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**Re:** Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Proposed Sale Notice

*Submitted via regulations.gov; Docket No. BOEM-2022-0017*

The American Clean Power Association (“ACP”)<sup>1</sup> and Offshore Wind California (“OWC”)<sup>2</sup> appreciate the opportunity to provide these comments on the Humboldt Wind Energy Area (“WEA”) and the Morro Bay WEA Proposed Sale Notice (“PSN”).<sup>3</sup> Our organizations represent and work with the vast majority of offshore wind development companies that are involved in the offshore wind business regionally and across the United States.

## **I. Introduction/Background**

BOEM should be commended for moving forward with its leasing process in the California. The U.S. now has a total offshore wind pipeline of over 28 gigawatts (GW) in federal

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<sup>1</sup> ACP is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and utilization of renewable energy solutions including land-based and offshore wind energy resources in the United States. ACP’s more than 1,000 member companies include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, utilities, marketers, customers, and others. The views and opinions expressed in this filing do not necessarily reflect the position of each of ACP’s members.

<sup>2</sup> OWC is a coalition of industry partners with a shared interest in promoting policies and public support for responsible development of offshore wind power in California. Its members are dedicated to providing an independent voice and industry expertise to facilitate offshore wind deployment off California’s coast. OWC undertakes public education and advocacy of this renewable resource as part of a comprehensive solution to California’s energy needs. OWC is a nonprofit, 501(c)(6) organization. The views and opinions expressed in this filing do not necessarily reflect the position of each of OWC’s members.

<sup>3</sup> 87 Fed. Reg. 32,443 (May 31, 2022), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/california/2022-11537.pdf>.

lease areas issued to date.<sup>4</sup> The addition of BOEM’s proposed WEAs in California will help ensure the U.S. achieves the Administration’s 30 GW by 2030 target for offshore wind and move toward net-zero power sector emissions, and will open substantial opportunities for the continued development of a domestic offshore wind supply chain along the Pacific seaboard.

We encourage BOEM to consider these comments on behalf of the offshore wind industry and to expeditiously issue a Final Sale Notice (“FSN”), and subsequently hold a lease sale for the Morro Bay and Humboldt WEAs—within the 2022 calendar year. We also recognize that the recently announced Inflation Reduction Act (IRA), if and when enacted, increases the urgency of this lease sale so that developers can take advantage of new and expanded clean energy tax credits. We also have the utmost confidence that BOEM will be able to hold the lease sale on schedule notwithstanding the new demands the IRA would place on the bureau as a whole.

We support BOEM’s approach outlined in the PSN to auction the Morro Bay and Humboldt WEAs. BOEM should continue to demonstrate leadership and a commitment to permitting offshore wind in the California by fully leasing the Morro Bay and Humboldt WEAs in order to reach the Biden Administration’s offshore wind goal of 30 GW by 2030, meet demand for offshore wind energy along the Pacific coast, and achieve significant environmental and economic benefits for the United States. The offshore wind potential off California is massive: a recent National Renewable Energy Laboratory (“NREL”) study found there are 201 GW of technical potential for offshore wind off the coast of California.<sup>5</sup>

In May, the California Energy Commission (“CEC”) released its draft Assembly Bill 525 report specifying its preliminary offshore wind planning goals – 3 GW by 2030, 10-15 GW by 2045, and potentially up to 20 GW by 2050.<sup>6</sup> Before finalizing the report, the CEC decided to consider additional studies and stakeholder comments that advocated for increasing the State’s offshore wind planning goals to 5 GW by 2030 and 20 GW or more by 2045. ACP and OWC support these expanded planning goals,<sup>7</sup> which we believe are well-supported by the latest

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<sup>4</sup> ACP, U.S. Offshore Wind Industry Status Update, (2021) available at [https://cleanpower.org/wp-content/uploads/2021/02/ACP\\_FactSheet-Offshore\\_Final.pdf](https://cleanpower.org/wp-content/uploads/2021/02/ACP_FactSheet-Offshore_Final.pdf).

<sup>5</sup> Available at <https://www.nrel.gov/docs/fy21osti/77642.pdf>.

<sup>6</sup> CEC Draft Commission Report on Offshore Wind Energy Development off the California Coast, May 2022.

