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*Comment Received From: Kristen Hislop*
*Submitted On: 3/11/2022*
*Docket Number: 17-MISC-01*

## Environmental Defense Center comments

*Additional submitted attachment is included below.*

environmental
DEFENSE CENTER

March 11, 2022

California Energy Commission
715 P Street
Sacramento, CA 95814

**Re: Comments on the California Energy Commission Workshop on Assembly Bill 525 Strategic Plan for Offshore Wind Energy Planning Goals**

Dear Commissioners:

Thank you for the opportunity to provide comments on the March 3, 2022, California Energy Commission ("CEC") Workshop on Assembly Bill ("AB") 525 Strategic Plan for Offshore Wind Energy Planning Goals. The following comments are submitted on behalf of the Environmental Defense Center ("EDC"), a non-profit, public interest law firm that has worked to protect and restore California's environmental and natural resources for more than 40 years. Our mission is to protect and enhance the local environment through education, advocacy, and legal action. EDC's work focuses primarily within San Luis Obispo, Santa Barbara, and Ventura Counties, including the northern Channel Islands and the ocean waters seaward of this region's shores.

For the past six years, EDC has advocated for the State of California to first identify environmentally responsible locations to help ensure offshore wind projects, and the industry, advance smoothly, without significant delay because of siting conflicts. AB 525 is an opportunity for the state to conduct a planning process that will identify ideal locations for offshore wind. We recommend that the data used to analyze least conflict areas include the entire coast, in both state and federal waters, and that the California Offshore Wind Gateway and data within is included in the CEC's list of resources considered for AB 525 offshore wind goal setting.

To develop offshore wind responsibly, state and federal agencies and developers must pursue science-based spatial planning to ensure siting does not harm sensitive marine and coastal ecosystems, habitat, cultural resources, and communities in the process. It has been environmental organizations' collective experience that selecting identified lower-conflict sites for renewable energy projects ultimately enables permitting for development to occur more

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smoothly and at lower cost, benefitting both the ecosystem and industry. We believe a planning process, as supported by AB 525, will bring us closer to achieving California's renewable energy goals in an efficient and effective manner, while protecting the state's marine and coastal resources.

EDC supported AB 525 because we believe this bill can help us accomplish these goals, in part because it emphasizes the following:

> *Offshore wind should be developed in a manner that protects coastal and marine ecosystems. The State of California should use its authority under state programs and policies to ensure (1) avoidance, minimization, and mitigation of significant adverse impacts, and (2) monitoring and adaptive management for offshore wind projects and their associated infrastructure.*[1]

While AB 525 emphasis is placed on federal waters, spatial analysis should include state waters. Infrastructure related to offshore wind projects in federal waters will impact state waters and coastal areas. In addition, two projects have been proposed in state waters (the Vandenberg Offshore Wind Energy Projects[2]) with applicants pursuing CA State Lands Commission ("SLC") leases, and it should be expected that additional lease requests will follow. We believe these proposed projects are inconsistent with AB 525 because they would cause significant adverse impacts to sensitive coastal and marine ecosystems.[3] A spatial analysis that includes state waters can improve our comparative analysis of impacts from proposals close to shore (e.g., the Vandenberg Projects), and those farther offshore (e.g., Morro Bay Wind Energy Area).

AB 525 provides the opportunity to analyze federal and state waters to allow the state to steer the future of wind off our coast. By omitting state waters, we lose the opportunity to fully understand the impacts that nearshore projects may have. When EDC and other conservation nonprofits requested that the SLC hold off on considering lease requests for offshore wind in state waters until a spatial planning process has been completed, SLC staff stated that they do not have the budget for such an endeavor. Therefore, this analysis should be included in the AB 525 wind energy planning efforts. By simply including state waters in AB 525 analysis, the SLC and other state agencies will be equipped with the data and analysis they need to ensure projects are sited in least conflict areas.

Finally, AB 525 planning should include the data within the California Offshore Wind Gateway. This resource was created as a tool for planning and includes many important data sets that are not included in CEC's list of resources considered for AB 525 offshore wind goal setting.[4]

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[1] AB 525, Section 1(m). Chaptered September 23, 2021.
[2] https://www.slc.ca.gov/renewable-energy/vandenberg-draft-pea/
[3] Environmental nonprofit group comment letter to SLC, re: Vandenberg Offshore Wind Projects. October 18, 2021. Attached.
[4] Assembly Bill 525: Evaluating and quantifying maximum feasible capacity of offshore wind and establishing offshore wind megawatt planning goals for 2030 and 2045. March 3, 2022.

In summary, we recommend that AB 525 directed planning efforts include data in both state and federal waters to fully plan for federal water projects and adequately prepare the state to respond to projects proposed in state waters. We also recommend the plan formally include the California Offshore Wind Gateway and data within. Thank you for your consideration of these comments.

Sincerely,

Kristen Hislop
Senior Director, Marine Program

Attachment: Environmental nonprofit group comment letter to SLC, re: Vandenberg Offshore Wind Projects. October 18, 2021. Attached.


October 18, 2021

Ms. Eleni Kounalakis, Chair
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
*Via Email: CSLC.Commissionmeetings@slc.ca.gov*

**RE: <u>Preliminary Environmental Assessment for Vandenberg Offshore Wind Energy Projects; Proposal to Prepare an Environmental Impact Report – Agenda Item 32</u>**

Dear Chair Kounalakis and Commissioners,

The following comments are submitted on behalf of the Environmental Defense Center, Natural Resources Defense Council, National Audubon Society, Center for Biological Diversity, Monterey Bay Aquarium, Surfrider Foundation, Sierra Club California, Defenders of Wildlife, American Bird Conservancy, California Coastal Protection Network, Ocean Conservation Research, Santa Barbara Audubon Society, Ventura Audubon Society, and Gaviota Coast Conservancy in response to the California State Lands Commission's ("CSLC") Final Preliminary Environmental Assessment ("PEA") for the two Vandenberg Offshore Wind Energy Projects ("Vandenberg Projects" or "Projects") proposed in State waters along the Santa Barbara County coastline, and to the proposal to solicit Statements of Interest for consultant services to prepare an Environmental Impact Report ("EIR").

Together, our organizations have long advocated for policies and actions to bring renewable energy, including floating offshore wind projects, to scale in an environmentally protective manner. We understand that developing renewable energy is pivotal for California to

avoid the worst consequences of climate change, achieve a zero-carbon energy future, and maintain our thriving economy, healthy communities, and national role as an environmental leader.[1] Careful consideration of *how* we achieve this zero-carbon future is vital for protecting California's internationally treasured wildlife, landscapes, marine ecosystems, cultural resources, productive farmlands, and diverse habitats.

As it explores prospective offshore wind development, California has an opportunity and responsibility to become a visionary leader in offshore wind energy and create a planning process that sets a high environmental standard for this new technology and ocean use. Our organizations have long advocated for the State to first identify environmentally responsible locations to help ensure offshore wind projects, and the industry, advance smoothly, without significant delay because of siting conflicts. Recently signed into law, AB 525 supports this effort and emphasizes the following:

> *Offshore wind should be developed in a manner that protects coastal and marine ecosystems. The State of California should use its authority under state programs and policies to ensure (1) avoidance, minimization, and mitigation of significant adverse impacts, and (2) monitoring and adaptive management for offshore wind projects and their associated infrastructure.*[2]

As explained herein, the proposed Projects are inconsistent with AB 525 because they would cause significant adverse impacts to sensitive coastal and marine ecosystems.

We appreciate that the CSLC prepared the PEA to gather early information regarding the potential impacts of the Vandenberg Projects. As such, the CSLC is in the unusual position of having a lot of information already, based on the Final PEA and comments. We believe that this information clearly demonstrates that the Projects are not in the best interests of the State and are inconsistent with the CSLC's obligation to protect public trust resources. Preparing an EIR is not necessary given the ample information presented to the CSLC regarding the environmental harms posed by these Projects. Therefore, we urge the CSLC to deny the applications because the Projects are not in the best interests of the State.

## I. <u>The CSLC may not Issue a Lease for a Project that is not in the Best Interests of the State.</u>

Although the CSLC has discretion when it comes to leasing decisions (see, for example Public Resources Code sections 6301 and 6501.1[3]), such discretion is subject to the requirement "that it be exercised in the best interests of the State." Pub. Res. Code § 6005.

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[1] For example, Audubon's scientists found that climate change may drive 389 species of North American birds to extinction if we cannot limit warming below 3 degrees Celsius. Chad B. Wilsey et al., *Survival by Degrees: 389 Bird Species on the Brink*, AUDUBON (2019), *available at* https://www.audubon.org/climate/survivalbydegrees. Also see: Trainer, V.L., Kudela, R.M., Hunter, M.V., Adams, N.G. and McCabe, R.M., 2020. Climate extreme seeds a new domoic acid hotspot on the US west coast. *Frontiers in Climate*, *2*, p.23.

[2] AB 525, Section 1(m). Chaptered September 23, 2021.

