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**Re: Draft Environmental Assessment, Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf of Oregon**

*Submitted at Regulations.gov, docket No. BOEM-2023-0065.*

The American Clean Power Association<sup>1</sup> appreciates the opportunity to comment on the Bureau of Ocean Energy Management's (BOEM) Draft Environmental Assessment (EA) for Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf (OCS) of Oregon.

In these comments we recommend broadening the foreseeable activities associated with site characterization analyzed in the EA and clarifying certain language on environmental impacts. We also support the scope of the EA and its overall impact determinations. These recommendations and comments are detailed below.

I. Offshore wind will help reduce the impacts of climate change and meet federal and state decarbonization goals.

Offshore wind (OSW) energy is an essential clean energy source that will play an important role in combatting climate change and achieving the President's climate goals. Recent studies from Lawrence Berkeley National Lab, Princeton University, and the University of California at Berkeley found that to achieve the carbon reductions by 2050 that scientists believe are necessary to avert the worst impacts of climate change it will be necessary to increase annual deployment of renewable energy, primarily wind and solar, by two to three and a half times the

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<sup>1</sup> The American Clean Power Association (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.

level achieved in 2020.<sup>2</sup>

This requires expanding deployment of wind and solar from roughly 32 gigawatts (GW) per year as in 2020 to 60-70 GW per year, every year for the next couple of decades. OSW is essential to achieve this level of deployment. In the climate executive order (EO), signed on January 27, 2021, President Biden called deployment of clean energy technologies, such as OSW, “critical for climate protection” and established that “[i]t is the policy of my 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.” The EO further called on the Administration to “accelerate the deployment of clean energy and transmission projects in an environmentally stable manner.” In addition, on March 29, 2021, President Biden set a goal of deploying 30 GW of OSW by 2030 and 110 GW of OSW by 2050. More recently, the Department of Interior (DOI) set a goal to deploy 15 GW of floating OSW capacity by 2035.

This lease sale will help Oregon meet its long term decarbonization goals. In 2021, the Oregon State Legislature passed the Clean Energy Targets Bill, creating a goal to reduce greenhouse gas emission from electricity sold to 100 percent below baseline emissions by 2040.<sup>3</sup> Additionally, the Northwest Power and Conservation Council (NWPPCC) estimated in its recent Power Plan<sup>4</sup> that the region would need more than 350 GW of renewable capacity by 2041 in order to meet demand. Similarly, a 2021 study by Evolved Energy Research, working with the Clean Energy Transition Institute, GridLab, and Renewable North West, found the most cost-effective route to a deeply decarbonized western electricity grid includes 20 GW of OSW development in Oregon.<sup>5</sup> These leases also promise to bring substantial economic benefits to Oregon, creating well-paid clean energy jobs, and generating revenue for the state. The National Renewable Energy Laboratories (NREL) found that a single 600-megawatt (MW) OSW project “could support approximately 4,470 jobs and \$445 million in Gross Domestic Profit (GDP) during construction and an ongoing 150 jobs and \$14 million annually from operation and maintenance labor, materials, and services.”<sup>6</sup>

II. The Scope of BOEM’s Oregon Draft EA is appropriate, and should inform the scope of the Oregon Coastal Management Program’s (OCMP) Review.

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<sup>2</sup> See e.g. Jones, R., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts* (2020) available at <https://www.evolved.energy/post/princeton-net-zero-america-project>.

<sup>3</sup> Clean Energy Targets Bill, Enrolled House Bill 2021 (HB 2021-C), Available: <https://www.oregon.gov/deq/ghgp/pages/clean-energy-targets.aspx#:~:text=80%20percent%20below%20baseline%20emissions,baseline%20emissions%20levels%20by%202040>

<sup>4</sup> NWPPCC 2021 Power Plan, [https://www.nwccouncil.org/fs/17680/2021powerplan\\_2022-3.pdf](https://www.nwccouncil.org/fs/17680/2021powerplan_2022-3.pdf)

<sup>5</sup> Evolved Energy Report on Oregon Clean Energy Pathways Study, [https://renewablenw.org/sites/default/files/Reports-Fact%20Sheets/OR\\_CEP\\_Final%20Report%20.pdf](https://renewablenw.org/sites/default/files/Reports-Fact%20Sheets/OR_CEP_Final%20Report%20.pdf)

<sup>6</sup> *Two NREL Studies Find Gulf of Mexico Well Positioned for Offshore Wind Development*, NREL (May 6, 2020), <https://www.nrel.gov/news/program/2020/studies-find-gulf-of-mexico-well-positioned-for-offshore-wind-development.html>.

The EA analyzes impacts from site characterization and assessment activities on the OCS and State waters. The scope of this analysis is appropriate, and BOEM should work closely with the Department of Land Conservation and Development, Oregon Coastal Management Program, and National Oceanic and Atmospheric Administration's Office of Coastal Management to ensure their Federal Consistency Review stays within this scope. This approach is consistent with past OSW lease sales and provides predictability to the industry. Because BOEM leases do not convey development rights at the time of a lease and because a site-specific plan will not be submitted to BOEM until later in the process, BOEM has reasonably determined the most appropriate time to conduct a National Environmental Policy Act (NEPA) analysis of the buildout of a lease is if and when it has received a Construction and Operations Plan (COP) from the lessee. The D.C. Circuit has upheld this approach by BOEM to its environmental analysis of OSW 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 OSW 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.

