

August 12, 2025

Via Federal e-rulemaking portal

Bureau of Ocean Energy Management
Pacific Region
Office of Strategic Resources
760 Paseo Camarillo (CM 102)
Camarillo, California 93010

**Re: Request for Information and Interest: Commercial Leasing for Outer
Continental Shelf Minerals Offshore American Samoa; 90 Fed. Reg.
25369 (June 16, 2025); Dkt. No. BOEM-2025-0035**

To Whom it May Concern:

Thank you for the opportunity to comment on this request for information (RFI). The Bureau of Ocean Energy Management does not have legal authority to allow deep-sea mining offshore American Samoa, because Congress did not extend the Bureau that authority.

The proposed lease sale is an unprecedented activity that would allow resource extraction in a vast region of the Pacific Ocean. Neither Congress nor the Bureau itself have considered or evaluated mineral leasing in this area before, and Congress never gave the Bureau the power to take the actions it is now contemplating. If the Bureau moves forward, it will violate bedrock principles of the separation of powers and arrogate to itself an undelegated area of Congressional control under the Property Clause. The Bureau must therefore abandon any further actions to facilitate deep-sea mining in this region.

As the largest international ocean conservation organization solely focused on protecting the world's oceans, with millions of supporters worldwide, Oceana is deeply concerned by the prospect of mineral leasing in this region of the Pacific. Deep-sea mining is a technologically and financially unproven gamble that risks destroying a fragile and largely unexplored marine ecosystem and endangering the culture, environment, and fisheries economy of American Samoa. Oceana has joined joint comments, submitted separately, making these points. Our comments here address an additional, fundamental concern: while the Bureau *should not* go forward, it also *cannot* go forward with mineral leasing in this area.¹

¹ In addition to our comments, there are other reasons the Bureau does not have the requisite authority, including that the "minerals" covered under OCSLA do not include the type of minerals proposed for leasing here. We endorse, and hereby incorporate by reference, the comments of the Center for Biological Diversity on that issue.

DETAILED COMMENTS

The Bureau is proposing to offer a lease sale for minerals in the United States Exclusive Economic Zone (EEZ) around American Samoa, a United States territory. But there is no authority in the Outer Continental Shelf Lands Act (OCSLA) for the Bureau to pursue mineral leasing offshore U.S. territories. In the RFI, the Bureau cites a 2022 amendment to OCSLA that broadened the definitions of “Outer Continental Shelf” and “State” to permit offshore wind leasing offshore U.S. territories. The Bureau is suggesting this change authorized the Bureau to offer mineral leases in territorial EEZs.

Our comments below describe why that interpretation is incorrect. We first explain that the 2022 amendments authorized only territorial *wind* leasing under OCSLA. We then describe how prior, unenacted bills reinforce that understanding and demonstrate what Congress would have done instead if it *had* intended to authorize territorial mineral leases. Finally, we note that the Bureau’s own actions since 2022 confirm it understood the amendments to be limited to wind leasing. The conclusion is clear: the 2022 amendments – considered, as they must be, in their full context²– expand the Bureau’s authority for *wind* leasing and nothing more. The Bureau cannot twist the language of those amendments to grant it a power Congress did not contemplate or delegate.

I. THE 2022 AMENDMENTS TO OCSLA AUTHORIZED ONLY TERRITORIAL WIND LEASING

In OCSLA, Congress delegated a portion of its authority under the Property Clause³ to the Department of Interior (and through it the Bureau) to authorize and regulate certain activities, including leasing, on the outer continental shelf. Areas offshore U.S. territories historically have not been available for leasing of any kind under OCSLA. As the Bureau notes in its RFI, however, “Section 50251(b) of the Inflation Reduction Act of 2022 expanded the definition of the OCS under the OCS Lands Act to include submerged lands within the Exclusive Economic Zone adjacent to U.S. territories and amended the OCS Lands Act by modifying the definition of ‘State’ to include each of the 50 States of the Union, the Commonwealth of Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.”⁴

The RFI’s statement is a correct reiteration of one set of changes made in Section 50251 of the Inflation Reduction Act. But it entirely ignores the context of those changes within the rest of Section 50251. Below, we first describe the *full* text of Section 50251, which clearly concerns only offshore wind leasing. We then note how the legislative history of Section 50251’s enactment reinforces the plain text’s exclusive focus on wind leasing. Read in full context, Section 50251 does not confer any authority for territorial mineral leasing.

² See *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”) (internal quotation marks omitted).

