



Rogue
Climate



May 1, 2023

Georgeann Smale, Renewable Energy Modernization Rule Lead
Karen Thundiyl, Chief
Office of Regulations
Department of the Interior
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

VIA: REGULATIONS.GOV DOCKETING SYSTEM

RE: Comments on BOEM's Notice of Proposed Rulemaking on the Renewable Energy Modernization Rule, Docket Number BOEM-2023-0005

I. Introduction

The undersigned organizations appreciate the opportunity to comment on the Bureau of Ocean Management (BOEM) Proposed Renewable Energy Modernization Rule (the Rule). Bureau of Ocean Energy Management, Renewable Energy Modernization Rule, 88 Fed. Reg. 5968 (Jan. 30, 2023).

We support the stated goal of the Rule to promote the *responsible* development of renewable energy, and create transparency and resource-specific criteria around wind energy development. Insofar as the situations are comparable, we agree with, and incorporate by reference the comment filed by a coalition of groups lead by the Conservation Law Foundation. However, there is an important caveat. The East Coast NGO comment deals with nearshore, fixed-structure offshore wind. This is a known technology (albeit evolving), and the East Coast commenters therefore operate on the assumption that wind energy development will go forward in some form and in some places, with the necessary environmental constrains. Floating offshore wind energy, as is being contemplated for the West Coast, is untested, especially in highly turbulent Pacific Northwest waters, and its impacts are entirely unknown. No assumption should therefore be made in advance that floating offshore wind will proceed at all. We have

several West Coast-specific concerns about what is missing from the Rule as presented.

First, we are concerned that the potential impacts that result from this will fundamentally change the way that water and wind move offshore on the West Coast. We urge BOEM to undertake a West Coast Programmatic EIS as its first step towards any development of wind energy. The cumulative impacts of floating offshore wind development, especially should it shift upwelling, could be monumental and cascading. If BOEM cannot ensure that alterations to the California Current cannot be avoided, it should abandon floating off-shore wind. While the National Environmental Policy Act requires disclosure of the impacts, BOEM should also take this opportunity to implement requirements to avoid, and then minimize impacts. The Rule should at a minimum create a mechanism by which BOEM can require financial mitigation for impacts. Beyond that, because of the breadth of potential impacts (particularly from floating wind power facilities proposed on the West Coast), BOEM should require a bond sufficient to disassemble and remove any structure or other components, and restore the offshore area at the end of its useful life, **or** if the impacts to the ocean are significantly adverse, greater than the intensity predicted in its analysis, or cannot be otherwise mitigated.

Second, this rule does not adequately address the potential impacts to coastal communities from the reasonably foreseeable (or required) nearshore and upland development of infrastructure necessary to support the development, maintenance, and operations of these offshore facilities. Indigenous communities near any proposed call area should be consulted and involved in any planning and decision making from the first step.¹

Finally, the impacts to fisheries (and the fishing industry) are not adequately addressed in this rule. Conservation-focused fish advocates, sport fishing groups, and commercial fishermen have unique interests and all should be involved in the planning and mitigation processes from the beginning.

II. Anticipation and Mitigation of Adverse Ocean and Upland Impacts

Given the requirements in the National Environmental Policy Act (NEPA) to attempt to quantify reasonably foreseeable individual and cumulative impacts likely to result from a proposed action under this rule, we urge BOEM to require comprehensive analysis early in the leasing and project selection process. We further urge BOEM to take this rulemaking opportunity to include substantive antidegradation requirements related to any impacts found under NEPA.

BOEM should undertake a programmatic analysis as early as possible, to outline and anticipate likely impacts from these proposed projects. A West Coast PEIS would

¹ The undersigned organizations agree with the concerns and comments outlined by the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians tribal government (CTCLUSI) submitted on this matter, and defer to CTCLUSI with regard to consultation and tribal engagement concerns.

ensure that impacts from changes to wind patterns, upwelling, shading, water temperature impacts, and physical intrusions into the ocean floor and near-shore, intertidal, and upland areas can be addressed early and completely, giving potential regulated entities ample notice of the kinds of impacts they should be prepared to avoid, address, and mitigate (in that order). Because no projects of this type have ever been installed along the Oregon coast, BOEM should exercise restraint and caution when permitting potentially massive projects with potentially massive consequences.

BOEM should develop a West Coast-specific plan for wind energy development, similar in scope and breadth to the Northeast Ocean Plan, or Mid-Atlantic Regional Plan. Those plans describe collaborative actions, and best practices used to inform and guide federal, state, Tribal, and Fishery Management Council activities under existing authorities. This kind of over-arching planning process will do double-duty to reveal broad impacts, and create certainty for regulated entities. While we understand the urgency around a decarbonized energy future, it should not come at the expense of the environment.

A. Offshore Impacts

Additionally, to the extent that BOEM can analyze reasonably foreseeable impacts up front, less analysis will have to be done later down the line. Much of the uncertainty around offshore wind along the Oregon coast is a result of the lack of comprehensive analysis of the impacts to the ocean environment that can be expected from these proposed floating wind energy facilities.

Concerns around noise, water temperature, wind shadowing, upwelling zone shifts, habitat disruption, direct wildlife impacts through collision and entanglement, and visual impacts must be avoided or fully mitigated. In order to understand the likely impacts, analysis should take place early and often. Further, the Rule should require ongoing monitoring, analysis, avoidance, and mitigation.