<sup>7</sup> Offshore Wind California and American Clean Power - California Comments to California Energy Commission (CEC) Regarding Assembly Bill (AB) 525 Offshore Wind Planning Goals for 2030 and 2045, July 7, 2022

research, including a new NREL analysis<sup>8</sup> submitted to the CEC on capacity findings and power density of floating offshore wind in California.

Once finalized, these ambitious multi-GW goals will represent an important milestone for the state's offshore wind industry, demonstrating that California is serious about "going big" on floating offshore wind to drive economies of scale and realize the substantial jobs, climate, and clean power benefits from responsibly developing this renewable energy resource. The goals will send an important signal to the industry and other state and federal agencies that California is committed to moving forward expeditiously to make offshore wind power a reality. This includes the federal lease auction this fall and planning for ports, transmission, procurement, additional call areas, workforce development, and a sustainable supply chain to jumpstart the state's offshore wind industry. The ultimate goal is to develop a thriving, world-leading floating wind industry and make offshore wind a key part of California's diverse clean power portfolio, while also protecting the state's marine and coastal resources.

The Morro Bay and Humboldt WEAs for lease in the PSN have been designated through careful analysis, interagency cooperation, and stakeholder agreement. As they stand, they are responsive to the nation's renewable energy goals and the need to develop a predictable leasing pipeline in the Pacific. -Any reduction in these lease areas threatens the ability to sustain a long-term supply chain. Economies of scale are necessary to drive cost reduction, optimize layout and attract a regional supply chain. Our research and calculations find that offshore wind lease areas should ideally be at least 100,000 acres, and these lease areas are already smaller than that. Reducing the lease size into areas that are any smaller will come at a higher cost and erode economies of scale. We do not suggest that BOEM merge lease areas to create larger lease areas, given the long-term needs of the region and nation, and we strongly recommend that BOEM not to reduce the size of the areas in the FSN. We appreciate BOEM's transparency on the potential for corridors or buffers that could encumber lease areas. The FSN should include clear language that the final boundaries of the offered lease areas will not be subject to further encroachment absent convincing new evidence warranting such restrictions.

The success of this auction will catalyze the entire West Coast offshore wind market.

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<sup>8</sup> Offshore Wind Research Summary – California Study Results, National Renewable Energy Laboratory (NREL), Walt Musial, Presentation to California Energy Commission Workshop, June 27, 2022, p. 8.

Therefore, we strongly advise BOEM to maximize competition and benefits for the California supply chain and affected stakeholders. It is critical that developers are able to depend upon clear policy imperatives so that they will choose to invest in this industry and maintain a sustained presence in the U.S. offshore wind market, especially on the West Coast. If structured with the recommendations we make in this comment, this auction should attract experienced and qualified participants, fostering competition among developers and providing cost savings for California ratepayers. It should also ensure the viability of the supply chain on the West Coast, reducing risks that could inhibit project completion and jeopardize BOEM's offshore wind goals. Given the early stages of the West Coast offshore wind market, BOEM should structure the auction so that the capital it attracts provides direct benefits to affected stakeholders, providing certainty to projects and the floating offshore wind market on the entire West Coast.

Finally, we would like to emphasize our interest in continued engagement with BOEM, the State of California, and other key parties following the PSN comment deadline. Striking the right balance in structuring the California lease sale will require an iterative process and constant dialogue. The offshore wind industry stands ready to participate in that conversation in the coming months as we work toward our goal of a timely and successful sale of the Morro Bay and Humboldt leases.

## **II. Comments**

### **A. Bidding Credits**

ACP and OWC request that BOEM provide more flexibility in designating a bidding credit. We appreciate that BOEM recognizes that bidding credits that benefit the community increases the likelihood that a project will garner public support, and therefore enhance the project's likelihood of being built in time to provide badly-needed clean energy to California's grid. Stakeholder and community buy-in is essential to the success of infrastructure construction, even for projects as beneficial to the environment as offshore wind. If there is ever a state in which to maximize the benefits to the community through providing flexibility in offering bidding credits in a lease auction, it is in California.

