement includes an environmental assessment (EA) that determines whether an action is a major federal action significantly affecting the environment.<sup>38</sup> However, if the agency has determined that the proposed action is a major federal action without conducting an EA, then the agency moves directly to preparing the statement of the environmental impact of and alternatives to the proposed federal action, known as an environmental impact statement (EIS).<sup>39</sup> This is the case with BOEM’s five-year programs; the significance of the program’s impact on the environment is assumed. Therefore, BOEM prepares a programmatic EIS (PEIS)<sup>40</sup> concurrently with preparation of the five-year program. This process is explained in further detail throughout this report.

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<sup>32</sup> 43 U.S.C. §1344(c)(2).

<sup>33</sup> 43 U.S.C. §1344(d)(1).

<sup>34</sup> 43 U.S.C. §1344(d)(2).

<sup>35</sup> 43 U.S.C. §1344(e).

<sup>36</sup> 30 C.F.R. §556.16(b).

<sup>37</sup> 43 U.S.C. §1332(2)(C). For more information on NEPA, see CRS In Focus IF11549, *The Legal Framework of the National Environmental Policy Act*, by Nina M. Hart and Linda Tsang; and CRS Report RL33152, *The National Environmental Policy Act (NEPA): Background and Implementation*, by Linda Luther.

<sup>38</sup> 40 C.F.R. §1501.3(a).

<sup>39</sup> *Ibid.*

<sup>40</sup> A PEIS evaluates the environmental impact of the federal program in question from a broad regional perspective; more detailed and geographically focused analyses in compliance with the requirements of NEPA are also conducted at



## Coastal Zone Management Act<sup>41</sup>

Under the CZMA,<sup>42</sup> states are encouraged to enact coastal zone management plans to coordinate protection of habitats and resources in coastal waters.<sup>43</sup> The CZMA establishes a policy of preservation alongside sustainable use and development compatible with resource protection.<sup>44</sup> State coastal zone management programs that are approved by the Secretary of Commerce are eligible to receive federal monetary and technical assistance. State programs must designate conservation measures and permissible uses for land and water resources,<sup>45</sup> and must address various sources of water pollution.<sup>46</sup>

The CZMA also requires that the federal government and federally permitted activities comply with these state programs.<sup>47</sup> To that end, the BOEM regulations governing the five-year program provide that “[i]n development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State.”<sup>48</sup> The regulations require BOEM to request information concerning the relationship between a state’s coastal zone management program and OCS oil and gas activity from the governors of affected coastal states and the Secretary of Commerce prior to development of the leasing program.<sup>49</sup>

## Five-Year Program Development Process<sup>50</sup>

BOEM’s development of a five-year program typically takes place over two or three years, during which three successive versions of the program proposal are published for review. The drafts are submitted to state governors and federal agencies and, in the final stage, to Congress and the President (see discussion of consultation requirements in the “Legal Framework” section, above). The second and final program proposals are released concurrently with draft and final versions of the PEIS, which are also opened to public comments. Each step of the process involves additional public comment and environmental review. After the program takes effect, individual lease sales also undergo environmental review, as do companies’ exploration and development plans on leased tracts. **Figure 1** outlines the steps from development of the five-year program to actual oil and gas production in an individual well.

Because of the analysis and review undertaken at each stage of drafting the five-year program, the successive drafts represent a winnowing process. The initial draft proposed program (DPP)

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the planning, leasing, and exploration and development stages.

<sup>41</sup> For additional information on the CZMA, see CRS Report R45460, *Coastal Zone Management Act (CZMA): Overview and Issues for Congress*, by Eva Lipiec.

<sup>42</sup> 16 U.S.C. §§1451-1464.

<sup>43</sup> Coastal U.S. states and territories, including the Great Lakes states, are eligible to receive federal assistance for their coastal zone management programs. Currently, there are 34 approved state and territorial plans. See National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, State and Territory Coastal Management Program Summaries, at <https://coast.noaa.gov/czm/mystate/>.

<sup>44</sup> 16 U.S.C. §1452(1), (2).

<sup>45</sup> 16 U.S.C. §1455(d)(2), (9)-(12).

<sup>46</sup> 16 U.S.C. §1455(d)(16).

<sup>47</sup> 16 U.S.C. §1456(c).