³ U.S. Const. art. IV, § 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...”).

⁴ Commercial Leasing for Outer Continental Shelf Minerals Offshore American Samoa — Request for Information and Interest, 90 Fed. Reg. 25369, 25370 (June 16, 2025).

A. The Plain Text of the 2022 Amendments Concerns only Wind Leasing.

The plain text of the Inflation Reduction Act of 2022, as enacted,⁵ authorizes only an expansion of the Bureau's offshore *wind* leasing authority to U.S. territories. Section 50251(b) appears within Title V, Subpart B, Part 5 of the law. The title of Part V, in its entirety, is "Offshore Wind."⁶ Section 50251 is the *only* provision that appears in Part V. It defies common sense to suggest that the one provision in a section entitled "Offshore Wind" addressed anything other than exactly that: offshore wind leasing.

The exclusive focus on wind is further reinforced within subsection 50251(b) – the subsection that the Bureau is relying on. That subsection is titled "Offshore Wind for the Territories," which could hardly be more clear. The definitional changes that the Bureau notes appear in subsection 50251(b)(1); the remainder of the subsection, 50251(b)(2), is entitled "Wind Lease Sales for Areas of the Outer Continental Shelf" and adds a new section to OCSLA to be titled "Wind Lease Sales for Areas of the Outer Continental Shelf Offshore of Territories of the United States."⁷

Mineral leasing is not mentioned once in Section 50251 (or anywhere else in the Inflation Reduction Act, for that matter). Indeed, the only time *any* leasing other than wind is noted is to preclude it. Section 50251(b)(1)(B) adds language to Section 18 of OCSLA that specifically excludes the territories from that section, which governs offshore oil and gas leasing.⁸ That explicit carveout reinforces the equally explicit language surrounding it: Congress did not expand the definition of the outer continental shelf for any purpose other than wind leasing.

The language in Section 50251 is unequivocal: it expands the Bureau's existing authority over wind leasing to areas offshore U.S. territories. It does not expand any other area of the Bureau's authority to that new geographic region.

B. The Legislative History of the 2022 Amendments Discuss only Wind Leasing.

The legislative history of the Inflation Reduction Act confirms that the amendments in Section 50251 apply only to wind leasing. The original version introduced in the House in September 2021 included virtually identical language to the final version.⁹ The Committee Report on the original version noted only that the language authorized wind leasing in the territories.¹⁰ The engrossed and calendared Senate version used different text that was equally clear: "The Secretary of the Interior shall grant leases, easements, and rights-of-way to produce or support production, transportation, or transmission of electricity from

⁵ Inflation Reduction Act of 2022, Pub. Law No. 117-169, 136 Stat. 1818 (2022).

⁶ *Id.* at 2054.

⁷ *Id.* at 2054-2055.

⁸ *Id.*; see also 43 U.S.C. § 1344(i) (new statutory text).

⁹ H.R. 5376, 117th Cong., § 70801 (as reported by H.R. Comm. on the Budget, Sept. 27, 2021). The only difference in the relevant language is that the original bill added to the definition of "Outer Continental Shelf" the words "or lying within the exclusive economic zone of the United States *and the Outer Continental Shelf* adjacent to any territory of the United States." *Id.* (emphasis added). The italicized language was removed by S. Amdt. 5194, presumably as a superfluous and circular reference. S. Amdt. 5194 to H.R. 5376, § 50251 (as agreed to in S. by Voice Vote, Aug. 7, 2022).

¹⁰ H.R. Rep. No. 117-130, at 518 (explanation of provisions), 599 (dissenting views) (2021).

renewable energy facilities in submerged lands seaward from the coastline of [the U.S. territories] and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.”¹¹ The final version achieved the goal reflected in the Senate version, but did so – like the original – by dictating specific amendments to OCSLA’s language.

There is no indication in the iterations of what became Section 50251, or in the many discussions of the overall bill that became the Inflation Reduction Act, that Congress ever considered or intended this provision to expand agency authority over anything other than wind leasing. It would be “extraordinary for Congress to make such an important change in the law without any mention of that possible effect,” and “not a scintilla of evidence of such an intent can be found in the legislative history.”¹²

II. EARLIER BILLS CONFIRM THAT THE 2022 AMENDMENTS CONCERNED ONLY WIND LEASING.

Congressional actions prior to 2022 dispel any possibility that Section 50251 did more than its plain language suggests. The language in Section 50251 did not spontaneously appear; to the contrary, it had a long history in prior bills across several prior Congresses. This section of our comment describes that history. First, we describe the many predecessor bills with the same language as Section 50251, which authorized only territorial wind leasing. Then, we describe the markedly different language in the one bill that did propose to authorize territorial mineral leasing – language that was *not* carried over in Section 50251. This history confirms that the language of the 2022 amendments only expanded the Bureau’s authority with respect to territorial wind leasing.