This lease sale is the first on the West Coast of the United States and should be treated as a new market since floating wind has not advanced to this stage elsewhere in the country.. Not only should BOEM provide greater flexibility for developers who wish to claim a bidding credit,

but BOEM should also expand the scope of the credit to allow the credit to benefit a wider range of affected parties, including tribal nations and other environmental justice communities. It is also important that aggregate bidding credits be accessible so that they do not tilt the competitive playing field. As outlined in the following sections, it is too early at this stage to know exactly what the exact optimal uses of the credit may be in the coming years. An increase in flexibility and credit scope will encourage funds to flow to the purposes that will create the most good and increase the likelihood that these projects will succeed.

In addition, in the PSN, BOEM requested information on how a bidding credit proposal is consistent with the requirement that the government receive a fair return from the lease auction. A bidding credit like the one we outline below is legally permissible under OCSLA's requirement that BOEM ensure "a fair return to the United States for any lease," and "fair return" constitutes one of the various factors that must be balanced in its leasing decisions.<sup>9</sup> "Fair return" is not defined under OCSLA or BOEM regulations, nor is the term defined in any other statute. Therefore, BOEM has broad discretion in determining what constitutes fair return.<sup>10</sup>

Given the broad discretion that Congress has afforded BOEM, BOEM has wide latitude to determine what bidding credit amount will allow for fair return. So long as the bidding credits themselves meet an OCSLA objective (which they do, as discussed below), the credit should be tailored to BOEM's policy preferences, as informed by BOEM's consultations with other government agencies, industry, and other stakeholders. Therefore, BOEM should not view the "fair return" OCSLA provision as setting a constraint its ability to ensure, as much as possible, that the bidding credit will maximize benefits to both offshore wind developers and stakeholders. We discuss the specifics of our proposal in more detail below.

## **1. Community Benefits Flex Credit**

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<sup>9</sup> 43 U.S.C. §1337(p)(2)(A); § 1337(p)(4)(H).

<sup>10</sup> The "fair return" requirement for BOEM's offshore wind leasing contrasts with Congress's requirement in offshore oil and gas that the federal treasury receive "fair market value" for its leases. 43 U.S.C. § 1344(a)(4). . Despite the lack of legislative history undergirding the term "fair return," one can intuit the value in a more flexible standard for offshore wind than for oil and gas. The market for renewable electricity is far more complex than the market for global commodities such as oil and gas; the sale price for offshore wind electrons is highly dependent on an array of factors, including: regional energy markets; state-specific policy incentives; and the levelized cost of energy (LCOE) incorporating expenditures for capital and labor. *See, e.g.,* NREL, The Cost of and Feasibility of Floating Wind in California (2021), <https://www.nrel.gov/docs/fy21osti/77384.pdf>.

We appreciate BOEM’s continued experimentation with different types of bidding credits, and we share the policy priorities that BOEM has targeted with its proposed credits in the PSN: supply chain development, workforce training, and fisheries compensation. However, we believe BOEM’s objectives would be best accomplished by replacing its two proposed bidding credits with a single “Community Benefits Flex Credit” (“CBFC”) that allows each auction winner latitude to allocate funds where they are most needed, at a time when such spending would be most beneficial. The CBFC would absorb both of the credits BOEM is currently proposing, and would expand the allowable uses to include benefits to tribal and other environmental justice communities.

The CBFC should be flexible in order for developers to make individual determinations and maximize competition, and so that a lessee would have the flexibility to allocate among different categories of beneficiaries based on its determination of what use would provide the most value to the community and the California economy. We believe that the aggregate value of the CBFC should be higher than the sum of BOEM’s proposed bidding credits in the PSN (22.5%) so as to increase the size of the pie available to all categories of beneficiaries, although we take no position here regarding what that total amount should be. We also note that our support for a bidding credit higher than 22.5% is contingent on BOEM providing increased flexibility in the satisfaction of the bidding credit(s), whether or not it is done through a mechanism similar to our proposed CFBC,<sup>11</sup> Perhaps just as importantly, we support putting guardrails on the allocation of the CFBC in order to ensure that all categories of beneficiaries do in fact benefit when it comes time for a lessee to allocate the CBFC. No prospective beneficiary should be concerned that it will be left out of the payments and other advantages that the CBFC would confer.