Outcomes of Federal Consistency Review will be captured in BOEM's Consistency Determination, Oregon's response (most likely a Concurrence Letter with conditions), and any further response from BOEM. Conditions related to consistency should not be added to lease stipulations, as they are requirements regardless, are negotiated between BOEM and the State of Oregon, and can be revisited or revised through additional engagement were it to become necessary, for example for use of new technologies.

III. The foreseeable activities and assumptions for the Proposed Action may be inaccurate.

ACP is concerned that several of BOEM's assumptions related to reasonably foreseeable activities for the Proposed Action are inaccurate and unnecessary for establishing a Finding of No Significant Impact (FONSI). Failure of the EA to accurately reflect reasonably foreseeable developer activities could delay post lease sale site assessment and characterization activities. Leaseholders in California have observed similar gaps between the proposed action assumptions and actual survey plans which has created delay and stakeholder confusion.

Further, with respect to scenarios described in the EA, ACP appreciates that "likely" scenarios are described but recommends, if numerical estimates are maintained in the EA, "maximum" or "up to" scenarios should be used to avoid caps and limits on aspects of the EA that do not account for flexibility in case of new or alternative technologies, unexpected problems (such as with supply chain), or other reasons "maximum" case scenarios may occur. Some sections of the EA are quantitative and prescriptive, and we request BOEM ensure that the EA contains enough flexibility to account for the potential for deviations in individual lessee's site assessment and site characterization parameters. Instead, BOEM should reference use of the most current guidance at the time of operations (e.g., future NMFS West Coast Guidance) as an alternative to using specific survey guideline numbers or limits that may prove inaccurate.

a. Site Assessment: Metocean Buoys and Ocean Devices

i. Descriptions of Equipment

The examples of types of hull and anchoring systems is reasonable, but ACP encourages BOEM to include new and unusual technology language that will allow deviations from the general types of buoys and systems described in the EA if these systems are equivalently or less impactful than those described. For example, we recommend BOEM analyze anchors with larger footprints than the 2.3 sq. meters contemplated in this EA.

With respect to clearing sites for buoy deployment, it is unclear how BOEM may change its policies relative to the finalization of the Modernization Rule.<sup>7</sup> To date, in California, ACP members have experienced delays due to policies requiring site surveys be conducted to very high resolution (higher than most existing survey data) before deployment of buoys, even though BOEM allows use of autonomous underwater vehicles (AUVs) and remote operated vehicles (ROVs) to clear in real-time for deepwater deployments of oil and gas infrastructure in the Gulf of Mexico to avoid similar habitat disturbance<sup>8</sup> and the US Army Corps of Engineers (USACE) does not require such clearance in most cases. This policy around clearance seems to be based on BOEM Office of Renewable Energy Program's interpretation of 30 CFR 585, that BOEM felt required clearing sites completely in advance; however, it would seem more practical to clear sites to the extent practicable with existing data and complete the clearance in real-time if data are not high enough resolution to completely clear in advance. Given that the Modernization Rule removes the Site Assessment Plan requirement, BOEM should allow clearance expectations to be aligned with USACE Nationwide Permit (NWP) 5 and standard BOEM practices for deep water deployment of equipment.

ii. Quantification

BOEM should explicitly state that numerical quantification of sizes, lengths, and other aspects of equipment for metocean buoys and other ocean devices, as well as the methods of deployment, maintenance, and retrieval, are examples of typical equipment and methods. BOEM should state that equivalent or less impactful technologies and methods may also be used and are considered as part of the proposed action. ACP members have faced challenges at the time of survey plan review in applying EAs from the California lease sales due to the insufficiency of the NEPA coverage in the CA lease EAs for new technologies and alternative methods designed to achieve similar or better environmental outcomes. ACP believes it is important for BOEM to explicitly allow for such innovation and encourages the use of technologies and methods that can reduce impacts, improve data, reduce costs, achieve faster results when supply chains are strained, and otherwise improve outcomes by explicitly stating that alternative technologies and methods may

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<sup>7</sup> 89 FR 42602, 30 CFR 285, 30 CFR 585

<sup>8</sup> For example, see [https://www.boem.gov/sites/default/files/environmental-stewardship/Archaeology/ROV\\_2015\\_10.pdf](https://www.boem.gov/sites/default/files/environmental-stewardship/Archaeology/ROV_2015_10.pdf) and [https://www.boem.gov/sites/default/files/documents/newsroom/Conditional-Archaeological-Mitigation\\_1.pdf#:~:text=MITIGATION%203.20%20AVOIDANCE%20OF%20ARCHAEOLOGICAL%20RESOURCE%3A%20Your%20proposal%20includes%20bottom,bottom%20disturbing%20activities%20are%20to.](https://www.boem.gov/sites/default/files/documents/newsroom/Conditional-Archaeological-Mitigation_1.pdf#:~:text=MITIGATION%203.20%20AVOIDANCE%20OF%20ARCHAEOLOGICAL%20RESOURCE%3A%20Your%20proposal%20includes%20bottom,bottom%20disturbing%20activities%20are%20to.)

fit within the proposed action.

