



February 10, 2022

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Submitted via regulations.gov; Docket No. BOEM- 2021-0085

Re: Request for Comments on Pacific Outer Continental Shelf, Humboldt Wind Energy Area, California, Draft Environmental Assessment

The American Clean Power Association (“ACP”)¹ welcomes the opportunity to provide comments on the U.S. Bureau of Ocean Energy Management’s (“BOEM”) Draft Environmental Assessment (“Draft EA”) for Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf, Humboldt Wind Energy Area (“WEA”).² We support BOEM’s intent to further the early actions and progress it has taken in the Humboldt 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 Draft Environmental Assessment (“Draft EA” or “EA”) to support designation of the Humboldt WEA, and we appreciate that analysis in the Draft EA does not eliminate any of the proposed area. BOEM continue in the Final EA to analyze the largest area 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. There will be multiple

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 the Outer Continental Shelf Offshore, Humboldt Wind Energy Area, California, Draft Environmental Assessment (Jan. 11, 2022), <https://www.regulations.gov/document/BOEM-2021-0044-0085>



opportunities for further deconfliction, if necessary, at the lease sale stage, the preparation of the Construction and Operations Plan (“COP”), and/or during the construction and operations phases once BOEM gathers more data on coexistence with other ocean users and potential project impacts. Finally, we agree with the scope of BOEM’s Draft 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. California Needs Offshore Wind to Reduce the Impacts of Climate Change and Maintain a Resilient Power Grid

ACP and OWC applaud President Biden for making climate change mitigation a central priority of his Administration. In the Executive Order on Tackling the Climate Crisis at Home and Abroad (Climate EO), signed on January 27, 2021, President Biden called deployment of clean energy technologies, such as offshore wind, “critical for climate protection” and established that “[i]t is the policy of [the] Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy . . . especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.”³ The Climate EO further calls for the executive branch to “accelerate the deployment of clean energy . . . in an environmentally stable manner.”⁴ Most recently, the President issued an executive order stating that, in 2022, BOEM “will conduct reviews of wind energy areas offshore northern California (Humboldt) and central California (Morro Bay). . . .”⁵

California is experiencing the effects of climate change and has been at the forefront of climate change policy for decades, implementing some of the most aggressive clean energy goals in the nation. In the last five years alone, California has experienced the vast majority of

³ Executive Order 14008, available at <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

⁴ Id.

⁵ January 12, 2022, White House Fact Sheet: Biden-Harris Administration Races to Deploy Clean Energy that Creates Jobs and Lowers Costs, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/12/fact-sheet-biden-harris-administration-races-to-deploy-clean-energy-that-creates-jobs-and-lowers-costs/>



the worst wildfires in the state’s history. Scientists at Lawrence Berkeley National Laboratory and California water managers have recently projected that California’s snowpack — upon which its water supply largely depends — could disappear within 25 years if greenhouse gases continue unabated. Should this occur, the water supply for California, the fifth largest economy in the world, would be in grave jeopardy. California’s coast is also experiencing the effects of climate change, including larger and more frequent storms, coastal erosion, higher ocean temperatures, algal blooms, and kelp forest degradation. Put simply, California and its coastal resources need every tool in the climate mitigation toolbox—including offshore wind.

California’s power grid is not keeping up with the impacts of climate change. According to the Governor’s July 30, 2021, emergency proclamation, California could face a shortfall of upto 5,000 megawatts (MW) this summer, given the likelihood of extended drought, wildfire, and heatwaves.⁶ Record-breaking heat and drought conditions caused 2021 reservoir levels to dwindle, reducing hydroelectric power capacity by nearly 1,000 MW in the summer of 2021, while the heat increased demand for electricity. We recognize that offshore wind projects cannot practicably come online in time to address these near-term shortfalls, but recent developments show that California, as a state, is behind schedule in developing the clean energy resources needed to maintain a stable grid in the face of climate change. California will need to avail itself of all clean energy resources available to achieve reliable, affordable decarbonization, and offshore wind fills that need.

Clean energy deployment is also a massive priority for California, and offshore wind must be a critical piece of this. In 2018, California Senate Bill (SB) 100 established a policy for the state of California that renewable energy and zero-carbon resources supply 100 percent of electric retail sales to end-use customers by 2045.⁷ Offshore wind is an essential addition to California’s clean power mix because of its generation profile: it typically generates during the late afternoon and evening and in the summer, when our solar-dominant renewable system is

⁶ Proclamation of a State of Emergency. 30 July 2021. <https://www.gov.ca.gov/wp-content/uploads/2021/07/Energy-Emergency-Proc-7-30-21.pdf>

⁷ Senate Bill 100. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100



the most stretched.⁸ By 2035, California will need to dispatch more than 18 GW *per hour* to meet its maximum 3-hour net load ramp as a result of declining solar production in the afternoon.⁹ To be able to replace dispatchable resources facilities with variable renewables, California’s system needs resources with complementary generation profiles to provide clean generation at all hours of the day.¹⁰

A 2021 California Joint Agency Study published by the California Energy Commission, California Public Utilities Commission, and California Air Resources Board concluded that California needs to develop an estimated 145 GW of renewables and energy storage by 2045 to achieve 100 percent clean energy.¹¹ The study also concluded that California needs to design and develop a diverse renewable portfolio that includes not only solar and battery storage, but also regional wind, long-duration storage, and offshore wind. The study selected all 10 GW of offshore wind made available to the study model as part of the ideal renewable portfolio in a “SB 100 Core Scenario.” The report also confirmed the value of resource diversity and offshore wind specifically, finding that a portfolio that achieved the goals of SB 100 but excluded 10 GW of offshore wind would increase total annual resource costs by \$1 billion annually. A 2019 study from E3 arrived at a similar conclusion: a resource portfolio that includes between 7 and 9 GW of offshore wind could save California customers between \$1 billion and \$2 billion (net present value) between now and 2040 when compared to a less diverse energy portfolio. The right portfolio of resources, including large-scale offshore wind, will enable and ensure reliability at the least cost to all consumers. Indeed, costs and system reliability are imperative to all ratepayers alike.

