



2/20/24

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Pacific Regional Office
760 Paseo Camarillo, Suite 102
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RE: [Docket No. BOEM-2023-0061] Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Future Floating Wind Energy Development Related to 2023 Leased Areas Offshore California

I. Introduction – State and Federal Offshore Wind Goals

American Clean Power (ACP)¹ appreciates the opportunity to comment on BOEM’s notice of intent (NOI) for a California offshore wind Programmatic Environmental Impact Statement (PEIS).² Offshore wind is an essential source of clean power and indispensable to reducing the impacts of climate change and improving the health and wellbeing of Californians. In 2022, California adopted offshore wind goals of 2-5 GW by 2030 and 25 GW by 2045. Governor Newsom has embraced offshore wind as a strategy to "reduce air pollution, increase energy independence, and provide new economic opportunities to Californians while protecting the natural legacy of our coastline."³ The Biden administration has similarly established a goal of 15 GW of floating offshore wind by 2035, most or all of which is likely to come from the coast of California. To achieve these goals, BOEM should pursue a coordinated, efficient, and timely pathway to permitting California’s first offshore wind projects.

ACP’s membership includes all five California leaseholders who will be directly impacted by the PEIS as well as many other offshore wind developers that will be impacted by any precedent BOEM sets in adopting certain avoidance, minimization, mitigation, and monitoring measures (AMMMs). In these comments, we provide recommendations on how BOEM should approach the CA PEIS, including lessons-learned from the recent New York Bight PEIS.

¹ American Clean Power (ACP) is the leading voice of today’s multi-tech clean energy industry, representing over 800 energy storage, wind, utility-scale solar, clean hydrogen and transmission companies. ACP is committed to meeting America’s national security, economic and climate goals with fast-growing, low-cost, and reliable domestic power.

² Available at: <https://www.federalregister.gov/documents/2023/12/20/2023-27930/notice-of-intent-to-prepare-a-programmatic-environmental-impact-statement-for-future-floating-wind> (hereinafter “NOI”).

³ Newsom, Gavin. July 2022. [Governors Letter to CARB](https://www.gov.ca.gov/wp-content/uploads/2022/07/07.22.2022-Governors-Letter-to-CARB.pdf?emrc=1054d6). Available at www.gov.ca.gov/wp-content/uploads/2022/07/07.22.2022-Governors-Letter-to-CARB.pdf?emrc=1054d6.

II. Background

The PEIS is a critically important document. If done successfully, the PEIS will establish a strong foundation for a coordinated, effective, and efficient permitting process for California offshore wind projects. The PEIS will not only influence later stages of analysis and project-level commitments but could also demonstrate to Native American Tribes and Tribal Nations (“Tribes”) and stakeholders that robust analysis can be accomplished in an efficient manner. It will set the stage for multi-agency (state, federal, local) coordination which could facilitate alignment on permit requirements and efficiency in decision-making at all levels of government.

BOEM stated in the NOI that “[the PEIS analysis] will help BOEM make timely decisions on COPs submitted by lessees for the Humboldt and Morro Bay lease areas. Timely decisions further the United States’ policy to make Outer Continental Shelf energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)) and other requirements listed at 43 U.S.C. 1337(p)(4).”⁴ The goals of efficiency, coordination, and alignment among government and Tribes should be paramount in BOEM’s approach to the PEIS. At the same time, the PEIS is a new step in what would already be a very lengthy, multi-step process for permitting and approving offshore wind projects in federal waters off the coast of California. As discussed below, there are legal and practical limits to BOEM’s intention to develop mitigation measures in the PEIS. As such, BOEM should acknowledge these limitations in the PEIS, clearly state how the document fits into and improves upon the typical NEPA process, and describe how the PEIS is intended to be used in project-level reviews. Stakeholders, Tribes, coordinating agencies, and developers will benefit from clear, upfront framing.

III. The PEIS must comply with the law and must facilitate efficient and coordinated project-level environmental reviews.