BOEM has explicitly stated an assumption that up to six buoys will be deployed in and near to each leased area. We discourage BOEM from setting a “max” number of buoys in the EA and instead refer to USACE standards which will be in effect with the Modernization Rule.

The EA also states that buoy deployments and retrievals would take approximately one day, with one vessel trip per year for maintenance of all buoys, though additional trips for maintenance (up to 45-60 are considered for each lease block according to Table 2-4). The one-day deployment and decommissioning are based on LiDAR buoys deployed by Pacific Northwest National Labs (PNNL). Although it is possible to deploy and retrieve buoys in a single day, mitigation and other factors are likely to be different from PNNL and weather restrictions may cause delays in planned vessel trips. Thus, it is important to allow flexibility in timing. BOEM does say “approximately one day”, but BOEM should also acknowledge that the mitigation requirements and equipment may differ from PNNL, potentially requiring more than one day for deployment, maintenance, and decommissioning activities.

While BOEM indicates that Table 2-4 is an “estimate,” quantification may be interpreted as a cap to activities covered by NEPA, so it is important to be explicit that the EA is not based on a hypothetical cap on these activities.

A FONSI would be appropriate even if substantially more buoys and ocean instruments (like passive acoustic monitoring systems) were deployed. This is clear from USACE NEPA coverage for scientific devices under NWP 5. Because OSW developers will operate under NWP 5, BOEM should acknowledge that USACE will permit deployment of buoys, which includes NEPA coverage, consultations, and consistency review associated with NWPs. USACE has found that, if conditions for the NWPs are met, there is no more than minimal adverse effects.<sup>9</sup> NWP 5 does not limit USACE and those operating under this permit to a certain number of buoys in advance, a certain type of buoy, or a specific amount of time to deploy a buoy; this permit specifies the conditions that must be met to achieve no more than minimal adverse effects and requires application of outcomes of consultation and consistency review by USACE as applicable.

### iii. Summary

With respect to buoy and ocean device deployment, it is reasonable for BOEM to describe typical buoy operations, but it is unnecessary for BOEM to limit buoys to specific parameters or numbers when the standards for buoys are already established by USACE NWP 5. With the finalization of the Modernization Rule, BOEM should remove the constraints on buoys from EAs and rely on USACE to apply its standards to buoys, achieving efficiency and removal of duplicative processes, which is the intent of the rule. BOEM notes in 89 FR 52602 that environmental review of site assessment is still needed, but there is no requirement that such review be duplicative of USACE or constrain OSW developers into separate buoy (or other ocean device) requirements that differ from USACE. ACP requests that BOEM clarify the

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<sup>9</sup> The description and conditions of Nationwide Permit 5 can be found on the USACE website at <https://www.swt.usace.army.mil/Portals/41/docs/missions/regulatory/2021%20NWP/NWP-05.pdf?ver=S7vXJodPzA6SIxKHQD2otw%3D%3D>.

application of the Modernization Rule in the EA to allow USACE's standards to apply to ocean devices. USACE does not allow more than minimal adverse impact and adheres to outcomes of consultation and consistency review, and thus impacts from buoys deployed under USACE's NWP 5 should be considered non-significant by BOEM without requiring quantification of days, numbers, vessel or equipment parameters, or other quantifications that differ from USACE NWP 5.

b. Site Characterization Surveys

i. Descriptions of Equipment

As with metocean buoys and scientific devices, site characterization surveys that use geophysical equipment are subject to a USACE NWP (number 6) and are also subject to Marine Mammal Protection Act (MMPA) permitting when there is potential for harassment of marine mammals, typically based on sound thresholds. As with buoys, it is reasonable for BOEM to provide typical examples of the types of vessels and equipment that have been used in the past and may be applied to site characterization in Oregon, but given the differences between East Coast and West Coast environments and the likelihood of new and different technologies and platforms to be applied to minimize impacts and maximize data quality, we request that BOEM clearly state that it is providing examples and that equipment that results in equivalent or less impact is part of the proposed action and may be considered for approval by BOEM under the existing NEPA coverage of the EA and its consultations and consistency review.

BOEM should acknowledge that, with respect to ESA-listed species, historic and cultural resources, birds, and marine mammals, there are legal frameworks and permits that require specific standards be met for these species, and BOEM can rely on these standards rather than prescriptive constraints on equipment or vessel types, sizes, or uses. BOEM has a history of allowing options for new and unusual technologies in oil and gas. For example, for deep stratigraphic test drilling, Section V(B)(1)(a) of Permit Forms BOEM-0136 and BOEM-0329 specify listing and describing new or unusual technologies to be used without specifically requiring new or additional NEPA analyses.

ACP appreciates that BOEM has stated "If sufficient survey data are available, additional surveys may not be necessary." ACP requests that this flexibility be maintained.

ii. Quantification

BOEM notes that line spacing for high-resolution geophysical (HRG) surveys would vary depending on data purpose but goes on to provide numerical values for line spacing and some other survey parameters. ACP requests that BOEM acknowledge that any numerical values provided are based on current guidance, and new or revised guidance or policies or use of alternative technologies may affect these values.

