

To: Walter Cruickshank, Deputy Director, Bureau of Ocean Energy Management
From: Anne Reynolds, Vice President, Offshore Wind, American Clean Power
Re: New York Bight Draft Programmatic Environmental Impact Statement

On behalf of the American Clean Power Association (“ACP”) and our member companies engaged in developing offshore wind power projects, we are writing to follow up on our March 13, 2024 comments¹ on the New York Bight Draft Programmatic Environmental Impact Statement (“Comments”). To assist with the Bureau of Ocean Energy Management’s consideration of those comments, ACP hereby submits the following additional information.

As written in our Comments at length, ACP has serious concerns with the New York Bight Draft Programmatic Environmental Impact Statement (“NY Bight PEIS” or “PEIS”) as proposed. ACP also believes that, with changes, this document can be a productive addition to the environmental review process for offshore wind projects in the NY Bight lease areas. It is in this spirit that we submit the following suggestions for modifications to the PEIS.

Category 1: Measures Recommended for Adoption²

- Only measures that have been marked as ‘Previously Applied as a COP Term and Condition’ should be adopted in the PEIS. This includes 48 of the total number (113) of proposed AMMMs. Also, ACP has identified problems with the drafting of several of these measures in Attachment A of our Comments. ACP recommends that BOEM revise these AMMMs to address these concerns and then adopt them in the PEIS.

Category 2: Measures for Analysis

- Voluntary and novel measures should be included in the PEIS as measures for analysis, but not adopted. For voluntary measures, the PEIS should acknowledge that their inclusion is for analysis purposes only. These measures, by their nature, could and should not be adopted or required. Further, no voluntary measures that fall into category #3 below should be included here.
- For novel measures (that do not fall into the categories listed in category #3), the PEIS should also specify that their inclusion is for analysis purposes only. These measures could include those that are outside BOEM’s jurisdiction, as long as it is clear that these measures are strictly for analysis and subsequent agency coordination. In addition, only

¹ Those Comments were submitted with the Offshore Operators Committee, the National Ocean Industries Association and the New Jersey Offshore Wind Alliance. The ACP, OOC, NOIA, NJOWA Comments on NY Bight Draft PEIS, are available here: <https://www.regulations.gov/comment/BOEM-2024-0001-0439>

² ACP still has concerns about adoption of measures through the PEIS process, however, for the purposes of this exercise, we have identified AMMMs that if selected for adoption through the NY Bight PEIS, would be least problematic and harmful to the offshore wind industry.

novel measures for which there is demonstrated evidence that there is substantial avoidance or reduction of impacts should be included for analysis.

- These measures would be analyzed in a project specific COP NEPA review to determine whether they are appropriate for application for those projects.

Category 3: Measures for Complete Removal from PEIS³

There are still AMMMs that should not be included in the PEIS as adopted or for analysis. They are:

- Measures that are technically and/or economically infeasible.
- Measures that constitute new guidance or rulemaking.
- Measures that are duplicative of existing Federal or state requirements.
- Measures that could not be incorporated through terms and conditions of plan approval.

Categorization of AMMMs

1: Measures Recommended for Adoption	2: Measures for Analysis	3: Measures for Complete Removal from PEIS
All AMMMs in Appendix G of the Draft New York Bight PEIS marked as “Previously Applied as a COP Term and Condition” as modified in accordance with ACP comments. There are 48 measures in this category.	COMFIS-1, COMFIS-3, COMFIS-5, COMFIS-6, MM-2, MUL-5, MUL-10, MUL-13, MUL-28, MUL-39, STF-1, STF-5, VIS-1, VIS-2, VIS-3, VIS-4, VIS-5, VIS-6	AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6, AQ-7, BB-4, BIR-2, COMFIS-4, EJ-1, EJ-2, EJ-3, EJ-4, MM-3, MM-5, MMST-1, MMST-2, MMST-3, MMST-13, MUL-6, MUL-7, MUL-12, MUL-14, MUL-18, MUL-21, MUL-22, MUL-23, MUL-24, MUL-25, MUL-26, MUL-27, MUL-29, MUL-36, MUL-38, NAV-1, NAV-2, NAV-3, OU-1, OU-2, OU-3, OU-4, OU-5, OU-6, REC-1, ST-1, VIS-7

To provide further insight into Category 3, Attachment A summarizes our Comments with a list of the most problematic AMMMs as identified by our offshore wind power member companies.