It will also be critical that bidders have a clear understanding how each credit will be evaluated, implemented, and managed to allow bidders to accurately evaluate their ability to qualify for credits and determine a strategy that suits their individual needs. Without such clarity and certainty, bidders may not choose to take advantage of these credits, which could harm both competition and the stakeholders who stand to benefit from these credits. We look forward to

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<sup>11</sup> On the other hand, we support increased flexibility in the bidding credits even if BOEM does not elect to raise the aggregate amount above 22.5%.

further discussions with BOEM and other stakeholders regarding the implementation of criteria for each credit, and provide suggestions in the sections that follow.

The CFBC would align well with the factors that BOEM must balance under OCSLA. Under OCSLA, BOEM’s charge is to balance all 13 factors in 43 U.S.C. § 1337(p)(4), including safety, protection of the environment, national security, and consideration of other uses of the sea or seabed. *Id.* § 1337(p)(4)(A)–(L). As BOEM has already determined that lease provisions that contribute to the development of a domestic supply chain protect U.S. national security interests pursuant to 43 U.S.C. § 1337(p)(4)(F).<sup>12</sup> Likewise, credits for fisheries compensation relate to BOEM’s obligation to consider “other uses of the sea or seabed, including use for a fishery[.]” And a credit for tribal or other environmental justice groups would contribute to the “protection of the environment” under 43 U.S.C. § 1337(p)(4)(B), first because environmental justice *is* environmental protection, and second because it ensures that historically marginalized communities can benefit from new forms of energy production rather than being harmed by environmental degradation as they have in the past. By providing a diverse range of bidding credits that reflect multiple factors under OCSLA, BOEM can clearly demonstrate a balance of interests that meets the statutory requirements of OCSLA.<sup>13</sup>

In the next three sections, we provide feedback on each of the three credits that we propose including under the umbrella of our proposed CFBC.

## **2. Fisheries Compensation**

We support BOEM’s proposal for a bidding credit aimed at “assist[ing] fishing and related industries to manage transitions, gear changes, or other similar impacts which may arise from the development of the Lease Area.”<sup>14</sup> ACP and OWC recognize the value of such mitigation, and indeed have already proposed the establishment of regional fisheries compensation funds that would be funded through bidding credits. However, we believe that including this credit under the CFBC would provide lessees the flexibility and incentive to

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<sup>12</sup> New York Bight Final Sale Notice Decision Memorandum at 8-9, *available at* <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/ATLW-8-NY-Bight-Final-Lease-Sale-Decision-Memorandum.pdf>

<sup>13</sup> We also are confident that the CFBC would comply fully with the Miscellaneous Receipts Act (MRA), 31 U.S.C. 3302, because it does not result in the re-direction of any money received by BOEM as a result of the auction. All bidding credit funds would be paid directly by the lessors.

<sup>14</sup> 87 Fed. Reg. at 32,450.

exceed the 2.5% credit prescribed in the PSN.

In addition, we believe the credit should not be limited to CBAs. While we agree that CBAs should be eligible for the fisheries compensation credit, they should not be the sole mechanism for qualifying for the credit. We are concerned that the proposal in the PSN, by focusing only on CBAs and not contemplating other instruments such as third-party funds, could present prospective bidders with the unenviable choice to either (a) engage in a rush to sign agreements before a lease sale has even happened, thereby risking stakeholder fatigue; or (b) constrain discussions between the winning bidders and commercial fishermen after the lease sale. We recommend that the fisheries compensation credit should be awarded for a wider range of agreements and mechanisms, so long as they achieve the goal of providing compensation to fishermen for, among other things, lost income, gear replacement, and gear upgrades. Among these mechanisms, BOEM should include existing and future agreements to finance independent third-party compensation funds. BOEM should also be careful that, in setting criteria for this credit, it does not unnecessarily constrain the terms of existing or future agreements.

### **3. Tribal and Environmental Justice Credits**

In addition, tribal nations and environmental justice communities could be recipients of such credits. It is particularly important that tribal nations see a benefit from offshore wind, and that such funding can be used to help with job creation and rural electrification. For instance, 40% of the Yurok Tribe does not have access to the grid. In addition, the credit could help provide support for tribal engagement in the offshore wind development process, such as providing travel funding and educational opportunities. Offshore wind developers are actively seeking to invest in their communities and regions and are deeply engaged in developing measures that will allow offshore wind development to benefit other environmental justice measures. We recommend that lessees be afforded similar flexibility in terms of qualifying instruments as requested above with respect to fisheries compensation agreements.

