



January 11, 2022

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Submitted via regulations.gov; Docket No. BOEM-2021-0044

Re: Request for Comments on Outer Continental Shelf offshore Morro Bay, California Wind Energy Area, Environmental Assessment Scoping

The American Clean Power Association (“ACP”)¹ welcomes the opportunity to provide comments on the U.S. Bureau of Ocean Energy Management’s (“BOEM”) designation of the Morro Bay Wind Energy Area (“WEA”) and notice of intent to publish an environmental assessment (“EA”) of leasing activities within the WEA.² We support BOEM’s intent to further the early actions and progress it has taken in the Morro Bay area to meet the Biden Administration’s national goal to deploy clean energy and combat the threat of climate change.

We largely support the analysis and conclusions reached in the Area Identification memorandum (“Area ID Memo”)³ to support designation of the Morro Bay WEA, although we disagree with the premature elimination of the East Extension from the Morro Bay 399 Area at this stage of the process. BOEM should use the forthcoming EA to analyze the largest area

¹ American Clean Power represents the renewable energy industry in the United States, bringing together over 1,000 member companies, 120,000 members, and a national workforce located across all 50 states. By uniting the power of wind, solar, storage, and transmission companies and their allied industries, we enable the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. Additional information is available at <http://www.cleanpower.org>.

² Request for Comments on Outer Continental Shelf offshore Morro Bay, California Wind Energy Area, Environmental Assessment Scoping (Nov. 12, 2021), <https://www.regulations.gov/document/BOEM-2021-0044-0061>

³ Memorandum dated November 10, 2021, from Doug Boren, Regional Director, BOEM Pacific Outer Continental Shelf (“OCS”) Regional Office, to Amanda Lefton, BOEM Director, <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Area-ID-CA-Morro-Bay.pdf>



possible at this stage, as every megawatt of clean energy counts in the battle against climate change and the effort to achieve economies of scale in order to build an offshore wind supply chain on the West Coast. These combined needs make it essential to maximize offshore wind leasing off California, and especially the Central Coast. There will be multiple opportunities for further deconfliction, if necessary, at the lease or construction and operations, sale and/or Construction and Operations Plan (“COP”) stages once BOEM gathers more data on coexistence with other ocean users and potential project impacts. Finally, we agree with the scope of BOEM’s EA, and urge BOEM to work with the California Coastal Commission (“CCC”) to ensure that its consistency determination is similarly scoped to address the proposed federal action—lease issuance—and not the future authorization of an offshore wind project of unknown scope and design.

I. ACP agrees with BOEM’s designation of the Morro Bay Call Area and West Extension as part of WEA.

We largely support the analysis and rationale used in the Area ID Memo to develop recommendations for the Morro Bay WEA. We believe BOEM has generally achieved its goal of identifying offshore locations that are suitable for leasing, subject to our concerns about exclusion of the East Extension expressed below. ACP reiterates and incorporates by reference its opinions expressed in its Humboldt EA letter⁴ regarding how BOEM should handle ocean user conflicts in the Morro Bay WEA.

II. The Morro Bay WEA should include the East Extension

We believe BOEM erred by excluding the East Extension from the Morro Bay WEA. First, the Morro Bay WEA is a good start, but it is potentially not big enough to support a full offshore wind supply chain along the Central and Southern California coasts or to timely meet California’s aggressive renewable energy goals. Every square mile leased for offshore wind off California—and especially along the Central Coast—will count toward the total acreage needed

⁴ https://www.boem.gov/sites/default/files/documents/regions/pacific-ocs-region/renewable-energy/2021_0913%20American%20Clean%20Power%20Association.pdf



to build a domestic offshore wind industry and help California achieve a zero carbon energy electric system by 2045, as well as meet crucial interim targets in 2030 and 2040.

