



Responsible Offshore Development Alliance

September 13, 2021

Amanda Lefton, Director
Bureau of Ocean Energy Management
45600 Woodland Rd
Sterling, VA 20166

Re: BOEM News Release: BOEM Advances Offshore Wind Leasing Process in California, Public Input Sought on Offshore Wind Areas off California North and Central Coasts

Dear Ms. Lefton:

The Responsible Offshore Development Alliance (RODA) submits the following comments regarding BOEM’s scoping process for the Humboldt Environmental Assessment (EA) announced through the press release “BOEM Advances Offshore Wind Leasing Process in California, Public Input Sought on Offshore Wind Areas off California North and Central Coasts.”¹ BOEM must not move forward with offshore wind energy (OSW) projects on the west coast until it clarifies its process, its compliance with federal transparency laws, and its approach to ensure OSW development does not unreasonably interfere with fishing operations as required by the Outer Continental Shelf Lands Act.²

RODA is a coalition of fishery-dependent companies, associations, and community members committed to improving the compatibility of new offshore development with their businesses. Members of our coalition operate in federal and state waters of the Pacific, New England, and Mid-Atlantic coasts.

RODA encourages BOEM to learn from the sale of over a dozen existing leases along the east coast and improve that process before initiating additional federal waters leases. Most importantly, fishermen and fisheries scientists should be invited to work directly with BOEM, in addition to public comment periods, to assist in the careful site selection of OSW. This approach is the single best way to avoid and minimize impacts to our historic fisheries. It also would send a much-needed show of good faith to the fishing industry that BOEM recognizes their concerns and expertise and is not interested in mere “tick the box” activities.

¹ <https://www.boem.gov/HumboldtEA>.

² 43 U.S.C. § 1337(p).



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BOEM’s Announcements and Comment Process for the Humboldt Area Violate Open Government Laws

The approach currently favored by BOEM does not follow an adequate process, thereby excluding the fishing industry from meaningful participation. The press release issued in lieu of an informational notice provides limited information and suggests bias towards OSW as it states “As part of the Biden-Harris administration’s commitment to creating nearly 80,000 jobs through developing 30 gigawatts of offshore wind energy by 2030, the Department of the Interior’s Bureau of Ocean Energy Management (BOEM) today announced two actions advancing the federal wind leasing process offshore California.” RODA respectfully requests that any political administration commit to adequate, balanced environmental review of the impacts on marine species expected to result from the environmental industrialization arising from the installation of these turbines, other physical OSW-related infrastructure, and associated activities.

RODA and its members respectfully request BOEM carefully adhere to the public notice and comment process mandated by the Administrative Procedure Act³ and described in the American Wind Energy Association’s (now “Clean Power Association”) [Public Participation Guide](#). This would require BOEM to issue a Notice of Intent to begin the public scoping process under the National Environmental Policy Act (NEPA).⁴ Unfortunately, BOEM has chosen instead to perpetuate the OSW developer-centric approach of notifying the public of important actions through pro-wind press releases (containing minimal relevant environmental and procedural facts).

BOEM holds a duty to ensure that the public is well informed and has adequate public comment opportunities under the law.⁵ In exercising that duty, “the quantitative level of participation should not be given greater priority than the quality and balance of participation.”⁶ NEPA provides an agency with wide-ranging regulatory and interpretive discretion so long as “its promulgation process as a whole and in each of its major aspects provides a degree of public awareness, understanding, and participation commensurate with the complexity and intrusiveness of the resulting regulations.”⁷

³ 5 U.S.C. § 551 *et seq.*

⁴ 42 U.S.C. § 4321 *et seq.*

⁵ *See* 5 U.S.C. § 551(c).

⁶ Cary Coglianese et al., *Transparency and Public Participation in the Rulemaking Process: A Nonpartisan Presidential Transition Task Force Report* (July 2008) p. 4.

⁷ *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1028 (DC Cir. 1978).



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As a federal agency, it is necessary for BOEM to maintain transparency and predictable opportunities for public engagement. It is irresponsible for BOEM to not give public stakeholders sufficient information or time to provide insightful input and undermines any perceived “balance of participation.”

By only issuing a press release, BOEM has departed from the established legal process, which does a disservice to the ecosystem under development and the public, the cornerstones of NEPA’s purpose. Public input is an important first, and repeated, step of the NEPA process, which is missing from the approach BOEM is now following for leasing in California. The agency, and the Biden Administration at large, must uphold the high standards of science-based U.S. natural resource management by strengthening—not eroding—the NEPA process. Instead, the announcement associated with this “comment period” provides no detail and no information upon which the public may develop informed input.

