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on Permitting Roadmap for Offshore Wind

Coalition of environmental non-governmental organizations (ENGOs) - Natural Resources Defense Council, American Bird Conservancy, Center for Biological Diversity, Environmental Defense Center, Environmental Protection Information Center, Humboldt Baykeeper, National Audubon Society, and Ocean Conservation Research

Additional submitted attachment is included below.

February 10, 2023

RE: Docket 17- MISC-01 – Draft Conceptual Permitting Roadmap for Offshore Wind Energy Facilities Originating in Federal Waters off the Coast of California

On behalf of the Natural Resources Defense Council, American Bird Conservancy, Center for Biological Diversity, Environmental Defense Center, Environmental Protection Information Center, Humboldt Baykeeper, National Audubon Society, and Ocean Conservation Research, we submit these comments to the California Energy Commission (CEC) workshop on the draft conceptual permitting roadmap for offshore wind energy facilities.

We support responsible offshore wind development,[1] which offers California an important opportunity to fight climate change, reduce air pollution, and improve energy reliability. Offshore wind must be developed in a responsible manner with minimal environmental impacts and robust community engagement.

The current climate crisis demands immediate action, and decarbonizing our fossil-fueled economy is an important part of the solution. To effectively decarbonize, we need to adopt a multi-pronged approach that includes the following: promoting renewable and responsibly developed energy sources, like offshore wind; shifting transportation patterns; supporting distributed and community-scale renewable energy and microgrids; supporting energy efficiency and energy conservation policies, and investing in other climate-friendly policies. Balancing renewable and responsibly developed and utilized energy sources can achieve our climate goals in a cost-effective, reliable, and timely manner.

The ocean is experiencing a biodiversity crisis caused by ocean acidification, warming water temperatures, habitat shifts, and other harmful changes due to fossil-fuel-driven climate change. We must take stronger measures to protect and restore marine life and the habitats they depend on. Protecting biodiversity and rapidly transitioning to clean energy need not be in conflict; we can and need to accomplish both goals.

We appreciate the CEC's work to comply with AB 525, and we offer the following comments in response to the workshop to inform the draft permitting roadmap.

[1] Responsible development of offshore wind energy: (i) avoids, minimizes, mitigates, and monitors for adverse impacts on wildlife and habitats; (ii) minimizes 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 negative impacts to environmental justice communities; and (vi) uses the best available scientific and technological data to ensure science-based and stakeholder-informed decision making.

1. Response to Draft Permitting Roadmap

Developing offshore wind resources off the California coast will require coordination between federal and state agencies, regional and local entities, California Native American Tribes and governments, and a range of other stakeholders to complete the required environmental reviews necessary to issue permits for the different phases of offshore wind development, including associated new port infrastructure. Given the complexity of this process, we appreciate that the CEC intends its roadmap to be a "dynamic document," which will be updated as additional information becomes known about the next phases of infrastructure development and environmental review requirements.[2]

Robust Public Engagement Is Needed Throughout the Offshore Wind Development Process. We appreciate the CEC noting lease conditions requiring an Agency Communication Plan (ACP), a Native American Tribes Communications Plan (NATCP), and a Fisheries Communications Plan (FCP).[3] We also appreciate that the roadmap includes provisions for Tribal and stakeholder engagement, and we seek more detail on how this engagement will be conducted. The permitting and responsible agencies need to ensure that there are ample opportunities for public participation throughout the offshore wind development process. These opportunities for participation must be publicized with advance notice via a wide range of media channels to maximize the actual notice that all stakeholders receive. Output from public engagement, such as meeting recordings and related documents, should be published as broadly as the respective notice. Likewise, the roadmap should also require the publication of relevant information on state agency dashboards in languages other than English for greater accessibility for members of the Limited English Proficiency Community. Requiring this degree of diverse, continuous, and transparent public engagement in the roadmap will ensure that agency decisions are guided by environmental, labor, equity, and other considerations and will reduce the potential for long-term conflicts.