### **4. Supply Chain and Workforce Credits**

We support the intentions of the supply chain and workforce credit in the PSN. However, we strongly suggest that BOEM modify it in several key ways. First, as discussed above, bidders should have more flexibility in the amount of the bidding credit that they devote to the prescribed supply chain and workforce investments. This optionality is necessary because at this early stage



in the West Coast offshore wind industry, it is truly unknown how much investment in supply chain and workforce training will be needed, when and where it will be needed, and what other sources of funding will become available to build out onshore infrastructure and train a local workforce. The answers to these questions will become clearer in the coming years, and it will benefit everyone if lessees can preserve the ability to adapt their bidding credit spending to changing circumstances.

Second, we recommend that BOEM modify the deadlines by which the Community Benefits Flex Credit as proposed by ACP/OWC must be allocated and expended. COP submittal is an unrealistic benchmark for offshore wind developers to be able to make well-considered investments in an industry-wide supply chain, especially given that the West Coast market that is an emerging one with little existing offshore wind infrastructure. Additionally, the West Coast supply chain is further behind the nascent East Coast supply chain faced by the Carolina Long Bay lessees. We believe the FSN should allow additional time as compared to the last BOEM lease sale. We recommend that BOEM require the California bidding credits be allocated and expended no earlier than 12 months following the final non-objection to the lessee's facility design report (FDR) and fabrication and installation report (FIR). This benchmark would allow lessees sufficient time to have made a final investment decision and (as applicable) closed on the financing of the project.

. Third, if a lessee cannot commit by the benchmark suggested above, the lease should include ~~additional~~ relief from punitive enforcement measures by expanding the basis for extending the deadline to include unforeseen events and good faith efforts. in the event that a developer makes good faith efforts but is unable to make the full investment by the deadline. As a matter of fairness and to reduce technical and financial uncertainty, we recommend that BOEM expand the basis for extending the deadline to include unforeseen events and good faith efforts, and allow a developer to only return the portion of the credit that was not used on required investments at the risk-free treasury rate if it cannot meet the full commitment. By the same token, we also request that the backstop date by which the credit must be spent—as set forth in proposed lease stipulation 8.2.1.4—should be extended from 10 to 12 years to accommodate

uncertainties inherent in building a West Coast offshore wind industry from the ground up.

Fourth, we request more clarity regarding what and to where the credit can be applied. The additive nature of these investments is key. The current language allows the credit to be used for “programs” and “incentives,” but we seek clarification that these terms can include direct or indirect investment in domestically produced components and domestic hiring. We also seek further explanation for—and recommend deleting—the bar on receiving equity in return for lessees’ contributions, as this could disincentivize a wide range of otherwise helpful investments. BOEM should clarify the methodology behind its determination of market rates—or, as an alternative, eliminate the standard all together. As noted above, multiple factors may determine market rates, and BOEM should aim to incentivize as many American industries as possible through this credit.

Finally, we would like clarification in the FSN that the supply chain aspect of the bidding credit can be used to make investments in port infrastructure—the need for which is discussed at greater length in Section G below.

**B. BOEM Should Maximize Competition By Holding One Auction With A One Lease Per Bidder Limit.<sup>15</sup>**

We support BOEM’s proposal to allow only one lease per qualified bidder per auction, but we disagree with BOEM’s proposal to hold two simultaneous auctions and recommend that BOEM limit one lease per bidder across all five leases in one lease auction. We believe this approach will benefit everyone by maximizing competition, during both the lease auction and the development process.

The need for competition is paramount. In order to keep the levelized cost of energy low enough that California ratepayers can afford offshore wind-generated electricity, increased competition is necessary. In addition, increased competition will lower the price for services and create additional contracting opportunities. Limiting each bidder to one lease will result in more competition in all future stages of development, allowing the California workforce and ratepayers alike to benefit.

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<sup>15</sup> The views and opinions expressed in this section do not necessarily reflect the position of each of OWC’s and ACP’s members.

