Sea Grant
LAW CENTER

To: Karina Nielsen, Director, Oregon Sea Grant
From: Samantha Hamilton, Ocean & Coastal Law Fellow, National Sea Grant Law Center
RE: Revenue Sharing under the Outer Continental Shelf Lands Act for Offshore Wind (NSGLC-23-04-03)[1]
Date: May 09, 2023

Advisory Summary

Oregon Sea Grant reached out to the National Sea Grant Law Center seeking clarification regarding the potential revenue-sharing between the federal government and the Oregon Ocean Science Trust and Fund from offshore wind energy project leases under the Outer Continental Shelf Lands Act (OSCLA). The OCSLA, as amended by the Energy Policy Act of 2005, directs that a portion of the revenue generated by qualified offshore wind projects be shared by the federal government with eligible states. The State of Oregon has passed legislation directing any such revenue received to the Oregon Ocean Science Trust and Fund.

Background

The Energy Policy Act of 2005, which amended the Outer Continental Shelf Lands Act (OCSLA), grants the Department of the Interior authority to issue leases, easements, and rights of way on the Outer Continental Shelf (OCS) for projects that "produce or support production, transportation, storage, or transmission of energy".[2] Because offshore projects on the OCS can impact states whose coastlines border the OCS, the federal government is required to share revenues generated from qualified projects with eligible state governments.[3] The Bureau of Ocean Energy Management (BOEM) is authorized by the Secretary of the Interior to manage the development of renewable energy projects on the OCS.[4] Under the Energy Policy Act of 2005,

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[2] 43 U.S.C.A. § 1337(p)(1)(C).
[3] 43 U.S.C.A. § 1337(p)(2).
[4] 30 C.F.R. § 585.100.

BOEM has direct authority to promulgate rules and guidelines for the permitting and operation of offshore wind facilities.[5]

The state of Oregon established the Oregon Ocean Science Trust and Fund (OOST) in 2013 to promote statewide research and monitoring efforts and programs.[6] The Oregon Legislature expressly provided that "any moneys received by the State of Oregon from the federal government that constitute the state's distributive share of the amounts collected under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., shall be deposited in the fund."[7] Thus, any funds received by the State of Oregon under the OCS Lands Act should directly flow to the OOST Fund.

Revenue Sharing Requirements

As set forth in BOEM's regulations implementing the revenue sharing requirements, BOEM distributes among the eligible coastal states 27% of all revenues from bonuses, acquisition fees, rentals, and operating fees derived from the entire qualified project area and associated project easements.[8] A qualified project for the purpose of revenue sharing with eligible coastal States is one authorized under subsection 8(p) of the OCS Lands Act.[9] Examples of revenue generated by such renewable energy projects include bonuses paid by companies upon securing leases, annual rent of $3 per acre, and a 2% operating fee based on the anticipated value of the wind energy produced.[10]

To be eligible for revenue sharing, a part of a state's coastline must be located within 15 miles of the geographic center of the project area.[11] BOEM determines and announces the project area and its geographic center at the time it issues a lease.[12] Where more than one state is eligible for revenue sharing, BOEM equitably distributes their shares using a formula that apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area.[13]

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[5] CONGRESSIONAL RESEARCH SERVICE, R40175, OFFSHORE WIND ENERGY DEVELOPMENT: LEGAL FRAMEWORK (2023).
[6] Or. Rev. Stat. §§ 196.565-570.
[7] Or. Rev. Stat. § 196.567(4).
[8] 30 C.F.R. § 585.540(a).
[9] The entire area within a lease or grant for the qualified project, excluding project easements, is considered the qualified project area. 30 C.F.R. § 585.541.
[10] UNITED STATES DEPARTMENT OF THE INTERIOR, NATURAL RESOURCES REVENUE DATA, REVENUES (last visited May 09, 2023).
[11] 30 C.F.R. § 585.542.
[12] 30 C.F.R. § 585.540(b).
[13] 30 C.F.R. § 585.540(c).

Revenue Distribution

It is unknown at this time how revenue-sharing in Oregon would play out in practice, because there are currently no approved offshore wind projects on Oregon's OCS. However, as part of the Biden-Harris administration's goal to generate 30 gigawatts of offshore wind energy by 2030, BOEM identified three Call Areas off the Oregon coast for wind energy development in February 2022, which have a total installed capacity potential of 17 GW.[14] For two of the call areas - Coos Bay and Bandon - Oregon might be the only state eligible for revenue distribution depending on the projects' geographic centers. However, the Brookings call area is close to the California border, which might result in revenue sharing with both Oregon and California.[15]

Revenue distributions to states for renewable energy projects have been quite small to date. Revenues in the past decade have generally been from bonus bids, rents, and sources other than operating fees, because there were no projects operating commercially in federal waters during this period.[16] According to the U.S. Department of Interior's Natural Resources Revenue Data website,[17] offshore wind projects along the Atlantic Coast generated over $4.6 billion in revenue to the federal government in FY22. However, no revenue-sharing distributions were made to Atlantic coasts states in FY22.

A historic review of the data reveals that payments to states have been limited. Thus far, Massachusetts has received eight revenue-sharing payments of approximately $24,000 during fiscal years 2011-2019, for a total of just over $190,000. Rhode Island received distributions of approximately $170 in fiscal years 2015 and 2016 and approximately $1,700 in fiscal year 2017.[18] As offshore wind projects begin generating more energy, the revenue they generate–and thus the disbursements to eligible coastal states–should increase.

Conclusion

Under the Outer Continental Shelf Lands Act, as amended by the Energy Policy Act of 2005, BOEM must share 27 percent of revenue received by the federal government for offshore wind projects with states whose coastlines are located within 15 miles of the geographic center of a qualified project. If a qualified offshore wind energy project is sited off the coast of Oregon, revenue distributions to the state of Oregon will be directed to the Oregon Ocean Science Trust

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[14] OFFSHOREWINDBIZ.COM, *U.S. Plans to Auction 3 GW Offshore Oregon, Pinpoints Three Areas* (Feb. 25, 2022).

[15] OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, *OROWindMap* (last visited May 09, 2023), http://bit.ly/3pu2mgc.

[16] CONGRESSIONAL RESEARCH SERVICE REPORT, R46970, OFFSHORE WIND ENERGY: FEDERAL LEASING, PERMITTING, DEPLOYMENT, AND REVENUES (2021).

[17] https://revenuedata.doi.gov/

[18] CONGRESSIONAL RESEARCH SERVICE REPORT, supra note 16.

and Fund. It’s important to note, however, that revenue sharing disbursements to date have been quite small as the industry is in its infancy.