The goal of the PEIS should be to facilitate an efficient and coordinated environmental review process for California offshore wind projects, allowing BOEM to successfully advance federal and state renewable energy goals, while at the same time ensuring responsible offshore wind development on the outer continental shelf (OCS). The PEIS should not adopt any substantive requirements but should provide BOEM with analytical tools for decision-making at the project-specific level. Key to success will be the identification of reasonable AMMMs that are technically and economically feasible, as is required by the National Environmental Policy Act (NEPA) and the Outer Continental Shelf Lands Act (OCSLA).

⁴ NOI pg. 4

- a. The proposed purpose and need are counter to BOEM’s authority under NEPA and OCSLA.

BOEM notes that the purpose and need of the Proposed Action is to “identify, analyze, and adopt, as appropriate, potential mitigation measures to be applied to the five California leases issued in 2023.”⁵ This is contrary to both NEPA and OCSLA.

First, NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.⁶ Importantly, NEPA is merely a procedural statute—it imposes no substantive requirements.⁷ In short, NEPA requires agencies to take a “hard look” at the environmental impacts of proposed actions being proposed under other substantive statutes over which they have authority, such as OCSLA. NEPA itself does not provide authority to impose requirements or limit actions.⁸ As such, BOEM cannot use NEPA as the statutory mechanism to adopt AMMMs, it can only rely on NEPA to analyze the impacts of adopting or not adopting said measures.

Second, the agency’s proposed action to adopt AMMMs at the PEIS stage, prior to COP review, is contrary to BOEM’s authority and its implementing regulations under OCSLA. Doing so prematurely imposes a substantive burden on lessees and inappropriately preempts the COP approval process. BOEM regulations outlining the COP approval process state that BOEM conducts an environmental review once the lessee has submitted a COP and that *upon completion* of our technical and environmental reviews and other reviews required by Federal Law... BOEM may approve, disapprove, or approve with modifications your COP. If we approve your COP, we will specify terms and conditions to be incorporated into your COP.”⁹ Importantly, BOEM approves a COP, including mitigation measures, *upon completion* of the environmental review.

In the PEIS, BOEM should note that the purpose and need is to identify, analyze, and *consider* AMMMs. Any reference to adoption of measures should be removed.

- b. BOEM should ensure project-level environmental reviews can effectively tier to the PEIS.

⁵ 88 F.R. at 88108

⁶ 42 U.S.C. § 4331

⁷ See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”).

⁸ *Ibid.*, at 351. (“other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed, rather than unwise, agency action.”)

⁹ 30 C.F.R. 585.628(f)

As is contemplated both by NEPA¹⁰ and by California's offshore wind permitting roadmap,¹¹ a PEIS should allow BOEM to tier subsequent environmental reviews to avoid duplication of effort, to reduce the burden on agencies, Tribes, and other stakeholders who review these documents, and to ensure that project-specific analyses focus *only* on those impacts that cannot be reviewed at the programmatic level. An effective PEIS should form the base of current understanding and allow future project-specific documents to build upon it. A PEIS should also set the stage for additional research and technological advancements that will be further refined as projects move toward construction and operation.

BOEM recently issued a Draft PEIS for the New York Bight that explicitly provides guidelines for tiering of project-specific environmental documents.¹² Specifically, the guidelines allow lessees to “tier or incorporate by reference [the] PEIS” in order to “provide for greater efficiency and reduce duplication of analyses in complying with NEPA requirements.”¹³ In crafting the California PEIS, ACP recommends that BOEM create similar tiering guidelines and clearly state how BOEM and other federal and state agencies such as the Army Corps of Engineers and California State Lands Commission, as the California Environmental Quality Act (CEQA) lead agency, can rely on and tier from the PEIS to support future decision making. Creating clarity early in the process will not only help reduce duplicative reviews, but it will also create transparency from the perspective of stakeholders who will be better able to understand and anticipate the overall review process.

i. The PEIS should review *all* impacts ripe for review.

In the NOI, BOEM indicates that part of the purpose of the proposed action is to “identify minor or negligible impacts so that project-specific reviews can focus on moderate or major impacts and analyze regional cumulative impact.”¹⁴ This is contrary to the purpose of a *Programmatic* EIS which should assess *all* impacts that are ripe for analysis,¹⁵ no matter the level of significance. Similarly, the PEIS should analyze regional cumulative impacts as this is one of the most important functions of the PEIS.

