

DOCKETED

Docket Number:	17-MISC-01
Project Title:	California Offshore Renewable Energy
TN #:	251099
Document Title:	American Clean Power Association California Comments - ACP-CA AB 525 Permitting Roadmap Workshop Comments
Description:	N/A
Filer:	System
Organization:	American Clean Power Association California
Submitter Role:	Public
Submission Date:	7/19/2023 10:27:44 AM
Docketed Date:	7/19/2023

*Comment Received From: American Clean Power Association California
Submitted On: 7/19/2023
Docket Number: 17-MISC-01*

ACP-CA AB 525 Permitting Roadmap Workshop Comments

Additional submitted attachment is included below.



July 19, 2023

California Energy Commission
715 P Street
Sacramento, California 95814

RE: Docket 17-MISC-01, Workshop on AB 525 – Permitting Roadmap

Dear Chair Hochschild and Commissioners:

American Clean Power Association – California (ACP-CA) is a multi-technology clean energy trade association. We represent several offshore wind developers, including all five of California’s first offshore wind leaseholders.

ACP-CA thanks the California Energy Commission (CEC) for its work in developing a draft permitting roadmap for offshore wind. The second permitting roadmap published in April 2023 presented several high-level permitting models for stakeholder consideration. We understand the CEC intends to produce at least one additional draft roadmap for stakeholder review before adopting it into a chapter of the final AB 525 Strategic Plan in the fall. ACP-CA urges the CEC to include in its final roadmap clear recommendations for state action, including which model or models the state believes can facilitate permitting of offshore wind facilities in time to achieve deployment of the first offshore wind projects in the early 2030s. We believe one or more of the suggested models may contribute to achieving this goal, but only with certain embedded conditions of success.

Given the limited detail in the roadmap on the scope or process for state and federal agencies to implement each permitting model, ACP-CA cannot conclusively provide an opinion on which model or combination of models it prefers. Instead, these comments focus on the conditions for success in each model, as well as key questions and uncertainties.

Key Conditions of Success

Within each permitting concept presented in the April 2023 Permitting Roadmap and in the June 2 AB 525 Workshop, there are key conditions of success that will determine whether and how a particular permitting approach provides the necessary clarity to project developers and permitting agencies and the efficiencies needed to complete project permitting in the timeframe desired by policy makers. Many of these conditions were described in ACP’s previous comment letters on the permitting

roadmaps¹. Offshore wind developers have identified common challenges in state-federal permitting processes while advancing projects in other U.S. jurisdictions. These lessons learned have created an understanding of early strategies that we can collectively employ to avoid similar challenges in California. These include the following:

1. Consistent or consolidated data, survey, and application requirements

Given the number of state and federal agencies that will be involved in the review of offshore wind project proposals, it will be critical for permitting agencies to collectively develop clear and consistent data, survey and application requirements for project developers. These should be provided to developers early in the process. Changing or conflicting data requirements that arise after survey work has begun, for example, would be a major source of delay and expense.

2. Clarity in agency roles and responsibilities

Project developers need clear direction on each agency's role, authority, and responsibility in offshore wind project reviews. There is still uncertainty, for example, regarding whether the State Lands Commission (SLC) or local entities with granted tide lands will serve as the California Environmental Quality Act (CEQA) Lead Agency.

3. Shared culture and goals

The primary state and federal agencies involved in permitting offshore wind must share common goals and embrace a shared culture committed to the successful, timely, and responsible permitting, construction and operation of offshore wind facilities. As the Bay Restoration Regulatory Integration Team (BRITT) process illuminated, shared culture is a key factor in successful interagency coordination.² The state could facilitate this through temporary staff exchange programs among state entities or even with staff from the Bureau of Ocean Energy Management's (BOEM) Pacific Region.

4. Predictable, agreed-upon, transparent timelines for agency reviews and stakeholder engagement

As ACP has advocated in the past, the state should provide a detailed schedule or Gantt chart that depicts developer/agency early engagement, coordinated agency reviews and sequencing. This schedule will provide the predictability and transparency that are essential for promoting responsible, efficient, and successful offshore wind development. This should include efforts to align the state's environmental review under CEQA and state permitting processes with the National Environmental Policy Act (NEPA) and other federal permit processes. Transparent and predictable schedules will enhance visibility to stakeholders, build confidence in the process and

¹ February 2023 Comments:

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=248756&DocumentContentId=83270>

October 2022 Comments:

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=246365&DocumentContentId=80563>

² PPIC, Advancing Ecosystem Restoration with Smarter Permitting, August 2021

outcomes, and provide certainty needed by developers for their internal project development schedules.