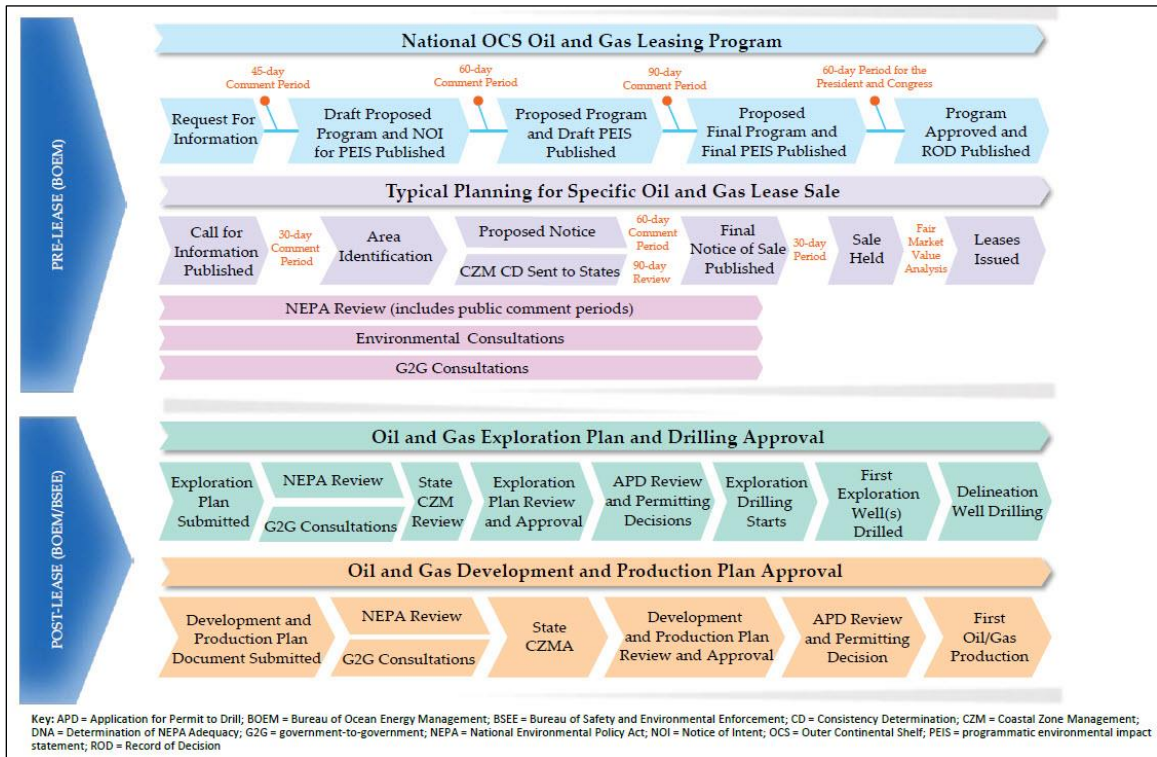
<sup>48</sup> 30 C.F.R. §556.19.

<sup>49</sup> *Ibid.*

<sup>50</sup> This section was prepared by Laura Comay, Specialist in Natural Resources Policy.

examines all of the agency’s available planning areas for oil and gas leasing,<sup>51</sup> analyzing them according to factors in Section 18 of the OCSLA and considering public input, in order to develop an initial schedule of proposed lease sales. In subsequent versions of the program, BOEM might remove proposed sales on the basis of further analysis, but could not add new sales without reverting to an earlier stage of the process and undertaking new environmental reviews.

**Figure 1. OCS Oil and Gas Leasing, Exploration, and Development Process**



**Source:** BOEM oil and gas leasing flow chart, at <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/Process-Diagram.pdf>.

The steps of the process are discussed in greater detail below, with examples from the 2017-2022 program, the most recent five-year program to complete the development process.

- **Step 1. Request for Information.** BOEM initiates development of a new five-year program by publishing in the *Federal Register* a request for information (RFI) from interested parties concerning regional and national energy needs for the next five-year period; leasing interests of possible oil and gas producers; environmental concerns; and concerns of state and local governments, tribes, and the public, among other issues. For example, the RFI for the 2017-2022 leasing program was published on June 16, 2014, and was followed by a comment period during which the agency received more than half a million comments.<sup>52</sup>

<sup>51</sup> BOEM divides the U.S. OCS into 26 planning areas in four regions (the Atlantic, Pacific, Arctic, and Gulf of Mexico regions). The draft proposed program analyzes all of the planning areas except those that are closed to oil and gas leasing activities by congressional or presidential moratoria or other executive or legislative actions.

<sup>52</sup> BOEM, “Request for Information and Comments on the 2017-2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program,” 79 *Federal Register* 34349, June 16, 2014.

