



Dear Director Klein,

On behalf of our member companies, ACP submits the following comments on the Proposed Underwater Noise Limits for Offshore Wind Construction in the U.S. Guidance (the Proposed Guidance) that the Bureau of Ocean Energy Management (BOEM) presented to ACP and its members on June 28, 2023. The offshore wind industry shares BOEM's goal of protecting marine resources in the development of nation's offshore wind resources. Industry has deep experience using sound reduction technologies in constructing wind farms and believes that collaboration with BOEM is essential to ensure that the combined experience of BOEM and the offshore wind industry is brought to bear in defining future expectations through BOEM guidance.

ACP would first like to thank BOEM, and specifically the Center for Marine Acoustics, for its willingness to engage in constructive dialogue on this issue and its commitment to modify the Proposed Guidance in response to industry feedback. We appreciate that BOEM acknowledges the need for flexibility in cases where future sound limits are not technically and commercially practicable and that BOEM has already made modifications to the original Proposed Guidance to incorporate industry feedback. However, ACP continues to have serious concerns about the technical and economic feasibility of many of the proposed measures and the lack of an open public process for the development of this guidance.

ACP and its members are alarmed that BOEM continues to integrate incomplete, non-peer reviewed guidance into regulatory documents, without adequate engagement of the offshore wind industry and the public and without full consideration of feasibility and efficacy in light of construction and operations parameters. For the sake of project viability and optimization of marine mammal protection, it is vital that these discussions occur and are allowed to mature before incorporating proposed measures into project-specific or programmatic environmental reviews.

We believe the following steps are needed:

- Halt BOEM's implementation of non-peer reviewed guidance into regulatory documents until adequate engagement with the offshore wind industry occurs and a complete analysis of potential impacts of these conditions on construction and operations is completed.
- Convene a combined BOEM-industry forum on sound mitigation to develop a shared, robust understanding of the effectiveness and feasibility of alternative sound reduction measures.



- Set an appropriate timetable for soliciting and evaluating public input to further inform the development of guidance, including publication of draft guidance with a 45-day public comment period.
- Convene a second BOEM-industry forum after the comment period to discuss solutions and input provided in comments raised about the draft guidance.

ACP and its members respectfully offer the following specific critiques to lay a foundation for further joint discussion and action.

1. It is premature to implement new guidance on sound mitigation prior to a thorough and complete analysis of learnings from the construction of the South Fork Wind Farm and Vineyard Wind 1 projects, including measured sound fields, sound abatement techniques, relative effectiveness of mitigation and monitoring measures, and documented exposures above relevant thresholds. Ignoring this experience robs BOEM and the industry of the opportunity to learn and improve based on the most recent science and practical considerations.
2. It remains unclear how and to what extent the proposed thresholds will reduce the amount of acoustic exposure, and whether these reductions meaningfully increase protection of marine wildlife. Empirical data compiled from projects in construction should be presented and discussed at the joint forums proposed above. This discussion could also help inform level B harassment numbers that are based on older science and that merit further validation.
3. The Proposed Guidance fails to account for trends in offshore wind technology, particularly the use of larger wind turbines and associated larger foundations and piles. Large turbines are essential to make efficient use of the nation's offshore wind resource and to meet President Biden's offshore wind and climate goals, myriad State goals, and individual projects' offtake agreements. The proposed guidance is based on experience with the 6 megawatt (MW) turbines used at CVOW, which are substantially smaller than the utility-scale projects currently in construction at South Fork Wind Farm (11 MW) and Vineyard Wind 1 (13 MW). Moreover, manufacturers are already developing new, larger turbines and foundations and will likely stop producing smaller turbines and foundations in the future. The Proposed Guidance should reflect both the experience of current construction projects and the anticipated industry standard turbines sizes over the next decade. Failure to do so will stunt the development and use of commercially available technologies in the United States, hampering project viability and putting the country at a competitive disadvantage against the rest of the world.