BOEM makes assumptions about survey equipment in specifying line miles of survey within the two leases. Making such calculations based on the best information available provides an understanding of likely scenarios, but this level of specificity in an EA may cause BOEM or

other agencies to later feel constrained to limit the line miles of survey and the types of equipment and methods based on BOEM's examples and estimates rather than allowing for flexibility based on new technology, supply chain, changing requirements, and outcomes of later state, federal, and community and tribal engagement on export cable routes, navigation needs, etc. that drive survey needs. Further, in order to ensure adequate MMPA coverage, maximum-case-scenarios for geophysical survey activities are frequently applied to MMPA permits and such estimates often ultimately exceed the number of actual line miles of survey after the survey is complete. This may cause discrepancies between BOEM's estimates in the EA and MMPA permits. Also, line miles are dependent on the type of equipment used (which affects data), the downtime for mitigation measures like clearance and shutdown, weather and equipment-related downtime, and other factors. Again, making an estimate to show order of magnitude expectations seems reasonable, but it should be explicitly stated that these estimates are not caps on survey activities like line miles, equipment, or vessel types.

BOEM has estimated 89 days of survey activity "for both areas" (not specifying whether BOEM means each or additively). This is an extreme undercount (whether each or additive) considering the amount of survey activity pre-construction on other leases and the remote and challenging aspect of surveying in deepwater, along with the mitigation likely to be required. Surveys often have downtime, including weather and equipment-related issues. BOEM calls this a "best-case scenario" which provides some sense of scale, but BOEM should not consider this the maximum case evaluated by the EA to make a FONSI. BOEM notes that a 150% increase would be 134 days for a more conservative estimate. BOEM does not appear to make a similar calculation for export cable routes, so it is unclear why this estimate is needed for lease blocks. Standards to meet around impacts are more appropriate than specificity in activities like line miles, particularly when the specificity is not "up to a maximum" for analysis but instead appears to cap activities and limit equipment at what BOEM deems a "best-case scenario." ACP requests that the quantification of days of activity and line miles either be removed or it be explicitly stated that additional line miles and days of activity are considered as part of the proposed action.

Table 2-4 quantifies vessel trips for HRG and other surveys. Many of the trips are described as "10-hrs each." This implies an assumption that these survey activities will take place using vessels that return to port each night. BOEM should clearly allow for the possibility that all types of surveys may occur on vessels that remain at sea for multiple days as part of the proposed action.

### iii. Summary

Specific details of individual surveys will undergo survey plan approval and necessary permitting (such as MMPA and Rivers and Harbors Act). As noted for buoys, application of standards, like the NWP conditions and negligible impacts to marine mammals (as required by MMPA) is more appropriate for OSW EAs for site characterization and assessment than specifying the equipment or amount of activity. Otherwise, estimates of likely activity and equipment parameters in the EA become de facto caps and limits for approvals and unreasonably limit the consultations, which further complicates application of new technology, alternative

methods, and available equipment. ACP requests that BOEM explicitly state that other similarly impactful equipment, technologies, and methods for surveys are part of the proposed action and that BOEM remove quantifications of survey line miles and days or explicitly state that these estimates are not caps and additional line miles and days are considered as part of the proposed action.

#### IV. Language should be clarified in affected environment

Overall, the Affected Environment is well described and provides sufficient detail. It is unclear if the two Appendices that are on the BOEM's website, "Marine Mammal Affected Environment" and "Avian Affected Environment" are part of the draft EA. These appendices are not referenced in the EA itself. ACP provides some comments on these appendices below as part of comments on these taxa, but ACP recommends that either these appendices be incorporated into the text (likely as subsections associated with ESA-listed and formerly listed species) or that these appendices be added to the Appendix A-F document and properly referenced in sections 3.4 and 3.5.

##### i. Marine Mammals and Sea Turtles

###### a. Marine Mammal Appendix

- The appendix entitled "Marine Mammal Affected Environment" includes leatherback sea turtles, so ACP suggests adding "and Sea Turtles" to the title of this document/appendix.
- ACP suggests that BOEM change the language in the "Marine Mammal Affected Environment" appendix regarding humpback whales. It is now "(listed as Endangered under the ESA)." We suggest changing to "(two DPSs with the Mexico DPS listed as threatened and the Central America DPS listed as endangered)" to better capture the status of humpbacks off the coast of Oregon.
- In the "Marine Mammal Affected Environment" appendix, sperm whales are described, but their ESA-status is not indicated (unlike the rest of the ESA-listed species in the appendix). The status should be added for consistency.
- The sperm whale paragraph in the "Marine Mammal Affected Environment" appendix mostly describes where they are in the Humboldt and Morro Bay Wind Energy Areas, which are not the areas under consideration in this EA. There is also a more current stock assessment than Carretta et al. 2022 that should be cited if BOEM wants to continue to include a population estimate for this species in the EA, though population estimates are not provided for other species and are not necessary, so ACP recommends removing this for sperm whales and updating to Oregon information.
- ACP notes that sei whales and Guadalupe fur seals are not included in the "Marine Mammal Affected Environment" appendix. ACP agrees with this approach because of the low likelihood of occurrence in the action area.