[3] Public Resources Code section 6301 states, "The commission may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it." Section 6501.1

This obligation is closely related to the CSLC's responsibility to protect public trust resources. See Pub. Res. Code § 6009(c) (state tidelands "remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission."). In *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260, the California Supreme Court held that "one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." The same Court held in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441, that "the public trust doctrine is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust."

With respect to CSLC leasing decisions, the court in *W. Oil & Gas Assn. v. State Lands Com*. (1980)105 Cal. App. 3d 554, 559, noted that "considerations affecting the [CSLC's] decision are whether the land to be leased is *environmentally significant, the extent of potential damage to it*, whether the rental rate will result in the use of substitute facilities by a prospective lessee, and the availability, reliability, and applicability of comparable or related data concerning the land's value." (Emphasis added.) In considering a lease for commercial or industrial development on state tidelands, "the decision is discretionary and dependent upon an assessment of the public interest." *Id*., citing *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24.

Accordingly, the CSLC's leasing decisions are bound by its responsibilities to act in the best interests of the State and protect the State's public trust resources.

## II. <u>The Proposed Projects are not in the Best Interests of the State and would Imperil Public Trust Resources.</u>

The proposed Projects are not in the best interests of the State because they would harm public trust resources and adversely affect the important ecology and environment of State tidelands. As described in the PEA, the Projects are:

1. Near a part of the coast and nearshore waters included in the CSLC's Significant Lands Inventory (which is described as "a 1-mile strip of tidelands and submerged land in the Pacific Ocean immediately offshore of VSFB"). This area was included in the Inventory in part because of the presence of California brown pelican, California least tern, and large numbers of shorebirds. These birds extend beyond that 1-mile mark offshore into the Project area. (PEA at 4-11)

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enumerates that the lease of state land is purely optional and within the discretion of the commission, providing that "[l]ands owned by the state, and which are under the jurisdiction of the commission may be leased for such purpose or purposes as the commission deems advisable…"

2. Within an area of strong seasonal upwelling and high primary production—conditions that support "abundant and diverse habitats." (PEA at 4-11)

3. Directly adjacent to the Vandenberg State Marine Reserve ("VSMR") (PEA at 4-12), which has the highest level of protection in California's Marine Protected Area ("MPA") network.

4. Home to multiple species of concern and those protected under both Federal and State regulations, including: "Federal and State Endangered Species Acts (ESAs); the Marine Mammal Protection Act (MMPA); Migratory Birds Act; Magnuson-Stevens Fishery Conservation and Management Act; the California Department of Fish and Wildlife (CDFW) Fish and Game Codes; the National Oceanic and Atmospheric Administration (NOAA) species of concern lists; the U.S. Fish and Wildlife Service (USFWS) regulations; and the California Coastal Commission (CCC) that designate species as having a scientific, recreational, ecological, or commercial importance under the Coastal Act." (PEA at 4-13; Migratory Bird Treaty Act misnamed as "Migratory Birds Act")

5. Proposed in an area supporting approximately forty species of marine mammals (PEA at 4-13); at least five species of sea turtles (PEA at 4-18); endangered black and white abalone (PEA at 4-18); many commercially, recreationally, and ecologically important species of fishes (PEA at 4-19), including special status fish species (PEA at 4-20); numerous species of marine birds (at least fifty-four) and bats (PEA at 4-21), some of special status with potential occurrence in the Project areas. (PEA at 4-23)

6. Along the Pacific Flyway migration route. (PEA at 4-22)

7. Near largely undeveloped open space with intact Central Coast scrub, maritime scrub, coastal bluff, dune scrub, floodplains, wetlands, riparian, and littoral habitats (PEA at 4-38) that support myriad species, including special status invertebrates, fish, amphibians, reptiles, and birds. (PEA Table 4-12)

8. Described by NOAA as an ecological hotspot. (PEA at 4-24)

9. Overlap or border leatherback turtle critical habitat, humpback whale critical habitat, and biologically important areas for gray and blue whales. (PEA at 2-24)

The attached September 13, 2021, comment letter on the Draft PEA further describes potential impacts of these Projects.[4] In our letter we describe the Projects' impacts to sensitive marine and terrestrial species and habitats, including important habitat for birds, whales, sea turtles, the southern sea otter, bats, fisheries, and other marine mammals.

[4] See attached letter from environmental organizations to Eric Gillies, CSLC, regarding Comments on Draft Preliminary Environmental Assessment for Vandenberg Offshore Wind Energy Projects (September 13, 2021).

Comments by the California Coastal Commission similarly point out that "marine mammals and seabirds are generally found in higher densities closer to the shoreline" and that the Commission "support[s] alternatives that consider turbines sited further offshore."[5] The Commission noted impacts to marine resources, scenic and visual resources, commercial and recreational fishing, and navigation.[6] For this reason, the Commission prefers "alternative locations for these projects in areas with lower marine mammal and seabird density, particularly areas further from the coast, to better avoid and minimize environmental impacts."[7]

## III. The Projects must be Denied.

It is because of these impacts that we respectfully request the CSLC find that moving forward with environmental review for offshore wind in this location is not in the best interest of the State. We do not take this position lightly, as our organizations and the greater environmental community have overwhelmingly supported offshore wind projects on both West and East Coasts that are further along in leasing and development. Projects that have been supported by the environmental community included more transparent, inclusive, and informed stakeholder engagement to arrive at siting decisions, such as Block Island and the Maine research array[8].

A similar years-long process undertaken by the Bureau of Ocean Energy Management ("BOEM") and California Energy Commission ("CEC"), along with the wind industry and stakeholders, resulted in the identification of two Call Areas for wind offshore California: Morro Bay and Humboldt. The proponents of the two Vandenberg Projects failed to meaningfully engage with stakeholders early in the process to identify more acceptable locations for a true pilot project. Such engagement would have resulted in a better outcome, informed by input and data accumulated by NGOs, scientists, other stakeholders, and resource agencies. Unfortunately, the location the developers decided to pursue is among the most problematic in terms of environmental impacts along the entire California Coast.

That the Vandenberg Projects are called "demonstration" projects does not change the fact that inclusive and science-driven planning should precede any site-specific project analysis. The Projects are not appropriately sited and have the potential to result in significant impacts to wildlife as a result of their locations. In addition, the Projects would do little to inform projects in more appropriate locations, as they are not proposed in relevant locations or at scale commensurate with projects under consideration in federal waters offshore California. As noted by the California Coastal Commission, data collected in the area of the proposed Projects may not be transferable to projects in federal waters.[9]

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[5] Letter to CSLC from Kate Huckelbridge, California Coastal Commission (September 13, 2021) ("Coastal Commission Letter"), p. 2.
[6] *Id*. at pp. 3-4.
[7] *Id.* at p. 2.
[8] https://www.maine.gov/energy/initiatives/offshorewind/researcharray
[9] Coastal Commission Letter, pp. 4-5.

## IV. Conclusion

We recognize that wind energy is an important facet to our ability to tackle climate change. That is why it is so important that the initial rollout of offshore wind energy on the West Coast be smooth and successful. There are many promising projects being developed now, but these two applications fall short in scope and would have a dire environmental impact on globally significant coastal and marine ecosystems. These Projects are not in the best interest of the State, threaten important public trust resources, and would establish an adverse precedent for this nascent industry.

We respectfully urge the CSLC to deny these applications and work with other State and Federal agencies, stakeholders, and the wind industry to follow the mandates of AB 525 and support siting of offshore wind projects that protect coastal and marine ecosystems and avoid or minimize significant adverse impacts. We believe that pursuit of wind energy projects at more appropriate locations will be more effective and successful at helping the State meet its renewable energy goals.

We do not need an EIR to tell us that these Projects will have significant adverse impacts on the State's coastal and marine environment. Fortunately, we already have a lot of information about this region and the impacts that would result from these Projects. Therefore, we urge the CSLC to deny these applications and instead support existing efforts to appropriately site and design wind energy projects offshore California.

Thank you for your consideration.

Kristen Hislop, Senior Director, Marine Program
Environmental Defense Center

Sandy Aylesworth, Senior Advocate
Natural Resources Defense Council

Garry George, Director, Clean Energy Initiative
National Audubon Society

Lauren Cullum, Policy Advocate
Sierra Club California

Lisa Belenky, Senior Attorney
Center for Biological Diversity

Pamela Flick, California Program Director
Defenders of Wildlife

Amy Wolfrum, California Ocean Conservation Manager
Monterey Bay Aquarium
*(cont'd)*

Joel Merriman, Director, Bird-Smart Wind Energy Campaign
American Bird Conservancy

Michael Stocker, Director
Ocean Conservation Research

Katherine Emery, Executive Director
Santa Barbara Audubon Society

Susan Jordan, Executive Director
California Coastal Protection Network

Delia Bense-Kang, Northern and Southern CA Regional Coordinator
Surfrider Foundation

Bruce Schoppe, Conservation Chair
Ventura Audubon Society

Doug Kern, Executive Director
Gaviota Coast Conservancy

Attachment: Letter from environmental organizations to Eric Gillies, CSLC, regarding Comments on Draft Preliminary Environmental Assessment for Vandenberg Offshore Wind Energy Projects (September 13, 2021).