4. BOEM’s final guidance should include provisions to accommodate any site-specific conditions and project-specific components. While BOEM had recently proposed reducing the threshold to 1500m for near term projects the agency is apparently now implementing the sound standard at 1km starting in May 2026 in regulatory documents.¹ Supply chain and domestic offshore wind industry investments for projects are made well before a project is built. Prior to the implementation of such a standard, there needs to be robust evidence that any applicable limit would be technically and economically feasible. This is a prime example of why these guidelines must be developed collaboratively with industry so that unintended consequences are avoided before they become barriers to development.
5. Implementation of a vessel sound emissions management plan appears both unnecessary and impractical. The relative amount of vessel sound associated with offshore wind is minimal. Based on estimates from MarineTraffic.com, offshore wind vessels account for less than 2% of all offshore vessel traffic. Given that offshore wind accounts for such a small percentage of marine traffic, implementation of the sound emissions management plan will provide no measurable protection to species and will instead add to the burden of the offshore wind industry and ratepayers. In addition, this plan would not be feasible for projects currently in the permitting pipeline as they are already making procurement decisions and entering into contracts with vessels and because of the limited vessel availability due to the nascent U.S. supply chain and Jones Act requirements.
6. Requiring sound field verification (SFV) at every turbine location would be unnecessary and cost prohibitive. We believe a standardized target sub-sample of turbine locations would be more than sufficient to determine the effectiveness of sound reduction mitigation measures. Again, empirical data compiled from the projects currently conducting SFV could be discussed at our proposed BOEM-industry forum and would inform a broader discussion on how best to incorporate lessons learned from early projects.
7. The Proposed Guidance creates a potential regulatory roadblock, as it would establish limits that are inconsistent with current National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) practice. In particular, standard practice in Marine Mammal Protection Act (MMPA) incidental take authorizations is currently for NOAA NMFS to establish marine mammal harassment zone sizes based on a modeled 10 dB reduction in pile driving sound. If BOEM were to implement its proposed 1km Level A harassment

¹ Empire Offshore Wind, Empire Wind Projects (EW 1 and EW 2) Final Environmental Impact Statement (<https://www.boem.gov/renewable-energy/state-activities/empire-wind-final-eis>)



threshold limit for its Endangered Species Act (ESA) Section 7 consultations, it would create a discrepancy between the proposed actions by NOAA NMFS (via proposed MMPA incidental take authorization) and BOEM (via ESA Section 7 Biological Assessment). This would, in turn, create a significant challenge during the ESA Section 7 consultation process. The ESA requires that NOAA NMFS limit the exemption of take to that which is reasonably certain to occur; dual proposed actions that are inconsistent with one another would create confusion as to what outcome is reasonably certain to occur. BOEM should ensure its pile driving sound standards align with NOAA NMFS's before finalizing and implementing any new limits.

8. Compliance with the Proposed Guidance could siphon finite resources from conservation efforts that may offer more protection or potential benefit to marine mammals. For example, a long-term, archival, passive acoustic monitoring (PAM) network (now proposed as 10 years) would be very costly, and it is unclear to what extent it would enhance environmental protections. If the network contemplates real-time PAM to solely reduce speeds for offshore wind operations and maintenance vessels representing roughly 2% of overall vessel traffic on the Outer Continental Shelf, the network would thus offer negligible protection to marine mammals as the remaining non-offshore wind related vessels would not have to comply with these measures. At the same time, if the PAM network is intended to eventually apply to all vessels, the cost of setting up this network should not be borne solely by an industry that makes up such a small proportion of all vessel traffic—and is an even smaller proportion of the overall threat to marine mammals from vessel strikes given that offshore wind is by far the most regulated maritime industry with respect to both vessel speed and marine mammal monitoring.
9. ACP is concerned that the Proposed Guidance could unintentionally exacerbate stressors on marine mammals. For example, construction time could be extended unnecessarily to accommodate repeated attempts to reduce sound to a specific level (e.g., start-up, test, fail sound limit, shut down, add bubble curtain, start-up, fail by lesser degree, shutdown, and so on). Also, more extensive sound field verification requires additional vessels and equipment. Additional vessels in the field results in additional Health, Safety, Security & Environment (HSSE) exposure to personnel, a higher risk associated with operating multiple vessels in close proximity, increased risk of collision with marine mammals and sea turtles, and higher emissions during construction. BOEM should weigh these factors against any minor additional protection, if any, that may result from stricter sound thresholds.

ACP strongly encourages BOEM to engage in a more robust joint discussion of sound mitigation challenges and solutions, to better leverage industry experience. Collaboration and an open



public comment period are essential elements of this process. We share BOEM’s commitment to protecting marine species through improved sound abatement, but we emphasize this requires thorough consultation with developers to understand and take into consideration available and anticipated technologies, realistic timelines, costs, technical challenges, and limitations in partnership with regulators. This collaboration is essential to ensure that future measures are effective but do not create insurmountable technical and economic burdens on an industry whose success promises to provide great long-term benefits to marine mammals by reducing greenhouse gas emissions and combating climate change—the single greatest threat to marine life.

ACP and its members look forward to actively engaging with BOEM to jointly develop effective and workable sound mitigation guidelines.

Sincerely,

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

Josh Kaplowitz
Vice-President, Offshore Wind