



May 16, 2022

VIA ELECTRONIC SUBMISSION

The Honorable Deb Haaland  
Secretary  
U.S. Department of the Interior  
Fish and Wildlife Service  
1849 C St. NW  
Washington, D.C. 20240

**Re: Draft Environmental Assessment, Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf, Morro Bay Wind Energy Area, California (Docket No. BOEM-2021-0044).**

Dear Secretary Haaland,

On April 6, 2022, the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) published a draft environmental assessment for the Morro Bay Wind Energy Area. The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on the draft environmental assessment. BOEM should include a small business impacts analysis in its final environmental assessment for the call area. This will provide greater transparency to impacted small entities and ensure that they are considered throughout the leasing process.

**A. The Office of Advocacy**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>1</sup> as amended by the Small Business Regulatory Enforcement Fairness Act

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<sup>1</sup> 5 U.S.C. §601 et seq.

(SBREFA),<sup>2</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>3</sup> The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.<sup>4</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”<sup>5</sup>

## **I. Background**

The Outer Continental Shelf Lands Act (OCSLA)<sup>6</sup> sets forth procedures to produce energy resources on the Outer Continental Shelf (OCS). OCSLA permits the Secretary of the Interior, in consultation with other relevant federal agencies, to grant leases, easements, and rights-of-way on the OCS for activities that support production, transportation, or transmission of energy.<sup>7</sup> Under OCSLA, management of such activities should consider economic, social, and environmental values of renewable and non-renewable resources contained within the OCS.<sup>8</sup> Proper consideration must also be given to other uses of the seabed including fisheries, navigation, and marine productivity.<sup>9</sup>

In administering lease sales, BOEM must also comply with the requirements of the National Environmental Policy Act (NEPA).<sup>10</sup> Under NEPA, BOEM is required to publish for notice and comment a draft environmental impact statement that includes among other things the environmental impact of the proposal, adverse environmental effects that cannot be avoided, and alternatives to the proposed action.<sup>11</sup> In conducting this analysis, BOEM considers other uses of the areas being evaluated for leasing, including commercial fishing.

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<sup>2</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

<sup>3</sup> Small Business Jobs Act of 2010 (PL. 111-240) §1601.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 43 U.S.C. § 1331 et seq.

<sup>7</sup> 43 U.S.C. § 1337 (p).

<sup>8</sup> 43 U.S.C. § 1344 (a) (1).

<sup>9</sup> *Id.* at (a) (2).

<sup>10</sup> 42 U.S.C. § 4331 et. seq.

<sup>11</sup> 42 U.S.C. § 4332 (C).

On April 6, 2022, BOEM published a draft environmental assessment to analyze the impacts of future commercial leasing and activities within the Morro Bay Wind Energy Area,<sup>12</sup> an area located approximately 20 miles off the coast of San Luis Obispo County, California. The draft environmental assessment analyzes environmental and socioeconomic impacts from issuing offshore wind leases and other related activities.

On January 7, 2022, Advocacy filed a public comment letter on BOEM's Request for Information on Reducing or Avoiding Impacts of Offshore Wind Energy on Fisheries.<sup>13</sup> In its comments, Advocacy urged BOEM to include small business analyses in its draft environmental impact statements for construction and operations plans, and other environmental analyses, and publish such analyses for notice and comment. To date, Advocacy is not aware of any such analyses being included in recent draft environmental impact statements or environmental assessments, and there have been no updates to BOEM's mitigation policies for fisheries.

## II. Advocacy's Comments

### A. BOEM should provide a small business impacts analysis in its environmental assessment.

On April 20, 2022, Advocacy held a virtual roundtable to gather comments and feedback from interested small entities on the proposed Morro Bay Wind Energy call area and the draft environmental assessment. During the roundtable, small businesses commented that BOEM does not allow them ample opportunity to voice their concerns during oral hearings, and that they do not know if or how their oral and written comments are accounted for in agency decisions.

These types of outreach activities, in which business owners are required to participate virtually or in person to provide oral comments, pull owners away from running their businesses and result in a direct loss in revenue. When a small business takes time away from their busy schedule to attend such meetings and provide comments, the agency should inform the public how those comments will be considered. Furthermore, fishermen have long commented that BOEM should engage with them earlier in the process when a particular call area is being developed, rather than late in the process when a bid has already been awarded and developers are not well-versed and knowledgeable about the impacts to fisheries.

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<sup>12</sup> Draft Environmental Assessment, Commercial Wind Lease and Grant Issuance and Site Assessment Activities on the Pacific Outer Continental Shelf, Morro Bay Wind Energy Area, California, Docket No. BOEM-2021-0044, (April 6, 2022).

<sup>13</sup> See Comments from the SBA Office of Advocacy, Re: Request for Information, Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development (January 7, 2022), <https://advocacy.sba.gov/2022/01/12/advocacy-comments-on-boems-rfi-for-reducing-or-avoiding-impacts-of-offshore-wind-energy-on-fisheries/>. Citing U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., *Request for Information Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development* (November 22, 2021), <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf>

Within its draft environmental assessment, BOEM states that the impact to fisheries is expected to be minor and/or temporary in duration, citing a period of 5 years or less.<sup>14</sup> Small fisheries have repeatedly commented that this is untrue. They reiterated during the roundtable that when a wind energy project is leased in a particular area, they must then reassess whether they can continue to fish in that area at all.