¹⁰ Current NEPA regulations direct agencies to tier environmental reviews “when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review; 40 C.F.R. § 1501.11

¹¹ California's offshore wind permitting roadmap and recent draft Assembly Bill (AB) 525 Strategic Plan mirrors this NEPA tiering language. The roadmap notes that “[i]deally, programmatic documents allow for more efficient permitting of individual projects by building on, but not repeating, the information contained in the original programmatic document. This process is called tiering, which can reduce the scope and complexity of subsequent project-specific environmental documents.

¹² BOEM, New York Bight Draft Programmatic Environmental Impact Statement Appendix C at C-1, https://www.boem.gov/sites/default/files/documents/renewable-energy/NY%20Bight_DraftPEIS_AppC_TieringGuidance_508.pdf

¹³ *Id.*

¹⁴ 88 Fed. Reg. 49924

¹⁵ 40 C.F.R. § 1501.11.

c. The PEIS must provide a reasonable range of alternatives.

NEPA regulations require agencies to evaluate “reasonable alternatives,” meaning “a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.”¹⁶ A rule of reason governs whether an EIS’s range of alternatives is adequate.²⁹ Therefore, alternatives in the PEIS should only contemplate AMMMs that are technically and economically feasible and BOEM should engage industry in helping to guide that assessment. Further, alternatives in the PEIS should only analyze scenarios that can be legally justified. For example, as was seen in the New York Bight Draft PEIS, and is discussed below, no alternative should presume that offshore wind projects could proceed with no environmental safeguards as this assumption is counter to BOEM’s obligations under OCSLA, and other substantive environmental statutes. Equally, no alternative should assume the adoption of a broad range of AMMMs that are both technically and economically infeasible. BOEM will fail to advance the goals of the PEIS by comparing two extreme scenarios in its alternatives.

d. Avoidance, Minimization, Mitigation and Monitoring Measures (AMMMs) must be appropriately designed to the level of analysis in the PEIS.

Overall, BOEM should ensure flexibility in developing AMMMs such that project-level mitigations can adapt to specific project needs, best available science and technology, and real-life construction and operating conditions. If, as we recommend, the AMMMs considered in the PEIS are frameworks that can be adopted or altered via project-specific NEPA, BOEM should clearly state this in the PEIS. Furthermore, it is essential that the AMMMs in the PEIS enable CA to meet its offshore wind and clean energy goals.

i. Avoidance, Minimization, Mitigation, and Monitoring Measures (AMMMs) must follow anticipated effects.

Each AMMM must have an appropriate and necessary nexus to an identified and reasonably anticipated effect that warrants mitigation. The AMMMs should also be proportional to the identified effect. BOEM should develop AMMMs only where there is sufficient analysis of the scale of impact. Where impacts are highly uncertain, BOEM should refrain from imposing AMMMs ahead of project-specific review.

ii. Avoidance, Minimization, Mitigation, and Monitoring Measures (AMMMs) must be technically and economically feasible

¹⁶ 40 C.F.R. 1508.1(z).

Any AMMM outlined in an alternative in the PEIS must be technically and economically feasible.¹⁷ Such measures would be premature at this programmatic review level where project-level design and operation are hypothetical. Instead, AMMMs should provide adaptive solutions, targeted reduction impacts that deliver tangible results, and the use of monitoring, reporting, and adaptive management to respond to specific circumstances on the ground and in the water.

Programmatic AMMMs should provide for technological advancements (e.g., innovative design and installation methods that reduce noise impacts from construction) that are likely to occur before developing individual project COPs. Overly prescriptive programmatic AMMMs and lack of procedural flexibility could serve to disincentive innovation with respect to reducing project-related environmental impacts. The PEIS should allow lessees to propose alternative AMMMs in their COPs that achieve the same or better resource outcomes.

BOEM must ensure that the individual and cumulative nature of the proposed AMMMs do not ultimately prohibit or severely limit an operator's ability to complete construction and installation activities.¹⁸ For example, implementing seasonal closures that force industry to be on the ocean only during certain months could compromise the safety of personnel, contractor vessels, and other assets and would therefore be infeasible.