Most recently, under California Assembly Bill (AB) 525, the California State Assembly

⁸ California Polytechnic Institute, <https://doi.org/10.1088/2515-7620/ab4ee1> & E3, The Economic Value of Offshore Wind Power in California, http://castlewind.com/wp-content/uploads/2019/08/2019-08-08_E3-CastleWind-OffshoreWindValueReport_compressed.pdf

⁹ Energy Strategies for Western Interstate Energy Bureau, <https://westernenergyboard.org/wp-content/uploads/2019/12/12-10-19-ES-WIEB-Western-Flexibility-Assessment-Final-Report.pdf>

¹⁰ Brightline Defense Project, <https://www.brightlinedefense.org/news/caoffshorewind>

¹¹ SB 100 Joint Agency Report: Charting a path to a 100% Clean Energy Future <https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity>



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 California is massive: a recent National Renewable Energy Laboratory (“NREL”) study found there are 201 GW of technical potential for offshore wind off the coast of California.¹² Realizing even 10 or 15 percent of this potential would provide a massive boost to meeting California’s climate goals.

We believe that development of Humboldt would have beneficial impacts in Humboldt County, and are not only short-term impacts, and that the benefits are underestimated in the EA. Offshore wind will also bring substantial economic benefits to California, creating jobs and revenue in areas of the state (e.g., the Central Coast and Humboldt County) that need these economic opportunities. 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 327,000 job-years in construction and 4,500 *permanent* operation/maintenance jobs for 40 years through development of 10 GW of offshore wind.¹³ These jobs, both temporary and permanent, are good-paying jobs. For example, the study found that the wage rate for construction-related labors (including foundation, erection, electrical workers) is about \$50 per hour, and the salary for O&M labor is around \$40/hour for technicians and environmental scientists and specialists, and nearly \$60/hour for managers and supervisors.¹⁴ We urge BOEM to revise the analysis in the final EA to include the above points.

II. The scope of BOEM’s Humboldt Draft 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 Humboldt Draft EA, and requests that BOEM work closely with NOAA’s Office for Coastal Management (“OCM”) to ensure that the CCC’s

¹² Available at <https://www.nrel.gov/docs/fy21osti/77642.pdf>.

¹³ USC Schwarzenegger Institute, “California’s Offshore Wind Electricity Opportunity,” 2021 http://schwarzeneggerinstitute.com/images/files/OSW_Report.pdf

¹⁴ *Id.* at 19-20.



Federal Consistency Review of the Humboldt 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 Humboldt leases are issued in a timely manner consistent with BOEM's Offshore Wind Path Forward.

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 Humboldt WEA Draft EA is consistent with how it has analyzed every one of its eight offshore wind lease sales, and this approach has withstood legal scrutiny by the D.C. Circuit Court of Appeals. Moreover, at this point, it is the optimal process for enabling offshore wind to help achieve California's and the Biden Administration's climate and clean energy goals.

As an initial matter, we note that BOEM has conducted eight offshore wind lease sales since 2012, and in each instance has limited its NEPA analysis only to the 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 alleging that BOEM should have analyzed the buildout of the area before issuing a lease. The court held that because BOEM's granting of leases reserves the right for it to disapprove offshore wind development within the lease area, it does not constitute an "irreversible and irretrievable commitment of resources" requiring a full NEPA analysis of a hypothetical wind farm.



BOEM’s approach to environmental analysis of its lease sales is not only legally sound, but it is the right approach as a matter of public policy. It is critical to understand that when BOEM has reached the lease issuance stage in its regulatory process, it has already conducted significant analysis of the optimal lease locations that included consideration in light of a variety of environmental effects, use constraints, and stakeholder concerns. This analysis largely occurs through “Area Identification,” an early landscape scale analysis of major potential conflicts between offshore wind and other ocean users and sensitive environmental resources. 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 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 hypothetical 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 clean energy to meet California's 100% zero-carbon electricity mandate; 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 Humboldt WEA Draft 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 has prepared is properly limited in scope to only the lease issuance and site characterization and assessment activities, and does 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 Humboldt WEA at this early stage; as noted above, BOEM has already done some of this analysis with CCC's input. But for numerous reasons, BOEM's *federal consistency determination under the CZMA* for the lease sale 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 continue to consult with CCC throughout the process and set the groundwork for CCC's concurrence with the BOEM consistency determination.



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 2021-2025.¹⁵ 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 as well as the State of California’s twin goals of establishing a local offshore wind industry in the coming decade and becoming carbon neutral by 2045.

In addition, federal and state laws and NOAA regulations require it. The BOEM consistency determination for Humboldt is written 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 has sought concurrence from CCC as to whether CCC concurs with the consistency determination of 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 determine whether the future lessees’ proposals are consistent with the state’s enforceable coastal management policies once those lessees submit their federal COPs and accompanying state permit applications. It is at this stage that each lessee 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 review of proposed

¹⁵ <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/OSW-Proposed-Leasing-Schedule.pdf>.



projects. In all cases, the state coastal agencies have concurred, or concurred with limited conditions, with the BOEM consistency determination for leasing activities.