5. Continued coordination in stakeholder communications

Better coordination is needed between federal agencies, state agencies and leaseholders to ensure consistency and efficiencies in outreach and engagement with stakeholders, communities, and Tribes throughout the state and federal permitting processes. For example, while the CEC completes its public input process to develop the final permitting roadmap, offshore wind leaseholders are preparing communications plans, as required by BOEM as a lease condition, for engagement with Tribes, agencies, and the fishing industry. The leaseholders are also preparing plans for federal and state agencies' review, which will describe the surveys and assessments they need to complete for the project permit applications. Meanwhile, state agencies as well as leaseholders are separately conducting outreach with Tribal Governments and commercial fishery representatives to provide information and gather feedback from those stakeholders. In addition, the National Oceanic and Atmospheric Administration (NOAA) is currently considering an application for a new Marine Sanctuary on the central coast, which would abut the Morro Bay lease areas, and is of keen interest to Tribes, NGOs, communities, and prospective developers in the central coast region. With these multiple, overlapping initiatives that either directly or indirectly relate to offshore wind development, there is risk of stakeholder confusion about authority, responsibility, and process. The CEC should facilitate continued coordination to avoid conflicts in messaging and to promote clarity in how the various processes fit together.

6. Reasonably bounded project alternatives and potential mitigations

BOEM and the CEQA lead agency must ensure that any alternatives analyzed in detail in the NEPA and CEQA documents, as well as mitigation measures, are technically and economically feasible. The Fiscal Responsibility Act of 2023 amended NEPA and clarified that alternatives must be technically and economically feasible. Alternatives that would fail to result in a project being constructed are the same as a no action alternative and do not serve the goal of informed decision-making. BOEM has worked with cooperating Federal agencies to develop screening criteria for alternatives to be included for detailed analysis in the NEPA document.³ Similarly, CEQA requires Environmental Impact Reports (EIRs) to describe a range of reasonable alternatives to the project, which would feasibly attain the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.⁴ The range of alternatives in an EIR is bounded by those alternatives that can feasibly attain project objectives. Feasibility factors considered under CEQA include site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional

³ <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM%20COP%20EIS%20Alternatives-2022-06-22.pdf#:~:text=Based%20on%20NEPA%20caselaw%20and,relevance%20and%20efficacy%20and%20are%20duplicative.>

⁴ CEQA Guidelines Section 15126.6 [a]

boundaries, and whether the proponent can reasonably acquire, control, or otherwise have access to an alternative site. Given the definition of alternatives under both NEPA and CEQA, permitting agencies should work closely with the offshore wind industry when developing alternatives to ensure they are technically and economically feasible. The same principles apply to mitigation measures. On the Atlantic, a successful approach to addressing technical and economic feasibility has been for permitting agencies to identify the environmental concern or impact they are trying to avoid or mitigate and then work with the project developer(s) to design an alternative and or mitigation measure to reduce impacts to the resource(s) in question.

7. Clear, agreed-upon scope of review and project definitions

Permitting agencies should provide a clear definition of the project and the purpose of environmental reviews early on to inform developers, stakeholders and sister agencies. This step may be relatively straightforward under single-project, separate document approaches; however, it is especially critical when state agencies contemplate programmatic reviews and joint reviews with the federal government. For programmatic reviews, the state and its federal partner should clearly define the scope and purpose of a programmatic review to avoid scope creep or expansion. For example, the scope should define the precise geographic location and boundaries of the actions that will be characterized as one large action under review, a statement of the proposed project objectives, and the basis for review. For a joint review process, the state CEQA lead agency and BOEM will need to enter into a Memorandum of Understanding (MOU) early on to ensure that both federal and state jurisdictional responsibilities are met.