Second, at this stage in BOEM’s leasing process, it is in the national interest for BOEM to preserve maximum flexibility regarding the potential scope of leasing off the California coast, including keeping the East Extension under consideration. Given the nature of BOEM’s environmental analysis of lease sales under the National Environmental Policy Act (“NEPA”), doing so would not create significant new administrative burdens relative to BOEM’s current plan to only conduct an environmental analysis on the Morro Bay and West Extension.

In general, BOEM’s lease sale EAs analyze the foreseeable impacts of the lease issuance, which are largely limited to: (a) geophysical and geotechnical surveys; and (b) deployment of two or more meteorological buoys per lease. BOEM has conducted at least eight of these lease sale EAs over its history with renewable energy leasing on the Outer Continental Shelf, and no matter the geographic area, the substantive analyses and findings have largely not varied significantly over the years. With its deep understanding of the potential impacts from offshore wind leasing activities, given how well understood these impacts are, we believe BOEM could prepare a lease sale EA covering all the Morro Bay Call Areas with minimal extra effort as compared to a lease sale EA covering just the original Morro Bay and West Extension WEA—and would not materially increase BOEM’s administrative burden. On the other hand, failure to do so now would foreclose suitable broader offshore development at a potentially great environmental and economic lost opportunity cost.

Third, the National Ocean and Atmospheric Administration (“NOAA”) process for designating a Chumash National Marine Sanctuary (“NMS”) along the Central Coast creates additional uncertainty and puts an additional premium on space available for offshore wind. As the current Chumash NMS proposal would take nearly the entire Central Coast outside of the Morro Bay WEA off the table for offshore wind leasing, including the formerly identified Diablo



Canyon Call area, BOEM should maximize the area under consideration for leasing as much as possible without further delaying its Morro Bay WEA lease sale.⁵

Finally, we believe that the specific justifications offered in the Area ID Memo for excluding the East Extension do not warrant elimination of that area from consideration for leasing at the present stage in the BOEM's process:

- **Fisheries:** On page 16 of the Area ID Memo, BOEM notes that “further outreach, data gathering, and analysis could provide BOEM with a more comprehensive understanding of the uses in the East Extension as final areas for leasing are developed.” While ACP agrees that further research should be conducted, we note that preliminary research indicates reducing fishing within a WEA there could provide potential beneficial impacts to commercial fishing outside the WEA. For instance, if reduced fishing occurs inside the WEA, it could result increased biomass outside as well.⁶ In terms of potential direct effects on fish themselves, existing science suggests it is unlikely that offshore wind will have population-level impacts on fish, despite stakeholder concerns about avoidance, benthic habitat disturbance, electromagnetic fields (EMF), or noise.⁷ The BOEM permitting process, especially at the site-specific COP plan phase, can effectively assess and address these concerns and is the appropriate forum for final assessment.
- **Visual:** On page 23 of the Area ID Memo, BOEM notes that “[a]lthough BOEM could potentially reduce visual impacts by removing the Eastern Extension at this time because it is closer to shore, it may be premature to exclude areas at the Area ID stage based on potential visual impacts alone.” ACP agrees that such exclusion is premature, especially because the ultimate project size will determine potential impacts and that has not yet been established; thus, such impacts would be better addressed at the COP stage.
- **Avian:** On page 23 of the Area ID Memo, BOEM notes that it “determined that impacts to seabirds could be addressed on a site-specific basis at the COP review stage but impacts may potentially be reduced if the Eastern Extension was removed from the WEA designation.” Again, ACP agrees that such potential impacts should be evaluated on a site-specific and project-specific basis, and that it is therefore premature to exclude the East Extension from consideration for leasing at this stage and on this basis.

⁵ Note that ACP will be submitting comments to NOAA regarding its proposed designation of the Chumash NMS, proposing that NOAA scale back the sanctuary boundaries to allow for the development of offshore wind in the Morro Bay WEA and provide flexibility for additional offshore wind leasing to occur off the Central Coast.