III.ACP agrees with BOEM’s Impact Determinations

ACP concurs with the impact determinations made by BOEM in the Draft EA with respect to benthic resources; recreational and commercial fisheries; marine mammals and sea turtles; maritime navigation; visual impacts; and socioeconomics.

1. Benthic Resources

We agree that impacts to benthic resources would be limited to the immediate footprint of the anchors or direct sampling. Sediment suspension would be temporary and short-term. Noise impacts from HRG surveys and Project vessels to EFH and fishes would be minimal and temporary in duration. The artificial reef effect may provide a local, short-term (less than 5 years) benefit to fish populations.

As BOEM correctly notes, no marine geophysical data acquisition would impact the seafloor or subseafloor geology, and any shallow geotechnical sampling within the WEA would result in minor, temporary disturbance of the upper 25 m (82 ft) of Quaternary sediment that underlie the seafloor. Therefore, these should be considered as negligible in the final EA.

2. Recreational and commercial fishing

We agree with BOEM’s conclusion that because many of the region’s important fishing grounds are in depths less than 500 m (1,640 ft), a buoy within the WEA (500 m to 1,100 m (1,640 ft to 3,609 ft) depth) would create minimal conflict, if any, with the fishing industry. At the end of the 5-year term data collection instrumentation will be decommissioned, and large marine debris objects removed so any existing de facto exclusion zones will be eliminated. Therefore, we agree with BOEM’s analysis and reiterate that, as per BOEM conclusion, the proposed action’s effects on recreational and commercial fishing will be temporary.

We also agree with BOEM’s conclusion that implementation of the No Action Alternative would not meaningfully reduce ongoing impacts to commercial fishing from existing and potential future actions.



Note that the wind industry is committed to working with the commercial fishing industry, and our industry is dedicated to working on a project-by-project basis to assess space-use conflicts with commercial fishing, including considering marine shipping, marine protected areas, and the IPCs associated with the Proposed Action. We agree with BOEM’s conclusion that lessees will develop a SAP that will aim to minimize adverse effects from their site assessment and site characterization activities.

3. Marine mammals and sea turtles

Overall, we agree with BOEM’s assumption that measures developed through years of conventional energy operations and refined through BOEM’s renewable energy program and consultations with NMFS, including vessel strike avoidance measures, visual monitoring, and shutdown and reporting, will minimize or eliminate potential effects from site assessment and site characterization activities to protected marine mammal and sea turtle species.

We emphasize that many assumptions are conservative (i.e., disturbance distances), but are still anticipated to range from negligible to minor. We emphasize that all survey activities are temporary, including metocean buoy moorings which have previously been placed in the Humboldt area prior with negligible effects. Nonetheless, any concerns that arise can be addressed through project specific SAPs and COPs.

4. Maritime navigation

Global experience demonstrates compatibility between OSW and safe vessel navigation. We agree with the focus on project-specific navigation safety risk assessments as the appropriate vehicle for addressing most navigation issues. We also agree with BOEM’s conclusion that cargo ship traffic is more concentrated further to sea and closer to shore than in the Humboldt Call Area, so collisions between vessels and allisions between vessels and met buoys are considered unlikely.

5. Visual impacts

We agree with BOEM’s conclusion that “no impacts from changes in coastal viewsheds are anticipated for site assessment and characterization activities.”



IV. Mitigation Measures

Finally, although ACP generally agrees with the BOEM mitigation measures in Appendix D, we note that there are some deviations from our recommendations in our November 9, 2021 letter to BOEM and NOAA. We have attached specific examples in Attachment A, and have attached our November 9th 2021 letter in Attachment B, which we urge BOEM to take into account in the final EA.

V. Conclusion

ACP appreciates the opportunity to comment on the draft Humboldt EA, and looks forward to continuing its active engagement with BOEM on this critical leasing process in the coming year.

Respectfully,

Johanna Jochum, Counsel
Manuela Demarche Mello, Legal Fellow
Josh Kaplowitz, Vice President, Offshore Wind

American Clean Power Association

Enclosures:

- Attachment A: Appendix D Review
- Attachment B: November 9, 2021 ACP Letter to BOEM and NOAA

Attachment A

Key Notes from Appendix D as compared to BOEM Atlantic PDC/BMPs and also the ACP November 9, 2021 Letter to BOEM on the PDCs and BMPs