Impacts Analyses Must Consider Cumulative Effects

To comply with NEPA, BOEM must consider the cumulative impacts of the pre-construction activities and construction, operations, and decommissioning of OSW projects, individually and in concert with each other. As RODA and numerous environmental organizations have consistently stated in the past, this must occur through a Programmatic EIS that evaluates the entirety of BOEM’s new OSW leasing program.

Purpose and Need

As BOEM has yet to respond to numerous comments from RODA and other groups regarding incorrect framing of its prior “purpose and need” justifications under NEPA, we incorporate those statements by reference and will not repeat them in their entirety. The purpose and need for this EA, based on the information contained in the Administration’s press releases to date, would appear to be to mitigate climate change by installing human-made structures in our currently undeveloped oceans. All OSW projects should be analyzed and discussed as part of a larger plan (both national and international) to address climate change with minimal additional environmental impacts. The U.S. needs a strategic approach to address climate change instead of a haphazard one that prioritizes supposed solutions requiring enormous amounts of new “steel in the water” combined with no plans to retrofit existing infrastructure reliant on fossil fuels, e.g. heating homes.



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Fish and Fisheries Impacts Assessment and Essential Fish Habitat Consultation

We urge BOEM to coordinate closely with the National Marine Fisheries Service, the Pacific Fishery Management Council (PFMC), state fisheries management agencies, and other established experts in order to develop the best possible fisheries data to inform this EA and any future leasing decisions. This information must be supplemented by ecological and business knowledge from the fishing industry and coastal communities. BOEM should use the longest time series available that also includes the most recent and complete fishing year when analyzing fisheries data, bearing in mind that the fishing year does not always follow the calendar year. For more specific fisheries science and management expertise, RODA supports the comments submitted by the PFMC regarding this Draft EA.

Decommissioning

BOEM's regulations require that all sites must be restored to their original state as part of decommissioning. This EA must provide a description of the requirements and environmental impacts of decommissioning, which would be of interest to any member of the public and are not well understood for floating offshore wind energy technology. Without adequate plans and associated funds for decommissioning, this attempt to mitigate climate change using renewable energy sources may result in an ecological disaster for future generations.

BOEM's Must Explicitly Analyze and Authorize Site Characterization Activities

RODA and its members are extremely concerned about ongoing impacts to fishing and the marine environment from OSW survey activities. To be clear, these surveys are already abundant in other regions, occurring round the clock, across a huge range of U.S Outer Continental Shelf and inshore environments. *BOEM must address impacts from unregulated OSW surveys and complete a Programmatic Environmental Impact Statement evaluating the cumulative impacts of all reasonably foreseeable OSW survey effort in the Pacific.* A simple EA authorizing further survey activity off Humboldt would not be sufficient under NEPA given the conspicuous size and scale of such cumulative impacts.

Currently, the process for submitting geological and geophysical (G&G) survey information in Site Assessment Plans (SAP) does not allow for environmental review of the impacts of survey activities. BOEM requires the submission of G&G information in SAPs for both wind energy areas



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and cable routes,⁸ but survey activities undertaken pursuant to the collection of this mandated information are not explicitly governed or permitted under any EA. Because survey information is collected *before* BOEM reviews a SAP,⁹ there is no formal process for evaluating the environmental impacts of survey activities. However, the G&G survey equipment is known to cause harm to commercially harvested fishes¹⁰ and the marine environment,¹¹ is used in a manner that displaces commercial fishing activity, and results in loss of or damage to fishing gear. Numerous RODA members have reported significant population-scale impacts to harvested species on the east coast, particularly pelagic species including squids but also demersal species like whelks, after periods of OSW survey vessel activity. In recent years, the scientific literature on acoustic impacts to commercially harvested stocks has broadened, and the best available science now corroborates the experiences of our members: showing that acoustic impacts from OSW projects and seismic surveys have localized and population-scale impacts to harvested species and their habitat.

Due to the G&G activities occurring outside of the NEPA process, NMFS is unable to conduct Essential Fish Habitat (EFH) consultations for them, despite the fact that geophysical surveys emit high amounts of acoustic energy, including shallow- and medium-penetration sub-bottom imaging systems that use ‘chirp’ and ‘boomer’ equipment.¹² In preparation of a SAP, G&G survey requirements only include a submission of a Biological Evaluation¹³ to NMFS’ Protected

⁸ 30 C.F.R. § 585.610.

⁹ Notably, the public does not have an opportunity to comment on a SAP or even see a draft until after BOEM’s approval.