b. Marine Mammals and Sea Turtles Section 3.4.1

In section 3.4.1 of the EA, BOEM should state that biologically important areas (BIAs) are not regulatory. The public may see their use in this document along with Critical Habitat and the combination of BIAs with Critical Habitat in Figure 3-4 as indicating that these areas have a regulatory or statutory meaning. BOEM could use language such as the following: BIAs are based on scientific publication that consolidates data to suggest where major feeding, breeding, and migratory habitats are for different months. There are no consultations associated with BIAs and no statutes governing how activities can occur in them. Like a distribution map or other scientific literature, they serve to help understand where important habitat may be or where animals may be concentrated at certain times of year.

c. Table 3-4

- Table 3-4 is unclear regarding humpback whale status. It appears as if “threatened” is the designation under the MMPA. BOEM should consider splitting the distinct population segments (DPSs) in Table 3-4 to properly reflect the status of each.
- Table 3-4 is called “Protected Marine Mammals and Sea Turtles Likely to Occur in the WEAs.” This table includes green and loggerhead sea turtles and lists olive ridley sea turtles twice with different information; however, in the paragraph above the table, BOEM states that green, loggerhead, and olive ridley sea turtles are “unlikely” to be in the proposed action area and they were not being carried forward in the analysis. Thus, they should not be included in the table. Possibly “WEAs” should be changed to “lease areas” in the title. If the sea turtles noted are maintained in Table 3-4, the erroneous olive ridley entry should be removed.
- BOEM also says that “three” ESA-listed sea turtles may occur off the Oregon coast (page 29) but lists four species in Table 3-4, so this discrepancy should be addressed.
- If sea turtles are maintained, the stock descriptions are confusing. Sea turtles do not have stocks akin to marine mammals under MMPA. The stock for one of the olive ridley entries states “Wherever found, except where listed as Endangered.” It is unclear what this is supposed to mean. BOEM should change “stock” to DPS for turtles if the four turtles are maintained and use N/A for leatherbacks and olive ridleys, or just use N/A for stock if only leatherbacks are maintained. BOEM should also remove MMPA from the status header column for sea turtles.
- Potentially, Guadalupe fur seals should also be removed from Table 3-4 for the same reason as loggerhead, green, and olive ridley sea turtles – they are not “likely” to occur. If maintained, Guadalupe fur seals would be practically absent (limited occurrence, the language used for loggerheads, might be more accurate than seasonal low numbers).
- Sei whales tend to be distributed far out to sea beyond the lease areas and are rare in the

California Current.<sup>10</sup> The occurrence information should reflect this – possibly using “uncommon” as is used for North Pacific right whale. Both of these species could be better classified as “rare” in the action area rather than “uncommon.”

- Minke whales and gray whales each have a footnote that “critical habitat has not been designated for this ESA-listed species,” but these are not ESA-listed species. This footnote should be removed from these two species.
- The Stock Assessment Report indicates that sperm whales are not seen off the coast of Oregon in winter, so that seasonality should be captured in the table given seasonality is captured for other species.
- Non-ESA-listed killer whale stocks seem to be incorrectly described in the table. There is an Eastern North Pacific West Coast Bigg’s (Transient) Killer Whales and an Eastern Pacific Offshore Stock (not an Eastern North Pacific Transient Stock and a West Coast Transient Stock). Eastern North Pacific transient killer whales are broken down into three transient stocks (including the West Coast Transient). The table footnote seems to be saying the two stocks in the table are the same stock with two different names, but there are two stocks that should be described in the table. The Eastern Pacific Offshore Stock is described in the Pacific Stock Assessment Reports, which are not referred to in the footnote. The Alaska Stock Assessment Reports describe the transient stocks. The three Eastern Pacific transient stocks are described in one entry in the Stock Assessment Reports (for 2022, this is on pages 153-160<sup>11</sup>). There are three stocks that overlap the action area: Eastern North Pacific West Coast Transient, Eastern North Pacific Offshore, and Eastern North Pacific Southern Resident.
- The lease areas are well beyond typical southern resident killer whale habitat, and they are less common in Oregon coastal areas than Washington. The Stock Assessment Report<sup>12</sup> indicates that they typically are within the Salish Sea and surrounding areas of the Washington Coast from April to October and mainly off Washington and Vancouver Island in winter. They are observed elsewhere along the coast as far south as central California and as far north as Alaska, and tagging suggests they stay within 34 kilometers (21.1 miles) of shore in water less than 200 meters deep, which is closer to shore than the lease areas. Thus, their occurrence should be changed in the table to reflect rare or sporadic occurrence.
- Short-finned pilot whales are referred to as a “Mexico DPS.” Short-finned pilot whales are not listed under ESA, and so are not a DPS. The stock that occurs in Oregon is the California/Oregon/Washington Stock. They are not common in the action area.<sup>13</sup>

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<sup>10</sup> Reported in the Sei Whale Stock Assessment Report and Barlow, J. 2016. Cetacean abundance in the California current estimated from ship-based line-transect surveys in 1991-2014. Southwest Fisheries Science Center, Administrative Report, LJ-2016-01. 63.