Strong Mechanisms for Interagency Coordination Are Needed. Because the development of offshore wind facilities and supporting infrastructure will require oversight and permits from a number of federal and state agencies, strong mechanisms for interagency coordination are needed to ensure comprehensive oversight of and efficiency in the wind development process. We hope that the CEC's proposal for robust interagency agreements will facilitate the permitting process and support efforts to secure funding for agency review and implementation.[4] Any such agreements should not interfere with transparency and public participation in the regulatory processes.

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[2] California Energy Commission, Draft Conceptual Permitting Roadmap at 1 ("Draft Permitting Roadmap").
[3] Draft Permitting Roadmap at 7-8.
[4] *See* Draft Permitting Roadmap at 13-14.

A Visual Representation of the Permitting Pathway is Needed. All stakeholders would benefit from a publicly available visual diagram, chart or dashboard that illustrates the process for permitting offshore wind projects and the infrastructure needed to bring electrons from offshore floating turbines to end users, including interactions with federal agencies. This diagram, dashboard, or visual representation should be maintained by one California agency, perhaps California Energy Commission, in coordination with all other California agencies. It should be available to all stakeholders and provide notices, progress, deadlines and opportunities for engagement in environmental and other reviews in permitting processes. It should also provide an overview of the process of California agencies and how they will interact to fulfill their permitting obligations both in sequence and in the estimated timeline. This online, "one stop" visual representation should be fully funded for the lifetime of permitting offshore wind in California. Additionally, the agency needs to assess whether an additional effort needs to be made to provide printed materials or other communication for stakeholders who do not have internet access.

2. Recommendations for Environmental Review of Impacts of Offshore Wind Development

The CEC notes that interagency coordination regarding permitting could involve a permit application checklist, an integrated process for reviewing and submitting application materials, a schedule for interagency coordination, and opportunities for joint environmental documents under the California Environmental Quality Act and the National Environmental Policy Act.[5] The CEC should recommend the use of environmental review checklists in permitting processes moving forward and provide support to permitting agencies in developing the checklists as needed.

As part of this coordinating process, agencies should also coordinate about the topics that will be studied in the environmental reviews that will be conducted as part of the permitting process. Coordinated environmental review will facilitate filling data gaps about the effects of offshore wind development and promote efficiency in the permitting process. At a minimum, environmental review documents should cover the following:

- **Reasonably foreseeable and cumulative impacts of offshore wind development–** There should be a full evaluation of potential direct, indirect, and cumulative impacts of offshore wind development in the environmental review documents produced during the next phases. As several of our groups have previously commented,[6] potentially

[5] Draft Permitting Roadmap at 16.

[6] *See* Letter from Natural Resources Defense Council, *et. al.,* to Bureau of Ocean Energy Management, Comments in Response to the Bureau of Ocean Energy Management Draft Environmental Assessment for Commercial Wind Lease Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf, Humboldt Wind Energy Area, BOEM-2021-0085 (Jan. 11, 2022); Letter from Environmental Defense Center, *et. al.* to Bureau of

significant impacts may result from wind development in Humboldt and Morro Bay, and there has not yet been a comprehensive assessment of cumulative impacts. Reasonably foreseeable and cumulative impacts include the development of port and transmission infrastructure.

- **Robust alternatives identification and proposal–** Impact assessment should develop robust alternatives as early in the scoping process as possible, and agencies should consider providing the public with proposed alternatives before the draft Environmental Impact Report is issued. Factors to include in development of alternatives include, inter alia, project location, design, construction, operations and maintenance, financing, transmission, and stakeholder engagement. Improved knowledge of feasible alternatives and their impacts would enable regulators and developers to make better decisions early in the process when there is greater flexibility; it would also ensure that critical documents such as monitoring plans are thorough enough to detect and assess developing impacts.[7]
- **Potential impacts to marine mammals and sea turtles in state waters–** The California Current Ecosystem supports a vibrant array of marine life classified as protected and endangered under federal[8] and state law[9], including marine mammals, like humpback, blue, and gray whales, the northern elephant seal, and the southern sea otter, and reptiles such as the Pacific leatherback and loggerhead sea turtles. Offshore wind development poses numerous potential risks to these species, including injury and disturbance from noise related to site assessment and construction, entanglement in debris snagged on platform mooring lines, inter-array cables, or transmission cables, and strikes from vessels during construction and tow servicing of wind platforms as part of operations and maintenance. As we have previously commented to the CEC, additional research on species' population structure, distribution and habitat, and foraging behaviors, among

Ocean Energy Management, Re: Morro Bay Wind Energy Area Draft Environmental Assessment, BOEM-2021-0044-0128 (May 16, 2022).