- **Step 2. Draft Proposed Program/Notice of Intent for PEIS.** BOEM publishes a draft proposed program (DPP), the first of three program decision documents.<sup>53</sup> The DPP analyzes all OCS planning areas available for leasing, taking into account comments received on the RFI, and identifies a preliminary lease schedule. BOEM published its DPP for 2017-2022 on January 29, 2015, with a comment period that closed on March 30, 2015.<sup>54</sup> The DPP's preliminary lease schedule consisted of 14 proposed oil and gas lease sales spanning three of the four offshore planning regions (Gulf of Mexico, Alaska, and Atlantic). BOEM received more than 1 million comments on the DPP.

When the DPP is published, BOEM also issues a notice of intent (NOI) to publish a programmatic environmental impact statement (PEIS) for the proposed lease areas and seeks public input (through a scoping process) on the issues that should be analyzed in the PEIS. The NOI for the 2017-2022 program was published on January 29, 2015, along with the DPP.<sup>55</sup>

- **Step 3. Proposed Program/Draft PEIS.** After further analyzing the lease sale areas proposed in the DPP according to the required factors in Section 18 of the OCSLA, and taking into account the public comments received on the DPP, BOEM publishes a proposed program (PP). This second version refines the proposed locations and timing for OCS oil and gas lease sales. BOEM submits the PP to Congress, state governors, and relevant federal agencies and also solicits public comment on the program. BOEM published the PP for 2017-2022 on March 15, 2016, with a comment period that closed on June 16, 2016.<sup>56</sup> The PP revised the draft leasing schedule from the DPP to narrow it to 13 proposed lease sales spanning two offshore planning regions (Gulf of Mexico and Alaska).

The PP is accompanied by a draft PEIS analyzing the OCS areas that were identified for leasing at the DPP stage. The draft PEIS for the 2017-2022 program was released along with the PP, with a comment period that closed on May 2, 2016.<sup>57</sup>

- **Step 4. Proposed Final Program/Final PEIS.** The final document published by BOEM is the PFP, which is based on additional analysis of the factors in Section 18 of the OCSLA, along with analysis of the public comments received on the PP. The PFP is announced in the *Federal Register* and submitted to the President

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<sup>53</sup> A decision document is one on which the Secretary of the Interior must issue a decision.

<sup>54</sup> BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Draft Proposed Program*, January 2015, at <http://www.boem.gov/2017-2022-DPP/>, hereinafter referred to as "2017-2022 DPP." Also see BOEM, "Notice of Availability (NOA) of and Request for Comments on the Draft Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program from 2017-2022 (DPP)," 80 *Federal Register* 4941, January 29, 2015.

<sup>55</sup> BOEM, "Outer Continental Shelf (OCS), 2017-2022 Oil and Gas Leasing Program," 80 *Federal Register* 4939. Public scoping meetings were announced for Alaska, Virginia, Maryland, North Carolina, South Carolina, Florida, Texas, Louisiana, Alabama, and Washington, DC. Additional public scoping meetings were later planned for New Jersey and Georgia (BOEM, "Outer Continental Shelf (OCS), 2017-2022 Oil and Gas Leasing Program," 80 *Federal Register* 12204, March 6, 2015).

<sup>56</sup> BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Leasing: Proposed Program*, March 2016, at <http://www.boem.gov/2017-2022-Proposed-Program-Decision/>, hereinafter referred to as "2017-2022 PP."

<sup>57</sup> BOEM, *Outer Continental Shelf Oil and Gas Leasing Program, 2017-2022: Draft Programmatic Environmental Impact Statement*, March 2016, at [http://boemceaninfo.com/u/dpeis/dpeis\\_volume\\_I.pdf](http://boemceaninfo.com/u/dpeis/dpeis_volume_I.pdf), hereinafter referred to as 2017-2022 Draft PEIS. BOEM published a notice of availability of the PEIS in the *Federal Register* (BOEM, "Draft Programmatic Environmental Impact Statement for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program: 2017-2022," 81 *Federal Register* 14885, March 18, 2016, at <http://www.boem.gov/81-FR-14885/>).

and Congress for a period of at least 60 days. Although Congress does not have an approval role for the PFP, the 60-day review period could allow for legislation to be introduced that would influence the outcome of the program. BOEM published the PFP for 2017-2022 on November 18, 2016.<sup>58</sup> It contained a final refinement of the proposed lease schedule, narrowing it to 11 sales in two offshore planning regions (Gulf of Mexico and Alaska).

