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January 3, 2022

Re: Atlantic Wind Lease Sale 9 (ATLW–9) for Commercial Leasing for Wind Power on the Outer Continental Shelf in the Carolina Long Bay Area— Proposed Sale Notice

Submitted via regulations.gov; Docket No. BOEM–2021–0078

The American Clean Power Association ("ACP"),[1] the Mid-Atlantic Renewable Energy Coalition Action ("MAREC Action"),[2] and the Southeastern Wind Coalition ("SEWC")[3] appreciate the opportunity to provide these comments on the Carolina Long Bay Proposed Sale Notice ("PSN").[4] Our organizations collectively represent and work with the vast majority of offshore wind development companies that are involved in the offshore wind business regionally and across the United States.

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

[2] MAREC Action is a nonprofit organization that was formed to help advance the opportunities for renewable energy development primarily in the region where the Regional Transmission Organization, PJM Interconnection, operates. MAREC Action's footprint includes North Carolina and nine other jurisdictions in the region. MAREC Action members include utility scale wind (including offshore wind) and solar developers, wind turbine manufacturers and non-profit organizations dedicated to the growth of renewable energy technologies.

[3] The Southeastern Wind Coalition is a non-profit that works to advance the wind industry in the Southeast. SEWC focuses on land-based wind, offshore wind, wind imports, and the industry's supply chain. SEWC takes an objective, data-driven, and economic development focused approach to ensure the Southeast can take advantage of this clean, low-cost generation source. The region of coverage for SEWC includes Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, Arkansas, Tennessee, and Kentucky.

[4] 86 Fed. Reg. 60,274 (Nov. 1, 2021), https://www.boem.gov/sites/default/files/documents/about-boem/regulations-guidance/86-FR-60274.pdf

I. Introduction/Background

BOEM should be commended for moving forward with its leasing process in the Carolina Long Bay. The U.S. now has a total offshore wind pipeline of over 28 gigawatts (GW) in federal lease areas issued to date.[5] The addition of BOEM's proposed Carolina Long Bay Wind Energy Area will help ensure the U.S. achieves the Administration's 30 GW by 2030 target for offshore wind and move toward net-zero power sector emissions, and will open substantial opportunities for the continued development of a domestic offshore wind supply chain along the South Atlantic seaboard.

We encourage BOEM to consider these comments on behalf of the offshore wind industry and to expeditiously issue a Final Sale Notice (FSN), and subsequently hold a lease sale for the proposed Wilmington East Lease Area. Consistent with Secretary Haaland's timetable for future offshore wind leasing, BOEM should issue a lease or leases before the moratorium imposed in the prior administration takes effect on July 1, 2022.[6]

We largely support the analysis and rationale in the PSN to develop the Wilmington East Lease Area, along with the accompanying auction structure and lease stipulations. BOEM has generally achieved its goal of identifying an offshore location that is suitable for wind energy development in the Carolina Long Bay, while also taking into consideration other ocean users and uses, including commercial and recreational fishing, maritime navigation, and Department of Defense ("DoD") activities. We appreciate that the proposed Wilmington East Lease Area explicitly avoids the most significant impacts to these ocean uses, while acknowledging the potential for future mitigation measures to address any remaining impacts as the area is characterized and developed. As discussed further below, however, we are concerned that the PSN proposes lease stipulations that could add uncertainty and deter participation in this leasing

[5] ACP, U.S. Offshore Wind Industry Status Update, (2021) available at https://cleanpower.org/wp-content/uploads/2021/02/ACP_FactSheet-Offshore_Final.pdf.

[6] In the closing months of the Trump Administration, vast swaths of acreage were withdrawn for a decade from future federal energy leasing, starting in North Carolina and reaching down around Florida and into the eastern Gulf of Mexico. While much of the focus of this action was on its impact for oil and gas exploration and production, the Department of Interior confirmed at the time that the withdrawal *also* applied to offshore wind. While we do not necessarily agree with that reading of the Presidential Memorandum, it does appear that BOEM believes that it is prohibited from executing lease auctions in federal waters off the coast of North Carolina for a ten-year period beginning on July 1, 2022. *See,* https://www.bloomberg.com/news/articles/2020-09-28/trump-s-offshore-oil-ban-to-halt-coastal-wind-farms-too.

process.