[7] Preparing a Programmatic Environmental Impact Statement (PEIS) is another effective way for state agencies to ensure that the public's concerns and needs are being addressed. The Bureau of Ocean Energy Management (BOEM) is currently undergoing this process for the New York Bight project with multiple scoping meetings and opportunities for public engagement (87 Fed. Reg. 42,495 (July 15, 2022)). The outcome of BOEM's review is still uncertain, and it may not provide the best model for programmatic environmental review; however, that process demonstrates that agencies can conduct programmatic environmental review after wind energy areas have been designated, and it is important that state reviews cover the topics recommended in this letter to ensure their quality and usefulness. A well-conducted PEIS can promote transparency, increase public confidence in the decision-making process, and improve project outcomes in environmental, economic, and social arenas.

[8] *See*, National Oceanic and Atmospheric Administration, https://www.fisheries.noaa.gov/species-directory/threatened-endangered?oq=&field_species_categories_vocab=All&field_species_details_status=All&field_region_vocab=1000001126&items_per_page=25&page=0

[9] California Endangered Species Act, Cal. Fish & Game Code § 2050 et seq.

other priorities, is needed, and the next phases of permitting provide an opportunity to conduct this research.[10]

- **Potential impacts to bird and bat species–** Multiple bird and bat species use the aerial pathways around the current Lease Areas. It is important to evaluate the effects of wind development and operations on these species and populations, including collision risk and habitat displacement, which are indirect effects of state permitting for other project elements. We have provided suggestions for necessary research in prior comments to the CEC.[11]
- **Potential impacts to fish and benthic habitat in state waters–** Fish, including great white sharks and salmon sharks, may also be exposed to offshore wind construction and operation activities, and the next phases of permitting should consider risks to fish species, as required by the California Endangered Species Act and the California Coastal Act. The California Coastal Act requires that marine environments and species of special biological or economic significance be granted special protection and that any use of such environments sustain the long-term productivity and health of species found within.[12] Benthic habitat, including rocky reefs, sandy bottoms, and kelp forests, supports biodiverse marine communities, commercially important fisheries, and nutrient cycling. It is particularly important to protect biogenic structural habitat,[13] which is comprised of three-dimensional structures created by slow-growing living organisms (e.g., corals, sponges) that support a high density and diversity of marine species. Environmental review for the next phases of development should consider potential impacts to fish and benthic habitats.[13]
- **Potential impacts of invasive species–** Future development activities may lead to an increase in introduced or invasive species due to the presence of transmission lines, floating substations and other infrastructure in state waters and coastal areas, as well as increased traffic associated with maintenance and servicing. Site assessment may also lead to the introduction of species that may travel on survey boats' hulls, anchor chains, ballast water, or other means. We recommend the CEC address this issue in its permitting checklist and recommend that responsible agencies require lessees to provide a plan to reduce the likelihood of introduction of species during site assessment and characterization, as well as during future development activities.

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[10] *See* Letter from Natural Resources Defense Council et. al., to California Energy Commission, RE: Docket 17-MISC-01 - Workshop on Assembly Bill 525: Preparing a Strategic Plan for Offshore Wind Development (Nov. 14, 2022)("Strategic Plan Letter").

[11] *See* Strategic Plan Letter.

[12] California Coastal Act § 30230, Cal. Pub. Res. Code (West 2020).