Along with the PFP, BOEM publishes a final PEIS that concludes the analysis of the areas proposed for leasing. The final PEIS is submitted to the President and Congress along with the PFP. BOEM released the final PEIS for the 2017-2022 program on November 18, 2016, along with the PFP.<sup>59</sup>

- **Step 5. Approval of PFP by Secretary of the Interior.** At least 60 days after the PFP is submitted to the President and Congress, the Secretary of the Interior may approve the PFP, which then becomes final. The Secretary publishes a record of decision for the final program. Former Secretary of the Interior Sally Jewell issued a record of decision approving the final program for 2017-2022 on January 17, 2017.<sup>60</sup>

## Five-Year Programs Submitted in Earlier Years<sup>61</sup>

Since 1980, nine distinct five-year programs and a revised version of one program have been submitted to Congress.<sup>62</sup> Following the 60-day review period required by the OCSLA, each of these five-year programs has taken effect as an approved program. **Table 1** shows the previous submissions, dating back to 1980. The five-year programs have reflected the offshore oil and gas leasing policies of different presidential Administrations, along with input from states, Members of Congress, and other stakeholders.

**Table 1. OCSLA Five-Year Programs Submitted to Congress Since 1980**

Years	Administration Submitting Plan	Congress	Number of Sales Listed in Submission	Number of Sales Held	Approximate Acres Leased (in millions) <sup>a</sup>
2017-2022	Obama	114 <sup>th</sup>	11	8 (as of September 2022) <sup>b</sup>	4.8 (as of September 2022) <sup>b</sup>
2012-2017	Obama	112 <sup>th</sup>	15	13	7.4
2007-2012 <sup>c</sup>	Obama / G. W. Bush <sup>c</sup>	111 <sup>th</sup> / 110 <sup>th</sup>	16 / 21 <sup>c</sup>	11	21.7
2002-2007	G. W. Bush	107 <sup>th</sup>	20	15	20.5

<sup>58</sup> 2017-2022 PFP, at <https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP/>. Also see BOEM, “Notice of Availability of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program,” 81 *Federal Register* 84612, November 23, 2016, at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-23/pdf/2016-28296.pdf>.

<sup>59</sup> BOEM, *Outer Continental Shelf Oil and Gas Leasing Program, 2017-2022: Final Programmatic Environmental Impact Statement*, March 2016, at <http://boemceaninfo.com/fpeis/>; hereinafter referred to as 2017-2022 Final PEIS.

<sup>60</sup> DOI, *Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program*, January 17, 2017, at <https://www.boem.gov/2017-2022-Record-of-Decision/>.

<sup>61</sup> This section was prepared by Laura Comay, Specialist in Natural Resources Policy.

<sup>62</sup> Prior to 1980, the domestic program for oil and gas leasing encompassed almost 30 years of federal government lease sales conveying more than 3,000 tracts from October 1954 through September 1980.

Years	Administration Submitting Plan	Congress	Number of Sales Listed in Submission	Number of Sales Held	Approximate Acres Leased (in millions) <sup>a</sup>
1997-2002	Clinton	105 <sup>th</sup>	16	12	22.9
1992-1997	G. H. W. Bush	102 <sup>nd</sup>	18	12	22.6
1987-1992	Reagan	100 <sup>th</sup>	42	17	24.7
1982-1987	Reagan	97 <sup>th</sup>	41	23	21.0
1980-1982 <sup>d</sup>	Carter	96 <sup>th</sup>	36	12	4.1

**Source:** CRS.

- Acreage leased is shown in BOEM, OCS Lease Sale Statistics, “All Lease Offerings,” at <http://www.boem.gov/OCS-Lease-Sale-Statistics-All-Lease-Offerings/>.
- Eight sales were held under the 2017-2022 program prior to its June 30, 2022, expiration. Lease Sale 257 was vacated by a judicial order (*Friends of the Earth v. Haaland*,—F. 3d.—, 2022 WL 254526 (D.D.C. 2022)), and leases were not issued. Subsequent to the program’s expiration, P.L. 117-169 was enacted, requiring BOEM to conduct the remaining lease sales despite the program’s expiration and to issue the leases from the vacated Lease Sale 257. The figures shown as of September 2022 do not reflect acreage from Lease Sale 257.
- The George W. Bush Administration developed the original program for 2007-2012 and submitted it to the 110<sup>th</sup> Congress with a lease schedule containing 21 sales. Following a court order in 2009, DOI revised the program under the Obama Administration and resubmitted it to the 111<sup>th</sup> Congress with a revised lease schedule containing 16 sales.
- This program was originally referred to as the Comprehensive Program 1980-1985, but the covered years were changed to 1980-1982 due mainly to judicial activity. *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

## Role of Congress

Congress can influence the Administration’s development of a five-year program in a number of ways. Members of Congress may convey their views on the Administration’s proposals by submitting public comments on program drafts during the formal comment periods, and they may evaluate the program in committee oversight hearings. More directly, Members may introduce legislation to set or alter a program’s terms. Congress also has a role under the OCSLA of reviewing each five-year program once it is finalized, but as discussed above, the OCSLA does not require that Congress directly approve the final program in order for it to be implemented.