Individual AMMMs should not be considered in a vacuum. Overly precautionary measures can have the unintended consequence of creating a higher risk for a species through other vectors (e.g., prolonged exposure). For example, an AMMM could result in vessels spending more time on the water and potentially require more vessels to execute an activity, thus increasing overall exposure to vessel related risks. In addition, BOEM should consider the cumulative cost of AMMMs to ensure overall cost-effectiveness. AMMMs that are unduly expensive or significantly depreciate project performance will raise power offtake costs, thereby affecting ratepayers.

To the extent coordinating agencies suggest AMMMs, they must be fully vetted by BOEM against the standards of technical and economic feasibility, nexus to anticipated effect, and combined impact on project construction and operation. ACP welcomes ongoing communication between developers to ensure the feasibility of implementing proposed AMMMs. The burden should be on BOEM, not on developers after the fact, to prove the feasibility of AMMMs.

¹⁷ e.g., the removal of turbines or offshore substations, the reduction of onshore cable routes, or other AMMMs that reduce project capacity.

¹⁸ It is imperative that BOEM review all proposed mitigation measures to ensure that construction and installation can occur when sea conditions are viable.

IV. The representative project design envelope (RPDE) must reflect likely project designs and be technologically feasible.

In the NOI, BOEM notes that it is creating a “hypothetical development scenario based on a representative project design envelope (RPDE).”¹⁹ BOEM further notes that “[t]he National Renewable Energy Lab (NREL) created this design envelope with the input of lessees that will be submitting the COPS for the California leases.”²⁰ ACP appreciates that BOEM has been working with lessees in designing the RPDE, and encourages BOEM to continue regular consultation with lessees as this process moves forward. Regular input from lessees will ensure that NREL’s programmatic assumptions remain current, that the RPDE is a realistic reflection of likely project designs, and that the RPDE is technically and economically feasible. Such an outcome is necessary as the RPDE will be an important part of shaping every offshore wind project in California.²¹

The RPDE should also be sufficiently adaptable to not only accommodate analysis of project factors that can be assessed on a ranged scale, such as turbine height and spacing, but also to accommodate categorical project factors like technology, foundation, and platform type. We note that there are currently several different foundation and anchoring designs for floating offshore wind. BOEM should consider the environmental impacts of the project parameters themselves, rather than the impacts of a maximum case parameter, and identify AMMMs to address any anticipated impacts. This will limit the need for additional, supplemental analysis for individual projects because the range of options—not just the maximum case scenario—will receive full consideration through the NEPA process.

Design flexibility is also necessary to accommodate anticipated industry innovations. We note that offshore wind technology has advanced rapidly over the past decade, and products and methods that may be commercially available to developers within five years might not be easily foreseen today. The PEIS should clearly explain this reality so that stakeholders understand the limitation of the effects analysis at this stage of analysis. Furthermore, there are likely to be advancements in products and methods that could assist in reducing costs to consumers and reducing project impacts, and the PEIS should explain why these methods have not been analyzed in this PEIS but may still be appropriate in project-specific NEPA documents.

V. BOEM must utilize best available science.

¹⁹ 88 Fed. Reg. 88107

²⁰ *Id.*

²¹ Some of the California lessees did not have their engineering team in place when this request from NREL was first received. ACP encourages BOEM to regularly reach out to leaseholders with the programmatic assumptions to ensure that these are current.

BOEM must utilize the best available science to develop the PEIS and avoid the use of speculative science or worst-case scenarios to fill data gaps. For example, BOEM has included hydrodynamic effects of offshore wind on marine mammals in environmental analysis for East Coast offshore wind projects, but any analysis must reflect that there is currently no concrete evidence that offshore wind creates hydrodynamic effects that negatively impact marine mammals. Please see Appendix 1 for detail and report recommendations.

VI. BOEM should ensure robust coordination between other federal agencies, Native American Tribes and Tribal Nations (Tribes), and California state agencies.

ACP appreciates BOEM's invitation to federal agencies, Tribes, and state and local governments to consider becoming cooperating agencies in preparation of the PEIS. Cooperating agencies robust involvement and commitment to the framework and process established by BOEM for the PEIS is key to the success of the PEIS and the goal of efficiency through tiering.