[13] Biogenic habitats "encompass both a) those living species that form emergent three-dimensional structure, that separate areas in which it occurs from surrounding lower vertical dimension seafloor habitats and b) non-living structure generated by living organisms, such as infaunal tubes and burrows." Source: New Zealand Government Ministry for Primary Industries, "Linking marine fisheries species to biogenic habitats in New Zealand: a review and synthesis of knowledge. New Zealand Aquatic Environment and Biodiversity Report No. 130. May 2014. https://fs.fish.govt.nz/Doc/23651/AEBR_130_2514_HAB2007-01%20(obj%201,%202,%20RR3).pdf.ashx.

- **Potential impacts to coastal habitats and public access–** The Coastal Zone Management Act, the California Coastal Act, and other laws provide for the protection of coastal resources and related public access opportunities that may be impacted by offshore wind development. Any environmental review must address impacts to coastal areas and public access and ensure compliance with these and other relevant laws governing the coastal zone, including transmission infrastructure for offshore wind projects and new port infrastructure needed to support the projects.

Given the range of additional research needs and the dynamic regulatory landscape, it would be beneficial to establish a separate science entity dedicated to directing priorities for monitoring and research, housing and synthesizing information about the effects of offshore wind, and developing data standards for monitoring, and potentially other relevant standards. As courts in the Ninth Circuit have held,[14] and as both federal and California state agencies have attested, agencies must consult the best available science regarding environmental considerations and existing uses of the ocean to inform their decision making.[15] Securing the best available science requires continuous coordination across diverse stakeholders, allocation of resources from various fields, and a collaborative platform for data-sharing. Designating a single entity to develop and disseminate best available science can help ensure a coherent and consistent definition in all phases of permitting. An entity like the Regional Wildlife Science Collaborative could serve a useful purpose on the West Coast in advancing the science on offshore wind impacts, and the next phases of permitting provide an opportunity to launch such an entity.[16]

As our network of ENGOs has stated previously, it is essential to secure two general categories of data: (1) robust baseline data to accurately assess and track potential risks to marine species from offshore wind development, which must inform project siting, design, and operation; and (2) continuous monitoring data to allow for adaptive management. The CEC should recommend that state permitting agencies include such data collection in their permit conditions, both as a precondition of permitting and as an ongoing duty under the permit. This should include securing baseline data collection on avian, marine mammal, fish, zooplankton, and benthic invertebrates, and structural benthic habitat distributions in proposed project sites. Additionally, permitting agencies should require future offshore wind projects to commit to pre-, concurrent, and post-construction monitoring, incorporating innovative monitoring technology as it becomes available. Permit conditions should also require analysis and modeling of the potential

[14] *See, e.g., Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988); *see also San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 995 (9th Cir. 2014); *National Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 732 (2001) (agency must attempt to resolve uncertainty by collecting further data *before* a decision is made); *Sierra Club v. U.S. Forest Service*, 843 F.2d 1190, 1195 (1988). Although these cases involve NEPA, state courts have looked to NEPA when interpreting the requirements of CEQA. See, e.g., *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86, fn 21; *Environmental Defense Fund v. Coastside Water District* (1972) 27 Cal.App.3d 695, 701.

[15] AB525 Offshore Wind Report, California Energy Commission, 17-MISC-01 (May 9, 2022), https://www.energy.ca.gov/filebrowser/download/4361.

[16] *See* https://rwsc.org/

synergistic and cumulative impacts of initial projects, considering present and future ocean conditions. In recommending allocation of research funding, the CEC should prioritize assessment of the cumulative impacts of multiple offshore wind developments on Pacific wildlife species and populations. Finally, it is important that the CEC and coordinating agencies account for the seasonal variation in certainty and risk levels, rather than operating based on a yearly average that obscures important information for effective, real-time risk mitigation.

3. Coordinated Development of Robust Alternatives to Avoid, Minimize and Mitigate Significant Impacts

Coordination between state agencies, in consultation with scientists and stakeholders, is needed for early identification of robust alternatives to avoid, minimize, and mitigate impacts of proposed projects as a whole. Development of alternatives by state agencies should begin early in the process to identify alternatives for to-shore transmission lines, substations, port infrastructure development, and other project features that require state agency permitting and that must be analyzed as part of the environmental review. Agencies must become familiar with various technologies to develop a range of meaningful alternatives for public and decision maker review.