September 13, 2021

California State Lands Commission
Attn: Eric Gillies
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Via Email: stateapplications.OSW@slc.ca.gov

**RE: <u>Comments on Draft Preliminary Environmental Assessment for Vandenberg Offshore Wind Energy Projects</u>**

Dear Mr. Gillies,

The following comments are submitted on behalf of Environmental Defense Center, Sierra Club California, Ocean Conservation Research, Defenders of Wildlife, American Bird Conservancy, National Audubon Society, Center for Biological Diversity, Natural Resources Defense Council, Surfrider Foundation, Monterey Bay Aquarium, Santa Barbara Audubon Society, Ventura Audubon Society, and Gaviota Coast Conservancy in response to the California State Lands Commission's (CSLC) Draft Preliminary Environmental Assessment (DPEA) for the two Vandenberg Offshore Wind Energy Projects (Vandenberg Projects or Projects) proposed in state waters along the Santa Barbara County coastline.

As you know from a letter that several of our organizations submitted on March 31, 2021 (see Attachment A) in response to the CSLC's request for input in advance of the DPEA, we oppose the locations of these Projects; review of the DPEA has only reinforced our concerns. Moving forward with these Project applications is not in the best interest of the State of California or the offshore wind energy industry. Our organizations remain united in support of responsibly sited, constructed, and operated floating offshore wind power. We do not take a

position to oppose these projects lightly, but we feel that it is necessary for the protection of wildlife and the furtherance of responsibly sited, successful offshore wind projects in California.

On behalf of our organizations and our millions of members, we reiterate previous requests regarding our vision for the state's offshore wind strategy:

1. Avoid sensitive marine habitats and protected areas.
2. Ensure a robust stakeholder planning process.
3. Devote time and resources to utilizing the California Offshore Wind Data Basin Gateway.
4. Include a structure and plan to incorporate future scientific studies and data into project siting.

After review of the DPEA, we remain concerned with the Projects' proposed locations, as we believe they do not avoid sensitive marine habitats and protected areas as required by state law and the public trust obligations of the CSLC. To build upon this concern and the additional requests listed above, in this letter we further describe:

1. The potential for offshore wind power to play a critical role in meeting California's renewable energy goals.
2. Concern that the Projects do not avoid sensitive marine and terrestrial habitats and species, which should be a top priority for offshore wind proposals.
3. Remaining questions that exist after review of the DPEA.

Together, our organizations have long advocated for policies and actions to bring renewable energy, including offshore wind projects, to scale in an environmentally protective manner. We understand that developing renewable energy is pivotal for California to avoid the worst consequences of climate change, achieve a zero-carbon energy future, and maintain our thriving economy, healthy communities, and national role as an environmental leader.[1] Careful consideration of *how* we achieve this zero-carbon future is vital for protecting California's internationally treasured wildlife, landscapes, marine ecosystems, cultural resources, productive farmlands, and diverse habitats.

As it explores prospective offshore wind development, California has an opportunity and responsibility to become a visionary leader in offshore wind energy and create a planning process that sets a high environmental standard for this new technology and ocean use. In an October 21, 2019, letter that several of our organizations submitted to the California Energy Commission (CEC), we recommended that offshore wind energy must be developed responsibly, in a way that incorporates a range of stakeholder considerations and minimizes project specific and cumulative environmental impacts (see Attachment B). We again reiterated this in our

[1] For example, Audubon's scientists found that climate change may drive 389 species of North American birds to extinction if we cannot limit warming below 3 degrees Celsius. Chad B. Wilsey et al., *Survival by Degrees: 389 Bird Species on the Brink*, AUDUBON (2019), *available at* https://www.audubon.org/climate/survivalbydegrees. Also see: Trainer, V.L., Kudela, R.M., Hunter, M.V., Adams, N.G. and McCabe, R.M., 2020. Climate extreme seeds a new domoic acid hotspot on the US west coast. *Frontiers in Climate*, *2*, p.23.

March 31, 2021, letter to CSLC. We believe such an approach would also benefit the industry, as siting and permitting will advance more expeditiously if use conflicts and environmental concerns are addressed ahead of the permitting process. That the Vandenberg Projects are called "demonstration" projects does not change the fact that inclusive and science-driven planning should precede any site specific project analysis. The Projects are not appropriately sited and have the potential to result in significant impacts to wildlife as a result of their locations. In addition, the Projects would do little to inform projects at scale in federal waters as they are not commensurate with projects under consideration in federal waters offshore California.

Our recommended approach, to utilize a seascape level planning process to progress offshore wind more efficiently and effectively, is supported by the 2021 SB 100 Joint Agency Report, which states:

> *"The benefits of using landscape-level approaches for renewable energy and transmission planning include early identification and resolution of large issues or barriers to development, coordinated agency permitting processes, increased transparency in decision making, increased collaboration, avoidance of impacts, and more rapid development of environmentally responsible renewable energy projects."*[2]

California and the wind industry are far better served by advancing projects in areas with strong support, and by ensuring that necessary safeguards exist for wildlife. Identifying environmentally responsible locations first will help ensure that offshore wind projects, and the industry, advance smoothly, without significant delay because of siting conflicts.

## I. To Ensure the Success of Offshore Wind as Part of California's Renewable Energy Future, Projects Must Be Appropriately Sited, Designed, and Operated.

California's policy "to provide 100 percent of electricity retail sales and state loads from renewable and zero-carbon resources in California by 2045" will require aggressive development of renewable energy.[3] The 2021 SB 100 Joint Agency report identifies out-of-state and offshore wind as an opportunity to reduce battery storage requirements. The report includes 10 GW of offshore wind in its core scenario, which is about 8% of current power producing capacity in the state.[4] It will require careful planning to advance this important climate goal while ensuring minimal impacts to California's coastal marine resources and ocean users. We encourage California to focus its staff resources on first prioritizing projects in federal waters as an alternative approach to achieving California's renewable energy goals, as such locations may have a higher potential to avoid impacts to marine and coastal resources.

The DPEA describes some of the benefits of bringing California offshore wind projects online, including providing an opportunity for scientific and environmental analysis of the

[2] https://efiling.energy.ca.gov/GetDocument.aspx?tn=237167&DocumentContentId=70349 at pg. 112
[3] https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity
[4] SB 100 Joint Agency Report. March 15, 2021. https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity

technology; employment to support the transition away from fossil fuels; and the ability to source renewable energy at times when solar is not active (dealing with the "duck curve" in the evening hours); among others. While we agree that offshore wind can benefit California as we work to achieve the state's renewable energy goals, smart siting and appropriate safeguards must be in place to protect the environment from unnecessary impacts.

Given the importance of transitioning the state to renewable energy, it is key to build a foundation of trust in the offshore wind industry. This is done not only by fully engaging all stakeholders at the start and throughout the leasing and permitting process, but also by selection of sites with the greatest chances of success. The selection of sites in areas of environmental importance increases the potential for wildlife and habitat impacts, which is far from an ideal base to build trust in an emerging industry. Other areas along the California Coast that are farther from shore and have fewer conflicts with important habitat may have higher potential to avoid impacts to sensitive marine life than the Project area, which is adjacent to a state marine reserve and within an area layered with environmentally important designations, such as critical habitat, biologically important areas (BIAs), and others, as described within the DPEA and further discussed in this letter.

We remain committed to ensuring that all projects are sited, constructed, and operated in a manner that avoids impacts to marine and terrestrial species and habitats. Responsible siting and operation of offshore wind energy (i) avoids, minimizes, monitors, and mitigates adverse impacts on marine and coastal habitats and the wildlife that rely on them, (ii) reduces negative impacts on other ocean uses, (iii) includes robust consultation with Native American tribes and communities, (iv) meaningfully engages state and local governments and stakeholders from the outset, (v) includes comprehensive efforts to avoid impacts to environmental justice communities, and (vi) uses the best available scientific and technological data to ensure science-based and stakeholder-informed decision making. While there is urgency in tackling the climate crisis, California should not skip the important planning phase to rush through the permitting process for projects in problematic locations that will result in negative impacts to the environment. A well conducted planning process helps advance leases that will result in operational projects not mired in controversy.

## II. The Proposed Siting of these Projects Threatens Sensitive Marine and Terrestrial Species and Habitats.

For decades, our organizations have worked with state and federal agencies to secure precedent-setting protections for the ocean and coast. Maintaining the health of ocean ecosystems is essential to California's robust economy, the livelihoods of many California residents, and securing the sustainability of marine life in the region. Moreover, Californians—and many other residents of the U.S.—have made a strong public commitment to preserving California's coast and ocean and the marine wildlife that depend upon them. Protecting California's marine environment is ecologically, socially, and economically beneficial to the state and nation.