ACP supports the position of Tribes who have expressed a desire to be included in the decision-making process during the review of offshore wind projects. ACP encourages BOEM to incorporate greater, early, and effective participation of Tribes in the public review process of the PEIS. In addition, BOEM should consider inclusion of Tribal Ecological Knowledge (TEK) into the evaluation of impacts and potential AMMMs. This is common practice for BOEM managed actions in Alaska. The thorough engagement of Tribes in the PEIS will also facilitate more effective and meaningful engagement at the project-level phase.

ACP also supports strong collaboration between California and BOEM at this foundation stage of development in California. Early coordination could allow California to develop a supplemental programmatic document²² to address CEQA requirements that may not be adequately covered by a PEIS, and that can be relied upon for the purposes of tiering cite specific review. ACP encourages California and BOEM to begin mapping out the process contemplated through the PEIS, including, schedule and roles, as this will set the foundation for the Ocean Renewable Energy Action Team (REAT) coordinated review processes envisioned in the state's AB 525 Plan.²³ This close coordination is essential for enabling timely production of the PEIS in alignment with BOEM goals for completing the document in a two-year timeframe.

²² See: CEQA Guidelines at California Public Resources Code 15221. "NEPA DOCUMENT READY BEFORE CEQA DOCUMENT (a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or Finding of No Significant Impact rather than preparing an EIR or Negative Declaration if the following two conditions occur: (1) An EIS or Finding of No Significant Impact will be prepared before an EIR or Negative Declaration would otherwise be completed for the project; and (2) The EIS or Finding of No Significant Impact complies with the provisions of these Guidelines. (b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR."

²³ Per AB 525 Plan Vol II p 255, California has signaled its intent to initiate a federal-state Ocean Renewable Energy Action Team (Ocean REAT) to ensure "a coordinated, comprehensive, and efficient process for offshore wind permitting by implementing a project-specific permitting schedule and creating a process for reviewing project

i. BOEM should coordinate with the Offshore Wind Energy Fisheries Working Group

ACP further recommends coordination between BOEM and the California Offshore Wind Energy Fisheries Working Group (working group). The working group is composed of offshore wind leaseholders, commercial and recreational fishing organizations, and Tribal fisheries representatives. The working group is charged with developing a statewide strategy that includes best practices for avoidance, minimization, and mitigation of impacts to fishing and fisheries, protocols for communications, best practices for surveys and data collection, a methodology for socioeconomic analysis, a fishing agreement template, and a framework for compensatory mitigation for unavoidable impacts. BOEM's consideration of fishing impacts and programmatic AMMMs should be coordinated, to the extent feasible, with the statewide strategy to ensure consistency and avoid duplication of effort and any duplicative or conflicting mitigation measures.

VII. The PEIS should analyze beneficial impacts.

BOEM should take care to assess the programmatic-level beneficial impacts of offshore wind in the PEIS. These include the benefits of climate change mitigation, reduced air pollution from fossil fuel-based electric generation, as well as job creation and economic development. Climate change mitigation is an especially important consideration at the programmatic level as the impacts of continued unmitigated climate change will most certainly have the most severe impacts on habitats, species, and cultural resources and should be a benchmark against which BOEM evaluates the significance of direct OSW-related impacts. BOEM should acknowledge the need to act with speed and certainty in mitigating climate change through offshore wind development. In addition, BOEM should utilize the U.S. Environmental Protection Agency's CO-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) to quantify the human health benefits due to the reduction of emissions associated with the development of offshore wind projects as replacement for polluting electric generation sources.

VIII. BOEM must consider regional differentiation.

To enable individual project documents to tier-off the PEIS, as is a primary goal of this review, BOEM should consider regionally-specific programmatic AMMMs where appropriate. The Morro Bay and Humboldt lease areas are roughly 500 miles apart from one another. BOEM

documents and coordinating with lessees on information needs." Available: <https://www.energy.ca.gov/data-reports/reports/ab-525-reports-offshore-renewable-energy>

prepared two separate Environmental Assessments²⁴ for the two regions prior to the California offshore wind auction, showing the distinct geophysical, habitat, species, cultural, and socioeconomic conditions between the regions. The California Coastal Commission (CCC) completed similar analyses on the two regions as part of its consistency concurrence during their review under the Coastal Zone Management Act (CZMA).²⁵ As such, it is likely the potential impacts of offshore wind in the two regions will be different in both type and significance. Similarly, certain AMMMs may be more or less feasible in one area compared to another based on differences in weather conditions and other human uses. Finally, regional differentiation may enable better engagement with Tribes whose territories and cultural and ecological resources are specific to one region or another. As noted, we encourage the participation of Tribes as cooperating agencies in the development of the PEIS.