As examples of these types of participation, this section summarizes congressional action on the 2017-2022 program, the most recent completed program. For developments on the upcoming 2023-2028 program, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*.

## Public Comment

Members of Congress, along with other stakeholders such as state governors, interested agencies and organizations, and members of the public, may submit comments on draft versions of five-year programs. For the 2017-2022 program, BOEM received 15 comments from Members of Congress on its initial request for information (RFI), 12 comments from Members on the DPP, and 5 comments from Members on the PP. Some of these comments came from one or a few Members, and others had many signers (in some cases, 150 Members or more).<sup>63</sup> Some comments

<sup>63</sup> The 15 congressional comments received on the RFI are discussed on pp. A-46 to A-49 of the 2017-2022 DPP. The



opposed the inclusion of certain regions in the program, whereas others supported the proposed lease sales or sought an expansion of lease areas and a higher number of sales. The comments also addressed related issues such as seismic testing in the Atlantic.

BOEM takes the public comments into account when developing successive drafts of a five-year program. Each draft contains an appendix summarizing the substantive comments that BOEM received on the previous version, including those from Members of Congress, and explaining BOEM's response to each.<sup>64</sup> BOEM may revise the program to partially or fully adopt a suggestion, or may explain why it declined to do so.

## Oversight Hearings

The House or Senate may hold oversight hearings to evaluate a proposed five-year oil and gas leasing program. Such hearings help to inform Members in their legislative decisionmaking concerning the program and provide an opportunity for BOEM to hear Members' views. After BOEM released the DPP for 2017-2022, the House Natural Resources Committee held a hearing on the program on April 15, 2015.<sup>65</sup> Members and witnesses addressed issues such as the overall number of lease sales proposed for the program, whether leasing should occur in the Atlantic and Arctic, and whether seismic surveying should occur in the Atlantic, among others. On May 19, 2016, the Senate Energy and Natural Resources Committee held a hearing on the PP version of the program.<sup>66</sup> Members and witnesses discussed, among other issues, the PP's proposal for targeted rather than area-wide lease sales in Alaska and the factors that contributed to BOEM's decision to remove its earlier-proposed Atlantic lease sale from the 2017-2022 program.

## Legislation

Under the OCSLA, the final version of each five-year program must be submitted to Congress for a period of 60 days before the Secretary of the Interior can approve and implement the program.<sup>67</sup> During or outside the 60-day period, Congress could consider legislation to alter the program. Legislation could, for example, remove scheduled lease sales, add new lease sales, or make broader changes to the program.

The 114<sup>th</sup>, 115<sup>th</sup>, 116<sup>th</sup>, and 117<sup>th</sup> Congresses all considered legislation to alter the development or implementation of the 2017-2022 program. Proposals included bills to add specific lease sales to the program or require a different set of lease sales, to require certain minimum numbers of acres to be leased, to prohibit leasing in certain OCS areas, to defund the planning program, to prohibit any revisions to the program, and to require that canceled lease sales be held even after the program's expiration, among other topics. One enacted measure—the IRA 2022, P.L. 117-169—directs BOEM to hold three canceled lease sales from the 2017-2022 program despite the

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12 congressional comments received on the DPP are discussed on pp. A-24 to A-26 of the 2017-2022 PP. The 5 congressional comments received on the PP are discussed on pp. A-49 to A-50 of the 2017-2022 PFP.

<sup>64</sup> See Appendix A of each version of the program: the 2017-2022 DPP (summarizing comments on the RFI), the 2017-2022 PP (summarizing comments on the DPP), and the 2017-2022 PFP (summarizing comments on the PP).

<sup>65</sup> House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, oversight hearing, "Examining the Future Impacts of President Obama's Offshore Energy Plan," April 15, 2015, at <https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94270/pdf/CHRG-114hhrg94270.pdf>.

<sup>66</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, "Hearing to Examine the Bureau of Ocean Energy Management's 2017-2022 OCS Oil and Gas Leasing Program," 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 19, 2016, at <http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=110E5E8F-3A65-4BEC-9D25-5D843A0284D3>.

<sup>67</sup> 43 U.S.C. §1344(d)(2). The final program is also submitted to the President during this period.

program's expiration and to issue the leases from Lease Sale 257, which previously had been vacated by a judicial decision.

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