⁶ <https://www.nrel.gov/news/program/2020/pdfs/floating-offshore-wind-101-webinar-qa.pdf>

⁷ <https://cleanpower.org/wp-content/uploads/2021/06/OSW-Factsheet-Fisheries-Science-Behind-Coexistence.pdf>



III. The Area ID Memo Should Have Considered Factors Weighing in Favor of More Wind Energy Leasing

Although we support the conclusion reached by the Area ID Memo (other than exclusion of the East Extension), we wish to register a general concern about the one-sided nature of the Area ID stage of BOEM’s leasing process. BOEM’s Area ID Memoranda can and should consider the need for, and benefits of, offshore wind in the affected region. The Area ID Memo should not be solely limited to an analysis of potential ocean user conflicts. BOEM should balance its Area ID analyses by considering (among other things) state renewable energy goals under 43 U.S.C. 1337(p)(7), whether the size of the WEAs is sufficient to support a domestic onshore supply chain, and whether the area under consideration for leasing sufficiently prevents waste of the wind resource under 43 U.S.C. 1337(p)(4)(C).

For example, the State of California’s renewable energy goals are some of the most ambitious in the country, yet are not considered at all in the Area ID Memo. Most recently, under California Assembly Bill (“AB”) 525, the California State Assembly directed the California Energy Commission (“CEC”) to prepare a strategic plan for developing offshore wind resources, as well as specific megawatt targets for 2030 and 2045, the latter of which is due by June 1, 2022. Although the exact target has not yet been established as of the date these comments were submitted, the offshore wind potential off of California is massive; a recent National Renewable Energy Laboratory (“NREL”) study found there are 201 gigawatts (“GW”) of technical potential for offshore wind off the coast of California.⁸ Realizing this potential is a critical component of meeting the Biden Administration’s national objectives for offshore wind deployment, to address both climate and renewable energy goals, it warrants consideration in BOEM’s Area ID Memo.⁹ If BOEM were to issue a large lease sale accommodating even a small fraction of the technical capacity—for instance, 5-10 GW, it would lay the groundwork for the opportunity to create tens of thousands of jobs and generate billions of dollars in economic activity. Such a lease sale would also help achieve as well as help reach California’s stated mission in the California Senate Bill (“SB”) 100 to use renewable energy and zero-carbon resources to supply

⁸ <https://www.nrel.gov/docs/fy21osti/77642.pdf>

⁹ <https://www.nrel.gov/docs/fy21osti/77642.pdf>



100 percent of electric retail sales to end-use customers by 2045.¹⁰ In addition, a recent study from the University of Southern California and the Schwarzenegger Institute found California could see a gross domestic product increase of \$24 billion between 2020 and 2040 and job gains of up to 195,000 job-years in construction and 4,500 annual operation/maintenance for 40 years through development of 10 GW of offshore wind.¹¹ In addition, these opportunities promise high paying jobs concentrated in regions of California that really need the economic activity, further underscoring how leasing there would advance opportunities for these regions of California would also further the Biden Administration’s focus on addressing socioeconomic disparities.

The development of high paying jobs in this quickly growing industry, providing an adequate pipeline to encourage a robust supply chain and overall economic activity expected to result from leasing the Morro Bay WEA that should be weighed against other potential impacts. Consideration of these factors is highly relevant to determining whether the WEA is sufficiently large to meet the requirements of the Outer Continental Shelf Lands Act and the policy priorities of this Administration.

IV. The scope of BOEM’s Morro Bay EA is appropriate, and should inform the scope of the California Coastal Commission’s Federal Consistency Review

ACP agrees with the scope of BOEM’s Morro Bay EA, and requests that BOEM work closely with NOAA’s Office for Coastal Management (“OCM”) to ensure that the CCC’s Federal Consistency Review of the Morro Bay lease sale stays within this scope. This approach would be consistent with every offshore wind lease sale that BOEM has ever held, and would provide predictability to the industry and ensure that the Morro Bay leases are issued in a timely manner consistent with BOEM’s Offshore Wind Path Forward.