- MM A.1 Addresses a monitoring zone of 1,000 m (3,281 ft) in all directions for protected species when operating the boomer, sparkers, or bubble gun equipment. This size zone is challenging to monitor and is a significantly larger zone than the monitoring zone in the BOEM Atlantic PDC/BMPs (a 500 m zone for all ESA-listed species and a 200-m zone for non-ESA-listed marine mammals).
- MM A.1.b and MM B.2.b. Addresses autonomous vessel use with PSOs on a mother vessel. This approach negates the benefits of the technology. This is addressed in ACP Letter, section A.
- MM A.2. 1) Addresses "Exclusion Zones" for ESA-listed whale species. The BOEM Atlantic PDC/BMPs don't use the term "Exclusion Zone" and instead uses the term "Shutdown Zone". Zones should be consistently named and referenced between the Atlantic and the Pacific. Additionally the term "Exclusion Zone" is unclear in terms of what activities the vessel should undertake. 2) Addresses a 500 m "Exclusion Zone" for all ESA-listed whale species. The BOEM Atlantic PDC/BMPs reference a shutdown zone of 100 m for ESA-listed species, except for the NARW where 500 m shutdown is required. 500 m for all ESA-listed species is more onerous.
- MM A.2.b. Addresses shutdown of noise producing equipment operating below 180 kHz. BOEM has clarified in some texts (NY Bight Final EA) that parametric SBP and USBLs are not likely to have Level A or Level B impacts. Suggest the reference to 180 kHz be changed to boomer, sparkers, or bubble gun equipment.
- MM A.4. Addresses ramp up for electromechanical survey equipment and seems to suggest that all survey equipment must undergo ramp up. BOEM Atlantic PDC/BMPs specify that ramp up is only for boomer, sparker, and bubble gun equipment.
- MM A.7. Addresses separation distance between vessels to ensure sound sources don't overlap. Condition is not related to species protection. This is addressed in ACP Letter, section C.
- MM A.9. Addresses PSOs conducting observations when survey equipment isn't operating. This requirement is impractical and is addressed in ACP Letter, section C.
- MM B.1 Addresses keeping watch for marine mammals and adjusting activities. This mitigation is missing a provision for small delphinids of certain genera that may approach the vessel to bow ride.
- MM B.2.c Addresses a minimum separation distance of 500 m from all whales while BOEM Atlantic PDC/BMPs say 500 m separation distance from all ESA-listed whales
- MM B.5. Addresses checking daily information for species locations. Suggest adding NOAA weather radio, USCG NAVTEX, Notice to Mariners, and WhaleMAP website consistent with BOEM Atlantic PDC/BMPs.
- MM D.4. Addresses number of PSOs observing for marine mammal species. In alignment with the BOEM Atlantic PDC/BMPs 1) the mitigation mentions one PSO observing "when noise-producing equipment is operating" and should specify "boomer, sparker, or bubble gun equipment". 2) the mitigation should mention that a trained crew lookout should be sufficient for transiting during daylight hours 3) the break time between PSO shifts differs (2 hours in Appendix D mitigation and 1 hour in BOEM Atlantic PDC/BMPs)

- MM E.1 Addresses PSO reporting format. Suggest that BOEM use the same reporting format as specified in the BOEM Atlantic PDC/BMPs for consistency across projects.
- MM E.2. Addresses providing monthly PSO reports. Monthly PSO reports is excessive, is more reporting than we are currently required to do in the Atlantic, and is inconsistent with reporting requirements in NMFS June 2021 Consultation Letter.
- MM E.5. Addresses reporting of injured or dead listed species. BSEE contact is missing from this list.

Attachment B



November 9, 2021

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Mr. Bennett and Ms. Anderson:

The purpose of this letter is to outline the American Clean Power Association's ("ACP")¹ serious concerns regarding prohibitive conditions imposed on offshore wind data collection activities off the U.S. Atlantic Coast by the Bureau of Ocean Energy Management ("BOEM") and National Marine Fisheries Service ("NMFS") (together, the "Agencies"). These Project Design Criteria ("PDC") were imposed by the Agencies without consultation with affected offshore wind industry members through a programmatic Endangered Species Act ("ESA") section 7 consultation completed by NMFS on June 29, 2021 (the "Consultation").² The PDCs contain Best Management Practices ("BMP") that are not supported by the best available science, are unnecessary to protect ESA-listed species, are inconsistent with requirements for similar surveys in other contexts, or are unrelated to species protection.

The Agencies' imposition of these BMPs will frustrate the offshore wind industry's ability to timely and economically implement high resolution geophysical ("HRG") surveys to facilitate project development – a result that is inconsistent with the Biden Administration's goal of deploying 30 gigawatts of offshore wind by 2030 as well as BOEM's goal of approving at least 16

¹ ACP is the national trade association representing the renewable energy industry in the United States, bringing together hundreds of member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources in the United States. By uniting the power of wind (both land-based and offshore), solar, storage, and transmission companies and their allied industries, we are enabling the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. The American Wind Energy Association (AWEA) merged into ACP on January 1, 2021. Additional information is available at <http://www.cleanpower.org>.

² 16 U.S.C. § 1536(a)(2). NMFS's June 29, 2021, concurrence with BOEM's "not likely to adversely affect" determination for offshore wind activities off the U.S. Atlantic Coast is available at: https://www.boem.gov/sites/default/files/documents/renewable-energy/Final-NLAA-OSW-Programmatic_0.pdf



Construction and Operation Plans (“COP”) by 2025.³ Meeting these important national goals requires close coordination with offshore wind industry members to adopt reasonable and effective PDCs, something that the Agencies failed to do in this case.

As background, BOEM authorizes Site Assessment Plans (“SAP”) and COPs as part of its management of offshore wind siting and development on the Outer Continental Shelf (“OCS”) pursuant to the Outer Continental Shelf Lands Act.⁴ In February 2021, BOEM submitted a biological assessment (“BA”)⁵ to NMFS evaluating the potential impacts to ESA-listed species from offshore wind data collection activities on the Atlantic OCS over a 10-year period (June 2021 to June 2031). The activities evaluated include shallow hazard, geological, geotechnical, biological, and archaeological surveys in the North Atlantic, Mid-Atlantic, and South Atlantic planning areas and adjacent state jurisdictional coastal waters. Subsequently, on June 10, 2021 – without consultation with the offshore wind industry – BOEM revised its BA to include the modified, problematic PDCs addressed in this letter. On June 29, 2021, NMFS issued a letter concluding the Consultation based in part on the modified PDCs provided by BOEM (“Concurrence”).

In the sections that follow, ACP outlines the procedural and substantive errors resulting from the Consultation. We respectfully request a meeting with the Agencies to discuss immediate steps to correct these errors and resolve problematic PDCs for offshore wind data collection surveys off the U.S. Atlantic Coast.