In addition, BOEM should hold one single auction in 2022 for all five proposed lease areas. There is no need for parallel auctions: all leases will connect to the same power grid in California, and lessees will need to comply with the same interconnection processes and contracting opportunities. Both WEAs have their own unique development risks, and the auction itself will correct for any regional differences. Based on our understanding of market interest and the number of prequalified bidders, we believe it is reasonable to limit each winning bidder to one lease area and to hold a single auction of all five lease areas in both Humboldt and Morro Bay.

### **C. Proposed Chumash National Marine Sanctuary (“CHNMS”)**

We urge BOEM to follow through on its January 31, 2022 comments urging the National Oceanic and Atmospheric Administration (NOAA) to “adjust the boundary of the [Chumash Heritage National Marine] Sanctuary to facilitate transmission from the Morro Bay WEA to viable points of interconnection in the central coast.”<sup>16</sup>

We appreciate that BOEM acknowledges in the PSN that future designation of the CHNMS, an area comprising approximately 7,000 square miles off the central coast of California and adjacent to the Morro Bay WEA, may have impacts on offshore wind energy development and warrants full consideration by NOAA in the DEIS. So far, however, far too much uncertainty remains regarding whether future Morro Bay lessees will be able to connect their projects to the grid through a national marine sanctuary. ACP described this uncertainty in detail in its own comments on NOAA’s proposed designation of the CHNMS.<sup>17</sup> As we noted six months ago, if the proposed CHNMS boundary is finalized, the Morro Bay WEA would be “sea-locked,” increasing the legal and regulatory risks of developing offshore wind development in that area. In other words, the proposed boundary for CHNMS would eliminate any route to the shore for an export cable route and associated electrical substations that would not involve crossing a national marine sanctuary, and BOEM could not exercise its customary authority to permit such cables; instead, the offshore wind project would need to receive authorization from NOAA for its export cable to cross the CHNMS.<sup>18</sup> We are concerned that if NOAA stepped in to

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<sup>16</sup> BOEM Comments to NOAA on Proposed Designation of CHNMS, January 31, 2022, <https://www.regulations.gov/comment/NOAA-NOS-2021-0080-1055>.

<sup>17</sup> ACP Comments to NOAA on Proposed Designation of CHNMS, updated February 8, 2022, *on file with NOAA*.

<sup>18</sup> Under OCSLA, BOEM’s authority to issue leases, easements, and rights-of-way “does not apply to any area on

issue its own cable authorization in lieu of BOEM, it may create unnecessary legal and timing hurdles that could result in project delay or cancellation. Thus, it is critical for BOEM to work with NOAA to resolve this issue early in the designation process by adjusting the CHNMS boundary to allow for a feasible cable route.

We recognize that no final decision on the CHNMS boundaries will be made in advance of the California lease sale. However, NOAA *can* commit, publicly and in advance of the California lease sale, that it will make the *preferred alternative* in the forthcoming CHNMS Draft Environmental Impact Statement (“DEIS”) one that reflects adjusted boundaries of the CHNMS to ensure that all Morro Bay leases are able to run transmission cable to the most likely interconnection points: the Morro Bay and Diablo Canyon power plants, without crossing through the sanctuary. We urge BOEM to work with NOAA to make such an announcement in the coming months. Failure to do so will result in significant regulatory uncertainty surrounding the viability of development of the Morro Bay leases. This, in turn, will drive down competition for the Morro Bay leases, and with it, the benefits that potential developers would provide to the surrounding communities as a result of the proposed bidding credits.

Lastly, we recommend that BOEM acknowledge the challenges that national marine sanctuaries may pose in connecting the Humboldt lease areas to the grid, as any regional offshore transmission cables from those areas to load centers in the San Francisco Bay area would likely need to traverse as many as three existing national marine sanctuaries: Greater Farallones, Cordell Bay, and Monterey Bay. Major statutory and/or regulatory revisions may be required in the future to facilitate the full usage of the Humboldt leases and any future North Coast leasing.

#### **D. Vessel Transit Corridors**

We agree with BOEM that the information available does not indicate that vessel routing mitigation measures are needed. Safe vessel navigation is a priority for the offshore wind industry, and we appreciate the USCG’s work in conducting PACPARS and BOEM’s efforts to coordinate with USCG prior to the final lease sale. We note that much work has already been done to ensure safe navigation in this area, and that the robust deployment of offshore wind is entirely compatible with safe vessel navigation.