¹⁰ For more California goals, *see* ACP Comments on Morro Bay Call for Information and Nominations for Commercial Leasing for Wind Power Development (Sept. 13, 2021) (attached).

¹¹ University of Southern California Schwarzenegger Institute, “California’s Offshore Wind Electricity Opportunity,” 2021, http://schwarzeneggerinstitute.com/images/files/OSW_Report.pdf.



1. Analyzing site surveys and site assessment activities for met buoys is consistent with both BOEM’s past practices and the DC Circuit’s decision in the Fisheries Survival Fund.

BOEM’s scoping for the Morro Bay WEA EA is consistent with its previous scoping of eight offshore wind lease sales, which has withstood legal scrutiny by the D.C. Circuit Court of Appeals, and we support such an approach here. We urge BOEM to continue the process consistent with the current scoping process, as it is optimal for enabling offshore wind to help achieve state and federal climate and clean energy goals.

As an initial matter, in each instance that BOEM has conducted offshore wind lease sales, BOEM has limited its NEPA analysis only to the reasonably foreseeable impacts of lease issuance: site characterization surveys and site assessment activities. Because BOEM leases do not include development rights and BOEM does not have a site-specific plan before it, BOEM has reasonably determined that the most appropriate time to conduct a NEPA analysis of the buildout of a lease is: if and when it has received a COP from the lessee. Nine years in, the offshore wind industry expects and plans for BOEM to continue with this approach. It would be severely disruptive to the industry (and to all stakeholders) if BOEM were to suddenly change its course with respect to this process only for California.

Moreover, the D.C. Circuit has upheld this approach by BOEM to its environmental analysis of offshore wind lease sales. In *Fisheries Survival Fund v. Haaland*, 858 Fed. Appx. 371 (May 20, 2021), the court rejected a challenge to a BOEM lease sale off of New York State that alleged BOEM should have analyzed the buildout of the area before issuing a lease. The court held that because BOEM’s offshore wind leases do not include development rights, issuing them did not constitute an “irreversible and irretrievable commitment of resources” requiring a full NEPA analysis of the construction of a wind farm that had not yet been proposed.

At the Area Identification ID stage, BOEM synthesizes voluminous information that it has collected from the public and members of the BOEM Task Force (including the California Coastal Commission and other state agencies). This extensive, multi-year process, which started in California over five years ago in 2016, culminates in BOEM’s designation of WEAs that are



suitable for offshore wind leasing and potential development in light of the wide range of factors and constraints.

At the leasing stage, however, it would be premature and speculative for BOEM to do a full NEPA analysis of the hypothetical buildout of offshore wind within those WEAs. At this point, BOEM has not received the benefit of the extensive site-specific information that will be gathered through the implementation of the Site Assessment Plan, which a lessee will prepare and execute after the issuance of a lease. Site control, through the issuance of a lease, is necessary for it a lessee to invest the necessary resources to gather baseline survey data over the course of months and years, design a project, and prepare a COP. The COP is a proposal that would include, among many other things, geotechnical and geophysical survey data, site-specific environmental data, and wind turbine specifications and layouts. The COP will be the basis for BOEM's extensive review of the potential environmental and socioeconomic effects of a proposed offshore wind project, including any proposed cables to shore, which will be included in an environmental impact statement under NEPA (and which will result in the development of mitigation measures).

Conducting a more detailed NEPA analysis of construction and operation of a hypothetical the environmental impacts of a wind energy project(s) before site assessment activities are complete and a COP is prepared would necessarily be speculative because it would require BOEM and its consulting agencies to make assumptions that may not be the case after site assessment activities are completed and a project's COP submitted. BOEM would undoubtedly then need to conduct a duplicative analysis once a lessee has submitted its COP, which could vary widely from its assumptions based on the results of surveys and the specifics of the project proposal. Requiring BOEM to produce a speculative and redundant environmental review at the lease sale stage would also cause up to a two- year delay in the California leasing process, which in turn would (a) greatly impede the Biden Administration's goal of issuing leases off California in Fall 2022; (b) delay the time by which offshore wind can provide much needed clean energy needed to meet California's clean energy needs; and (c) delay critical on-shore supply chain investments such as ports, port facilities upgrades to ports, the creation of



marshalling areas, and the siting of wind turbine generator (“WTG”) component manufacturing facilities.

