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June 12, 2023  
Louisiana Department of Natural Resources  
Office of Mineral Resources  
Attention: James Devitt  
617 North Third Street, 8<sup>th</sup> Floor  
Baton Rouge, LA 70802

Mr. Devitt,

Emerald Renewable Energy Developers (Emerald) applauds the State of Louisiana for its efforts to revise its regulations regarding wind leasing on State Lands and Water Bottoms to conform with Act 443 of the 2022 Regular Session of the Louisiana Legislature. We appreciate the opportunity to review and provide public comment on the Notice of Intent that was published in the May 2023 *Louisiana Register*. Following are comments that we would like you to consider that we believe would be improvements to the rules that have been proposed.

**Comment 1:**

Section 725 (Page 987) Transfer or Assignment of a State Wind Lease should be modified to specify that a party who transfers or assigns a State Wind Lease to another party who is approved by the Office of Mineral Resources should no longer retain liability for the activities and structures on the leased property.

**Comment 2:**

Section 733 (H) (Page 991) State Wind Lease Decommissioning should be modified to reflect standard practices for the wind industry for removal to a depth of 5 feet rather than the depth proposed in the rule of 15 feet which may be more appropriate for construction techniques used in the oil and gas industry and its construction practices.

Once again, we appreciate the opportunity to provide these written comments and look forward to working with the Department to develop rules and regulations that will promote the wind industry in the State of Louisiana while protecting the Natural Resources of the State and providing a clean source of energy that will be beneficial to the citizens of Louisiana.

Sincerely,

A handwritten signature in blue ink that reads "Elon Hasson".

Elon Hasson  
Founder and Principal

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# CITY OF NEW ORLEANS

Jeffrey Schwartz, Director  
Office of Economic Development

June 12, 2023

Honorable Tom Harris, Secretary  
Louisiana Department of Natural Resources  
LaSalle Building  
617 North Third Street,  
Baton Rouge, LA 70802

**Re: Comments in Response to the Notice of Intent: Department of Natural Resources  
Office of Mineral Resources Leasing State Lands and Water Bottoms for the  
Exploration, Development and Production of Wind Energy**

Dear Secretary Harris,

On behalf of the City of New Orleans, we appreciate the opportunity to comment on the Department of Natural Resources' Notice of Intent to establish a maximum acreage for wind leases; to provide for operating agreements relative to the production of wind energy; to provide for the powers and duties of the secretary of the Department of Natural Resources; to provide for rules and regulations; and to provide for related matters.

The City of New Orleans welcomes the efforts and recognizes the excellent leadership of the Department of Natural Resources (DNR) in the development of offshore wind leases in the nearshore state waters of Louisiana. These leases will be extraordinarily beneficial to Louisiana communities for a variety of economic, environmental, and social reasons.

The City of New Orleans therefore urges DNR to strongly consider inclusion of community benefits requirements among the lease operator agreement requirements. As noted in the Notice of Intent, each wind lease may encompass up to 25,000 acres of public waters and water bottoms. To that end, the State can and should require leaseholders to provide substantial and measurable community benefits, including:

- Threshold disadvantaged business and women-owned business requirements (the City recommends 35%, based on local demographics and the supply of eligible businesses);
- Louisiana labor and content requirements.
- Demonstrated recruitment efforts of professional management and legal jobs, including associated professional service consulting contracts, from among Louisiana Women's Business Resource Centers, Louisiana Historically Black Colleges and Universities, Black Alumni Associations of accredited Louisiana Law Schools, and Black Alumni Associations of accredited Louisiana universities.

The City believes that such requirements associated with State operating agreements—besides those listed in safety regulations—will better ensure that communities impacted by offshore operations can financially participate in public benefits.



The State may also consider whether R.S. 49:973, which requires each state agency to consider and provide written statement of the impact of its rules on poverty in relation to individual or community asset development prior to the adoption and implementation of such rules (e.g., poverty impact statement) should apply.

The map below illustrates poverty levels in parishes adjacent to the proposed public leases. The dark red areas represent parishes where more than 24% of the population was below the poverty level in the past 12 months. For example, in Jefferson Parish, there are an estimated 69,356 people below the Federal poverty line (approximately 16%).

Between 16-21% of people live below the Federal poverty line in all of the coastal parishes adjacent to state waters in the Gulf of Mexico, making a poverty impact statement that may consider this rule's effect on employment and workforce development, and/or actionable community benefits agreement requirements, ideal for the proposed rule.

Again, the City of New Orleans welcomes these long-awaited efforts to deploy offshore wind power in the Gulf of Mexico and recognizes the extraordinary potential gains for Louisiana residents. These gains would not be possible without your leadership and that of your agency.

We applaud your efforts and look forward to a thoughtful partnership in the work ahead.