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the outer Continental Shelf within the exterior boundaries of any unit of the . . . National Marine Sanctuary System[.]” 43 U.S.C. 1337(p)(10).

We do understand that there needs to be resolution with USCG on interaction with future shipping lanes and lease areas and emphasize that BOEM work with USCG to ensure that the lease areas and wind turbine generator (“WTG”) placement within those areas are not affected, particularly within the Morro Bay WEA. The Morro Bay and Humboldt WEAs areas are simply too small to warrant vessel routing measures throughout any lease areas within them. Any vessel routing measures can easily avoid the lease areas—including buffer zones for such lanes, including the USCG “recommended tracks” that cross the Morro Bay WEA. We recommend that BOEM convey this to USCG in the additional discussions referenced in the PSN. If, for any reason, BOEM does include lease stipulations addressing vessel routing measures in the FSN, BOEM should provide detailed information as to how it arrived at its conclusions, including how it calculated the corridor/lane width, length, and orientation, and reasoning for why the lease areas could not be avoided.

We also urge BOEM to work with the USCG to reach an agreement that when a final PACPARS is issued, the recommendations from that PARS (or subsequent PARS) will not apply retroactively to areas that have already been leased. Specific navigational concerns can be appropriately addressed via project-specific Navigation Safety Risk Assessments (“NSRAs”) that are incorporated into a lessee’s Construction and Operation Plans (“COPs”), which are then subject to federal environmental review and public comment under the National Environmental Policy Act (“NEPA”). We believe that additional analysis of traffic concerns and proposed turbine layouts can be conducted on a more project-specific level, to allow for proper mitigation for each project if there is a crucial need.

#### **E. Telecommunication Cables**

ACP and OWC appreciate BOEM’s interagency approach to designating leases and anticipating multiple needs of turbines. As mentioned in the PSN, there are two planned submarine cable systems that are scheduled for installation in cable corridors that overlap the proposed Lease Areas. A planned submarine telecommunications cable system, known as BIFROST, is expected to be installed in 2023 in a cable corridor that would overlap with the southern portion of the proposed Morro Bay E Lease Area. A planned telecommunications cable, known as ECHO, is expected to be installed in Eureka, California, in 2023 and would overlap with both proposed Humboldt Lease Areas. As BOEM has done in other lease sales, we

encourage BOEM to cooperate with the U.S. Army Corps to ensure that siting of telecom cables is carried out to minimize conflict with leases.

#### **F. Military & Airspace Conflicts**

We urge BOEM to make public any potential Department of Defense (“DoD”) stipulations in the lease area prior to the FSN. While we appreciate that BOEM has worked with the DoD to work to establish lease areas that will not conflict with military operations and that the proposed lease areas offshore Morro Bay area all located within the area determined by the DOD to be suitable for development, we urge transparency on site-specific stipulations, as they could have the practical effect of derailing development.

BOEM imprecisely notes in the PSN that future consultation with the department could necessitate site-specific stipulations, such as to deconflict potential effects to the North American Aerospace Defense Command (“NORAD”) mission. We understand from DoD’s Morro Bay EA comments that the Morro Bay WEA is located within at-sea warning areas, W-285 and W-532, as designated by the Federal Aviation Administration, and that W-532 is also part of the Point Mugu Sea Range (“PMSR”).<sup>19</sup> According to DoD, the potential introduction of tall structures in the water within this warning area “will displace military activities that utilize the low-altitude airspace and sea space,” and potential mitigation measures could “include curtailment of wind turbines to avoid impacts to DoD training and testing, such as missile exercises and PMSR activities where electromagnetic interference must be eliminated.” While such mitigation measures are potentially workable, firmer guidance is needed from BOEM on the exact site-specific stipulations that are expected. A height limit, for instance, could severely hinder a project’s viability. Without more clarity, developers may hesitate to commit to a bid within the Morro Bay lease area, which would drastically alter the auction format and potential benefits to community stakeholders. We urge BOEM to attempt to work with DoD to provide, to the fullest extent possible, clarity on potential lease stipulations and continue to work with DoD to mitigate any outstanding issues.