IX. Lessons learned from New York Bight Draft PEIS

The New York Bight Draft PEIS contains several critical flaws that should be considered in the development of the California PEIS. ACP will be submitting specific comments on the New York Bight Draft PEIS addressing those issues. BOEM should incorporate lessons learned from the New York Bight Draft PEIS and avoid repeating flawed elements in the California PEIS.

- a. Avoidance, Minimization, Mitigation, and Monitoring Measures (AMMMs) include new requirements without proper process.

As noted in the NOI, “BOEM may require mitigation measures as conditions of approval for activities proposed by lessees in their COPs.” This appropriately recognizes that AMMMs are made binding on an individual project upon COP *approval*. However, the New York Bight Draft PEIS contains AMMMs that instead prematurely impose new requirements prior to the COP *development* process and thus could not be enforced through terms and conditions of plan approval. For example, an AMMM from the New York Bight Draft PEIS (MUL-23) states that “Lessees must consider how to avoid or reduce potential impacts on important environmental resources, including sensitive habitats (e.g., Mid-Shelf Scarp, NJDEP-designated prime fishing grounds, hardbottom, SAV, ledges), by adjusting project design. Lessees must demonstrate this consideration through their initial COP submission or subsequent updated versions.” Requiring that a measure be demonstrated through initial COP submission is COP guidance and, as stated above, could not be implemented through terms and conditions of plan approval and is therefore in direct conflict with the proposed action of the New York Bight PEIS. This measure, and all measures that constitute COP guidance, should not be included in a PEIS. If BOEM would like

²⁴ See : <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Humboldt-DraftEA.pdf>; https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/2022_0404_MorroB_DraftEA_FOR_PUBLICATION_0512.pdf

²⁵ See: <https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/W7a-6-2022-AdoptedFindings.pdf>; <https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/Th8a-4-2022%20adopted%20findings.pdf>

to consider these types of measures for inclusion in the COP development process, then BOEM must go through the proper guidance development process. To do so, BOEM would need to amend the current COP guidance to include these measures and go through a public review and stakeholder outreach process. A NEPA document, especially one that focuses on specific leases, should not be the venue for BOEM (and cooperating agencies) to receive stakeholder feedback on any and all items that they are interested in implementing across the renewable energy program. Going through the guidance or regulatory development process may take more time, however, it is important that BOEM utilize the correct processes to ensure consistency with the purpose of the PEIS and that all stakeholders have the opportunity to weigh in on items that will impact development beyond the California lease areas. Including these types of measures in the NEPA document circumvents the proper process for development of guidance and excludes valuable input from stakeholders who may not be aware that new guidance is being proposed in a programmatic NEPA document for wind energy development in the California lease areas.

b. Infeasible and inappropriate AMMMs

The New York Bight Draft PEIS proposes many infeasible and inappropriate AMMMs. Rather than include novel AMMMs that require the implementation of new technologies, BOEM should issue Requests for Information to determine the status of these technologies and their feasibility. Although many of the infeasible measures included in the New York Bight Draft PEIS include caveats regarding feasibility, this simply shifts the burden of proof to the developer rather than following the appropriate process to determine if a measure is reasonable for implementation.

BOEM should not include any AMMMs that duplicate or contradict existing BOEM or Bureau of Safety and Environmental Enforcement (BSEE) regulations, guidance, or processes such as the Area Identification process, the Alternatives Screening Criteria, or the regulations for unanticipated impacts.²⁶ In addition, measures should only be included for analysis if they are proposed to mitigate a specific impact on a resource that fits under the range of impact producing factors that can be determined at this early stage of the process.²⁷ Furthermore, mitigations should be commensurate with and reasonably proportional to a specific effect.²⁸

In determining feasible AMMMs, BOEM should look to those that have been applied to existing offshore wind projects. Novel measures should only be adopted after appropriate opportunity for public comment and a determination that these measures are reasonable and feasible.