Sincerely,



Jeffrey Schwartz  
Director, Office of Economic Development

June 2023

Secretary Thomas Harris  
Louisiana Department of Natural Resources  
LaSalle Building  
617 North Third Street  
Baton Rouge, Louisiana 70802

Re: Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

Dear Secretary Harris:

Our organizations, National Wildlife Federation, National Audubon Society, Coalition to Restore Coastal Louisiana, Healthy Gulf, Louisiana Wildlife Federation, Orleans Audubon Society, and Taproot Earth, promote the responsible deployment of offshore wind energy in the Gulf of Mexico. Responsible offshore wind energy (i) avoids, minimizes, mitigates, and monitors 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 impacts to underserved communities, and (vi) uses the best available scientific and technological data to ensure science-based stakeholder-informed decision making.

Offshore wind offers an opportunity to combat the threats of climate change to both wildlife and communities by transitioning our energy economy to renewable sources and away from high conflict, highly damaging fossil fuels. Collectively, our organizations have a robust history of advocacy, conservation, and coastal restoration work in Louisiana, and we have worked diligently throughout the federal offshore wind permitting process to ensure best practices and responsible wildlife protections are implemented in the deployment of offshore wind in the Gulf.<sup>1</sup> **We have serious concerns about whether offshore wind in state waters can meet the criteria of responsible development, particularly under the current permitting regime, which lacks a robust environmental analysis and comprehensive siting process.** We therefore submit our

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<sup>1</sup> See eNGO RFI Comments at <https://www.regulations.gov/comment/BOEM-2021-0041-0025>;  
See eNGO Call Comments at <https://www.regulations.gov/comment/BOEM-2021-0077-0031>;  
See eNGO Scoping Comments at <https://www.regulations.gov/comment/BOEM-2021-0092-0017>;  
See eNGO Draft WEA Comments at <https://www.regulations.gov/comment/BOEM-2022-0036-0090>;  
See eNGO Draft EA Comments at <https://www.regulations.gov/comment/BOEM-2022-0036-0090>;  
See eNGO PSN Comments at <https://www.regulations.gov/comment/BOEM-2023-0021-0042>.

comments on the Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy by the Louisiana Department of Natural Resources.<sup>2</sup>

## Environmental Considerations Specific to Louisiana's State Waters

As the state of Louisiana embarks upon the siting and deployment of offshore wind in state waters, we caution that nearshore (within 3 nautical miles) siting of turbines is unprecedented in the United States and rare in Europe, as it often poses greater risks to wildlife and habitats.

Although the Block Island Wind Farm, the first commercial offshore wind farm in the United States, is located in state waters off of Rhode Island, before the 30 megawatt project was sited, the regulating entity, the Rhode Island Coastal Resources Management Council (a corollary to the Louisiana State Mineral and Energy Board), embarked on a rigorous spatial planning initiative. This planning and adaptive management tool, the Ocean Special Area Management Plan (Ocean SAMP),<sup>3</sup> has been lauded as a national model for marine spatial planning, and enabled the Council to fulfill its mandate to preserve, protect, develop, and restore coastal areas.<sup>4</sup> While Block Island is the only offshore wind farm in state waters, it is located 16 miles from the mainland,<sup>5</sup> and therefore does not present the same risks as a project located within the 3 nautical mile state waters boundary.

Conversely, the Nautilus Offshore Wind Project,<sup>6</sup> a proposed 25 megawatt project 2.8 miles off the coast of New Jersey, failed to proceed to development for a number of reasons, but importantly, was largely opposed by environmental groups for its poor siting and high risk to coastal wildlife and habitats. The project would have placed turbines in a critical avian migratory corridor and the large size of the turbines would have put many birds, including protected species, at risk.<sup>7</sup>

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<sup>2</sup>

[https://www.dnr.louisiana.gov/assets/OMR/media/forms\\_pubs/NOI\\_Wind\\_Leasing\\_Rules\\_for\\_the\\_Register.pdf](https://www.dnr.louisiana.gov/assets/OMR/media/forms_pubs/NOI_Wind_Leasing_Rules_for_the_Register.pdf)

<sup>3</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 2. Report by Rhode Island Coastal Resources Management Council.

<sup>4</sup> <http://www.crmc.ri.gov/aboutcrmc.html>

<sup>5</sup> Tetra Tech Inc. (2012). Block Island Wind Farm and Block Island Transmission System Environmental Report/Construction and Operations Plan. Report by Tetra Tech Inc.. Report for Deepwater Wind. Retrieved from

[https://tethys.pnnl.gov/sites/default/files/publications/BlockIsland\\_2012.pdf](https://tethys.pnnl.gov/sites/default/files/publications/BlockIsland_2012.pdf)

<sup>6</sup> Formerly known as the Fishermen's Energy Atlantic City Windfarm.