8. Defined dispute resolution procedures

Although state agencies and BOEM have been working successfully and collaboratively since the formation of the Intergovernmental Renewable Energy Task Force, offshore wind project permitting in the Pacific will be a new, complicated process and there may arise instances where agencies disagree about significance, mitigations, sufficiency of data, etc. Therefore, the CEC should recommend the state establish a dispute resolution process ahead of time to swiftly address any conflicts and keep permitting on track.

9. Sufficient and sustained state funding for permitting agencies

The state must sufficiently and sustainably fund its permitting agencies to enable coordination and efficient permitting. Based on the timeline for permitting and environmental reviews, the CEC should include in the final roadmap an estimate of staffing and funding requirements for each agency over the next 10-year period. This estimate can serve as the basis for annual budget processes to enable the administration and legislature to comprehensively evaluate the funding requirements for offshore wind permitting across agencies.

While the conditions of success described above are relevant to each of the conceptual permitting models, there are important considerations for each model, as discussed below.

Coordinated Permitting Approach

ACP-California generally supports the Coordinated Approach articulated in the April 2023 Permitting Roadmap and described in further detail in the December 2022 AB 525 Conceptual Permitting Roadmap. The Renewable Energy Action Team (REAT) model is a good example of agencies working closely together to accomplish permitting tasks efficiently to meet deadlines. The CEC should review lessons learned from the REAT process to identify additional conditions of success or avoidable pitfalls that may inadvertently slow down or complicate the permitting process.

As Scott Flint discussed during the June 2 workshop, one condition of REAT's success was a defined deadline driving coordinated and timely action by both state and federal agencies. The federal and state permitting processes are part of an integrated, complex set of public and private actions that must progress in tandem for offshore wind developers to invest in project development, negotiate contracts for offtake, and help achieve California's offshore wind and climate goals. We have collectively described the four pillars of offshore wind development—procurement, permitting, ports, and transmission—that are subjects of the AB 525 report. The state must apply urgency to each of these pillars, including an efficient permitting process for offshore wind port developments and transmission infrastructure. Within the final strategic plan, we ask that the CEC establish target deadlines for all development activities ancillary to offshore wind projects, as was done during the REAT process, to ensure all pillars are moving forward together and on time.

The Federal Permitting Improvement Steering Council (Permitting Council) "FAST-41" program will be a useful tool for promoting coordination and tracking progress against milestones. The Permitting Council is a unique federal agency charged with improving the transparency, predictability, and outcomes of the federal environmental review and authorization process for certain large-scale critical infrastructure projects. A project proponent can initiate this process by submitting a FAST-41 Initiation Notice (FIN) to the Executive Director of the Permitting Council and BOEM. BOEM would then determine if the project meets the definition of a "covered project". Based on our experience on the East Coast, BOEM has considered this to be at the Construction and Operations Plan (COP) stage for an offshore wind facility. Once a project is determined to be a "covered project" agencies must develop a Coordinated Project Plan (CPP) and establish a permitting timetable. ACP encourages California to participate in this process to ensure coordination with Federal agencies and transparency on the permitting timeline. The State of Louisiana was the first (and so far, only) state we are aware of that has opted into the FAST-41 process. The project proponent was the Louisiana Coastal Protection and Restoration Authority (CPRA), which was established as a single state entity with authority to articulate the state's priorities and to focus development and implementation efforts to achieve comprehensive coastal protection for Louisiana. California should begin coordination with the Permitting Council as soon as practicable. There are two options for incorporating state milestones into the FAST-41 program: 1) California could opt into Fast-41

requirements under an MOU; or 2) the state and BOEM could agree to posting state milestones, with language reflecting the state is not subject to F41, but is displaying the information for tracking. If utilization of the permitting dashboard is not feasible for California permitting milestones, we recommend the state develop an equivalent permitting dashboard that mirrors the Fast-41 dashboard to facilitate alignment in agency reviews and stakeholder engagement.

Success in a Coordinated Approach also requires a state lead coordinator with decision-making or appointed authority who is assigned to manage the process on behalf of the state in partnership with the Federal government. Ideally, the lead coordinator will have authority for dispute resolution and for evaluating and encouraging progress along the timeline of state milestones.

