September 13, 2021

U.S. Bureau of Ocean Energy Management
Program Manager
Office of Renewable Energy
45600 Woodland Road
Sterling, Virginia 20166

Submitted via regulations.gov; Docket No. BOEM-2021-0055

Re: Comments on the Notice to Publish a North Carolina Draft Supplemental Environmental Assessment for Commercial Wind Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore North Carolina

The American Clean Power Association ("ACP")[1] welcomes the opportunity to provide comments on the U.S. Bureau of Ocean Energy Management's ("BOEM") notice to publish a supplemental environmental assessment ("EA")[2] for the Commercial Wind Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf ("OCS") Offshore North Carolina. July 1, 2022 looms as the date after which BOEM has stated that no offshore wind leases can be leased in federal waters off North Carolina, South Carolina, Georgia, and Florida for 10 years.[3]

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[1] American Clean Power represents the renewable energy industry in the United States, bringing together over 1,000 member companies, 120,000 members, and a national workforce located across all 50 states. By uniting the power of wind, solar, storage, and transmission companies and their allied industries, we enable the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. Additional information is available at http://www.cleanpower.org.

[2] Bureau of Ocean Energy Management, Notice of Preparation of a Draft Supplemental Environmental Assessment (EA) for Commercial Wind Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore North Carolina available at https://www.regulations.gov/document/BOEM-2021-0055-0001. *See also,* Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore North Carolina Revised Environmental Assessment (2015) available at https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/NC/NC-EA-Camera-FONSI.pdf.

[3] *See, Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition (*Sept. 8, 2020) available at https://www.govinfo.gov/content/pkg/DCPD-202000659/pdf/DCPD-202000659.pdf, and *Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition* (Sept. 25, 2020) available at https://www.govinfo.gov/content/pkg/DCPD-202000726/pdf/DCPD-202000726.pdf. While much of the focus of this action was on its impact for oil and gas

While ACP strongly supports a legislative reversal of this moratorium as it applies to offshore renewable energy, unless or until that happens, there is only one way to ensure a pipeline of offshore wind leases and project to satisfy North Carolina's goal of 8 gigawatts (GW) of offshore wind[4] and South Carolina's growing interest in offshore wind development.[5] That solution: robust BOEM leasing off the Carolinas before the July 1, 2022 deadline.

BOEM's proposed supplemental EA for the Wilmington East Wind Energy Area (WEA) is welcome, but far too timid under these unique circumstances. ACP encourages BOEM to go bolder and produce a supplemental EA that analyzes leasing of both the Wilmington East and West WEAs *and* the South Carolina Call Areas. This is a needed first step that will preserve the Biden Administration's ability to achieve state offshore wind goals in the Carolinas, and will plant the seeds for an offshore wind supply chain—and good clean energy jobs—in the Southeast United States.

I. Executive Summary

- BOEM should expand the supplemental EA to include both Wilmington East and West WEAs and all South Carolina Call Areas.

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exploration and production, the Department of Interior confirmed at the time that the withdrawal also applied to offshore wind. *See* Heather Richards, E&E News, Trump drilling bans would stymie offshore wind leasing (Sept. 29, 2020) (quoting BOEM spokesperson stating that "[t]he withdrawal includes all energy leasing, including conventional and renewable energy." While we disagree with that interpretation for the memoranda, we acknowledge BOEM's interpretation as prohibiting leasing auctions in federal waters off the coast of the Carolinas for a ten-year period beginning on July 1, 2022.

[4] Gov. Roy Cooper, Executive Order No. 218: *Advancing North Carolina's Economic Clean Energy Future with Offshore Wind* (June 9, 2021) available at https://files.nc.gov/governor/documents/files/EO218-Advancing-NCs-Economic-Clean-Energy-Future-with-Offshore-Wind.pdf.

[5] *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.

- Expanding the supplemental EA would add minimal administrative burden to the agency because the analysis would be similar to those that BOEM has already conducted for other lease sales.
- Expanding the supplemental EA will preserve BOEM's option to hold a more ambitious lease sale in advance of the impending leasing moratorium.
- A more ambitious lease sale before July 1, 2022 is achievable if BOEM is willing to streamline its leasing process and potentially defer some deconfliction until the construction and operation plan (COP) stage.
- The updated Biological Assessment ("BA") for the East Coast and updated science on Geographical and Geophysical ("G&G") surveys should be applied to the supplement to reflect the most recent science.[6]

II. Comments

a. BOEM should preserve its flexibility by expanding the supplemental EA to include the Wilmington West WEAs and the South Carolina Call Areas.

At this stage in BOEM's leasing process, and with the moratorium set to take effect in less than a year, it is in the national interest for BOEM to preserve maximum flexibility regarding the potential scope of leasing off the Carolinas. Given the nature of BOEM's environmental analysis of lease sales under the National Environmental Policy Act (NEPA), doing so would not create significant new administrative burdens relative to BOEM's current plan to only re-assess leasing of the Wilmington East WEA.