I. The Consultation failed to include necessary coordination with applicants.

The ESA consultation process does not include a public review component but does guarantee opportunities to participate for “applicants.” The definition of “applicant” includes any individual, corporation, or association “who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.”⁶ In a programmatic consultation, NMFS has said that an entity is considered an applicant when they are a “party to a discrete action.”⁷ For example, in a programmatic consultation with U.S. Forest Service on its timber management operations, a timber company is an applicant “where they are already the successful bidder on a timber sale.”⁸ Similarly here, ACP’s members include offshore wind leaseholders that have a discrete interest in BOEM’s approval of survey activities as part of SAPs and COPs.⁹ Each of these companies are therefore “applicants” for purposes of the Consultation.

³ See The White House, *Fact Sheet: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs* (Mar. 29, 2021) (available [here](#)).

⁴ 43 U.S.C. § 1337(p)(1)(C); 30 C.F.R. pt. 585.

⁵ BOEM named its document a “biological assessment” notwithstanding that the survey activities evaluated therein are not “major construction activities” requiring a BA pursuant to 50 C.F.R. § 402.12(b)(1). While this document would typically be called a “biological evaluation,” ACP uses the term BA throughout this letter for consistency with BOEM’s document name. This should not be construed to suggest that ACP believes survey activities are major construction activities.

⁶ 50 C.F.R. § 402.02 (definition of “applicant”).

⁷ NMFS & U.S. Fish and Wildlife Service, *Endangered Species Consultation Handbook*, 2-12 (Mar. 1998).

⁸ *Id.*

⁹ ACP members who hold leases in the Atlantic OCS are parties to the discrete activities considered in the Consultation, as evidenced by the Agencies’ own language. For example, NMFS’s Concurrence states that “[a]ll activities considered here *will comply* with a set of PDC (see Appendix B).” Concurrence at 5 (emphasis added).



As applicants, these ACP members were entitled to participate in the Consultation by submitting information and reviewing draft documents. In fact, the ESA consultation regulations provide that BOEM, as the action agency, “shall provide any applicant with the opportunity to submit information for consideration during the consultation.”¹⁰ A critical purpose of including the applicant in developing any ESA conditions is to “ensure that the measures are reasonable, that they cause only minor changes to the project, and that they are within the legal authority and jurisdiction of the agency or applicant to carry out.”¹¹ As recently as 2019, NMFS and the U.S. Fish and Wildlife Service, BOEM’s sister agency within the Department of the Interior (together, the “Services”), responded to public comments that applicants should be included in developing ESA conditions to “ensure they are implementable and do not require major alterations of the proposed action of a plan or project in terms of design, location, scope, and results.”¹² The Services responded that they “already involve Federal action agencies *and applicants* during key points of the consultation development process and will continue to do so as appropriate.”¹³

Unfortunately, ACP’s members were not provided an opportunity to participate in the Consultation despite expressing an interest in – and being directly impacted by – any HRG-related measures developed by the Agencies. Specifically, industry members were informed that HRG measures were being developed, but no context or timeline was provided, and industry members were not invited or allowed to review or provide input on those measures. Moreover, BOEM provided no public notice or opportunity for public comments,¹⁴ and therefore our members were not aware that the Agencies were proceeding with a programmatic consultation under ESA section 7. As a result, our members were not able to exercise participation rights in the Consultation.

These actions prevented ACP’s members from exercising their right to submit information during the Consultation, review draft documents, and provide comments to the Agencies during the Consultation. As described in detail below, this procedural error resulted in the Agencies’ adoption of PDCs that are inconsistent with industry standards, unrelated to species protection, or are not applicable to the proposed survey activities.

Similarly, BOEM states that it will work with current lessees to impose the PDCs on existing leases. BA at 2. In addition, the PDCs state that “[a]ny survey plan must meet the following minimum requirements specified below...” BA, App. B at 1.

¹⁰ 50 C.F.R. § 402.14(d) (emphasis added); *see also* Interagency Cooperation Under the Endangered Species Act, 51 Fed. Reg. 19,926, 19,928 (June 3, 1986) (preamble to consultation regulations) (“Nothing in section 7 authorizes or requires the Service to provide for public involvement (*other than that of the applicant*) in the ‘interagency’ consultation process.” (emphasis added)).

¹¹ NMFS & U.S. Fish and Wildlife Service, Endangered Species Consultation Handbook, 4-50 (emphasis added).

¹² Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation, 84 Fed. Reg. 44,976, 45,001 (Aug. 27, 2019).

¹³ *Id.* (emphasis added).

¹⁴ BOEM’s adoption of these PDCs without any apparent public process circumvented not only the Administrative Procedure Act’s notice-and-comment rulemaking requirements (5 U.S.C. § 553) but also BOEM’s own regulatory process for identifying necessary environmental measures under 30 C.F.R. § 585.801. The ESA does not provide independent authority to impose new requirements, except by NMFS through “reasonable and prudent measures” and associated terms and conditions in a biological opinion’s incidental take statement, which was not issued here. *See* 50 C.F.R. § 402.14(i)(1)(ii), (iv).



II. Adopted PDCs are not based on best science and are inconsistent with survey requirements in other contexts, unrelated to species protection, and impracticable.

The PDCs adopted by BOEM in its revised BA for offshore wind data collection activities include BMPs that are contrary to the best available science, do not reflect the industry standard for HRG surveys, and may even *increase* impacts to protected species. As discussed above, the imposition of such measures will frustrate the offshore wind industry’s ability to timely conduct necessary data collection in support of project development and are inconsistent with the Administration’s goal of deploying 30 gigawatts of offshore wind by 2030.¹⁵

In the following sections, ACP describes the problematic BMPs and details how each measure is not based on science, inconsistent with HRG survey requirements in other contexts, ineffective, or impracticable.