A. Prior Bills with Similar Language Focused Exclusively on Wind Leasing.

The earliest iterations of Section 50251’s language appeared in two bills in the 115th Congress.¹³ In November 2017, Rep. Scalise (R-LA) introduced the SECURE American Energy Act (H.R. 4239),¹⁴ which is discussed below. In August 2018, Del. Bordallo (D-GU) introduced the “Offshore Wind for Territories Act” (H.R. 6665).¹⁵ Delegate Bordallo’s bill included sections substantively the same as what ultimately became Section 50251(b): it revised the OCSLA definitions of “outer continental shelf” and “state” to include EEZ areas around the territories, excluded those areas from Section 18 of OCSLA, and established a process for wind lease sales.¹⁶ All of the discussion in Congress surrounding H.R. 6665 – including Del. Bordallo’s introductory remarks and the House discussion of the bill – noted

¹¹ H.R. 5376, § 71002 (as placed on S. Legis. Calendar under Gen. Orders, Aug. 3, 2022) (emphasis added).

¹² *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 176 (1993) (finding it improbable for Congress to have intended to amend a provision of the Immigration and Nationality Act to apply extraterritorially despite nowhere indicating as such).

¹³ Bills introduced as far back as the 109th Congress proposed changes to the statutory definition only. *See, e.g.*, H.R. 4761, 109th Cong. (2006); H.R. 3682, 114th Cong., § 851 (2015).

¹⁴ H.R. 4239, 115th Cong. (2017).

¹⁵ H.R. 6665, 115th Cong. (2018).

¹⁶ *Id.* §§ 2, 4. Unlike the final enacted version, H.R. 6665 also included provisions to share leasing revenues with the affected territories, and to establish a “Coral Reef Conservation Fund.” *Id.* §§ 3, 5.

it opened the door to *wind* leasing in the territories.¹⁷ During the debate, Rep. Gallego (D-AZ) specifically called out the definitional changes as intended to allow wind leasing *without* allowing oil and gas leasing.¹⁸

H.R. 6665 was not enacted, but virtually identical bills were reintroduced in both the House and Senate in the 116th Congress,¹⁹ and in the House in the 117th Congress.²⁰ In addition, several bills were introduced that incorporated similar language regarding territorial wind leasing into larger legislative packages.²¹ Discussions on the relevant portions of all of these bills focused solely on wind leasing. No member of Congress discussed any effect on mineral leasing, nor did any witnesses – including witnesses from the Department of Interior and the Bureau itself.²² Committee Reports also omit any discussion of mineral leasing, aside from cursory mentions in budget estimates.²³

“At no point during the debates over these [bills] did a single Member of Congress suggest that [they] would so fundamentally change” the management of waters offshore U.S. territories as to allow an entirely new form of resource extraction.²⁴ It would “test the limits of reason to suggest that despite such silence,” Congress “intended to enact what would arguably be the single most significant change” in the OCSLA’s mineral leasing program “since its inception.”²⁵ Any expansion of authority for such leasing “would have surely drawn more explicit statutory language and legislative comment.”²⁶ Rather, the bills,

¹⁷ 164 Cong. Rec. 1137 (2018) (introductory remarks); 164 Cong. Rec. 9778-9781 (2018) (H.R. debate).

¹⁸ *Id.* at 9780 (“[B]ecause the territories are currently not covered by the Outer Continental Shelf Lands Act, there is no legal mechanism for putting wind turbines in the waters off their coastlines. This bill fixes this longstanding unfairness, offers them a share of any revenues generated by offshore wind, and also protects their coastlines by leaving them off of the offshore oil and gas leasing process.”)

¹⁹ H.R. 1014, 116th Cong. (2019); S. 499, 116th Cong. (2019).

²⁰ H.R. 1689, 117th Cong. (2021).

²¹ H.R. 8632, 116th Cong., § 317 (2020); H.R. 2780, 117th Cong., § 405 (2021); H.R. 3764, 117th Cong., § 217 (2021); H.R. 4334, 117th Cong., § 303 (2021); S. 2613, 117th Cong. § 405 (2021).