A documented, detailed, and exhaustive analysis of alternatives must be conducted at the outset of the environmental review and permitting processes to maximize the probability of successfully avoiding, minimizing, and mitigating harm. This analysis should seek to avoid and mitigate adverse economic and social effects, by, among other things, considering alternative sites for state-permitted infrastructure and proposed project components, evaluating reduced project sizes, and identifying alternative project iterations that consolidate transmission elements. While it is not possible to quantify all potential impacts of the alternatives considered, the CEC should assign quantitative values to the anticipated positive and adverse effects as fully as possible to facilitate comparison using common metrics.

4. Recommendations for Permit Conditions to Protect Environmental Resources

In addition to including required categories for environmental review, the CEC's permitting checklist should include required permit conditions for all phases of development to protect environmental resources. We provided detailed descriptions of such protective conditions in our letter responding to BOEM's proposed sale notice for the California wind energy areas, and we recommend that California state agencies require conditions in the following categories for the next phases of development[17]:

[17] Letter from Natural Resources Defense Council, et. al. to Bureau of Ocean Energy Management, Re: Proposed Sale Notice for Commercial Leasing for Wind on the Outer Continental Shelf in California – BOEM-2022-0017 (Aug. 1., 2022), attached.

- Monitoring and mitigation to reduce risk of entanglement of marine mammals, sea turtles, sharks, and diving birds.[18]
- Vessel strike avoidance and risk reduction measures, including reducing vessel speeds to 10 knots or less.
- Noise avoidance, minimization, and mitigation measures.
- Benthic habitat protection, including detailed benthic surveys of Habitat Areas of Particular Concern prior to leasing, avoidance of biogenic structural habitat, and, where the presence of biogenic habitat is confirmed, the submission and approval by relevant agencies of a mitigation plan prior to beginning operations. This would include plans for a mooring system with minimally intensive benthic footprints.
- Risk reduction of collision, lighting, and perching impacts for birds and bats. This would include research funding and adoption of new technologies to monitor collision with turbines in real time.
- Invasive species prevention, monitoring, and mitigation.
- Plans for adaptive management and compensatory mitigation provided by lessees, including advance voluntary compensatory mitigation for anticipated impacts during the life of the project.[19] Adaptive management plans should, at a minimum, achieve the following objectives:
    - Regular reassessment of the cumulative impacts of offshore wind projects and other anthropogenic activities impacting the respective environment
    - Development and implementation of a protocol for adjusting offshore wind operations in response to changing environmental conditions and emerging information, such as new information about seasonal migration, breeding, or feeding of marine species.
    - Regular review and revision of the adaptive management plan to ensure it remains both responsive to present and prevailing environmental conditions and based on the best available science.
    - Continuous consultation with local stakeholders to understand their relationship with offshore wind projects and address any concerns or unanticipated consequences of the projects on their interests.

All state permits and approvals should also require companies to contribute to a fund to support robust scientific research and development of mitigation and monitoring plans to inform

[18] Secondary entanglement could occur if marine debris becomes ensnared on project infrastructure, including platforms, mooring lines, inter-array cables, and anchors, and subsequently entangle marine wildlife. Also of concern are "primary" entanglement, where an animal becomes directly entangled in the lines and cables, and "tertiary" entanglement, where marine debris already entangling an animal becomes ensnared on the infrastructure; both warrant monitoring as floating offshore wind development proceeds.

[19] We expect developers to be prepared to adapt project construction and operation procedures based on new information or changes to wildlife populations and the levels at which these populations interact with the lease areas. For example, should rates of avian collision be higher than anticipated, lease holders should have plans in place for increased collision avoidance measures, as well as plans for compensatory mitigation.

avoidance, minimization, mitigation, adaptive management, and compensatory mitigation strategies for the projects.

5. Conclusion

We look forward to working with the CEC and sister federal and state agencies to ensure that offshore wind is responsibly developed.

Should you have any questions about the issues raised in our letter, please do not hesitate to contact us through the information below.

Sincerely,

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