With these caveats, BOEM should continue to demonstrate leadership and a commitment to permitting offshore wind in the Carolinas by fully leasing the Wilmington East WEA in order to reach the Biden Administration's offshore wind goal of 30 gigawatts by 2030, meet demand for offshore wind energy along the Carolina Coast, and achieve significant environmental and economic benefits for the United States. In addition, leasing the Wilmington East WEA will help meet state renewable energy goals in the offtake areas. For instance, North Carolina has committed to reduce electric power sector greenhouse gas emissions by 70% below 2005 levels by 2030 and attain carbon neutrality by 2050, foster long-term energy affordability and price stability for North Carolina's residents and businesses by modernizing regulatory and planning processes, and accelerate clean energy innovation, development, and deployment to create economic opportunities for both rural and urban areas of the state.[7] Just as importantly, Governor Cooper has ordered the deployment of 2.8 GW of offshore wind energy by 2030 and 8 GW of offshore wind by 2040.[8] BOEM should move the development process forward to ensure a pipeline of offshore wind leases and projects to satisfy North Carolina's offshore wind goals, not to mention South Carolina's nascent interest in offshore wind development.[9]

The Wilmington East Lease Area identified in the PSN is the result of careful analysis and is responsive to the region's renewable energy goals and the need to develop a predictable leasing pipeline. But this lease area alone is also not enough to sustain a long-term supply chain; much more leasing in the region is needed to accomplish that objective (and that, in turn, requires the lifting of the South Atlantic offshore wind moratorium. as discussed in ACP's September 13, 2021 comments on the Carolina Long Bay leasing process.[10]). Given the long term needs of the region and nation, we urge BOEM not to reduce the size of the area in the FSN. We appreciate BOEM's transparency on the potential for corridors or buffers that could

[7] https://deq.nc.gov/energy-climate/climate-change/nc-climate-change-interagency-council/climate-change-clean-energy-plans-and-progress/clean-energy-plan.
[8] https://governor.nc.gov/news/press-releases/2021/06/09/governor-cooper-commits-offshore-wind-power-north-carolina-creates-jobs-transitioning-clean-energy
[9] See, Bureau of Ocean Energy Management Carolina Long Bay Task Force, Response to Draft Proposed Sales Notice - South Carolina Perspective (July 21, 2021) available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Draft-South-Carolina-Perspective.pdf.
[10] ACP Comments to BOEM on North Carolina Long Bay EA, Docket No.2021-0055 (September 13, 2021).

encumber lease areas, but the FSN should include clear language that the final boundaries of the offered lease areas will not be subject to further encroachment absent convincing new evidence warranting such restrictions.

II. Comments

A. Number of Leases

ACP and MAREC Action do not take a position on whether the proposed lease area should be split into multiple leases or maintained as one lease area, as their membership have divergent positions on the issue.[11] SEWC is submitting a separate comment on the same docket articulating their position that the Wilmington East WEA should be split into two lease areas. However, all signatories to this letter agree that if BOEM decides to divide the WEA into multiple leases, there should be only one lease per winner.

B. Vessel Transit Corridors

In the PSN, BOEM declined to delineate vessel transit corridors in the Wilmington East WEA, determining that the information available does not warrant the imposition of transit corridors. We agree with BOEM's position and would simply emphasize that the area is too small to warrant transit corridors. If, for any reason, BOEM does insert transit lanes/corridors in the FSN, BOEM should provide detailed information as to how it arrived at its conclusions, including how it calculated the corridor/lane width, length, and orientation.

More broadly, we also ask that BOEM avoid using the terms "transit corridors" or "transit lanes." Neither are official terms used by the U.S. Coast Guard (USCG) or National Oceanographic or Atmospheric Administration (NOAA) charts. We urge BOEM to attach no label to ocean areas between leases, or if it must to use the term "separation zone" rather than "transit corridor" or "transit lane." This term highlights the fact that such spaces could serve multiple purposes, including corridors for transmission routing, particularly if a regional transmission system is eventually developed. Ocean areas (or separation zones) would also allow mariners transiting through one wind farm (e.g., not via a designated "lane") to reorient to a new layout.

[11] MAREC Action notes that several of its members support splitting the WEA into two leases if they could each support a commercially viable utility-scale offshore wind project, factoring in spatial constraints.