The Intergovernmental Panel on Climate Change (IPCC) *Special Report on Oceans and Cryosphere in a Changing Climate*,[5] released on September 24, 2019, underscores the imperative of conserving biodiversity to maintain human life. Preserving intact marine habitat is essential to protecting biodiversity. The IPCC report found that coastal land and sea use change has had the second largest impact on marine biodiversity over the past fifty years. Scientists recommend highly protecting at least 30 percent of the marine environment by 2030 to preserve ecosystem function and enhance climate resilience.[6] Offshore wind development would constitute a new industrial use of the ocean. As state and federal agencies consider offshore wind, preserving the ecological integrity of known biological hotspots—including the Projects' areas—is critical. In fact, the National Oceanic and Atmospheric Administration (NOAA) has described this location as an ecological hotspot: "Ecological hotspots occur in continental shelf and nearshore waters from Point Conception through the northern Channel Islands, where spatial patterns of bird, fish, invertebrate, and mammal habitat overlap."[7] Image 1 shows that this hotspot includes the Project area, even though it is just northwest of Point Conception.

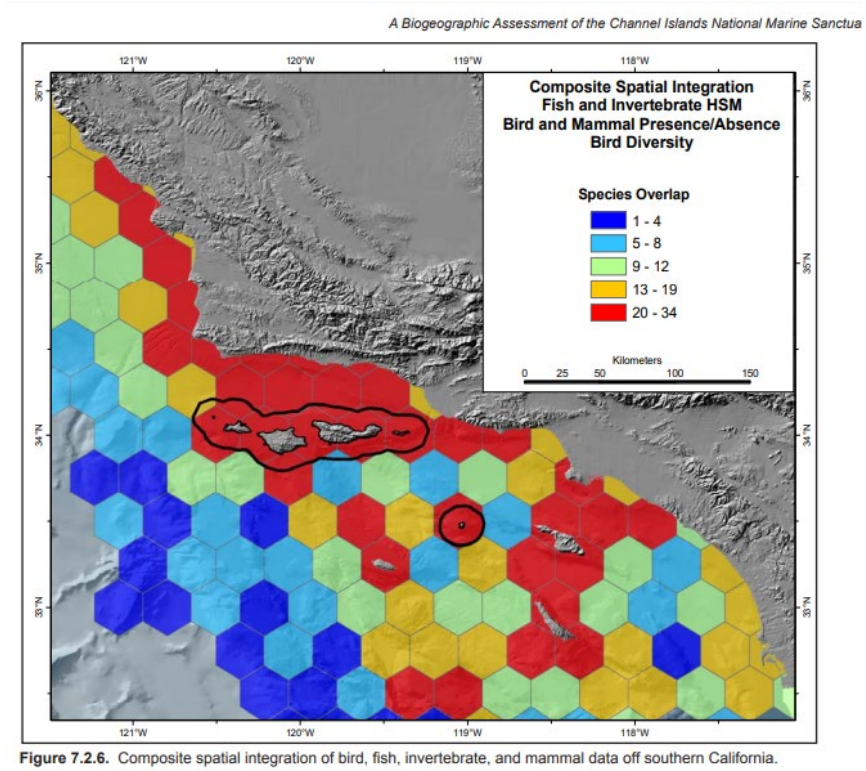

**Figure 7.2.6.** Composite spatial integration of bird, fish, invertebrate, and mammal data off southern California.

*Image 1: Species overlap in the Project area.*[8]

[5] https://www.ipcc.ch/srocc/
[6] Dinerstein et al. 2019. A global deal for nature: guiding principles, milestones, and targets. Science Advances. 19Apr2019. Volume 5, Issue 4. Available at: https://www.science.org/doi/10.1126/sciadv.aaw2869
[7] NOAA National Centers for Coastal Ocean Science (NCCOS). 2005. A Biogeographic Assessment of the Channel Islands National Marine Sanctuary: A Review of Boundary Expansion Concepts for NOAA's National Marine Sanctuary Program. Prepared by NCCOS's Biogeography Team in cooperation with the National Marine Sanctuary Program. Silver Spring, MD. NOAA Technical Memorandum NOS NCCOS 21. 215 pp.
[8] *Id.*

California coastal communities have already begun to feel the impacts of climate change in the form of sea level rise, extreme temperature events, fires, mudslides, droughts, and more. The communities and environment near the Vandenberg Projects have also born a heavy burden from the extraction of fossil fuels, most notably during the 1969 Santa Barbara Oil Spill, 1997 Torch Pipeline Oil Spill, and 2015 Refugio Oil Spill. These communities deserve the opportunity to benefit from renewable energy projects that do not further harm the ocean and coast. As noted below, numerous important species found in the area's waters have "nearshore affinity;"[9] thus, offshore wind development in state waters would likely have an even greater impact on these biological resources than alternative sites farther offshore.

California should use environmental and social spatial data to select appropriate sites that have optimum offshore wind energy potential with the least degree of environmental and social impacts. This involves identification and mapping of any persistent hotspots of species abundance and/or areas of rare environmental significance while reviewing potential development areas. Significant areas include, but are not limited to, state Marine Protected Areas (MPAs), critical breeding and feeding habitats for wildlife (such as Audubon Marine Important Bird Areas (IBAs)), Cetacean Density and Distribution Mapping BIAs, critical habitat for Endangered Species Act-listed species, Habitat Areas of Particular Concern, and regionally relevant areas. Federal leasing is prohibited within the boundaries of the National Marine Sanctuary (NMS) System. 30 C.F.R. § 585.204. As per the "mitigation hierarchy," which seeks to first avoid, then minimize, and mitigate potential environmental impacts from all stages of offshore wind development,[10] and as required by the California Environmental Quality Act (CEQA),[11] avoidance of sensitive habitat should be the priority. The Projects proposed in the DPEA fail to avoid several known areas of significance.

The location of the Projects is adjacent to six onshore Audubon IBAs that are included in an international program to identify high conservation areas for birds. Those IBAs include Point Conception 120W34N, Point Conception 121W34N, Vandenberg Air Force Base, and Santa Ynez Sanctuary IBA, which together provide key habitat for over 20 species of seabirds. Long-term data sets show the importance of the Vandenberg State Marine Reserve (VSMR) for Brandt's and pelagic cormorants, rhinoceros auklets, pigeon guillemots, and California brown pelicans—all of which are vulnerable to collision and habitat displacement in state waters squarely within the foraging areas of these breeding and roosting colonies.[12] The largest seabird breeding colonies off Point Conception are concentrated along coastal bluffs immediately parallel to proposed turbine locations, including hundreds of cormorants, western gulls, and

[9] https://www.ipcc.ch/srocc/

[10] IUCN and The Biodiversity Consultancy. "Mitigating biodiversity impacts associated with solar and wind energy development: guidelines for project developers" (2021). Available at: https://portals.iucn.org/library/node/49283. Please note that the IUCN document provides general guidelines on how the mitigation hierarchy could be and has been applied, but its application in each case will be context and site-specific, and based on best available scientific information and technologies available at the time.

[11] Public Resources Code § 21002 ("[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects".).

[12] https://databasin.org/maps/new/#datasets=e6dba80c73f546058e4dbab23abdcab0 California Seabird Colony – Summary Bird Abundance.

pigeon guillemot; with close proximity to feeding grounds, breeding seabird and wind turbine interactions are inevitable. However, perhaps at even greater risk, the proposed Project locations are within the immediate migratory pathway of hundreds of thousands, if not millions, of seabirds navigating upwelling resources along the California Current, with Point Conception experiencing particularly high concentrations. More detailed concern for potential interactions with birds is described below is Section IIIB. The Projects also overlap with important habitat for several marine mammal and sea turtle species. (See Section IIIA and Attachment A for more details on these concerns.) The image below shows predicted summer seabird abundance along this stretch of the California Coast (black polygon is the approximate proposed location of the Projects), indicating the Projects would be within an area of highest predicted abundance.[13]