¹⁰ See, e.g., van der Knaap, Inge, et al. "Effects of a seismic survey on movement of free-ranging Atlantic cod." *Current Biology* (2021). <https://doi.org/10.1016/j.cub.2021.01.050>. While this study examines the effects of the low-frequency-sound pulses associated with oil and gas site characterization, it is unclear to what extent how those differ from sound and vibrations produced by current generation OSW surveys, as available public information spans a vast range of possibilities and we are unable to identify any instance in which BOEM has authoritatively disclosed this information.

¹¹ See Kunc HP, McLaughlin KE & R Schmidt. “Aquatic noise pollution: Implications for individuals, populations, and ecosystems.” *Proceedings of the Royal Society B: Biological Sciences* (2016). <https://doi.org/10.1098/rspb.2016.0839>

¹² BOEM. “Guidelines for Information Requirements for a Renewable Energy Site Assessment Plan (SAP).” (June 2019). <https://www.boem.gov/sites/default/files/renewable-energy-program/BOEM-Renewable-SAP-Guidelines.pdf>.

¹³ National Marine Fisheries Service. “Recommendations for the Contents of Biological Assessments and Biological Evaluations.” <https://www.nrc.gov/docs/ML0921/ML092170770.pdf>.



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Resources Division for the purposes of avoiding marine mammals. EFH assessments and consultations conducted in later project stages have also failed to adequately assess the impacts of G&G surveys to the acoustic environment, as these activities. For example, consultations for the Vineyard Wind and South Fork projects did not evaluate the projects' impacts to EFH from acoustic surveys under the SAP or the COP.

It is unclear whether developers and their contractors are required to disseminate notices to mariners describing survey activities for the development of a SAP,¹⁴ and they are currently not required to develop mitigation and compensation plans for gear lost as a result of pre-SAP surveys. U.S. commercial fishermen regularly report G&G survey vessels operating erratically, failing to adequately communicate with commercial fishing vessels operating on fishing grounds, failing to issue accurate notices describing their planned activity, and occasionally causing gear loss.

BOEM thus allows and even requires, without permitting, activities undertaken by OSW lessees and their contractors that cause significant financial harm to commercial fishing industry members in the form of lost or damaged fishing gear. Further, it allows the leasing of OSW project areas and permitting of activities that result in this destruction and loss without the establishment an adequate gear loss compensation program. Current approaches are piecemeal, administered poorly by developers, and often only developed long after survey operations begin, if at all.¹⁵ RODA has called for the development of a uniform gear loss compensation program without any response or action from BOEM or the states. Such an approach is the norm in other industries, including oil and gas, but here follows the common OSW trend of limited regulation and oversight.

These issues must be addressed in this EA and before leasing decisions that would require additional survey activities. For new large wind energy areas, repeating an unchecked, "Wild

¹⁴ When notices do occur, they take the form of developers distributing "Notices to Mariners" via emailed PDFs to inform fishermen of on-the-water activity on a periodic basis. As RODA has informed BOEM in the past, this is simply not an effective means of notifying fishing vessel captains and crews as they do not access PDFs either while preparing for a trip or while underway. Repeatedly, fishermen have requested developers to improve the basic dissemination of this critical project information. In RODA's Joint Industry Task Force meetings last year, fishermen and OSW developers jointly scoped a communications project that would have two core components: a website for those engaged in management and outreach discussions, and an app for mariners. The developers declined to pursue this project and there remains an urgent need to support RODA in working with developers and the regulatory community to improve these communication streams.

¹⁵ While there are instances in which our members have reported expedient processing of gear loss claims by certain developers, overall there remains significant confusion and consternation that OSW developers are unilaterally tasked with developing, arbitrating, and paying gear loss claims without any external, independent oversight or standardization.



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West” style survey effort for site characterization not only harms biological resources and impacts the fishing industry, but the cumulative impacts of all these surveys may cause to irreparable damage to the marine environment.

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Thank you for your consideration of these comments. RODA and its members look forward to working with BOEM, nationally and in the Pacific, to establish, and participate, a transparent and predictable public comment process. In the meantime, our members’ clear, consistent, and reasonable suggestions for improvements to OSW planning and permitting, and requests for specific mitigation measures, are well documented through hundreds of previous submissions and sign-on letters that are equally applicable to federal waters off of California as to the U.S. Atlantic. Please do not hesitate to reach out if we can provide additional information or clarification.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Annie Hawkins', with a long, sweeping flourish extending to the right.

Annie Hawkins, Executive Director

A handwritten signature in blue ink, appearing to read 'Fiona Hogan', with a long, sweeping flourish extending to the right.

Fiona Hogan, Research Director

A handwritten signature in blue ink, appearing to read 'Lane Johnston', with a long, sweeping flourish extending to the right.

Lane Johnston, Programs Manager

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