³ Full rationale for the removal of individual AMMMs that fit into this category can be found in Attachment A of ACP’s Comments on the NY Bight Draft PEIS.

Attachment A: Top Problematic AMMMs from NY Bight Drat PEIS

Measure ID ⁴	Measure Name	AMMM Issue Category	Reasons AMMM is Problematic and Recommendation for FEIS
MUL-22	Received Sound Level Limit (RSLL)	<ul style="list-style-type: none"> • Technically and Economically Infeasible • AMMM should be Guidance 	<ul style="list-style-type: none"> • This AMMM constitutes new requirements that go well above and beyond existing terms and conditions of COP approval. It also represents new guidance and should go through the guidance development process prior to implementation. • It is premature to implement new requirements on sound mitigation prior to a thorough analysis of learnings from the construction of the South Fork Wind Farm and Vineyard Wind 1 projects. • This measure is technically and economically infeasible as it fails to account for trends in offshore wind technology, particularly the use of larger wind turbines and associated larger foundations and piles. The proposed guidance is based on experience with the 6-megawatt (MW) turbines used at the CVOW research project, which are substantially smaller than current utility-scale projects such as South Fork Wind Farm (11 MW) and Vineyard Wind 1 (13 MW). • This measure assumes development of new sound attenuation reduction technology which may not occur. In reality, the offshore wind supply chain is global in nature and such technology would take long periods of time for development and implementation. This timeline for the development of this technology does not align with the sound reduction timelines in this measure.

⁴ Please note that none of these comments should be interpreted as opposition to protections for environmental or other important resources. The offshore wind industry is focused on responsible development and is committed to working with Federal, Tribal, State, and local governments as well as other stakeholders to avoid and/or mitigate impacts from offshore wind development.

			<p>Recommendation for FEIS:</p> <ul style="list-style-type: none"> • BOEM should eliminate this AMMM from consideration in the FEIS and instead use RSSL's that were used for the Southfork and Vineyard Wind projects. • If BOEM wishes to establish new RSSL's, BOEM should engage in a robust, public guidance development process that includes a public comment period, workshops, and outreach to industry stakeholders.
MUL-23	Adjust project design to reduce impacts	<ul style="list-style-type: none"> • Duplicative of Existing Federal Processes • AMMM is Guidance 	<ul style="list-style-type: none"> • The inclusion of this measure is counter to the proposed action which states that "BOEM would require as conditions of approval for activities proposed by lessees in COPs submitted for the NY Bight lease areas, unless future COP-specific NEPA analysis shows that implementation of such measures is not warranted or effective." • BOEM already considers avoidance and reduction of impacts through the lease development process and the NEPA alternative development process. This AMMM would be duplicative of those processes. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • This AMMM should be removed from the FEIS. Potential project changes to reduce or avoid impacts should be addressed through project specific environmental reviews utilizing the process for identifying alternatives established by BOEM.
MUL-24	Adaptive management for NMFS Trust Resources	<ul style="list-style-type: none"> • Duplicative of Existing Federal Processes 	<ul style="list-style-type: none"> • This AMMM includes elements that are not appropriate for an adaptive management plan such as changes to project design (including removal of wind turbines). • Matters like setbacks, or placement (including the addition or removal) of wind turbines are not appropriate for an Adaptive Management Plan – but instead are elements of the project design and extensive project and environmental review processes. • This AMMM contemplates using the precautionary principle to establish mitigation measures. This is highly inappropriate as mitigation measures should