<sup>11</sup> <https://repository.library.noaa.gov/view/noaa/52074>

<sup>12</sup> <https://www.fisheries.noaa.gov/s3/2023-08/Killer-Whale-Eastern-North-Pacific-2022.pdf>

<sup>13</sup> See Stock Assessment Report [https://media.fisheries.noaa.gov/dam-migration/po2016\\_sfpw-cow\\_508.pdf](https://media.fisheries.noaa.gov/dam-migration/po2016_sfpw-cow_508.pdf)

- Northern right whale dolphins are referred to as a “Central America DPS.” Northern right whale dolphins are not listed under ESA, and so are not a DPS. The stock that occurs in Oregon is the California/Oregon/Washington Stock.
- Harbor seals are listed as a California Stock. The stock most likely to overlap the action area is the Oregon/Washington Coastal Stock.
- There is a footnote indicated for Guadalupe fur seal (footnote 3) that does not appear with footnotes 1 and 2 below the table.
- The distributions of northern elephant seals, stellar sea lions, and California sea lions in Oregon have seasonality that does not seem to be captured in Table 3-4
- Given the large number of issues in this table, ACP recommends that BOEM revisit the entire table for accuracy with respect to the Oregon lease areas and potential cable routes included in the action area. ACP did not do an exhaustive review of information.

V. ACP agrees with Impact Determinations and has some recommendations to clarify language

i. Marine and Coastal Habitats and Associated Biotic Assemblages

In section 3.3.2 of the EA, the conclusion states that impacts to Essential Fish Habitat (EFH) and fishes would be “minimal.” “Minimal” does not appear to be a level of impact for other taxa. The impact categories appear to be negligible, minor, and moderate, so BOEM should change “minimal” to “negligible” for consistency.

ii. Marine Mammals and Sea Turtles

- BOEM should remove Table 3-5 and refer to whatever the latest acoustic guidance is at the time of the project. NMFS is updating its guidance and has a draft guidance out for public comment (89 FR 36762). Thus, BOEM should not include this table.
- BOEM should remove Table 3-6, as it is based on outdated guidance, is unnecessary to assess impacts, and may differ from NMFS’ assessment of distances under MMPA at the permitting stage for specific projects.
- On page 34 of the EA, BOEM should remove the section on Potential for Injury.
  - NMFS has already determined in a plethora of permits and ESA consultations that the range of equipment (and equivalent equipment) considered in the EA does not result in injury “take” under ESA or MMPA. NMFS has been providing Letters of Concurrence indicating that no “take” is anticipated under ESA, and MMPA permits have not included Level A (potential injury) “take.” There are decades of data and precedent to inform this decision by NMFS.

- BOEM’s characterization of multibeam echosounders as equipment having potential for injury to high-frequency cetaceans is based on improper use and interpretation of NMFS’ spreadsheet tool. NMFS has determined that multibeam echosounders are typically *de minimis* sources for which NMFS does not require an MMPA permit or ESA take statement. BOEM’s use of the NMFS spreadsheet tool incorrectly assumes an omni-directional source, operation at full power, and no absorption of sound over distance. High-frequency sound absorbs much faster than low-frequency sound in marine environments, and NMFS considers this and the fact that animals move in space in assessing potential for injury.
- NMFS spreadsheet tool is being updated to match new acoustic guidance that is in the process of public comment and so should not be applied by BOEM in the EA to avoid later conflict with NMFS’ assessments based on updated guidance.
- Section 3.4.2.2 states that “Level B disturbance is expected within 45-48 m [meters] of the AUV and UTP [underwater transponder positioning] for marine mammals and within 9 m for sea turtles.” This sentence should be removed from the EA.
  - Sea turtles do not have Level B as a designation of exposure. Level B is a type of harassment specific to the MMPA. Sea turtles may have the potential to be behaviorally disturbed, but this would not be Level B disturbance and may not constitute “take” under ESA definitions and policies.
  - With respect to MMPA, NMFS would need to determine in which cases Level B harassment would be anticipated from AUVs operating geophysical equipment. Potentially, Level B harassment would not be expected at some distances above the seafloor depending on the equipment, and similar to Level A harassment, is not anticipated at all for some types of equipment (such as multibeam echosounders).
  - The distances that BOEM provides in the EA may or may not be accurate estimates when specific equipment is assessed during permit processes, and these specific distances are not necessary for assessing impacts.

Overall, wherever distances to ESA and MMPA thresholds are provided, they should be removed from the EA. NMFS has recently published a draft update to its acoustic guidance. If there is a discrepancy between BOEM’s estimates at the EA stage and the estimates associated with MMPA permitting, this may cause problems with use of the EA by NMFS. Further, as with specific equipment lists and vessel types, the use of estimates of distances to ESA and MMPA thresholds may cause unintended caps and limits on equipment and methods in practice, and there is no requirement of NEPA that these be quantified in an EA to reach a FONSI.

### iii. Birds

In the main text of Birds in the Underwater Noise and Vessel Attraction sections on page 43 of the EA, BOEM states “Site assessment-related surveys typically use a single vessel” and “A single vessel is typically involved in a site assessment-related survey.” These statements should be removed. In practice, surveys may include several simultaneously operating vessels. Although the conclusion that survey vessel activity would not create a significant increase in vessel traffic is still accurate, BOEM should avoid assuming single vessels for surveys to make sure this does not create a limit on simultaneous vessel use.