2. BOEM should work with NOAA to ensure CCC’s consistency review is consistent with the scope of the federal action.

Given the appropriate scope of the Morro Bay WEA EA, we urge BOEM to confer with the NOAA OCM, which could impress upon the CCC the need to limit the scope of federal consistency review of BOEM’s federal consistency determination under the Coastal Zone Management Act (“CZMA”). The consistency determination BOEM will prepare should be limited in scope to only the lease issuance and site characterization and assessment activities, and not assess construction and operation of hypothetical future projects that may be proposed in those leases.

We appreciate CCC’s interest in analyzing the potential impacts of offshore wind within the Morro Bay WEA at this early stage; as noted above, BOEM has already done some of this analysis with CCC’s input. But for numerous reasons, the CCC’s federal consistency determination under the CZMA should be limited only to the federal action itself, which is simply the issuance of one or more leases and *not* the approval of an offshore wind farm. We urge BOEM and NOAA to consult with CCC throughout the process and set the groundwork for CCC’s concurrence with the BOEM consistency determination once issued.

First, we are greatly concerned that an expanded concurrence review at this stage could significantly delay a lease sale that is slated to occur in 2022 in accordance with the Biden Administration’s Offshore Wind Path Forward 2021-2025.¹² Such a delay would spark increased uncertainty within the industry and deter much-needed supply chain and ports investments. This, in turn, could compromise both the Administration’s goals of achieving 30 GW of offshore wind by 2030 and as well as the State of California’s twin goals of establishing a local offshore wind industry in the coming decade and going becoming carbon neutral by 2045.

¹² <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/OSW-Proposed-Leasing-Schedule.pdf>.



Second, the federal and state laws and NOAA regulations require it. The BOEM consistency determination for the proposed Morro Bay WEA lease sale must be made in relation to a “Federal agency activity” under 16 U.S.C. 1456(c)(1). That federal action proposes only a lease and not a wind farm, which would be reviewed as an application for a Federal license under 16 U.S.C. 1456(c)(3). NOAA’s OCM regulations make the same distinction. At the present stage, BOEM is judging the CCC is will determine whether it concurs with the consistency statement of a the proposed federal action—the issuance of an offshore wind lease—under 15 CFR Part 930, Subpart C. The CCC, much like BOEM, will have ample other opportunities to put determine whether the future lessees’ proposals are consistent with the state’s enforceable coastal management policies to the test once those lessees submit their federal COPs and accompanying state permit applications. It is at this stage that, each applicant will prepare a consistency certification that the CCC will then determine whether it concurs with the consistency certification of the COP as an “OCS plan” under 15 CFR Part 930, Subpart E.

Finally, we note that for each of the eight BOEM lease sales that have occurred thus far, the affected state coastal management programs have abided by this system and limited their lease-sale concurrence decisions to just the action of issuing the leases. These states—particularly Rhode Island, Massachusetts, New York, and New Jersey— have been very active participants in the BOEM process, particularly at the COP stage. Their willingness to work within BOEM’s established leasing process has in no way waived or prejudiced their future thorough review of proposed projects by coastal protection agencies in these states. future review of proposed projects. In all cases, the state coastal agencies have concurred, or concurred with limited conditions, with the BOEM consistency determination for leasing activities.



V. Conclusion

ACP appreciates the opportunity to comment on the designation of the Morro Bay WEA and the scope of the upcoming environmental assessment, and looks forward to continuing its active engagement with BOEM on this critical leasing process in the coming year.

Respectfully,

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