			<p>only be developed <u>when there is clear evidence of an impact</u>, and the measure would reduce the effects of that impact in a measurable manner. Furthermore, Congress has not specified that BOEM, BSEE, or NMFS may apply a precautionary principle and therefore, the use of such a principle is not only inappropriate but in violation of the law.</p> <ul style="list-style-type: none"> • BOEM’s planning and leasing process identifies areas most suitable for offshore wind development. Wholesale removal of areas at the COP stage based off proximity to sensitive habitats is not appropriate or justified. This is especially true as the process for identification of sensitive habitats is highly subjective. <p>Recommendation for FEIS:</p> <ul style="list-style-type: none"> • This AMMM should be removed from the FEIS. • At a minimum, references to the precautionary principle should be removed from this AMMM. • If BOEM would like to include an adaptive management AMMM, it should be resource specific and encourage the lessee to develop a true adaptive management plan. An appropriate Adaptive Management Plan would be a framework, not a prescriptive set of measures. The goal of such a plan must be, as the name suggests, to have a plan in place to potentially modify the management and operation of the facility to adapt to newly observed conditions.
MM-5	NARW Strike Management Plan	<ul style="list-style-type: none"> • Technically and Economically Infeasible • Duplicative of Existing Federal Rulemaking Processes 	<ul style="list-style-type: none"> • Application of this AMMM circumvents NOAA NMFS’s ongoing rulemaking process (Proposed Amendment to the North Atlantic Right Whale Vessel Strike Reduction Rule). • This AMMM fails to demonstrate a reduction in impacts as it applies to an extremely small percentage of vessels and offshore wind vessels are the only ones conducting visual monitoring during transit. The application of this mitigation measure, when put into the context of past, present, and reasonably foreseeable activities, would have a negligible difference in impacts and

		<ul style="list-style-type: none"> • AMMM is Guidance 	<p>mitigation measures should only be imposed if they can demonstrate a true reduction in impacts.</p> <ul style="list-style-type: none"> • Applying the 10-knot speed restriction year-round to all vessels, regardless of length, impedes the offshore wind industry’s ability to construct projects. This measure is not feasible, reasonable, or practical and if it was, a year-round 10-knot vessel speed requirement for <u>all</u> vessels would be part of the vessel speed rule. In addition, this measure conflicts with MMST-13 which details a seasonal speed measure. • This measure overlaps with many other plans/AMMMs. This plan contains elements of other plans and is simply being called out on its own. The measure is not well linked to other highly related measures such as dedicated watch standards, situational awareness network tools, vessel speed constraints, measures to avoid sighted animals, and the real-time PAM requirements. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • This AMMM should be removed from the FEIS. • All vessel strike related measures should be condensed into one Vessel Strike Avoidance Plan which allows for adaptability and optionality that includes flexibility in speed constraints. That plan should be tightly linked to the vessel speed rule and should not conflict with, or exceed, those requirements. Sea turtle and other larger whale measures should be included in this.
MUL-29	Sound Field Verification (SFV) Process, Plan and Reporting	<ul style="list-style-type: none"> • Technically and Economically Infeasible • AMMM is Guidance 	<ul style="list-style-type: none"> • The process outlined in the AMMM will result in significant construction delays to projects and is not economically or technically viable. • Requiring sound field verification (SFV) at every turbine location would be unnecessary and cost prohibitive. 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.

			<ul style="list-style-type: none"> • This measure could also unintentionally exacerbate stressors on marine mammals by extending construction times and resulting in more vessels on the water. • SFV is also problematic because it doesn't take into account background anthropogenic sources that are picked up during the noise monitoring. <p>Recommended for FEIS:</p> <ul style="list-style-type: none"> • This measure should be removed from the FEIS. • BOEM should engage in a robust, public guidance development process that includes a public comment period, workshops, and outreach to industry stakeholders. • If SFV is to be included, it should be limited to a standardized target sub-sample of turbine locations which would be more than sufficient to determine the effectiveness of sound reduction mitigation measures.
EJ-4	Environmental Justice Compensatory Mitigation	<ul style="list-style-type: none"> • Technically and Economically Infeasible • Duplicative of Existing State and Local Requirements 	<ul style="list-style-type: none"> • The mitigation amount identified is not economically viable. • This AMMM is inconsistent with NEPA as it is intended to address unanticipated /unforeseen impacts, while NEPA analysis and mitigation must be tethered to reasonably foreseeable impacts. • This measure is duplicative of existing state and local requirements as EJ impacts are primarily related to onshore impacts, outside the jurisdiction of BOEM and are addressed through State and local permits and requirements. • Offshore cultural and fisheries impacts mentioned in this measure are mitigated through other AMMMs and environmental laws including compensatory mitigation. The Draft PEIS has not demonstrated that mitigation measures for other resource areas are insufficient to mitigate for impacts to EJ communities. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • BOEM should remove this AMMM from the FEIS.