We are grateful for the efforts of DOI, BOEM, DoD, the State of California, and Congressman Carbajal over the last few years to jointly assess and resolve potential conflicts

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<sup>19</sup> <https://www.regulations.gov/comment/BOEM-2021-0044-0154>

over sea-space for offshore wind off the Central Coast. We are hopeful that BOEM, in cooperation with DoD, can provide more certainty within the W532 warning area for potential developers prior to releasing the FSN.

### **G. Ports**

Offshore wind development in California WEAs will require port revitalizations and infrastructure improvements to create capacity for turbine assembly due to the large size of floating WTGs. For instance, the Port of Morro Bay does not have an adequate staging area for the floating WTG assembly and deployment, and either that port or an adjacent one may need to be developed in order to develop projects. For instance, Port Hueneme, Long Beach, Los Angeles, and San Francisco could be possible ports that future lessees may use to develop on the California coast. But regardless, port infrastructure upgrades will likely be necessary to accommodate the size and scale of floating offshore wind turbines.

Under the California AB 525, by no later than June 30, 2023, the CEC, in coordination with federal, state, and local agencies and a wide variety of stakeholders, must develop a strategic plan for offshore wind energy developments installed off the California coast in federal waters and submit it to the California Natural Resources Agency and the California Legislature. The overall strategic plan must include a plan to improve waterfront facilities that could support a range of offshore wind energy development activities, including construction and staging of foundations, manufacturing of components, final assembly, and long-term operations and maintenance facilities. The assessment must also include workforce development needs, and competing and current uses, infrastructure feasibility, access to deep water, bridge height restrictions, and the potential impact to natural and cultural resources, including coastal resources, fisheries, and Tribal nations.

We recommend that BOEM work together with the relevant California agencies under an MOU to evaluate port availability and buildout, as well as the impacts of multiple ports and port use/and construction. In addition, it will provide more certainty for developers and stakeholders, while reducing any potential for conflict between state and federal planning needs. We urge BOEM to work with the California CEC and other agencies to meet these goals and pave the way for offshore wind development.

## **H. Lease Provisions**

In finalizing leasing provisions in advance of the FSN, we recommend that BOEM accommodate the fact that this is the first lease sale on the West Coast and apply lessons learned on the East Coast.

First, BOEM should extend the time frame to produce the Native American Tribes Communications Plan (NATCP). The 120 days offered in proposed lease stipulation 3.1.2.1 does not allow for the development of a robust, comprehensive plan given that collaboration will need to occur with numerous Tribal governments located in central and northern California, as California is home to over 100 federally recognized Tribal governments and many more non-federally recognized Tribes. The process of drafting the plan, coordinating several meetings, implementing comments, and recirculating for review should not be rushed. We recommend BOEM extend the timeframe from 120 to 180 days, with the potential for a 180-day extension, at a minimum; this is consistent with extensions already offered to lessees in the New York Bight. We also suggest a similar extension for the Agency Communications Plan (ACP) in proposed lease stipulation 3.1.2.2, as lessees will need to communicate with West Coast offices of federal agencies that have much less experience with the offshore wind permitting process than those on the East Coast.

Second, BOEM should consider extending the required time period for SAP submittal from 12 to 18-24 months following lease issuance, to accommodate the time required for procurement of vessels to undertake geophysical and geotechnical surveys in support of the SAP application and for acquisition of necessary permits required for the surveys (e.g., Incidental Harassment Authorization from NOAA). The current 12-month time frame would require developers to begin these activities prior to BOEM lease auction, without the guarantee of winning a lease. We note that on the East Coast, BOEM has granted numerous Preliminary Term extensions because of the unrealistic nature of this timeframe.

## **I. Lease Sale Timing Transparency**

Finally, we urge additional transparency on the timing of the lease sale. Many of our members must obtain financing in order to participate in BOEM lease sales and extended uncertainty over the anticipated date of the lease sale can disrupt this process. We urge BOEM



to publicly commit to a 2022 lease sale date well ahead of issuing the FSN so that bidders can adequately prepare.

### **III. Conclusion**

ACP and OWC appreciate the opportunity to provide these comments. If you have any questions, please do not hesitate to contact the undersigned at the contact information listed below. We look forward to working with BOEM as it moves forward with leasing offshore wind in California.

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