ANOTHER STEP TOWARD NORTH CAROLINA OFFSHORE WIND: PROPOSED OFFSHORE WIND FARM LEASE ANNOUNCED

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Renewable Energy Alert

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The U.S. Department of the Interior has just announced the next step in the years-long process toward the development of wind energy facilities off the coast of North Carolina. In a notice published in the Federal Register on August 16, 2016, the Bureau of Ocean Energy Management ("BOEM") proposed the sale of commercial lease rights to develop wind energy facilities on the Outer Continental Shelf off the coast of northeastern North Carolina. The notice can be found at: https://federalregister.gov/a/2016-19552. The area proposed for lease encompasses approximately 122,400 acres, begins about 24 nautical miles off the Outer Banks of North Carolina, and contains 21.5 Outer Continental Shelf blocks. This area is known as the Kitty Hawk Wind Energy Area ("WEA") and is situated in rough proximity to the Virginia WEA that was leased by BOEM pursuant to an auction process in 2013. A map of the proposed Kitty Hawk lease area can be found at: http://www.boem.gov/Map-Standard-Background/. Public comments to BOEM's notice, as well as expressions of interest in the proposed lease for the Kitty Hawk WEA, may be submitted during the 60-day comment period that ends on October 17, 2016.

BACKGROUND

In January 2011, BOEM formed the North Carolina Intergovernmental Renewable Energy Task Force to facilitate communication and coordination among state and local governmental stakeholders regarding the potential for North Carolina offshore wind energy facilities. This initiative by BOEM expanded on feasibility studies by the State of North Carolina that culminated with a coastal wind study report published by the University of North Carolina in 2009. In 2012, BOEM published a Call for Information and Nominations to solicit the wind energy industry's interest in the offshore areas of North Carolina for wind farms. At that time, BOEM identified three potential offshore areas for wind development: the Kitty Hawk WEA and two areas off the southeastern corner of the state near the South Carolina border. Five wind energy developers submitted indications of interest to BOEM regarding the three proposed WEAs.

BOEM subsequently completed an environmental assessment under the National Environmental Policy Act and, in 2015, issued a Finding of No Significant Impact. Of particular interest, the environmental review evaluated visual impacts to the seascape and potential impacts to critical habitat of the right whale. Additionally, BOEM has concluded its consultations under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act, but still must consult with North Carolina and Virginia state governments regarding Coastal Zone Management Act issues.

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THE PROPOSED LEASE SALE

In the notice issued on August 16, BOEM proposed to offer for lease only the Kitty Hawk WEA. The two additional areas off the southeastern corner of North Carolina (called the Wilmington East WEA and the Wilmington West WEA) will be grouped with potential WEAs off the coast of South Carolina and handled in a separate process altogether. The Kitty Hawk wind lease will be offered for sale by auction if there is sufficient interest expressed by potential bidders. BOEM's notice also acts as a request for indications of interest in the Kitty Hawk wind lease, and prospective bidders must affirmatively respond to the notice within the public comment period. Bidders that BOEM has already approved must submit an indication of continued interest while new bidders must submit qualification materials for review and approval. BOEM will review the legal, technical, and financial qualifications of prospective bidders to acquire and hold leases for projects of this type and scope.

BOEM will hold a public seminar regarding the proposed lease, the auction process and rules, and other aspects of the notice in mid-September 2016 in Raleigh, North Carolina, and will also hold a public meeting in Kitty Hawk, North Carolina. Additional public comments may be submitted to BOEM during the 60-day comment period. If any lease is granted to a wind energy developer at the end of the leasing process, the lease will not constitute final federal approval of an offshore wind project in the Kitty Hawk lease area. In order to obtain such approval, the project would have to complete additional environmental studies and technical reviews.

While North Carolina has several on-shore wind energy projects in development, the proposed lease for the Kitty Hawk WEA would be the first offshore wind lease for the state and only the twelfth nationwide.

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