MUL-25	Consistent turbine layout, markings, and lighting	<ul style="list-style-type: none">• Duplicative of existing Federal processes• AMMM is Guidance	<ul style="list-style-type: none">• This measure is guidance and should not duplicate USCG guidance and USCG review of site-specific conditions assessed in the NSRA and through their participation in the NEPA process.• Other COPs have already been approved with spacing that is less than 1nm x 1nm to meet project purpose and need and to provide the maximum benefit of efficient electricity production for ratepayers. This measure locks developers into something that the USCG has already said they can work with developers on project-by-project.• This measure is in conflict with a number of leases that allow for alignment across adjacent leases. <p>Recommendation for FEIS:</p> <ul style="list-style-type: none">• This measure should be removed from the FEIS.
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<p>AQ-1 through AQ-6</p>		<ul style="list-style-type: none"> • Technically and Economically Infeasible • Duplicative of Existing Federal Laws and Regulations • AMMMs are Guidance 	<ul style="list-style-type: none"> • These measures are technically and economically infeasible. • The AMMMs constitute guidance. • Existing and planned vessels do not meet the requirements in these AMMMs in sufficient numbers to support the US offshore wind industry. • These AMMMs shift the burden to developers to prove infeasibility. • These AMMMs are duplicative of existing laws and processes. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • These AMMMs should be removed from the FEIS. • BOEM should coordinate with EPA to determine which of these measures are already addressed through existing regulatory and permitting processes in order to remove duplication. For any that are not, BOEM should engage in a robust, public guidance development process that includes a public comment period, workshops, and outreach to industry stakeholders.
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<p>MUL-18</p>	<p>Shared Transmission Corridors</p>	<ul style="list-style-type: none"> • Technically and Economically Infeasible • Duplicative of Existing State Requirements and Processes 	<ul style="list-style-type: none"> • Coordination of transmission infrastructure should be guided by the state agencies procuring offshore wind power. • BOEM recognizes that they cannot dictate that a lessee use a shared cable corridors and that developing such a corridor would likely not be technically or economically practicable. In the New England Wind FEIS, BOEM fully explains why they did not consider a shared transmission corridor for detailed analysis: “BOEM cannot dictate that a lessee uses a shared cable corridor that does not already exist (30 CFR § 585.200(b)). BOEM has no way of determining if the use of a future shared cable corridor would be a technically and economically practical and feasible alternative for the proposed Project. Therefore, BOEM cannot require the applicant to use a non-existent shared cable corridor for the proposed Project.” <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • Although this measure is voluntary, it should still be removed from the FEIS as it is technically and economically infeasible, is duplicative of state processes, and its adoption as an alternative in COP EISs has been rejected by BOEM on numerous occasions.
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<p>OU – 1 and OU- 2</p>	<p>Mitigation for oceanographic high frequency radars and Mitigation for NEXRAD weather radar systems</p>	<ul style="list-style-type: none"> • Technically and Economically Infeasible 	<ul style="list-style-type: none"> • This AMMM is being considered without specific analysis of impacts from offshore wind development in the NY Bight lease areas to these radar systems. The fundamental purpose of mitigation measures in NEPA is to address a reasonably foreseeable impact of the Proposed Action. • The windfarm curtailment agreement is problematic and may be economically infeasible. Projects that rely on project finance will not be able to obtain financing with uncertain curtailment conditions. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none"> • In order for this mitigation measure to be included in the final PEIS, an analysis of the impacts to these radar systems must be included in the document and specific impacts from offshore wind development in the NY Bight must be demonstrated as reasonably foreseeable. In addition, the analysis should demonstrate what mitigations could be part of this agreement and how effective they would be at reducing impacts. This analysis should also consider the benefits of those measures when balanced against how they impact the project and any reductions in energy production or increased costs to ratepayers. If this analysis is not included or if specific impacts cannot be demonstrated, then this measure must be removed. Regardless, no commitment to this measure should be made in the FEIS.
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MUL-26	Monitoring Plan	<ul style="list-style-type: none">• AMMM could not be incorporated through terms and conditions of plan approval.	<ul style="list-style-type: none">• This AMMM is overly broad and lacks sufficient detail to assess a need for a mitigation measure of this type.• This AMMM does not address a specific environmental impact identified by the PEIS and therefore fails to meet the basic threshold to be considered as a mitigation measure. <p>Recommendation for the FEIS:</p> <ul style="list-style-type: none">• This AMMM should be removed from the FEIS.• Monitoring plans should only be developed to address a specific environmental impact that is identified by the analysis in the PEIS.
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