[6] For example, Meekan et al. 2021.

BOEM's lease sale EAs analyze the foreseeable impacts of the lease issuance, which are largely limited to (a) geophysical and geotechnical surveys; and (b) deployment of two or more meteorological buoys per lease.[7] BOEM has conducted at least six of these lease sale EAs over its history, and no matter the geographic area, the substantive analyses and findings have not varied significantly over the years.[8] Given how well-understood these impacts are, we believe a lease sale EA covering both Wilmington WEAs and the South Carolina Call Areas would be similar in nature to a lease sale EA covering just the Wilmington East WEA—and would not materially increase BOEM's administrative burden. In addition, a NEPA analysis for leasing all of these areas would fulfill a promise that the Obama Administration made to the people of the Carolinas, both in the September 2015 North Carolina EA analyzing both Wilmington WEAs, and the November 2015 Notice of Intent to conduct a NEPA analysis within the South Carolina Call Areas.[9]

We recognize that in order to conduct an EA of our proposed scope, BOEM would need to perform an expedited Area Identification on the South Carolina Call Areas. But BOEM has

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[7] *See, e.g., Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia - Final Environmental Assessment* (2012) available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Mid-Atlantic-Final-EA-2012.pdf; Bureau of Ocean Energy Management, *Atlantic Wind Lease Sale 5 (ATLW5) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey—Final Sale Notice,* 80 Fed. Reg. 57862 (Sept. 25, 2015) available at https://www.boem.gov/sites/default/files/regulations/Federal-Register-Notices/2015/80-FR-57862.pdf.

[8] *Id.*

[9] Bureau of Ocean Energy Management, *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore North Carolina Revised Environmental Assessment* (2015) available at https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/NC/NC-EA-Camera-FONSI.pdf; and Bureau of Ocean Energy Management, *Environmental Assessment for Commercial Wind Leasing and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore South Carolina,* 80 Fed. Reg. 73817 (Nov. 25, 2015) available at https://www.boem.gov/sites/default/files/regulations/Federal-Register-Notices/2015/80-FR-73817.pdf.

already laid substantial groundwork in this regard, having already received comments in response to its South Carolina Call for Information and NOI, and held a Carolina Long Bay task force meeting this past July in which it received input from Federal agencies and affected Tribal, State, and local governments.[10] In other words, BOEM has already satisfied a substantial amount of its regulatory obligations in advance of the development of a broader Carolinas lease sale EA. And as discussed in the next section, it would be well justified in these unusual circumstances to defer much of the substantive deconfliction until after lease issuance.

Importantly, if BOEM expands the supplemental EA to every area that it has identified off the Carolinas, it will preserve its ability to issue leases before the July 1, 2022 moratorium deadline of a number and size sufficient to satisfy current and anticipated state and industry demand in the region. Conversely, if BOEM only analyzes the Wilmington East WEA at this juncture, that will virtually ensure that if the moratorium takes effect, the offshore wind industry will fall woefully short of its potential in the Southeast during the next ten years. The clean energy generated from just Wilmington East, while helpful, is simply not enough to fulfill more than a fraction of North Carolina's 8 GW goal—or justify the type of port and supply chain development in the Southeast that is already underway in the Mid-Atlantic and New England regions.

b. A more ambitious Carolinas lease sale is achievable before July 1, 2022.

[10] *See,* Intergovernmental Renewable Energy Task Force for Carolina Long Bay, *Virtual Meeting Via Zoom*: *Agenda* available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Carolina-Long-Bay-TF-Agenda.pdf.

We recognize that a more ambitious Carolinas lease sale EA would be for naught if BOEM was not then able to complete the remainder of its leasing process, hold an auction, and execute multiple leases before July 1, 2022. We believe that a larger lease sale is possible before the moratorium takes effect, however, if BOEM is willing to streamline its leasing process and defer some deconfliction decisions. This could be achieved in three key ways:

(1) BOEM could publish an expansive proposed sale notice (PSN) as soon as possible, and receive and analyze comments concurrently with its development of the lease sale EA. BOEM regulations permit the PSN to be issued prior to the NEPA analysis, and information from the Area Identification and EA (along with PSN comments) could then be incorporated into the final sale notice (FSN).

(2) BOEM could conserve resources and avoid duplication of effort by leveraging its preparation for the New York Bight lease sale to "pre-prepare" for the Carolinas lease sale in a few months. This would potentially allow BOEM to hold its Carolinas lease sale the minimum of 30 days after issuance of the FSN.