Undertaking a comprehensive programmatic analysis early will also help create a more accurate baseline for comparing any future conditions. The Oregon coast and the larger California Current marine ecosystem are home to sensitive ecosystems and faces mounting threats to ecosystem quality and functions. A proper baseline, and a comprehensive analysis will be required to fully understand what impacts are a result of offshore wind development.

B. On-Shore and Upland Impacts

With regard to potential projects off of the Oregon coast, the need for upland improvements is a known issue. Development undertaken in advance of the build-out of any off-shore wind project would create significant upland and nearshore impacts. The ports along the Oregon coast do not currently have the size, depth, or infrastructure to support or develop the massive structures called for in preliminary documents seen by the undersigned organizations. The extensive development required to support this kind of development presents significant potential conflicts with estuarine resources.

Similarly, the electricity transmission infrastructure along the Oregon coast is not currently capable of handling the enormous current loads anticipated from these proposed wind projects.

Because these impacts are all reasonably foreseeable as a result of any Oregon offshore wind energy project, BOEM should anticipate and head off those impacts to the greatest extent possible, to limit impacts to the environment and the coastal communities.

III. Consultation with Indigenous Governments

As noted above we defer to and agree with the issues raised in the CTCLUSI comment on this rule. BOEM should expressly incorporate tribal consultation requirements into the Rule. See, *e.g.*, EO 13175. Tribal consultation should be comprehensive and give deference to tribal concerns.

Further, the concerns outlined by the Hoh tribe in its comment demonstrate the importance of early consultation and analysis, and highlight the tribe-specific concerns that must be addressed by BOEM.

IV. Community Impacts

Additionally, we hope that BOEM will incorporate community impact avoidance first, then mitigation, into the Rule. Further, we hope that BOEM will include bond requirements sufficient to completely restore project areas at the end of a facility's useful life, so that post-operational impacts can be avoided.

BOEM should emphasize opportunities for meaningful community involvement in the Rule. If, and only if, thorough environmental studies indicate that offshore wind development can proceed without ecological damage, we recommend that BOEM consider the Community Benefit Agreement (CBA) as a means of assuring environmental equity, CBAs are an effective tool for ensuring that the benefits reaped by developers do not come at the uncompensated expense of the community in which they operate.

A consistent issue with industrial development is the failure to quantify the economic impacts of the costs that developers externalize onto communities, leaving those communities holding the tab. As noted above, BOEM's approach in this Rule should prioritize impact avoidance, but to the extent that impacts cannot be avoided, they should be quantified in economic and actual terms, and any entity that seeks to reap the benefits of wind and ocean resources and in doing so affects a community should have to compensate for those impacts completely.

Following thorough impact avoidance, communities should be compensated for any remaining unavoidable impacts. One option for meaningful community engagement is creating space for a CBA negotiation process, resulting in an agreement signed by

community benefit groups and a developer, identifying the community benefits a developer agrees to deliver in compensation for impacts.² These agreements ensure that communities receive measurable, local benefits through enforceable, legally-binding contracts, which are the direct result of substantial community input and engagement.³

CBA's when done properly can create a negotiation process that includes all stakeholders including historically underrepresented community members.⁴ They hold a developer accountable by clearly identifying the developer's commitments and helping the public, community groups, state and local government officials, and news media monitor a project's outcome.

At a minimum, permitting timelines should incorporate opportunities for negotiation of CBA's. Ideally, the Rule would create a mechanism that also includes mandatory mitigation for impacts that actually occur, whether foreseen or not in any predicative analysis.

V. Fishery Impacts

BOEM has undertaken an initial fisheries analysis focused on the New Jersey area. We urge BOEM to pursue similar West Coast focused analysis that incorporates not only commercial fisheries, but also recreational interests, and conservation values. West Coast salmonid populations are under tremendous pressure, due especially to habitat degradation, with climate change having additional deleterious impacts. Ocean habitat conservation and enhancement is critical to the ongoing attempts to recover the many endangered, threatened, and at-risk salmonids and other anadromous and saltwater species in the region.

Survey mapping and interviews that elicit local experience on the part of the fishing community should be employed to determine baseline conditions. Commercial fishing interests should be brought in to discuss call area exceptions, concerns around infrastructure installation and sea floor disturbance, and potential mitigation measures.

VI. Conclusion

We urge BOEM to revise the Rule to address these concerns. We believe that the Rule can be improved to clarify the circumstances under which renewable ocean

² Guide to Advancing Opportunities for Community Benefits through Energy Project Development, U.S. Dept. of Energy Office of Minority Business and Economic Development, at 2-3 (Aug. 1, 2017) <https://www.energy.gov/sites/default/files/2017/09/f36/CBA%20Resource%20Guide.pdf> [hereinafter DOE Community Benefits Guide]

³ *Id.*

⁴ *Id.*

energy can be developed while also protecting the environment and the interests of coastal communities and the fishing industry.

Sincerely,



Phillip Johnson
Conservation Director
Oregon Shores Conservation
Coalition
P.O. Box 5626
Coos Bay, OR 97420
(503) 754-9303
phillip@oregonshores.org



Charlie Plybon,
Oregon Policy Manager
Surfrider Foundation
cplybon@surfrider.org



Ashley Audycki
South Coast Regional
Coordinator
Rogue Climate
ashley@rogueclimate.org