Numerous potential impacts that should be analyzed include reductions in catch limits and/or quotas, accessibility to navigation channels, damage to vessels and gear, inability to continue to use existing gear, loss of permit and vessel values, increased safety measures, changes to species migration patterns and behaviors, and others. These are not minor impacts as BOEM states. Rather, they have the potential to put small fishermen out of business. These impacts need to be thoroughly analyzed at this early stage when boundaries are being drawn, rather than late in the process when it is less likely that BOEM will move the wind energy area. Were BOEM to conduct a small business impacts analysis earlier in the process, the agency would be able to find solutions to mitigate impacts to small fisheries early on, such as by narrowing the call area, or moving it to a different location.

BOEM should conduct an RFA analysis on the environmental assessment. BOEM should identify the small businesses impacted by a proposed call area, discuss any known impacts to those small businesses, offer alternatives to the proposal, and solicit specific comments and feedback from small businesses on this analysis. Providing a separate small business section will allow stakeholders to have a means of digesting lengthy and cumbersome technical documents while also putting the focus on what if any impacts they may face directly. Small businesses simply do not have the time or resources to review long documents nor attend lengthy agency meetings. Most small business owners cannot afford to hire a consultant to read and digest the proposals. They must do this themselves, while also managing a business.

One small business owner commented that the call area is in the middle of a swordfish fishing ground, and that if development were to go forward in this area some fishermen could stand to lose significant amounts of revenue. BOEM should examine the fishing industry to understand the characteristics of small fishing firms, which make up about 98 percent of the finfish industry in California.<sup>15</sup> As of 2019, there were 90 finfish fishing entities and 37 shellfish fishing entities in California, all or nearly all of which are small.<sup>16</sup> These entities employed 2,825 people. There were also 36 seafood processors in California, all or nearly all of which were small, employing about 63,000 people.<sup>17</sup>

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<sup>14</sup> *Supra* note 12 at 69.

<sup>15</sup> U.S. Census Bureau Statistics of U.S. Businesses: 2017 Annual Data Tables by Establishment Industry, 2017 SUSB Annual Data Tables by Establishment Industry (<https://www.census.gov/programs-surveys/susb.html>)

<sup>16</sup> U.S. Census Bureau Statistics of U.S. Businesses: 2019 Annual Data Tables by Establishment Industry, 2019 SUSB Annual Data Tables by Establishment Industry (<https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html>)

<sup>17</sup> *Id.*

Using data such as annual receipts, locations, and employment levels of small fishing businesses, BOEM should provide a profile of affected entities and describe the relative impacts of different levels of costs. This information will help BOEM understand the severity of different potential costs and determine the necessary degree of mitigation.

**B. BOEM must account for the unique features that are important to the small businesses operating within the call area in its assessment of potential impacts.**

During the roundtable, small entities spoke about the uniqueness of the fish species found within Morro Bay. They also spoke about certain ecological phenomenon that are found in this area. In the Santa Lucia bank, cold water mixes with warm ocean water and attracts a unique variety of fish species. Attendees commented on how certain species of yellowfin tuna are only found in this region and cannot be found further north. They also spoke about an increased presence of other fish species such as bluefin tuna due to changing water temperatures. The small entities observed that if offshore wind activity saturated the area, it would hinder different species' ability to develop and grow. Any impacts to a fisherman's ability to fish these species is a direct impact and must be accounted for in an assessment of the call area.

Small businesses also spoke about the downstream economic effects of offshore fishing. For example, when a fisherman is not able to fish in a particular area, there is an impact on the docks, fuel suppliers, fish processors, and local restaurants who all benefit directly from commercial fishing. Tourism is also impacted, as tourists charter vessels to fish in these waters, as are restaurants that carry locally sourced seafood.

BOEM must thoroughly assess the characteristics of the areas in question, taking into consideration unique features that are important to small businesses and how these businesses may be impacted were they to have diminished or no access to these areas because of offshore wind development.

**C. BOEM should consider early engagement opportunities, and alternatives that would help to minimize impacts to small businesses.**

As noted above, BOEM should work to mitigate the impacts to small businesses of offshore wind development projects early in the process when a call area is being developed. One such mechanism that small businesses have suggested for doing this is using a "Fisheries Community Benefit Agreement." The agreement would be carefully negotiated and drafted by fishermen, the agency, and the development company in question and would include contributions from the developer to support continuing economic and community resilience in fisheries. While developers often attempt to provide compensation to fisheries for existing leases, these "pay outs" are a one-time lump sum, and do not account for long-term impacts. The Benefit Agreement would address both initial and long-term funding. The managing entity would be led by the fishing industry and not the agency or the developer. Advocacy encourages BOEM to investigate this option, and other potential alternatives at this early stage so that the agency has

ample time to work with industry to develop such agreements before a developer has been awarded a sale.

### **III. Conclusion**

BOEM should conduct specific small business outreach and publish a small business impact analysis within its final environmental assessment for the Morro Bay Wind Energy Area. BOEM should take into consideration all the potential impacts of future development, and any mitigation measures that may be used. Doing so will ensure that the impacts to small businesses are being adequately considered. If you have any questions or require additional information, please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,

/s/

Major L. Clark, III  
Deputy Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Prianka P. Sharma  
Assistant Chief Counsel  
Office of Advocacy  
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Copy to:     Dominic Mancini, Deputy Administrator  
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