Programmatic Environmental Review

ACP-CA understands that BOEM intends to develop a programmatic environmental impact statement (PEIS) under NEPA for the lease areas in federal waters offshore California. BOEM similarly initiated a PEIS for offshore wind leases in the New York Bight in July 2022. Given the template BOEM is building on the East Coast, we expect the PEIS will identify, analyze, and adopt, as appropriate, programmatic avoidance, minimization, mitigation, and monitoring (AMMM) measures and assess cumulative impacts based on representative project design envelopes. The analysis in this PEIS will also provide a framework for its integration with site-specific NEPA reviews. Importantly, the PEIS is intended to help BOEM make timely decisions on future offshore wind projects.⁵

Given the foundational nature of the PEIS and the bearing it will have on future projects, it is imperative that the state participate actively in the development of the California PEIS and commit to the outcomes and decisions of that process. We believe the state could accomplish this goal in one of the following ways, as further discussed below: 1) participate as a cooperating agency on the PEIS developed by BOEM's; 2) participate in development and review of a joint programmatic EIR (PEIR)/PEIS process with BOEM; or 3) developing a PEIR separately from BOEM that is scoped to examine project components that occur within the state's territorial sea⁶ and on-shore.

The first approach – collaborating with BOEM on the PEIS – would be the most straightforward and efficient. We believe the state could achieve its desired outcomes from a programmatic review of

⁵The purpose of the Proposed Action is to identify, analyze, and adopt, as appropriate, issues, degree of potential impacts, and AMMM measures. The site-specific NEPA analyses and consultations for each proposed wind energy project will focus on the impacts of approving a particular COP, including identification of AMMM measures that are best suited for consideration in the COP-specific NEPA analysis. The Proposed Action is needed to help BOEM make timely decisions on COPs submitted for the NY Bight." See <https://www.federalregister.gov/documents/2022/07/15/2022-15159/notice-of-intent-to-prepare-a-programmatic-environmental-impact-statement-for-future-wind-energy>

⁶ As defined by Title 33 Code of Federal Regulations §2.22(a)2.

current lease areas through this approach – namely, consideration of cumulative impacts, avoiding duplicative reconsideration of basic policy considerations, and early consideration of program-wide mitigation measures. The state (e.g., through SLC as CEQA lead) should request a seat at the table as a cooperating agency early in the scoping of BOEM’s PEIS. Involvement in the development of BOEM’s PEIS as a cooperating agency would provide the state with influence in the development of the purpose and need, alternatives, and preferred alternative as well as review of, and comment on, the preliminary draft PEIS and the preliminary final PEIS. A key objective of the PEIS should be to enable future tiering from the document, meaning that subsequent proposed offshore wind projects can move forward with environmental assessments rather than environmental impact statements if the projects’ design envelopes, technologies, and operating conditions are assessed in the PEIS.

The second approach, a joint PEIR/PEIS, would be a more formal and intensive iteration of the first approach described above. In this approach, the state would need to consider early on, and in collaboration with BOEM, the appropriate scope of a joint document, including whether and how to evaluate impacts in state waters and on land, and the baseline data and project envelope it would utilize. It would also need to consider the feasibility of “catching up” with BOEM’s PEIS planning to date,⁷ as well as the cost and benefits of this enhanced role for the state as compared to the first approach.

To engage in programmatic review of offshore wind impacts in federal waters, the state would necessarily need to either participate in BOEM’s PEIS process or collaborate in a joint programmatic review, as described in the two approaches above. The only programmatic review the state could feasibly conduct independent of the BOEM PEIS would be a PEIR exclusively focused on impacts in state jurisdictional lands and waters. In this third approach, the state could develop its own PEIR under CEQA that would assess the range of generic cable corridors that might be considered based on what is already known from subsea fiber optic cable projects, as well as impacts to coastal resources from similar coastal development projects. Following such a PEIR, an offshore wind proponent could then tier from this analysis for any site-specific impacts and possibly state-wide mitigation guidance related to their project components in state territorial waters and onshore.