C. Uniform/Prescribed Layout

In the PSN, BOEM requested comment on whether BOEM should consider prescribing uniform (i.e. aligned) turbine layouts in the Lease Area, and on whether the establishment of uniform turbine layouts negates the need for established transit corridors. While a uniform layout rather than transit corridors may work in some situations, we believe that prescribing a uniform layout in the Wilmington East Lease Area is premature, and that developers should be able to optimize and submit the layout that best suits their chosen technology and the wind resource. Developing a uniform layout will require extensive discussion and analysis of data that has not yet been collected; as a result, this requirement could delay the auction. Additionally, the area is too small to require any additional measures to facilitate transportation through the lease, especially at this early stage. We prefer that BOEM preserve flexibility for later project design and permitting, allowing a site-by-site approach to address stakeholder concerns.

D. Maritime Navigation

Safe vessel navigation is a priority for the offshore wind industry, and we appreciate BOEM's and the USCG's work in making the Wilmington East Lease Area a safe navigation area for all parties. We also appreciate BOEM's efforts to include discussion of all potential transit lanes and potential fairways ahead of issuing an FSN, and urge BOEM to provide as much certainty as possible regarding what parts of the lease area (if any) may not end up being buildable.

BOEM's discussion of all potential transit lanes and potential fairways at this stage provides more certainty regarding what parts of the lease area is up for auction. We note that much work has already been done to ensure safe navigation in this area, and that the robust deployment of offshore wind is entirely compatible with safe vessel navigation. In addition, navigational concerns are more appropriately addressed via project-specific Navigation Safety Risk Assessments ("NSRAs") that are incorporated into a lessee's Construction and Operation Plans ("COPs"), which are then subject to federal environmental review and public comment under the National Environmental Policy Act ("NEPA"). We believe that additional analysis of traffic concerns and proposed turbine layouts can be conducted on a more project-specific level, to allow for proper mitigation for each project if need be. For this reason, we strongly believe that the supplemental USCG Port Access Route Study ("PARS") currently being conducted in

the area should not recommend additional north to south navigational mitigation measures or additional encumbrances that might conflict with the Wilmington East Lease Area or with future WEAs. We also note that one of the proposed fairways in the USCG's advance notice of proposed rulemaking ("ANPRM"), overlaps slightly with the Wilmington East Lease Area, and we recommend that BOEM work with USCG to move that fairway slightly to the east/southeast to avoid conflicts. Once this is accomplished, we believe there should be no further restrictions on use of the lease area because fairway widths already incorporate safety buffers.

Although we acknowledge that the establishment of USCG fairways and traffic lanes is beyond the scope of this proceeding, we urge BOEM to work with the USCG to reach an agreement that, if and when a final PARS is issued, the recommendations from that PARS will not apply retroactively to areas that have already been leased.

E. Military & Airspace Conflicts

We appreciate that BOEM has not excluded portions of the lease area due to military conflicts. According to the February 13, 2020 letter from the DoD Military Aviation and Installation Assurance Siting Clearinghouse to BOEM, there is minimal military conflict in the Wilmington East Lease Area.[12] To the extent further conflicts are identified, those site-specific impacts and concerns can be better addressed through coordination with DoD, FAA, USCG, and NOAA at the COP review stage, which will consider mitigation techniques at the site-specific level. As there are many years between a lease issuance and a COP approval, and it would be premature to attempt to mitigate such potential impacts at this early stage. We therefore urge BOEM to continue to work with DoD and leaseholders to mitigate potential impacts on a project-specific basis at the COP stage of the development process. At the leasing stage, most significant military radar issues appropriate for identification and the associated conflicts, if any, have been addressed. We urge BOEM to take into account what has already been removed. Therefore, BOEM should avoid imposing new mitigation measures in the final Wilmington East lease.

F. Lease Stipulations on Benefits to Underserved Communities

In the PSN, BOEM noted it that it is "considering lease stipulations to direct benefits to underserved communities and to better develop the workforce needed to design, construct,

[12] https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/DoD-Response-Carolina-Long-Bay-Planning-Areas.pdf

operate, and maintain offshore wind farms." We applaud BOEM for recognizing the inequalities that often exist in communities in the vicinity of offshore wind development, and we support reducing disparities in resources allocated to underserved communities. We also support BOEM's goals of building opportunities for underserved communities for economic development related to the offshore wind industry, which will in turn help ensure a robust labor force needed to stand up an offshore wind industry in the U.S. In addition, racial equity, workforce development, and environmental justice considerations are all important parts of offshore wind's value proposition.