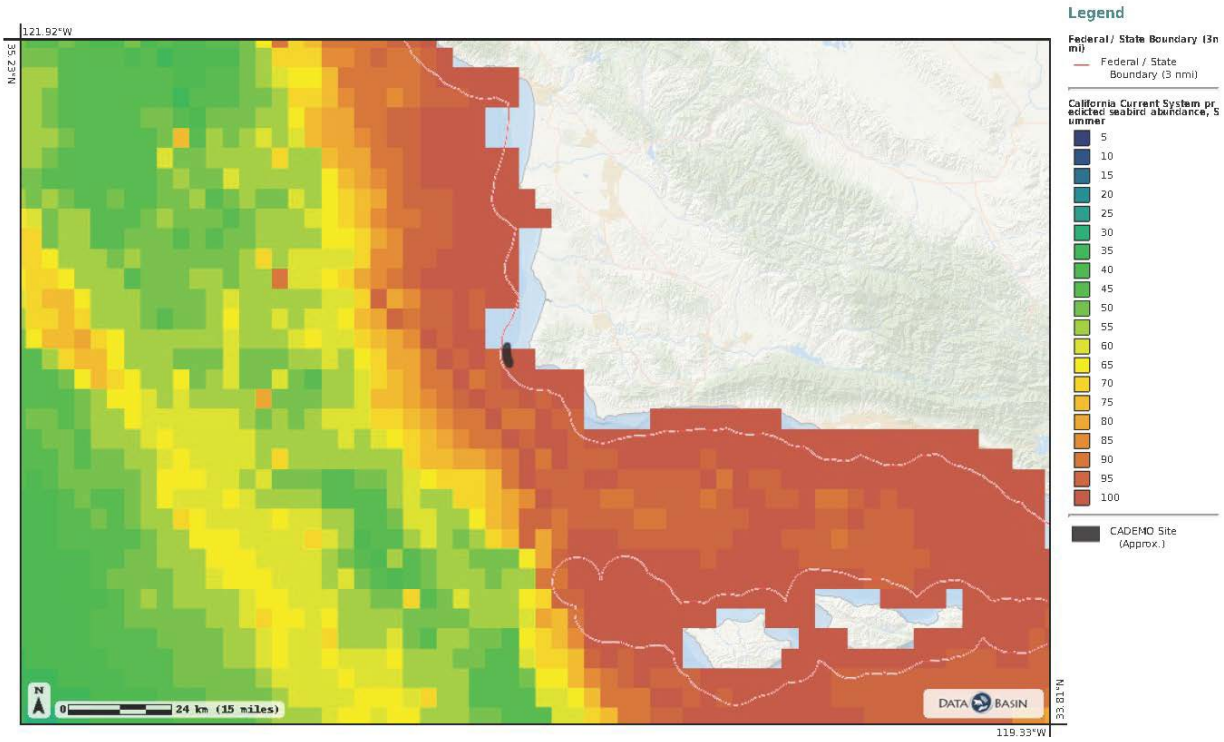


*Image 2. Seabird Abundance in and near the Project area.*[14]

In describing the locations of the Vandenberg Projects, the DPEA itself paints a picture of an area along the California Coast that is vital to regional marine productivity. For example, the DPEA notes the Project areas are:

1. Near a part of the coast and nearshore waters included in the CSLC's Significant Lands Inventory (which is described as "a 1-mile strip of tidelands and submerged land in the Pacific Ocean immediately offshore of VSFB"). This area was included in the Inventory in part because of the presence of California brown pelican, California least tern, and

[13] DataBasin. Potential CADEMO offshore wind farm site. https://databasin.org/maps/f1d3a4ae02f44b6f99ae2cd591370807/
[14] *Id.*

large numbers of shorebirds. These birds extend beyond that 1-mile mark offshore into the Project area. (DPEA at 4-11)
2. Within an area of strong seasonal upwelling and high primary production—conditions that support "abundant and diverse habitats." (DPEA at 4-11)
3. Directly adjacent to the VSMR (DPEA at 4-12), which has the highest level of protection in California's MPA network.
4. Home to multiple species of concern and those protected under both Federal and State regulations, including: "Federal and State Endangered Species Acts (ESAs); the Marine Mammal Protection Act (MMPA); Migratory Birds Act; Magnuson-Stevens Fishery Conservation and Management Act; the California Department of Fish and Wildlife (CDFW) Fish and Game Codes; the National Oceanic and Atmospheric Administration (NOAA) species of concern lists; the U.S. Fish and Wildlife Service (USFWS) regulations; and the California Coastal Commission (CCC) that designate species as having a scientific, recreational, ecological, or commercial importance under the Coastal Act." (DPEA at 4-13; Migratory Bird Treaty Act misnamed as "Migratory Bird Act")
5. Supporting approximately 40 species of marine mammals (DPEA at 4-13); at least five species of sea turtles (DPEA at 4-17); endangered black and white abalone (DPEA at 4-17); many commercially, recreationally, and ecologically important species of fishes (DPEA at 4-17), including special status fish species (DPEA at 4-19); numerous species of marine birds (at least 54) and bats (DPEA at 4-21), some of special status with potential occurrence in the project areas. (DPEA at 4-22)
6. Along the Pacific Flyway migration route. (DPEA at 4-21)
7. Largely undeveloped open space with intact Central Coast scrub, maritime scrub, coastal bluff, dune scrub, floodplains, wetlands, riparian, and littoral habitats (DPEA at 4-30) that support myriad species, including special status invertebrates, fish, amphibians, reptiles, and birds. (DPEA Table 4-1)

The descriptions of how the Projects would be sited to avoid environmental impacts are grossly inadequate. We strongly disagree that these Projects, as sited, would avoid sensitive biological resources to the extent practicable. In Section 2.2.2 on site selection, there is little mention of how these sites were selected to avoid impacts to the incredibly diverse marine environment, as described in the DPEA and summarized above. The Ideol project description states the siting considered "[o]ther possible environmental considerations." (DPEA at 2-8) The CADEMO project description merely states that the site has "[f]ew environmental constraints (avoids activities within the Vandenberg State Marine Reserve." (DPEA at 2-8) However, any industrial development adjacent to an MPA – designated for the benefit of conservation – could have impacts on that MPA's marine resources and the ability of that site to achieve its full conservation potential. Protected areas have defined boundaries that reflect administrative compromises and do not represent the definite presence/absence of species. Areas near the edges of protection zones should be considered important for the species and habitats protected by the designations (e.g., MPA, critical habitat, etc.). As such, the border of the VSMR should not be the first place we consider for the development of a new technology, such as floating offshore wind.

Notably, this area is also near the Pt. Conception Marine Reserve, another vital part of California's MPA network.[15] In addition, it is within the proposed Chumash Heritage National Marine Sanctuary (CHNMS), which was nominated in 2015 for its rich ecological resources and cultural significance, including Chumash Sacred Sites.[16,17] NOAA's Office of National Marine Sanctuaries renewed the nomination in 2020,[18] indicating support from NOAA to protect this area. The 2020 review identified that this is an "area of national significance" and that there is "broad community support for the nomination."[19]

In addition to being on the boundary of VSMR, the effectiveness of California's MPA network relies not only on the protections individual MPAs afford but on the connectivity of the entire MPA network.[20] The Project areas are also within the proposed CHNMS, and overlap or border several other protection zones, such as critical habitat for many species, as noted in the DPEA. (Tables 4-3, 4-4, 4-5, 4-7, and 4-8) Since the March 31, 2021, letter (Attachment A), the critical habitat update for humpback whales was finalized. (A supplemental letter was sent on April 21, 2021, with this information.) We are pleased to see this update included in Table 4-3, as it overlaps with the Project areas. Lacking in the DPEA, however, are BIAs for gray and blue whales, as we mentioned in our previous letter and again focus on in this letter. We also reiterate our reference to a 2005 biogeographic assessment by the NMS Program, which has more detail about the area around Point Conception, near the Project areas.[21]

(See Image 3 on next page)

[15] https://wildlife.ca.gov/Conservation/Marine/MPAs/Network#29097816-marine-life-protection-act
[16] https://chumashsanctuary.com/
[17] https://chumashsanctuary.com/about/sacred-sites/
[18] Review of Nomination for the Chumash Heritage National Marine Sanctuary. 85 Fed. Reg. 61935 (October 1, 2020)
[19] *Id.*
[20] Saarman E., Gleason M., Ugoretz J., Airamé S., Carr M., Fox E., Frimodig A., Mason T., Vasques J. (2013) "The role of science in supporting marine protected area network planning and design in California," Ocean and Coastal Management.
[21] NOAA National Centers for Coastal Ocean Science (NCCOS). 2005. A Biogeographic Assessment of the Channel Islands National Marine Sanctuary: A Review of Boundary Expansion Concepts for NOAA's National Marine Sanctuary Program. Prepared by NCCOS's Biogeography Team in cooperation with the National Marine Sanctuary Program. Silver Spring, MD. NOAA Technical Memorandum NOS NCCOS 21. 215 pp.