(3) Finally, BOEM could save time by deferring decisions on some contentious conflicts until after lease issuance. In order to offset such deferral (and the streamlining process more generally), we believe it would be fair for BOEM to include a "buyer beware" stipulation in its Carolinas leases advising that further deconfliction will occur at the COP stage—and that lessees should expect to only be able to develop a portion of their leases. We anticipate that this approach may reduce the per acre value of these leases, create some initial uncertainty, and result in more intensive discussions between lessees and BOEM prior to COP submittal. But barring legislative action to reverse the moratorium,

the alternative is fewer or no leases. That is a tradeoff the offshore wind industry is willing to accept in the Carolinas.

The adoption of these streamlining measures would greatly improve the feasibility of holding a broader Carolinas lease sale and executing such leases prior to July 1, 2022.

c. The updated Biological Assessment ("BA") for the East Coast should be developed and consultation under ESA reopened for the supplemental EA to reflect the best available science and current NMFS policies and guidelines.

Since the publishing of the Revised EA for the North Carolina Long Bay call areas, an updated BA for the East Coast was created. ACP is providing detailed comment on the EA for the New York Bight Lease Sales, including comment on the scope of the BA and in the context of its relationship to the EA. We request that BOEM consider our comments on the New York Bight EA as also part of our comments on the supplemental NC EA and hereby incorporate those comments by reference. The new East Coast BA, as amended in response to ACPA's comments on the New York Bight EA, should be applied to fully incorporated into the ESA consultation associated with the proposed supplemental EA to bring the EA up to date on the current state of East Coast biological analysis and relevant concerns and mitigation factors, as well as current NMFS policy and guidelines. Specifically,

- The Section 7 ESA consultation mitigation measures should be amended to apply only to ESA-listed species.

- The 180 dB language is outdated and does not reflect NMFS' current guidelines[11] for marine mammal harassment. It should not be used to limit sound source choices or consider mitigation for ESA-listed species.
- The language regarding ceasing HRG activities in Dynamic Management Areas is outdated. NMFS has not required this in recent IHAs.[12] A 10 knot speed limit is implemented.
- Appendix B.3.2 of the 2015 BOEM EA describes geotechnical exploration requirements, including SSV, exclusion zones, clearance, shutdown, and pauses for marine mammals and sea turtles. NMFS has determined these requirements to be unnecessary since the publication of this EA in 2015 and typically does not issue IHAs or ESA Incidental Take Statements for turtles for geotechnical equipment at this time. Appendix B.3.2 should be stricken in the supplemental EA. Shutdowns of dynamic positioning thrusters can be a safety hazard and is not a practicable mitigation for that reason as well.
- Shutdown, ramp-up, and power-down of most HRG survey equipment is prohibitive and does not align with agency determinations in other offshore survey scenarios.[13] BOEM should re-evaluate mitigation in Appendix B of the EA to reflect current NMFS policies around ESA species and HRG surveys.

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[11] National Marine Fisheries Service. 2018. 2018 Revisions to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0): Underwater Thresholds for Onset of Permanent and Temporary Threshold Shifts. U.S. Dept. of Commer., NOAA. NOAA Technical Memorandum NMFS-OPR-59, 167 available at https://media.fisheries.noaa.gov/dam-migration/tech_memo_acoustic_guidance_(20)_(pdf)_508.pdf.

[12] For example, the Incidental Harassment Authorization (IHA) issued by NMFS for Kitty Hawk Wind valid July 23, 2021 through October 31, 2021 and Ocean Wind LLC's IHA valid from May 10, 2021 through May 9, 2022.

[13] For example, the Incidental Harassment Authorization (IHA) issued by NMFS for Kitty Hawk Wind valid July 23, 2021 through October 31, 2021 only requires clearance and shutdown for sparkers with distances for different species determined based on the equipment and time frame is 30 minutes for clearance rather than 60 minutes as indicated in Appendix B.3.1 of the BOEM North Carolina EA from 2015.

- Shutdowns and clearance are only required for a few types of equipment (e.g. boomers and sparkers) in recent IHAs, and clearance periods are 30 minutes rather than 60 minutes.[14]

III. Conclusion

ACP is supportive of issuing a supplemental EA and encourages BOEM to further expand the scope of the supplemental EA to include all identified areas offshore of North and South Carolina so that leasing issuance can occur on time. We urge BOEM to maintain a timeline which will allow for more robust leasing off the Carolinas prior to the leasing moratorium taking effect on July 1, 2022. We also encourage BOEM to consider reducing the proposed mitigation measures within the EA and consulting further with NMFS under ESA to be more aligned with current scientific understanding, NMFS policy and guidelines, and recent federal actions (e.g. IHAs and ITRs) and analyses regarding geophysical surveys and biological data. ACP appreciates 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 progresses the leases in North Carolina and other future lease areas.

Respectfully,

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[14] *See supra* note 8.

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