A. Protected species observer and monitoring requirements are impracticable and exceed usual requirements.

The PDCs impose several third-party protected species observer (“PSO”) and monitoring requirements that should be revised or eliminated consistent with the best available science and the Agencies’ requirements for oil and gas HRG surveys. For example, the PDCs require PSOs to be monitoring at all times in sufficient numbers to ensure 360-degree visual coverage.¹⁶ This will almost necessarily require multiple PSOs on each survey vessel to ensure the necessary visual coverage and meet PSO hours restrictions. Similarly, the PDCs impose PSO observation requirements even when survey equipment is not operating¹⁷ – a measure that is not related to minimizing impacts of survey activities on ESA-listed species but rather on general data gathering for informational purposes. These additional observation hours interfere with maximum shift lengths, necessitating additional PSOs on survey vessels. Each of these requirements is impracticable for vessels with limited berth space and will prevent surveys from being conducted in a timely manner. Such requirements are also inconsistent with the Agencies’ requirements for oil and gas HRG surveys in the Gulf of Mexico (“GOM”), where only *one independent visual PSO* is required to be on duty for HRG surveys conducted in water depths greater than 100 meters and a trained crew member may serve as the PSO in waters shallower than 100 meters where observation is only required during a pre-clearance period.¹⁸

The PDCs also include monitoring requirements that are not necessary or that increase potential marine mammal impacts. First, a requirement for PSOs to monitor the 500-meter exclusion zone at night and during low visibility conditions¹⁹ is not practicable or effective. Vessel strike avoidance measures are sufficiently protective at night and under low visibility conditions, making night-time PSO monitoring for sound sources unnecessary. Indeed, for these reasons, NMFS did not require night-time monitoring by PSOs for oil and gas HRG surveys in the GOM.²⁰ Second, the requirement to use a mother vessel with PSOs in conjunction with autonomous

¹⁵ See *supra*, note 3.

¹⁶ Concurrence, App. B, PDC 7, BMPs 3-5.

¹⁷ *Id.* PDC 4, BMP 12.

¹⁸ 50 C.F.R. § 217.184(d)(2)(ii), (iii).

¹⁹ Concurrence, App. B, PDC 4, BMP 6.

²⁰ 50 C.F.R. § 217.184(d)(2)(ii).



surface vessels (“ASVs”)²¹ will negate one of the key benefits of this developing technology. ASVs represent an advancement in survey equipment that facilitates monitoring while reducing risks to health, safety, and the environment that are normally associated with a crewed vessel. The requirement to have a chase or mother vessel with cameras and PSOs negates the benefits of using ASVs for those purposes and increases the risk of marine mammal strikes when compared to ASVs alone. Each of these monitoring measures is impracticable and counter to the best available science. They should be eliminated from offshore wind survey requirements.

Finally, in what may be an error, the text of BOEM’s BA suggests that passive acoustic monitoring (“PAM”) may be required for surveys at night.²² However, no such requirement is included in the PDCs or elsewhere in the Consultation documents, which is appropriate. If the Agencies intended to impose PAM requirements, this would be inconsistent with the requirements for oil and gas HRG surveys in the GOM, where no acoustic monitoring is required for HRG or shallow penetration surveys.²³ It would also be inconsistent with NMFS’s published statements related to the ineffectiveness of towed PAM in detecting vocalizing mysticetes. Indeed, less than a month after issuing its Concurrence, NMFS declined to impose PAM for HRG surveys after explaining that it “does not concur that PAM is an effective technique for detecting mysticetes in order to implement mitigation measures during HRG surveys...”²⁴ ACP therefore requests clarification that PAM is not necessary or appropriate for offshore wind data collection activities. In addition, ACP takes this opportunity to request that the Agencies coordinate with its members regarding the Agencies’ joint PAM recommendations for offshore wind, which were also recently developed and published without appropriate coordination with the affected offshore wind industry.²⁵

B. Exclusion and shut-down zones are not supported by the best science and are inconsistent with recent agency findings.

The PDCs impose a 500-meter monitoring, pre-start clearance, exclusion, and shut-down zone for North Atlantic right whales (“NARW”) and a 100-meter exclusion/shut-off zone for all other ESA-listed whales for vessels operating boomer, sparkers, or bubble gun equipment.²⁶ These requirements are unnecessary given the small acoustic footprint of HRG surveys and are not supported by science. For example, the 500-meter exclusion area for NARW is roughly *three times* the distance that NMFS established to avoid Level B harassment of marine mammals, including NARW, in its 2020 Incidental Harassment Authorization for Ørsted’s offshore wind

²¹ Concurrence, App. B, PDC 4, BMP 1.b; *id.* PDC 5, BMP 2.

²² See BA at 65 (“Additionally, PAM and night vision equipment is required when surveying at night. Any time a listed species is sighted within their respective exclusion zone, HRG sources will be powered to off.”).

²³ 50 C.F.R. § 217.184(c)(2)(i), (d)(2).

²⁴ NMFS, *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Massachusetts and Rhode Island*, 86 Fed. Reg. 40,469, 40,489 (Jul, 29, 2021).

²⁵ See Sofie M. Van Parijs *et al.*, *NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs*, *Front. Mar. Sci.* 8:760840 (Oct. 27, 2021) (available at <https://www.frontiersin.org/articles/10.3389/fmars.2021.760840/full>) (last visited Oct. 30, 2021).