²² See *Hearing on S. 499 (and others) Before the Subcomm. on Pub. Lands, Forests, & Mining of the S. Comm on Energy & Nat. Res.*, 116th Cong. 58 (statement of Dep’t of Interior), 128 (statement of sponsor Sen. Bill Cassidy), 183 (statement of H.R. 1014 sponsor Res. Comm’r Jenniffer González-Colón), 245 (statement of Nat’l Ocean Indus. Ass’n) (2019); *Building Back Better: Reducing Pollution and Creating Jobs Through Offshore Wind; Meeting on H.R. 1689 (and others) Before the Subcomm. on Energy & Mineral Res. of the H. Comm. on Nat. Res.*, 117th Cong. (statements of Amanda Lefton, Dir., Bureau of Ocean Energy Mgmt., & Erik Milito, Pres., Nat’l Ocean Indus. Ass’n) (2021); *Ocean-Based Climate Action; Hearing on H.R. 1689 (and others) Before the H. Comm. on Nat. Res.*, 117th Cong. (statement of sponsor Res. Comm’r Jenniffer González-Colón) (2021).

²³ See Report to Accompany H.R. 6665, H.R. Rep. No. 115-1029, at 1-2 (background and need for legislation), 3 (section-by-section analysis of § 2), 6-7 (Cong. Budget Off. analysis) (2018); Report to Accompany H.R. 1014, H.R. Rep. No. 116-230, at 1-2 (background and need for legislation), 4 & 6 (Cong. Budget Off. analysis) (2019); Report to Accompany H.R. 2780, H.R. Rep. No. 117-686, at 28 (discussing § 405) (2022); Report to Accompany H.R. 3764, H.R. Rep. No. 117-695, at 107 (discussing § 217) (2022).

²⁴ *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 342 (1999) (finding that nowhere in the legislative history had Congress indicated the 1976 revisions to the Census Act would alter “the manner in which the [Census] Bureau could calculate the population for purposes of apportionment”).

²⁵ *Id.* at 343.

²⁶ *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 137 (2005) (quoting *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994) (finding that “had Congress intended to award fees as a matter of course to a party that successfully obtains a remand” under the removal statute, it would have indicated so).

like the ultimate 2022 amendments, did only what they purported to do – that is, expand offshore wind leasing.

While none of these bills ultimately passed, they set the trajectory for the final amendments in the Inflation Reduction Act, and they clearly show that Congress was *not* authorizing territorial mineral leasing when it ultimately enacted that language in 2022.

B. The Only Prior Bill that Did Address Mineral Leasing Failed to Pass

As noted above, the “SECURE American Energy Act” (H.R. 4239), introduced in 2017, also proposed comparable revisions to OCSLA.²⁷ But that bill had a unique addition: it *also* explicitly contemplated mineral leases. Alongside provisions similar to the bills discussed above, H.R. 4239 included a markedly dissimilar subsection that would have amended OCSLA’s mineral leasing provisions to authorize issuance of mineral exploration licenses and leases in the EEZ adjacent to United States territories.²⁸ Subsection 108(c) of that bill would have amended Section 8(k) of OCSLA – the mineral leasing provision – by adding a new subsection 8(k)(3), specifically entitled “Exploration Licenses and Leases on Outer Continental Shelf Adjacent to Territories And Possessions” that would authorize the Secretary to grant exploration licenses and subsequent leases “in an area lying within the United States exclusive economic zone and the outer Continental Shelf adjacent to any territory or possession of the United States.”²⁹ Those provisions were discussed in the associated Committee Report.³⁰

H.R. 4239 did not become law, and language comparable to subsection 108(c) never appeared in any subsequent bills. But the bill’s language demonstrates two things. *First*, it shows that the language in the 2022 amendments to OCSLA did not authorize mineral leasing off the territories. That same language was in H.R. 4239, right alongside the language in subsection 108(c) about mineral leasing; if the former was sufficient to confer authority for mineral leasing in the territories, the authority that subsection 108(c) proposed to confer would have been superfluous. *Second*, H.R. 4239 shows that Congress knew how to draft and incorporate language that would authorize mineral leases if it wished to do so. The bill’s failure to advance, and Congress’s decision not to include language similar to subsection 108(c) in future enacted bills (including the Inflation Reduction Act) demonstrates that Congress never intended to – and never did – authorize offshore mineral leasing in the territories. It “left the question” of offshore mineral leasing in the territories “for another day.”³¹

²⁷ H.R. 4239, §§ 108(a)-(b), 109.

²⁸ *Id.* § 108(c).