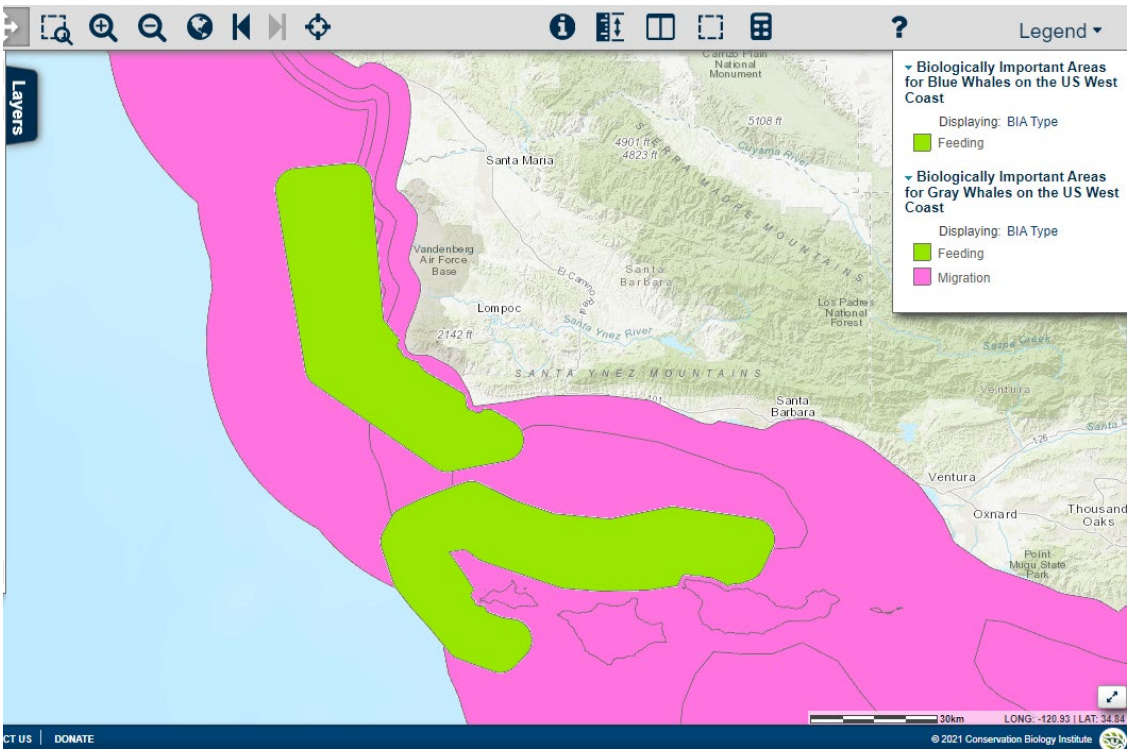


*Image 3: Biologically Important Areas for blue (migration) and gray (feeding) whales in the Project area. Gray whales only have the migration layer (not feeding) represented in this spatial extent; the green polygons are blue whale feeding BIAs.*[22]

Further, not all ecologically important marine areas are protected, and continued public input will be vital to ensure such places are identified and analyzed before siting decisions for offshore wind project developments are made. For example, detailed analysis exists for only a small number of marine mammals occurring in the areas of interest for offshore wind. For many of the species with known distributions, the data are not fine enough to make localized decisions. Near- and long-term research is needed on killer whales, beaked whales, fin whales, and minke whales, and there is a need to delineate BIAs for those species. Because of examples like this, we need to adopt a precautionary approach in siting and invest in data collection to inform future marine planning decisions. In addition, an analysis of climate-induced shifts and how those may impact marine mammal distribution will be complex, yet such an analysis will greatly benefit the planning process.

BOEM recently completed a study on seabird and marine mammal abundances along the Central Coast, the *Pacific Marine Assessment Partnership for Protected Species* (PacMAPPS) [23] study, and is still in process on the *Seabird and Marine Mammal Surveys Near Potential Renewable Energy Sites Offshore Central California*,[24] Data Synthesis and High-resolution Predictive Modeling of Marine Bird Spatial Distributions on the Pacific OCS,[25] Over Water

[22] Databasin.org
[23] https://www.boem.gov/sites/default/files/documents/environment/PC-17-04_0.pdf
[24] https://www.boem.gov/sites/default/files/documents/environment/PC-17-01_0.pdf
[25] https://www.boem.gov/sites/default/files/documents/environment/PC-15-01_0.pdf

Migration Movements of Black Brant,[26] and ADRIFT: Spatial and Temporal Distribution of Cetaceans in the California Current Ecosystem Using Drifting Archival Passive Acoustic Monitoring[27] studies. These studies have the potential to fill some critically important data gaps and should influence siting decisions. The PacMAPPS study has the potential to include at least three years of monthly ship and aerial pre-development baseline data on the presence and abundance of key species, including marine mammals and seabirds. This would dramatically bolster the statistical integrity of the data sets and set a high environmental bar.

In addition to the conflicts offshore, the Projects would also impact terrestrial resources in a largely undeveloped, contiguous block of relatively pristine native vegetation. As the DPEA describes, this area includes "a wealth of ecological resources" (DPEA at 4-30) that include special status species (DPEA at 4-33, 4-34). Proposed onshore substation development within critical habitat designations of the western snowy plover, one of the largest breeding colonies in California, and potential impacts to foraging birds from adjacent endangered California least tern nesting colonies at the Santa Ynez Estuary are of heightened concern. Overhead transmission lines paralleling the coast pose risks to migrating land and seabirds in the area, in addition to amplifying fire danger. The Projects pose real and significant risks to important seabird breeding colonies, coastal migrants, threatened and endangered birds and mammals, and increased fragmentation of one of the most undeveloped regions of the California coast. When siting offshore wind projects, it would be preferable to choose a location that has existing transmission capacity to reduce impacts to terrestrial resources.

The CEC, as part of its work on implementing SB 100, has developed a methodology for identifying least conflict areas that are appropriate for renewable energy development and transmission investments.[28] While this work is currently focused on terrestrial renewable energy development, the methodology in conjunction with data from the California Offshore Wind Gateway[29] and incoming data can be rapidly applied to help inform the responsible development of offshore wind. Identification of least conflict areas for offshore wind development would increase project viability and certainty and could allow for an expedited process in permitting offshore wind projects in the future.

Given the importance of protecting California's natural capital, which drives the state's ocean economy, we would like to work with you to ensure siting decisions reflect an unwavering commitment to protecting the marine environment. Implementing a deliberative planning process that prioritizes environmental protection and considers stakeholders' interests will demonstrate environmental leadership that will benefit this burgeoning industry while protecting California's rich natural resources.

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[26] https://www.boem.gov/sites/default/files/documents/regions/pacific-ocs-region/environmental-analysis/PC-20-01-profile_0.pdf
[27] https://www.boem.gov/sites/default/files/documents/regions/pacific-ocs-region/environmental-analysis/PC-20-04.pdf
[28] https://www.energy.ca.gov/event/workshop/2021-08/joint-agency-workshop-next-steps-plan-senate-bill-100-resource-build
[29] https://caoffshorewind.databasin.org/

## III. The DPEA Fails to Adequately Address Several Issues Regarding Impacts and Alternative Sites.

Additional information is necessary to fully address the potential impacts of the proposed Projects on the marine environment. The proposed Projects will result in many impacts, including cumulative impacts, that are not addressed in the DPEA. Due to these unavoidable impacts and conflicts because of the Projects' locations, the state must consider alternative sites for offshore wind development.

### A. The DPEA Omits Important Fish and Deep-Sea Coral Species.

The DPEA should include two rockfish species, yelloweye and cowcod, which are protected in state waters ("no-take"); yelloweye is considered overfished.[30,31] The preferred habitat for these species is rocky areas greater than 40 fathoms, which may be impacted by anchors and cables.[32]

Great white shark is another species omitted in the DPEA that should be included. Great white sharks have experienced regional population growth[33] and may be in the vicinity of the Projects. The DPEA should address the potential for interaction between the Projects and great white sharks, including potential attraction or displacement due to structures in the water, noise, and vibration, in addition to secondary entanglement risk.

The DPEA also omits discussion of deep-sea corals. Corals in both hard bottom and soft sediment could be impacted by the Projects due to the physical disturbance of the seafloor during construction and operation. This may include an increased sediment load that could choke corals and other species.[34]

### B. The Discussion Regarding Marine Mammals and Sea Turtles Lacks Important Information.

The DPEA mentions leatherback sea turtle and other turtle species of special status (at 4-17, Table 4-4), but fails to mention that the Project areas overlap with leatherback sea turtle critical habitat. The southern extent of leatherback sea turtle critical habitat is Point Arguello.[35]

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[30] https://wildlife.ca.gov/Conservation/Marine/Groundfish/Tracking#:~:text=Yelloweye%20rockfish%20is%20a%20federally,monthly%20catch%20estimates%20by%20area.

[31] https://wildlife.ca.gov/Conservation/Marine/Cowcod

[32] https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/west-coast-groundfish-closed-areas

[33] Kanvine et al. 2021. Estimates of regional annual abundance and population growth rates of white sharks off central California. Biol. Cons. Vol. 257, 109104. Available at: https://www.sciencedirect.com/science/article/pii/S0006320721001567

[34] Jones R, Fisher R, Bessell-Browne P (2019) Sediment deposition and coral smothering. PLOS ONE 14(6): e0216248. https://doi.org/10.1371/journal.pone.0216248

[35] 77 FR 4169 February 27, 2021. https://www.ecfr.gov/cgi-bin/text-idx?SID=79c870d9a02a7e22b18473ef2efb7556&mc=true&node=se50.10.226_1207&rgn=div8

The DPEA mentions that the Project locations are at the northern or southern extent of range for some species of marine mammals, though it does not specify which. (DPEA at 4-13)

In addition, the data on gray whale distance from shore should be updated, especially in consideration of the stress the species has had in recent years from unconfirmed causes, including unusual mortality events in recent years.[36,37]

The DPEA relies on outdated information for the southern sea otter and misrepresents sea otter residence in the coastal zone of the Project area (DPEA at 4-13). Estes and Jameson (1983) references a small sample size, and the population density and demographics have changed in the last 38 years. Sea otters do not have a defined breeding season and they no longer migrate away from the region; thus, the Bonnell et al. (1983) and Estes and Jameson (1983) citations are dated and should be clarified or, preferably, struck. The most current range information can be found in Hatfield et al. (2019),[38] which should be used for a reference to make any statements about population size or range as it is the most current census.