Nonetheless, we have not been presented with specific proposed lease language implementing these objectives, and are hesitant to support lease stipulations that have not been fully vetted by industry. If a lease stipulation has not yet been fully vetted, its implementation could have unintended consequences, especially for the communities the proposed stipulation purports to serve. Absent the ability to review and comment on such stipulations, we believe that BOEM's goals can be best achieved on an individual project basis at the COP stage, potentially in conjunction with future state offshore wind procurement policies, or in lieu of such policies should they not exist.

To the extent stipulations are included, we encourage BOEM to ensure that the compliance deadlines align with the development process. BOEM should particularly avoid a lease stipulation that would impose costs at a level that would raise the overall price of electricity that a project can deliver, which, in turn, can have the unintended consequence of raising electricity rates in underserved communities. We are also concerned about lease stipulations that impose requirements that cannot be met in a timely manner and do not allow developers maximum flexibility to avoid duplicative investments. Inserting such stipulations as a part of the lease auction could hurt competition by deterring robust developer participation.

Finally, if BOEM ultimately decides to pursue lease stipulations centered on equity issues for the Wilmington East lease sale, we would support provisions that are positioned as incentives rather than mandates, as BOEM has proposed with its supply chain and workforce development bidding credits. We take this position under the assumption that unlike in the New York Bight, there are unlikely to be conflicting or duplicative state-level policies in this arena.

G. Domestic Supply Chain/Workforce Development Bidding Credit

In the PSN, BOEM proposes to include a bidding credit that would allow bidders to receive a credit of up to 20 percent off their winning bid in exchange for financial commitments to development of a domestic supply chain and workforce development.

We support the intent and objectives of this credit, and appreciate the efforts at flexibility contained in the proposed lease language in Section 7. We agree that lessees will not be prepared to make supply chain investments until well into the development process, and the submittal of the facility design report ("FDR") may be a reasonable benchmark for such investments.

If BOEM decides to move forward with this concept in the FSN, however, we think more flexibility and clarity is warranted in several respects. First, if a lessee cannot commit by FDR submittal, the lease should include more relief from punitive enforcement measures in the event that a developer makes good faith efforts but is unable to make the full investment by the deadline. As a matter of fairness and to reduce technical and financial uncertainty, we recommend that BOEM expand the basis for extending the deadline to include unforeseen events and good faith efforts, and allow a developer to only return the portion of the credit that was not used on required investments at the risk-free treasury rate if it cannot meet the full commitment. Second, we request more clarity regarding what and to where the credit can be applied. The current language allows the credit to be used for "programs" and "incentives," but we seek clarification that these terms can include direct or indirect investment in domestically-produced components and domestic hiring. We also seek further explanation for—and recommend deleting—the bar on receiving equity in return for lessees' contributions, as this could disincentivize a wide range of otherwise helpful investments.

Finally, BOEM should consider other, potentially more effective uses of bidding credits, either in addition to or as an alternative to what is outlined in the PSN notice. For instance, the bidding credit could be used to provide a dedicated funding stream for a federal fisheries compensation fund. ACP will provide additional comments on this concept in response to BOEM's fisheries mitigation request for information.

H. Project Labor Agreement Lease Stipulation

In the PSN, BOEM proposes the addition of a lease stipulation that would require the

lessee to make every reasonable effort to enter into a project labor agreement ("PLA") covering the construction stage of any project proposed for the leased area. As justification for including PLAs as a lease stipulation, BOEM points to Executive Order 14008, "Executive Order on Tackling the Climate Crisis at Home and Abroad,"(E.O.)[13] as well as several sections of the Outer Continental Shelf Lands Act. BOEM indicates that "PLAs may support the achievement of [E.O. 14008's] goals—including expeditious development and potentially more years of receipt of operating fees—by assuring labor stability."[14]

We support the goals of the E.O. pertaining to offshore wind. Specifically, § 207 of the E.O. directs the Secretary of the Interior to conduct activities relating to offshore wind in a manner that "creat[es] good jobs"[15]—an objective that our members enthusiastically embrace. Of the planned offshore wind projects that have submitted COPs, most intend to use PLAs in the construction stage of the project.[16] This shows that offshore wind developers are actively seeking to invest in their communities and regions, and are deeply engaged in developing and retaining a long-term workforce. However, the specifics of each project's PLA (or other labor agreement) are more appropriately determined on a project-by-project basis or at the state level.