#### iv. Cumulative Impacts

The characterization of cumulative impacts as “moderate” rather than “negligible” for taxa and benthic resources mischaracterizes the situation in that the addition of the proposed action does not change the level of impact from negligible to moderate but is rather a result of background impacts that are moderate regardless of whether the action takes place. BOEM should state the cumulative impacts are not substantively changed by the increment of impact associated with the proposed action for the resources evaluated.

#### VI. Consultation and Coordination minor changes requested

In section 4.2.1, BOEM should change the following: in paragraph four where BOEM states “...and reporting (Appendix D)” it should be changed to “...and reporting (examples are provided in Appendix D).” BOEM has not completed its consultations yet and does not know what the final best management practices may be relative to consultation outcomes. BOEM should acknowledge that consultation outcomes may result in different best management practices than included in Appendix D, but these practices will achieve the statutory findings, which BOEM can take into account in the FONSI.

BOEM should list the cooperating agencies in the EA.

ACP agrees with BOEM’s statement indicating that lessees must comply with consultation outcomes and that those outcomes may change over time.<sup>14</sup> This is important flexibility.

#### VII. Fisheries activities maps need additional explanation

In Appendix C-2 of the EA, BOEM provides maps from Carlton et al. (2024). The maps in Figure C-9 are partially cutoff on the right side making them hard to read. BOEM should correct the formatting.

The Carlton et al. (2024) fisheries analysis is bounded by the Oregon Call Area boundaries and did not consider fisheries activity outside of those boundaries. As such, these heat maps force “hot” areas within the Call Areas even if those areas would not be hot when considering a larger swath of area offshore. The public may interpret hotspots as highly important fishing grounds, which they may or may not be. BOEM should note that limitation in the introductory paragraph on page C-5. An example could be “The Carlton et al. (2024) analysis was limited to the Oregon Call Areas and did not consider fisheries activities outside those areas; thus, heat maps indicate only relative importance or effort within areas inside the Oregon Call Areas and do not assess whether those areas are of high importance or effort for the fisheries across their entire range of operations.”

#### VIII. Language should be clarified in Appendix D

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<sup>14</sup> BOEM states “These measures may be updated due to statutory, regulatory, or other consultation processes, including but not limited to consultation under the ESA or the MMPA.”

- We suggest changing the title of Appendix D from “Typical Best Management Practices for Operations on the Pacific Outer Continental Shelf” to “Examples of Best Management Practices.”
  - Some Atlantic and Gulf of Mexico practices are included in Appendix D and so it is more than a list of typical Pacific practices.
  - Some of the practices are described in the context of Atlantic species and habitats and will need adjustment to Pacific species and habitats via the consultation process.
- D-1 also describes this section as practices from the Pacific, but this list includes Atlantic practices. BOEM should add to the sentence “...from oil and gas operations in the Pacific Ocean and prior consultations with State of Oregon and Federal agencies” and expand to “...from oil and gas...in the Pacific **and Atlantic** Ocean (including the Gulf of Mexico)...agencies.” (bold text is added) For Table D-1, the title should also reflect this and add “examples of” before “associated best management practices.”
- Section D-2 pre-empts the outcomes of consultation by stating that survey plans “must meet the following minimum requirements specified below.” This sentence should be removed or adjusted to say survey plans will meet a set of minimum requirements that may be similar to those described below as examples.
- BOEM states the potential for a FONSI is not predicated on implementation of the practices in the section. ACP recommends maintaining this statement.
- BOEM should change the opening of Appendix D to the following (bold is added, strikeout is removed): “The analysis in the EA assumes the following Best Management Practices **or similar or equivalent practices resulting from consultation and consistency review** will be implemented in Federal waters; however, the potential Finding of No Significant Impact (FONSI) is not predicated on their implementation. Any survey monitoring plan ~~must~~ is expected to meet ~~the following~~ minimum requirements ~~specified~~-similar or equivalent to below, except when complying with these requirements would put the safety of the vessel or crew at risk.”
- Definitions section: BOEM should change the definition of large whales to remove North Atlantic right whales.
- Live bottom features seem to be defined relative to the East Coast. BOEM should clarify if seeps, seamounts, or other Pacific bottom habitats are specifically included. In addition, BOEM issued Notice to Lessees (NTLs) for the Gulf of Mexico have previously defined live bottom features. This language may be useful for these definitions.
- BOEM should add Dall’s porpoise to definition of *Phocoenidae*.

i. Appendix D, Section A Moon Pools

With respect to ESA-listed species, only sea turtles, sea lions, and seals would be of a size that could enter a moon pool, and sea turtles are mainly limited to rare occurrence of leatherbacks off the Oregon coast. BOEM indicates in Table 3-4d of the EA that leatherbacks have limited sightings June to October. The proposed leases are closer to shore than most leatherback sea turtle use, with effectively “zero” density predicted in the proposed lease areas by Maxwell et al.