²⁶ (30 CFR § 285.417).

²⁷ See BOEM, Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf, available. https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf. AND See NEPA regulations 1508.1, Definitions, “Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects.”

²⁸ See BLM Mitigation Handbook at 3.5 F available. <https://www.blm.gov/policy/im-2021-046>

c. Delayed schedule

BOEM has stated during its scoping meetings that the California PEIS is on a two-year timeframe with the draft expected in fall 2024 and the final PEIS in summer 2025. The New York Bight Draft PEIS, however, has encountered significant delays, which could impact the initiation of project-specific NEPA reviews. One of the overarching reasons for the development of this PEIS should be the efficient facilitation of project-specific NEPA reviews. All effort should be given to maintaining the expected schedule for the California PEIS and preventing the process from delaying project-specific NEPA reviews.

X. Schedule & Process

BOEM has targeted a swift but achievable schedule for completing the PEIS. We urge BOEM to keep tightly to this timeline. A key first step, along with defining the scope of review and alternatives, will be setting up cooperating agency MOAs. ACP recommends engaging as soon as possible with state agencies (especially California State Lands Commission as the CEQA lead agency) on developing a coordination framework that will support project development goals.

Finally, ACP recommends that BOEM establish monthly meetings with California leaseholders to allow for the exchange of information and leveraging of expertise necessary for a successful PEIS (e.g., RPDE parameters). This regular forum was critical in the early stages of the New York Bight PEIS process and fostered common understanding on key analysis decisions, such as RPDEs and scope of analysis.

XI. Conclusion

We appreciate the opportunity to comment and look forward to engaging with BOEM further in the development and finalization of the California PEIS.

Sincerely,

Anne Reynolds
Vice President, Offshore Wind
American Clean Power Association

APPENDIX 1: Best Available Science

Hydrodynamic/upwelling effects

BOEM should review the white paper “Oceanographic Effects of Offshore Wind Structures and Their Potential Impacts on the North Atlantic Right Whale and Their Prey”²⁹ which concludes:

The presence of offshore wind structures on the Outer Continental Shelf is likely to have some impact on the hydrodynamics of the surrounding ocean as water moves past these structures. The level of impact is highly dependent on both local oceanography and wind farm characteristics (e.g., turbine size and spacing). The spatial extent and magnitude of hydrodynamic effects and the nature of any associated ecological impacts are less certain but are likely to be up to an order of magnitude less than changes due to natural variability and climate change.

BOEM should also review the National Academy of Sciences paper, “Potential Hydrodynamic Impacts of Offshore Wind Energy on Nantucket Shoals Regional Ecology: An Evaluation from Wind to Whales”, which found “the impacts of offshore wind projects on the North Atlantic right whale and the availability of their prey in the Nantucket Shoals region will likely be difficult to distinguish from the significant impacts of climate change and other influences on the ecosystem.”³⁰

Marine Mammal Impacts

The AB 525 Strategic Plan notes that direct entanglement risk is low for marine mammals as “[these] species are likely to detect large diameter mooring lines either through echolocation for toothed whales, whiskers for pinnipeds, or hearing for baleen whales, since ropes produce noise in relation to current flow.”³¹ This conclusion is also affirmed in research synthesized by the U.S. Offshore Wind Synthesis of Environmental Effects (SEER).³² Instead, SEER has documented the concern that secondary entanglement is more likely to create a secondary impact due to derelict fishing gear or other debris becoming snagged on offshore wind cables that could then pose a threat to marine mammals if they become entangled in this derelict fishing gear or debris.

²⁹ https://cleanpower.org/wp-content/uploads/2023/10/ACP_OSW-Hydrodynamics-and-NARW_Whitepaper_2023.pdf

³⁰ <https://www.nationalacademies.org/news/2023/10/briefings-to-congress/potential-hydrodynamic-impacts-of-offshore-wind-energy-on-nantucket-shoals-regional-ecology---an-evaluation-from-wind-to-whales>

³¹ AB 525 Plan, p 56

³² <https://tethys.pnnl.gov/sites/default/files/summaries/SEER-Educational-Research-Brief-Entanglement-Considerations.pdf>