²⁶ Concurrence, App. B, PDC 4, BMPs 1 (monitoring zone), 2 (exclusion zone), 2.b (shut-off requirement), 3 (pre-clearance), and 5 (post shut-down monitoring).



survey activities in coastal waters from New York to Massachusetts.²⁷ Moreover, NMFS has established that clearance, exclusion and shut-down zones should be based on peak pressure injury criteria, and that defining exclusion zones based on other acoustic thresholds for behavioral response or injury using an accumulation of energy, “has questionable relevance as a standard protocol for mobile sources, given the relative motion of the source and the animals.”²⁸ In fact, the Concurrence itself suggests that exclusion and shut-down areas are unnecessary here, noting that even at peak noise levels (*i.e.*, using sparkers), “[a]nimals in the survey area during the HRG survey are unlikely to incur any hearing impairment due to the characteristics of the sound sources...”²⁹

For these very reasons, NMFS exempted oil and gas HRG surveys from shut-down and exclusion requirements in the GOM earlier this year, concluding that a 200-meter pre-start clearance and monitoring zone was sufficient for HRG surveys.³⁰ NMFS made this decision after a review of the science and the measure’s anticipated efficacy. In particular, NMFS agreed with industry comments that the acoustic footprint of non-airgun HRG surveys is “too small” to warrant exclusion and buffer zones and that “due to the typically highly directional nature of these acoustic sources, animals observed at the surface will generally not be exposed to the signal.”³¹ NMFS noted that the proposed 200-meter restrictions had originated from BOEM’s HRG survey protocols, and that NMFS was eliminating BOEM’s proposed restrictions from its final rule after reviewing “the available scientific information regarding the typical interaction of these signals with the environment and likely lack of efficacy of typical standard operational protocols developed for omnidirectional sources.”³²

It is worth noting that even BOEM’s proposed 200-meter restrictions for HRG surveys in the GOM – which were later rejected by NMFS as not supported by science – would have been far less restrictive than the 500-meter exclusion and shut-down requirements adopted without scientific justification in BOEM’s BA as part of this Consultation. BOEM also instituted a 200-meter exclusion and shut-down zone for oil and gas HRG surveys in the Atlantic OCS for the protection of marine mammals and sea turtles.³³ BOEM has provided no rationale for the

²⁷ See NMFS, *Incidental Harassment Authorization* issued to Ørsted Wind Power North America, LLC (“Ørsted”) (Sept. 25, 2020), at 2 (sections 4(d)(i), (ii)) (providing 141-meter marine mammal harassment zone for impulsive sources such as boomers and sparkers, and a 54-meter harassment zone for non-impulsive, non-parametric sub-bottom profilers). NMFS also exempted Ørsted’s non-impulsive source HRG surveys from shut-down requirements. *Id.* at 4 (section 4(g)(ix)).

²⁸ NMFS, *Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico*, 86 Fed. Reg. 5322, 5414 (Jan. 19, 2021).

²⁹ Concurrence at 16 (noting sound source levels of 176 to 205 dB re 1 µPa-m and the “generally very short pulses and duration of the sound.”).

³⁰ NMFS, *Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico*, 86 Fed. Reg. 5322, 5376 (Jan. 19, 2021); see 50 C.F.R. § 217.184(d)(2)(i). It is worth noting that NMFS made this decision notwithstanding the presence of the endangered Bryde’s whale in the GOM which has a population of only 51 compared to an estimated 368 NARWs. See NMFS, *Draft U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2021*, 1, 6 (Oct. 25, 2021).

³¹ 86 Fed. Reg. at 5376 (describing industry comments and stating, “NMFS agrees with these comments”).

³² *Id.* (“NMFS ... notes that the proposed shutdown and exclusion zone requirements were offered in accordance with BOEM’s HRG survey protocols.” (citing Appendix B of BOEM’s *Programmatic Environmental Impact Statement for Gulf of Mexico OCS Proposed Geological and Geophysical Activities* (Aug. 2017) (“2017 GOM PEIS”))).

³³ See 2017 GOM PEIS at 4-169 (section 4.3.4.1.3); see also BOEM, *Record of Decision, Atlantic OCS Proposed Geological and Geophysical Activities, Mid-Atlantic and South Atlantic Planning Areas* at 4 (mitigation measure no. 3) (July 11, 2014).



departure in this Consultation from its proposed 200-meter exclusion and shut-down zone for oil and gas industry activities in the GOM and Atlantic OCS. More importantly, the Agencies have provided no explanation for why a 500-meter restriction for HRG surveys is necessary here, just months after NMFS concluded that a zone less than half that size was unnecessary for HRG surveys and not supported by science.

The PDCs already restrict certain sound sources in NARW critical habitat during calving and nursing season.³⁴ No further restrictions are necessary or appropriate. Imposition of broad exclusion zones will necessarily increase shut-downs and interfere with timely and efficient data acquisition, which in turn will frustrate industry efforts to meet BOEM regulatory requirements for specific projects. These delays will also increase the overall time that survey vessels are in the field, thus *increasing* the potential for actual marine mammal interactions. These unintended consequences underscore the importance of being guided by the best available science and, consistent with NMFS's findings elsewhere, exempting offshore wind HRG surveys from exclusion and shut-down requirements.

C. Minimum separation requirement is not related to species protection.

The PDCs require that a minimum separation distance be maintained between survey vessels "to ensure sound sources do not overlap."³⁵ The Agencies provide no scientific basis for any type of separation distance requirement, and it is worth noting that oil and gas HRG surveys in the GOM and Atlantic OCS are not subject to similar separation requirements. Rather than being a measure intended to minimize impacts to ESA-listed species (or any species), it appears that this measure may have originated from industry-proposed operational measures to avoid interference with each others' survey data. As such, a separation distance requirement is not appropriately imposed as part of this Consultation.