²⁹ *Id.*

³⁰ Report to Accompany H.R. 4239, H.R. Rep. No. 115-1000, at 22 (discussing § 108), 54 (Cong. Budget Off. analysis), 132 (dissenting views) (2018).

³¹ *Doe v. Chao*, 540 U.S. 614, 622-23 (2004) (finding that Congress’s failure to pass language in the Privacy Act authorizing general damages helped show the Act did not authorize such damages for statutory violations).

III. THE BUREAU'S 2023 RULE CONFIRMS IT HAD BEEN DELEGATED NEW AUTHORITY ONLY FOR WIND LEASING

The text and history of Section 50251 demonstrates that it authorized only wind leasing offshore U.S. territories. Prior bills reinforce that conclusion. So, too, do the Bureau's own actions. In the wake of the 2022 amendments to OCSLA, the Bureau revised its offshore leasing regulations to conform to the new definitions, but *only* with respect to its wind leasing regulations. It did so, of course, because the 2022 amendments gave the Bureau new authority *only* with respect to wind. The Bureau understood that, and it revised its regulations accordingly.

Barely more than a year after the Inflation Reduction Act became law, the Bureau published a direct final rule implementing Section 50251(b) by making changes to the regulations governing offshore leasing.³² The Bureau explained it was taking that action because the 2022 amendments required it: "The IRA amendments to OCSLA authorize BOEM to issue [leases and rights of use] in support of *renewable energy activities* offshore U.S. territories," and Section 50251(b) "directs the Secretary to issue an initial call for information and nominations no later than September 30, 2025, and authorizes the Secretary to conduct *wind energy lease sales* within the EEZs of the five self-governing U.S. territories." Therefore, "[t]o satisfy these new OCSLA requirements, BOEM is incorporating the revised definitions of 'outer Continental Shelf' and 'State' into its existing regulations governing *offshore wind energy leasing*."³³

As the Bureau's justification indicates, the 2023 rule made definitional changes – it revised the definition of "Outer Continental Shelf," and it added a new definition of "State" that included U.S. territories. But the Bureau made those changes *only* in 30 C.F.R. Part 585, which governs renewable energy leasing.³⁴ The Bureau never suggested that the 2022 amendments affected the Part 581 or Part 582 regulations, which govern mineral leasing. Nor, in the years since, has it ever amended Parts 581 or 582, which still contain the original definition of "Outer Continental Shelf" and no definition of "State" at all.³⁵

That lack of regulatory revision is doubly telling. *First*, it confirms that the Bureau well understood the 2022 amendments to OCSLA gave it no new authority for mineral leasing. *Second*, it underscores that the Bureau currently lacks not only statutory *but also regulatory* authority to offer mineral leasing offshore U.S. territories. If the Bureau had to revise its regulations before it could offer wind leasing in the territories,³⁶ then it surely must do the same before it can offer mineral leases in the territories. The Bureau has not made those revisions, and it does not have the legal authority to make them.

³² Conformity with the Inflation Reduction Act for Renewable Energy on the Outer Continental Shelf, 88 Fed. Reg. 68460 (Oct. 4, 2023).

³³ *Id.* at 68460 (emphases added).

³⁴ See *id.* at 68462; see also 30 C.F.R. § 585.113 (revised definitions).

³⁵ See 30 C.F.R. §§ 581.3, 582.3 (original definitions).

³⁶ See Commercial Leasing for Wind Power Development on the Guam Outer Continental Shelf – Call for Information and Nominations, 90 Fed. Reg. 663, 664 (Jan. 6, 2025) (citing the 2023 conforming amendments in Bureau's call for information and nominations for an offshore wind lease sale in Guam).

CONCLUSION

It could hardly be clearer that the 2022 amendments to OCSLA authorized offshore wind leasing – and *only* offshore wind leasing – for U.S. territories. The Bureau is attempting to leverage a limited grant of authority, which Congress conferred in order to expand renewable energy generation, to embark on an entirely different category of activity – wholesale natural resource extraction – in new and farflung regions of U.S. waters. Congress did not give the Bureau the power to take that step. If the Bureau wishes to do so, it needs to seek a delegation of that authority from Congress. In the meantime, the Bureau cannot take any further action on the proposal in the RFI.

We appreciate the opportunity to provide input and thank you for your time. We will continue to be engaged in this process moving forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Lowell". The signature is fluid and cursive, with the first name "Beth" being more prominent than the last name "Lowell".

Beth Lowell
Vice President, United States
Oceana