In any case, if the state endeavors to participate in a programmatic approach it should make clear to stakeholders how it intends to utilize this process for efficient and effective environmental review and decision making. Agencies must complete permitting for the first offshore wind projects (including the programmatic review and project-specific review) in 2028 to enable the first offshore wind projects to

⁷ If a NEPA document is ready before a CEQA document, the CEQA Guidelines (Section 15221) recommend state or local agencies use the EIS rather than preparing an EIR if these two conditions occur: (1) EIS is prepared before an EIR would be completed and (2) The EIS complies with the provisions of the CEQA Guidelines. Because NEPA does not require separate discussion of mitigation measures, these need to be added, supplemented, or identified before the EIS can be used.

come online in the early 2030s. It is important that programmatic reviews enable efficient and expedited reviews of project-specific permit applications. Developers consider submittal of project-specific permitting applications, agency declaration of applications completeness, and commencement of project reviews to be critical project development milestones. A future scenario in which the delay in completing programmatic reviews holds up initiation of project-specific reviews would compromise the start of construction, which of course would have consequences for power purchase, supplier, and construction contracts.

We also caution that the state's requirements under AB 525 to identify additional sea space to meet the 25-gigawatt offshore wind planning goals could complicate any programmatic document that is prepared for the current BOEM lease areas. Thus, defining the project and scope up front and maintaining this definition throughout the process will be critical to a successful outcome that advances the first five projects' environmental reviews. The state should resist calls to broaden the scope of programmatic review to include new potential but hypothetical wind energy areas as this would overly complicate and slow down the programmatic review process at a time when the offshore wind industry requires certainty and forward progress. However, the state, developers, and stakeholders will undoubtedly learn a great deal in the programmatic and project-level reviews of the first five lease areas, which can be applied to the benefit of future project assessments and cumulative impact analyses.

Joint CEQA-NEPA Documents

ACP-California is neutral with respect to the value of a joint document approach for project level reviews, although we see the value in reducing stakeholder fatigue through the review of joint rather than separate documents. Certainly, there have been many successful examples of federal and State of California agencies working together to complete a joint document. As articulated in a joint 2014 guidance document by the Council on Environmental Quality and the Governor's Office of Planning and Research, "[b]oth NEPA and CEQA [also] have similar goals of ensuring that governmental actors are making informed decisions regarding projects and operations that may affect the environment, and their implementing regulations are designed to allow flexibility in consolidating and avoiding duplication among multiple governmental layers of review."⁸ As Aspen Environmental highlighted in its presentation at the June 2nd AB 525 workshop, CEQA and NEPA are similar environmental review processes, but with distinct differences in standards, goals, and timelines. State and federal agencies have prepared useful documents on best practices for aligning the two processes, which the CEC should reference as it evaluates this option.⁹

If the state and federal governments do decide to move forward with this model, it will be critical that the federal and state lead agencies enter into an MOU as soon as possible that establishes shared

⁸ https://www.opr.ca.gov/docs/NEPA_CEQA_Handbook_Feb2014.pdf

⁹ [NEPA and CEQA: Integrating Federal and State Environmental Reviews;](#)

timelines; agency roles and jurisdictions; communication protocols; coordination and dispute resolution processes; agreements for alignment on project descriptions, data needs and survey requirements; consideration of feasible project alternatives; and the approach cumulative impact analysis. As highlighted above in the “Key Conditions of Success” section, the NEPA and CEQA lead agencies in a joint document approach will need to agree early-on to limit project alternatives and proposed mitigations according to NEPA and CEQA standards of feasibility and alignment with project objectives. A clear framework for this type of coordination will be critical to the success of this joint approach. Otherwise, the joint document model creates a risk of greater complications and delays than having two distinct processes. If a joint CEQA/NEPA document approach is selected, we recommend that the signing parties clearly outline in an MOU the state and federal roles and jurisdictions that will be upheld throughout the review process.

Conclusion

We appreciate the opportunity to comment on the excellent approach to providing and receiving information during the June 2 AB 525 Workshop and the coordination that is occurring amongst the state agencies to create the best permitting roadmap model for offshore wind. We look forward to continued engagement with the Energy Commission and the state’s offshore wind permitting agencies in the development of a more detailed permitting roadmap that builds upon one or more models presented to facilitate timely, coordinated, predictable, and efficient permitting of offshore wind facilities off the California coast.

Sincerely,



Molly Croll
Director, Pacific Offshore Wind
American Clean Power Association