(2013)<sup>15</sup>. BOEM states on page 29 of the EA that, aside from leatherbacks, other sea turtles are tropical and subtropical and would rarely stray into cold waters and would be cold stressed to the point of stranding or death in the action area and so are not carried forward in BOEM's analysis. BOEM should consider the extremely low, seasonal risk associated with leatherbacks and moon pools and not carry the moon pool mitigation forward to the ESA consultation and remove it from Appendix D of the EA. BOEM should provide the data to NMFS indicating the risk is not sufficient to warrant this mitigation that keeps vessels at sea longer, raising other risks and impacts (e.g., emissions, sound).

ii. Appendix D, Section B Protected Species and Geophysical Surveys

- Multibeam echosounders and most chirps should not be included in clearance or shutdown requirements.
  - Section B.4. states “A 500 m Clearance Zone must be established and monitored to be clear of all protected marine mammal species (100 m for sea turtles) for 30 minutes prior to operating boomer, sparker, bubble gun, and chirp sub-bottom profiler categories of equipment, or multi-beam echosounders operating at frequencies below 160 kHz.” NMFS has not been requiring the use of clearance or shutdown zones for multibeam echosounders, regardless of operating frequency, and most chirps have also been considered *de minimis* because of narrow beamwidths. There can be exceptions, but NMFS would determine these at the MMPA permitting stage.
  - On the East Coast, this equipment has not been included in clearance and shutdown in recent surveys.
  - Chirp Sub-bottom profilers were removed from the most recent BA on the east coast and should be removed from the EA here for consistency.
  - BOEM should not pre-empt NMFS by including more mitigation in the EA and Biological Assessment than has been required for this type of equipment in the Atlantic. This could create inconsistencies with the EA at the MMPA permit stage.
- BOEM uses the term “protected species” interchangeably with “ESA-listed species” in some sections. BOEM should clarify its language in these instances.
  - Colloquially, “Protected species” is often applied to marine mammals protected under MMPA and migratory birds protected under MBTA, so BOEM should be specific in the language about ESA-listed species and requirements associated with ESA consultation rather than MMPA and MBTA. MMPA permits will be issued by NMFS, and NMFS should have the flexibility to determine what is necessary to meet MMPA requirements at the time of permitting. Language should be clear about which species are being referred to in Appendix D.
  - For example, the quote above from Section B.4 states “all protected marine mammal species” but this is not likely to be required for all marine mammals in Incidental Harassment Authorizations (for example small dolphins and pinnipeds are excluded from clearance for OSW HRG surveys on the East Coast and excluding the bowriding dolphin species is standard practice).

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<sup>15</sup> Maxwell, S. M. et al. Cumulative human impacts on marine predators. Nat. Commun. 4:2688 doi: 10.1038/ncomms3688 (2013). Data products available on Databasin.org and accessed on June 10, 2022 at <https://databasin.org/datasets/9bdddb86c6e04c13963bf0b421cc4027/>.

- In section B.5, BOEM states “If any protected species is observed...” then continues with “must not be initiated until the ESA-listed whale (or unidentified whale or sea turtle)...” demonstrating BOEM really means ESA-listed animals but has ambiguously referred to them as “protected species” at the beginning of the measure description.

iii. Appendix D, Section C Protected Species and Vessels

- In C.1, BOEM states “If pinnipeds or small delphinids of the following genera: *Delphinus*, *Lagenorhynchus*, *Stenella*, *Tursiops*, and *Phocoena* are visually detected approaching the vessel (i.e., to bow ride) or towed equipment, vessel strike avoidance and shutdown are not required.” ACP suggests some clarifications below.
  - *Phocoena* are not delphinids.
  - BOEM should remove the word “shutdown” or change it to “stopping the vessel” if that is what BOEM means. BOEM has defined “shutdown” in terms of geophysical equipment shutdown, which is covered in Section B of Appendix D and should not be included in Section C to avoid confusion.
  - With respect to acoustic equipment shutdown, NMFS will determine at the MMPA permitting stage what is appropriate for non-ESA-listed species, and it is important to allow NMFS to have discretion to make those decisions at the appropriate time. BOEM should note that MMPA permit outcomes may differ from what is provided in Appendix D regarding non-ESA-listed species but will result in negligible impacts, as required by MMPA.

iv. Appendix D, Section D Entanglement

- In Section D.1, BOEM has specified clearance zone requirements for all marine mammals for ROVs, but then says “if any ESA-listed species is observed...” again BOEM should change “all marine mammals” to “all ESA-listed marine mammals.”
- In Section D.5, BOEM says no buoys should be deployed or retrieved if large whales or sea turtles are sighted within 500 m of the buoy being deployed or retrieved. The EA was written prior to finalization of the Modernization Rule. USACE has no such requirements related to its consultation under ESA for buoy deployments under Rivers and Harbors Act NWP 6. Buoy mitigation, like non-ESA-listed marine mammal mitigation, should be determined via the permitting process.

v. Attachment A to Appendix D Standard Field Codes and Units

The Attachment A to Appendix D (Standard Field Codes and Units) seems unnecessary for an EA. ACP requests that Attachment A be removed from the EA. If BOEM wants to develop a standard spreadsheet and standard codes and units, ACP recommends that should be done in collaboration with NMFS and industry. Attachment A includes all marine mammal species and not just those on the West Coast. Possibly, these standards are better provided in a joint guidance with NMFS.



IX. Conclusion

ACP appreciates the opportunity to comment on BOEM's Draft Environmental Assessment, Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf of Oregon.

Sincerely,

Anne Reynolds  
Vice President, Offshore Wind