The DPEA is silent on the use of high resolution geophysical (HRG) surveys for site assessment and characterization activities necessary prior to construction. Equipment used for HRG surveys can produce noise at source levels and frequencies that are potentially harmful to marine mammals. As such, this activity should be evaluated in the DPEA.

Finally, as we discussed in our March 31, 2021, letter and as noted in the DPEA (DPEA at 2-12), vessels used during construction and operation may impact whales through direct ship strikes. This issue is not adequately addressed in the DPEA. The DPEA also does not address how vessels may impact southern sea otters during construction and operation. The siting, construction, and maintenance of transmission lines to onshore substations can be expected to have adverse impacts on sea otters residing along this coastal region and potentially on the seal rookeries at Vandenberg.

### C. The DPEA Fails to Adequately Disclose Potential Harm to Birds.

The DPEA is inadequate in the following sections and topics in its preliminary assessment of the potential impacts of the proposed Projects on marine birds:

1. 2.3.4. Table 2-1. Summary of Comments from Agencies and Ports

The DPEA omits specific statutes and conservation obligations that protect birds, including:

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[36] Christiansen F, Rodríguez-González F, Martínez-Aguilar S, Urbán J and others. 2021. Poor body condition associated with an unusual mortality event in gray whales. Mar Ecol Prog Ser 658:237-252. https://doi.org/10.3354/meps13585

[37] https://www.livescience.com/four-dead-gray-whales-in-san-francisco.html

[38] Hatfield, B. B., J. L. Yee, M. C. Kenner, and J. A. Tomoleoni. 2019. California sea otter (*Enhydra lutris nereis*) census results, spring 2019. U.S. Geological Survey Data Series 1118, Reston, Virginia, USA. https://doi.org/10.3133/ds1118.

- Migratory Bird Treaty Act
- California Fish & Game Code section 3513 – Take under Migratory Bird Treaty Act
- Fish & Wildlife Conservation Act as amended in 1988
- Executive Order (EO) 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds," and
- North American Waterbird Conservation Plan.

2. Errata: p. 4-13 error: Migratory Bird Treaty Act.

3. Table 2.2. Summary of Comments from ENGOs

The DPEA mis-characterizes our concerns for the impacts of the proposed Projects on birds as only collision with turbines with a special concern for California brown pelican. We have stated repeatedly that there are three potential impacts of the proposed projects on many species of birds, which are also well-defined in the BOEM/U.S. Geological Survey (USGS) study titled Collision and Displacement Vulnerability among Marine Birds of the California Current System Associated with Offshore Wind Energy Infrastructure (OCS Study, BOEM 2016-043):

- collision with turbines,
- displacement and barrier effect, and
- population level impact on vulnerable populations of seabirds.

California brown pelican was highlighted in previous comment letters as an example of an important species to consider because:

- The species was formerly listed under the ESA and is currently state listed;
- The BOEM/USGS document ranks California brown pelican as the highest in population collision vulnerability with turbines of all the species of birds in the California Current System (CCS);[39] and
- The only breeding colonies of California brown pelicans in the western United States are within Channel Islands National Park on West Anacapa and Santa Barbara Islands. These colonies are not far from the Projects, and the birds forage in the Project area. [40]

We ask that the PEA correct this mischaracterization and include our concerns for all the impacts of the Projects on the 81 species of seabirds that are found in the CCS as stated and ranked in the publication cited below:

> *For 81 marine bird species present in the CCS, we created three vulnerability indices: Population Vulnerability, Collision Vulnerability, and Displacement Vulnerability. Population Vulnerability was used as a scaling factor to generate two comprehensive indicies: Population Collision Vulnerability (PCV) and Population Displacement Vulnerability (PDV). Within the CCS, pelicans, terns (Forster's [Sterna forsteri],*

[39] Adams, J., Kelsey, E.C., Felis, J.J., and Pereksta, D.M., 2017, Collision and displacement vulnerability among marine birds of the California Current System associated with offshore wind energy infrastructure (ver. 1.1, July 2017): U.S. Geological Survey Open-File Report 2016-1154, 116 p., https://doi.org/10.3133/ofr20161154
[40] https://www.nps.gov/chis/learn/nature/brown-pelican.htm

> *Caspian [Hydroprogne caspia], Elegant [Thalasseus elegans], and Least Tern [Sternula antillarum]), gulls (Western [Larus occidentalis] and Bonaparte's Gull [Chroicocephalus philadelphia]), South Polar Skua (Stercorarius maccormicki), and Brandt's Cormorant (Phalacrocorax penicillatus) had the greatest PCV scores. Brown Pelican (Pelicanus occidentalis) had the greatest overall PCV score. Some alcids (Scripps's Murrelet [Synthliboramphus scrippsi], Marbled Murrelet [Brachyramphus marmoratus], and Tufted Puffin [Fratercula cirrhata]), terns (Elegant and Least Lern), and loons (Yellow-billed [Gavia adamsii] and Common Loon [G. immer]) had the greatest PDV scores. Ashy Storm-Petrel (Oceanodroma homochroa) had the greatest overall PDV score. To help inform decisions that will impact seabird conservation, vulnerability assessment results can now be combined with recent marine bird at-sea distribution and abundance data for the CCS to evaluate vulnerability areas where OWEI [offshore wind energy infrastructure] development is being considered. Lastly, it is important to note that as new information about seabird behavior and populations in the CCS becomes available, this database can be easily updated and modified.*[41] (Emphasis added).

We also ask that the PEA use the vulnerability assessment combined with recent marine bird at sea distribution and abundance data in the Project area.

New data will be released by BOEM on distribution and abundance of birds in the CCS and the PEA should perform the synthesis recommended by BOEM above.

4. 4.2.3 Biological Resources

The DPEA attempts to analyze the impacts on Biological Resources – Marine in this section. However, the document begins with a statement of "significant environmental values" of a one-mile strip of Unconveyed State School Lands and Tide and Submerged Lands Possessing Significant Environmental Values (CSLC 1975). The "assessment" states "[s]pecifically, these lands are within the range of California brown pelican and California least tern, and the area is known to have large numbers of shorebirds." This statement from a 45-year old document is misleading and suggests that California brown pelican and California least tern and shorebirds are the only species in this area. There are seabirds, migratory birds, and waterbirds as well.

5. The cited statements in the DPEA are not relevant to the Proposed Projects

The analysis of birds relies heavily on one source: "At-sea Distribution and Abundance of Seabirds off Southern California: A 20-year Comparison"[42] and selects citations from this

[41] Adams, J., Kelsey, E.C., Felis, J.J., and Pereksta, D.M., 2017, Collision and displacement vulnerability among marine birds of the California Current System associated with offshore wind energy infrastructure (ver. 1.1, July 2017): U.S. Geological Survey Open-File Report 2016-1154, 116 p., https://doi.org/10.3133/ofr20161154.

[42] Mason et al. 2007. At-sea distribution and abundance of seabirds off Southern California: a 20-year comparison. Published in Studies in Avian Biology, No. 33, Cooper Ornithological Society.

aggregation of aerial surveys conducted in May through January 2002 from Cambria to the Mexican border.

The DPEA states "Mason et al. (2007) identified 54 species off southern California during coastal and at-sea surveys (from Cambria to the Mexican border), representing 12 different families. Nearshore seabirds tend to occur close to shore in relatively shallow waters."

Our limited review of the publication found, however, that the surveys for this data were only conducted on transects that were less than a mile from shore as reported in the publication.

> *Surveys were conducted from a high-winged, twin-engine Partenavia PN 68 Observer aircraft following methods developed for seabird observation by Briggs et al. (1985a, b; 1987). We flew surveys at 60 m above sea level at 160 km/hr ground speed and flew coastline (mainland and island) transects 300 m from shore.*[43]

The cited distance, 300 meters, is less than one mile from the coast. The proposed projects are between two to three miles from the coast. General statements in the DPEA such as "Pelagic seabirds occur in deeper waters, typically farther from shore than the nearshore species described above" (no citation, DPEA at 4-20) are misleading without more exact measurements. "Farther" includes the proposed Project area.