We are concerned that requiring PLAs across the board—despite the track record showing that they are already being used—can increase uncertainty for projects. First, there is the risk of federal requirements that are potentially redundant or in conflict with those of participating

[13] 86 FR 7619 (Jan. 27, 2021)("EO 14008").
[14] PSN, https://www.boem.gov/sites/default/files/documents/about-boem/regulations-guidance/86-FR-60274.pdf¬
[15] E.O. 14008 at Sec. 207, 86 FR at 7624
[16] *See e.g.* Anastasia E. Lennon, *Vineyard Wind signs labor agreement for offshore wind project; 500 union jobs guaranteed*, South Coast Today (Jul. 21, 2021) ("Vineyard Wind and a regional union organization signed a project labor agreement along the city's waterfront Friday, guaranteeing at least 500 union jobs for the project's construction and installation off the coast of Martha's Vineyard."), https://www.southcoasttoday.com/story/news/environment/2021/07/16/vineyard-wind-signs-labor-agreement-offshore-wind-project-unions/7995278002/; Nadja Skopljak, *Dominion Energy Plans CVOW Project Labor Deal*, Offshorewind.biz (Jan. 30, 2020) (agreement to negotiate Project Labor Agreement with three trade unions), https://www.offshorewind.biz/2020/01/30/dominion-energy-plans-cvow-project-labor-deal/; Revolution Wind, COP Volume I at 18 (Noting "Executed Memorandum of Understandings ("MoUs") with regional labor unions to negotiate in good faith a project labor agreement (PLA) and the development of training programs."), .https://www.boem.gov/revolution-wind-cop-volume-I; *Sunrise Wind Wins Bid for Large-Scale New York Offshore Wind Farm*, (Jul. 18, 2019)("Sunrise Wind will also enter negotiations with New York State contractors and trade labor organizations on a Project Labor Agreement to cover construction activities for the Sunrise Wind project, and is committed to paying prevailing wages."), https://us.orsted.com/news-archive/2019/07/sunrise-wind-wins-bid-for-large-scale-new-york-offshore-wind-farm; Ocean Wind, COP Volume 2 at 267 ("Ocean Wind developed a Memorandum of Understanding (MOU) signed with the South Jersey Building and Construction Trades Council in December, calling for a Project Labor Agreement for offshore wind construction jobs that pay prevailing wage."), https://www.boem.gov/ocw01-cop-volume-ii;

states. Indeed, this particular proposed lease sale is a great example of the need for a state-by-state and/or project-by-project approach. The states adjacent to the Wilmington East WEA do not currently have a strong organized labor presence, and a PLA requirement could result in a project in the leasing area being delayed or canceled due to labor shortages. The limited number of local labor organizations also may be hesitant to commit to an MOU or PLA with a project until it becomes "real"—having won a state solicitation or otherwise confirmed a power offtaker.

Second, any PLA requirement would need to provide maximum flexibility on timing. For instance, Vineyard Wind only recently signed its PLA—after BOEM issued the Record of Decision on its COP. Meanwhile, other projects (supported by policies of their host states) are engaged in good-faith negotiations with organized labor, often under Memoranda of Understanding ("MOUs") or other formal agreements, to ensure that offshore wind creates well-paying local jobs. At a stage when factors such as the lease scope and transit areas are not final, a premature PLA requirement could unintentionally deter development (particularly because some lease areas such as the Carolina Long Bay could potentially serve more than one state, which may have different infrastructure and workforces). Additionally, ongoing activities (scoping, regional transmission solutions, etc.) make it difficult to require PLAs at such an early stage, as conditions will likely change rapidly.

I. Protected Species

In the PSN, BOEM proposed that the lease stipulations no longer specify exclusion zones for sound propagation from geophysical survey equipment, vessel strike avoidance measures, or protected species observer procedures. We support BOEM's proposal and agree that mitigation measures developed through Endangered Species Act consultations and National Marine Fisheries Service-issued IHAs are the proper avenue for determining exclusion zones on a site-specific basis.

III. Conclusion

ACP, MAREC Action, and SEWC appreciate the opportunity to provide these comments. If you have any questions, please do not hesitate to contact the undersigned at the contact information listed below. We look forward to working with BOEM as it moves forward with the Wilmington East Lease Area and additional leasing in the Carolina Long Bay area.

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