D. Time/area restrictions are unnecessary and not supported by science.

The PDCs limit surveys in Cape Cod Bay from January 1 to May 15 to protect NARW.³⁶ However, this limitation is unnecessary given existing dynamic and seasonal management areas, which among other things impose a 10-knot speed limit for vessels 65 feet in length or greater in Cape Cod Bay.³⁷ Vessels have safely conducted surveys year-round in these areas without event. Moreover, other vessels are allowed to transit these waters during the referenced time period, and it is arbitrary to limit offshore wind surveys when other activities are not similarly restricted.

The PDCs also appear to refer to a "voluntary pause" in sparker operation in nearshore loggerhead sea turtle critical habitat from April 1 to September 30.³⁸ Although this measure is not mandatory, even voluntary measures should be based on sound science. In fact, even without a voluntary pause in sparker operations, NMFS concludes that impacts to any

³⁴ Concurrence, App. B, PDC 4, BMP 8 (limiting sound sources in the Southeastern U.S. calving area habitat from December through March to frequencies <7 kHz and >35 kHz at night or in low visibility conditions).

³⁵ *Id.* PDC 4, BMP 9.

³⁶ *Id.* PDC 4, BMP 7.

³⁷ 50 C.F.R. § 224.105(a)(3)(i).

³⁸ Concurrence, App. B, PDC 4, BMP 10.



loggerhead turtles in the area would be “minor” and “temporary.”³⁹ ACP is concerned that this measure, although technically voluntary, will be imposed by PSOs during survey activities or that a failure to implement this voluntary pause will be viewed negatively in post-survey reporting. For these reasons, and because the measure is not warranted or necessary, it should be removed from the PDCs.

E. The 30-day marine debris recovery requirement is impracticable and will increase vessel transits.

The PDCs require recovery of marine trash and debris “immediately, but no later than 30 days from the date in which the incident occurred.”⁴⁰ This 30-day limit, which is not imposed on oil and gas HRG surveys, will be nearly impossible to achieve operationally for any objects that must be re-located on the seafloor. Industry members will need time to contract with equipment providers if specialized equipment like magnetometers is needed and will then need to determine an appropriate area to survey and develop a recovery plan. In addition, the 30-day deadline will not provide sufficient time or flexibility for debris recovery activities to be combined with other planned activities, resulting in an overall increase in vessel transits.

Moreover, these new marine debris requirements could conflict with existing incident reporting requirements set forth in BOEM’s offshore renewable energy regulations at 30 C.F.R. Part 585.⁴¹ Pursuant to BOEM’s Memorandum of Agreement (“MOA”) with the Bureau of Safety and Environmental Enforcement (“BSEE”),⁴² these incident reporting regulations are enforced by BSEE, which has interpreted them to include responses to lost gear and equipment. Without opining on the merits of this interpretation, we urge the Agencies to avoid using the Consultation to impose new reporting and recovery requirements for marine debris when that incident reporting process is being managed by BSEE under the MOA.

III. Conclusion.

Imposing more onerous measures on offshore wind than for the oil and gas industry is arbitrary and frustrates important Biden Administration offshore wind energy goals, along with various state targets for offshore wind as well. HRG surveys and their acoustic metrics are the same regardless of their location or the industry that is undertaking them. Marine mammals and sea turtles that may be present in the Atlantic and the GOM are virtually identical with the exception of pinnipeds, which are not found in the GOM. Indeed, only four species of cetaceans generally listed as likely to be present in the Atlantic are not present in the GOM, and both marine areas contain a small, ESA-listed mysticetes population. Conclusions drawn by the Agencies for offshore wind HRG surveys in the Atlantic should therefore be consistent with the effects analysis for oil and gas HRG surveys in the GOM.

³⁹ Concurrence at 18.

⁴⁰ *Id.*, App. B, PDC 3, BMP 3.

⁴¹ See 30 C.F.R. § 585.830 (reporting obligations); *id.* § 585.831 (describing types of incidents covered by reporting requirement, including those involving property or environmental damage); *id.* § 585.832 (outlining immediate notification requirements); *id.* § 585.833 (providing 15-day written report requirement).

⁴² Memorandum of Agreement Between the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement, *Renewable Energy*, sec. IV (Dec. 22, 2020).



The measures described in this letter will create significant challenges for completing data collection activities, which are an essential first step to developing offshore wind projects. Consistent with the Administration's goal of developing 30 gigawatts of offshore wind by 2030, the PDCs described above must be revised to ensure that they are practicable and effective and reflect industry standards.

ACP requests that the Agencies meet with offshore wind industry members, including those who were improperly denied the right to participate in the Consultation as applicants, to chart a constructive path forward regarding the problematic PDCs and BMPs described above. Such a meeting should also include a discussion of necessary procedural steps to adopt more appropriate PDCs for offshore wind data collection activities.

Thank you for your timely attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Kaplowitz".

Josh Kaplowitz
Vice President, Offshore Wind
American Clean Power Association

cc:

David Hayes, White House Office of Domestic Climate Policy
Michele Morin, BOEM Office of Renewable Energy Projects
Julie Crocker, NMFS Office of Protected Resources
Cheri Hunter, Bureau of Safety and Environmental Enforcement
Jocelyn Brown-Saracino, U.S. Department of Energy
Christine Harada, Federal Permitting Improvement Steering Council