Therefore, we recommend: 1) CSLC should rely on the 2017 BOEM/USGS report and more recent data to determine vulnerability and increase the number of species of seabirds which could be vulnerable to the impacts of the projects; and 2) CSLC should rely on Moore et al. only for nearshore species of seabirds and waterbirds and not for the Project area, and look at other sources for initial data on seabirds and waterbirds in the area of the proposed project, including Briggs et al., Bird Communities a Sea Off California: 1975-1983, Studies in Avian Biology No. 11, 1987, and the upcoming BOEM/USGS transect surveys off Central California.

6. <u>DPEA is deficient on data on migratory birds and bats</u>

has provided comments to CSLC on the DPEA on the high risk to migratory birds and bats that fly through the rotor-swept zone of the proposed project areas. To accurately detect the magnitude, timing, and altitude of birds and bats flying through the proposed Project area, considering the best available science for the DPEA and the possible environmental analysis, the CSLC should consider requiring the Project proponents to determine the usage of the Project areas in several migratory seasons using marine radar during day and night.

For a proposed offshore wind project in the Great Lakes, six miles from the coast in Lake Erie, the Ohio Power Siting Board and Ohio Department of Natural Resources permit includes a condition that requires the developer to provide data using vertical radar on the site for at least one year and possibly two migratory seasons on birds crossing the Lake at night and day above and through the rotor-swept zone to determine risk before the project can begin to move forward.

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[43] *Id.*

Additionally, the data must be approved by the Ohio Department of Natural Resources.[44] The project proponent in the Great Lakes has elected to use a floating platform on which to secure the radar unit and the Ohio Department of Natural Resources requires that 70% of the data must be useable. Other on-site studies have been done with a secure platform. These studies are critical for understanding the risk to migratory birds for any environmental analysis and should be conducted before any nearshore project can move forward, since it is so close to the coast on the Pacific Flyway, as CDFW has commented.

Additionally, standard practice for permitting agencies at the county level is to require on-site protocol level bird-use surveys over one or two years for preparation of an environmental review of a project. CSLC should at minimum require two years of these surveys and data collection including on-site marine radar before beginning environmental review.[45]

7. Table 4-8. Special Status Marine Bird Species with Potential Occurrence in Project Areas

This table is inadequate as it does not seem to include onshore cable landing or infrastructure as "Project area" and does not include the following listed and special status species:

- Short-tailed albatross, a federally endangered species under the ESA.[46] A history of sightings off California[47] and eBird data and range map[48] for the species show its continued and growing presence in California waters, including in the Project area.
- California least tern,[49] listed as endangered under both federal and state ESAs (and a fully protected species under California law[50]), which nests on beaches but forages in the Project area, as the Project area includes onshore cable landings and infrastructure.
- Western snowy plover[51] nests on the California Coast and is listed as threatened under the ESA.

The USFWS has released Birds of Conservation Concern 2021.[52] These birds are considered special status species. Birds on the list that may migrate through the areas or seabirds that appear in the BOEM/USGS document on vulnerability of 81 species should be included as special status Species in the Project area whether they forage, fly through, or migrate through the Project area. Additionally, CDFW has prepared a list of California Bird Species of Special Concern.[53] Any species that occurs in the Project area, including during migration, should be considered as special status species in the CSLC's review.

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[44] http://dis.puc.state.oh.us/TiffToPDf/A1001001A20E21B35239G02930.pdf
[45] See Alta East wind project DEIR https://psbweb.co.kern.ca.us/planning/pdfs/eirs/AltaEast/Index.htm
[46] https://www.fws.gov/oregonfwo/articles.cfm?id=149489452
[47] http://creagrus.home.montereybay.com/CA_STAL.html
[48] https://ebird.org/species/shtalb
[49] https://www.fws.gov/sacramento/es_species/Accounts/Birds/ca_least_tern/
[50] Cal. Fish and Game Code § 3511(b)(6).
[51] https://www.fws.gov/arcata/es/birds/wsp/plover.html
[52] https://www.fws.gov/migratorybirds/pdf/management/birds-of-conservation-concern-2021.pdf
[53] https://wildlife.ca.gov/Conservation/SSC/Birds

8. Table 4-8. Potential Magnitude of Environmental Effect

Habitat Alterations should be changed to potentially Significant, as the turbines may displace marine life which may have to avoid the turbines during migration or foraging activities. This displacement has been demonstrated to be a significant impact in the EU and United Kingdom.[54]

In conclusion, the DPEA should rely on the framework of research and practices that includes: 1) seabird density and abundance data forthcoming from BOEM and other scientists, which will show that seabird density is much greater closer to the coast within three miles than it is twenty miles or more out at sea, for instance; 2) a note of precaution that other states that have considered offshore wind demonstration and commercial projects, even of only one turbine, have only considered projects six miles (Great Lakes), eight miles (Rhode Island), or 12 miles (Maine) from the mainland coast, and not closer than that. Rhode Island and Maine conducted extensive stakeholder planning processes before locating a demonstration project off the states' coasts.[55] Virginia's demonstration project is located 27 miles from the coast.[56] In fact, New Jersey declined to permit a project off its coast within five miles, in part because a pilot scale project would not produce a net economic benefit,[57] and because of testimony from National Wildlife Federation and New Jersey Audubon on the potential impacts on birds (public testimony available on request); and 3) the mitigation hierarchy of addressing impacts,[58] which is also used to address impacts in environmental review, is to first avoid potentially significant impacts through a robust alternatives analysis, and to minimize and mitigate impacts for which avoidance is not possible, where mitigation may include offsets for the impacts with compensatory mitigation where such offsets can be shown to be effective. We suggest that the cumulative, direct, and indirect impacts on birds are so potentially numerous from these Projects that these significant impacts should be completely avoided by not moving forward with these proposals.

### D. The DPEA Omits Consideration of Cumulative Impacts.

The DPEA does not consider cumulative impacts, which are of utmost importance when evaluating offshore wind siting and development. The siting of wind turbines can have cumulative impacts on migrating bird populations, bats, fisheries, marine mammals, and even changes to upwelling, to name a few issues. It is not feasible to analyze cumulative impacts if the state is considering multiple individual permits and not analyzing them as a network with shared, cumulative impacts. Considering the importance and high public value of California's marine resources, we recommend that CSLC analyze and model the potential synergistic and cumulative impacts of projects under present and future ocean conditions before considering any leases.

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[54] https://www.researchgate.net/publication/304563260_Displacement_of_seabirds_by_an_offshore_wind_farm_in_the_North_Sea

[55] https://seagrant.gso.uri.edu/oceansamp/; https://www.maineoffshorewind.org/

[56] https://www.dominionenergy.com/projects-and-facilities/wind-power-facilities-and-projects/coastal-virginia-offshore-wind

[57] https://www.njspotlight.com/2018/12/18-12-18-state-rejects-atlantic-city-offshore-wind-project-for-third-time-too-pricey/

[58] https://academic.oup.com/bioscience/article/68/5/336/4966810

### E. Alternative Sites must be Identified and Considered, as well as Alternative Renewable Energy Sources.

The multitude of concerns about the proposed sites for these Projects elevates the need for the state to consider alternative locations for offshore wind development. What alternative sites were considered? We respectfully request a full analysis of alternative sites in state and federal waters to build confidence in siting decisions. As we have repeatedly stated, we feel there are more appropriate sites for floating offshore wind farther offshore. Alternative sources of renewable energy that would provide the identified objectives for local energy resiliency should also be considered, such as distributed solar and storage alternatives.

## IV. Conclusion

While we support responsibly sited and operated floating offshore wind power, the proposed Projects raise many environmental and permitting-process concerns for the reasons described within this letter and Attachment A. The Projects are irresponsibly sited in a location with an incredible richness of biodiversity and should not be considered further. These Projects are not in the best interest of the state. The state would be far better served to initiate a planning process to identify appropriate locations for facilities that could be broadly supported by the environmental community and other stakeholders.

California's first offshore wind projects must reflect leasing, siting, and permitting decisions that are guided by planning and comprehensive scientific research on the potential impacts to sensitive marine areas and species and coastal resources, including cumulative impacts. Proper planning must occur before the CSLC considers specific lease applications. Further, developments should reflect recommendations from a robust stakeholder planning process, which will be essential for developing an offshore wind industry that will help power California's clean energy future.

Thank you for your consideration of these comments.

Sincerely,

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Bruce Schoppe, Conservation Chair
Ventura Audubon Society

Doug Kern, Executive Director
Gaviota Coast Conservancy

**Attachment A**: March 31, 2021, Letter to Jennifer Lucchesi and Jennifer Mattox, California State Lands Commission
**Attachment B**: October 21, 2019, Letter to Karen Douglas, California Energy Commission

Cc:
Wade Crowfoot, California's Natural Resources Secretary
Jennifer Lucchesi, California State Lands Commission
Jennifer Mattox, California State Lands Commission
Karen Douglas, California Energy Commission
Mark Gold, California Ocean Protection Council
John Ainsworth, California Coastal Commission
Kate Huckelbridge, California Coastal Commission
Chris Potter, California Department of Fish and Wildlife