<sup>7</sup> Hewett, A. (2018, December 18). News: Environmental groups applaud New Jersey BPU rejection of Nautilus Offshore Wind Project. Offshore Wind Energy. <https://offshorewind.nwf.org/2018/12/news-environmental-groups-applaud-new-jersey-bpu-rejection-of-nautilus-offshore-wind-project/>

In our federal advocacy, we have stressed that the unique characteristics of nearshore waters in general, in combination with the ecological importance and sensitivity of Louisiana's coastal habitat specifically, underscore the importance of making environmentally-informed siting decisions. The Gulf's nearshore and coastal waters (<20 nautical miles) contain the most biologically productive areas. During the federal comment process for siting offshore wind in the Gulf of Mexico, in which the Bureau of Ocean Energy Management (BOEM) solicits stakeholder and expert input to help inform its siting decisions, we cautioned against permitting offshore wind turbines within 20 nautical miles from shore. This science-based precautionary measure was recommended to protect coastal bottlenose dolphin populations, as well as to avoid impacts to the Gulf's billions of neotropical migrant birds, nesting colonies of coastal and marine birds, and wintering waterfowl. BOEM adopted this recommendation, along with other wildlife-focused avoidance, minimization, and mitigation measures designed to protect species in the deployment of offshore wind.

Whether the project is located in state waters or federal waters, Rhode Island or Louisiana, each location and project requires thorough analysis and scrutiny. Ultimately, our organizations evaluate projects based on whether or not they can be responsibly developed at a particular location, meaning, in part, whether or not the risks offshore wind poses to wildlife and habitat can be sufficiently avoided, minimized, and mitigated to reduce significant adverse impacts. Louisiana's wetlands and coastal waters create a productive and vital ecosystem that supports numerous species of marine mammals, sea turtles, birds, fish, invertebrates, and habitats. Our evaluation of projects in state waters will use a science-based approach to assess the unique characteristics of the Louisiana Coastal Zone to help advise the state in its siting decisions. While not an exhaustive list of environmental concerns, below, we outline several key taxa-specific considerations that should inform siting of offshore wind in state waters. For additional information on Gulf of Mexico-specific wildlife concerns, please refer to our past federal comments.<sup>1</sup>

## Marine Mammals

Over 30 marine mammal species reside in the Gulf of Mexico. Louisiana's Barataria Bay in particular is home to a well-known population of over 2,000 bottlenose dolphins. This population is made up of long-term, year-round residents who generally stay within 1.75 km of shore.<sup>8</sup> This population was severely injured from the Deepwater Horizon Oil Spill. Atlantic spotted dolphins and Risso's dolphins are also sometimes found nearshore.

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<sup>8</sup> Wells, R. S., Schwacke, L. H., Rowles, T. K., Balmer, B. C., Zolman, E., Speakman, T., ... & Wilkinson, K. A. (2017). Ranging patterns of common bottlenose dolphins *Tursiops truncatus* in Barataria Bay, Louisiana, following the Deepwater Horizon oil spill. *Endangered Species Research*, 33, 159-180.

Additionally, there is a resident, breeding population of sperm whales that resides just south of, and within 100 km from, the Mississippi River Delta.<sup>9</sup> Although these whales tend to prefer deeper waters, they can be found closer to shore in Louisiana and are keenly sensitive to underwater noise.

Vessel strike and underwater noise, especially from pile driving, have the potential to create serious harm for marine mammals. Additional potential threats include habitat disturbance/loss and behavioral changes leading to reduced fitness. Marine mammals in the US are all protected by the Marine Mammal Protection Act (MMPA), and endangered populations such as the endemic Rice's Whale are also protected under the federal Endangered Species Act (ESA).

## Sea Turtles

Five of the world's seven sea turtle species inhabit the Gulf of Mexico year round, and all five of these species are protected by the ESA: leatherbacks (*Dermochelys coriacea*) (endangered), loggerheads (*Caretta caretta*) (threatened), Kemp's ridleys (*Lepidochelys kempii*) (critically endangered), green (*Chelonia mydas*) (threatened), and hawksbill (endangered) (*Eretmochelys imbricata*).<sup>10</sup>

Adults can be found feeding and resting in surface waters of coastal Louisiana, and therefore are vulnerable to vessel strike and altered foraging and migrating patterns. Coastal Louisiana in particular is considered a hot spot for sea turtle foraging activity, especially for Kemp's ridleys and loggerheads.<sup>11</sup> In recent years, these two species have been making a nesting comeback as well, with loggerhead nesting sites in Grand Isle and Kemp's ridley sites in the Chandeleur Islands. The Mississippi Sound is a crucial developmental habitat for juvenile Kemp's ridleys. During the cooler months especially (December-May), this species tends to migrate to very nearshore waters on both sides of the Mississippi River Delta.<sup>12</sup> As many as 82 percent of juvenile Kemp's ridley sea turtles use the northern Gulf of Mexico to forage with high site fidelity, and individuals from this crucial

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<sup>9</sup> Davis, R. W., Ortega-Ortiz, J. G., Ribic, C. A., Evans, W. E., Biggs, D. C., Ressler, P. H., ... & Würsig, B. (2002). Cetacean habitat in the northern oceanic Gulf of Mexico. *Deep Sea Research Part I: Oceanographic Research Papers*, 49(1), 121-142.

<sup>10</sup> NOAA Fisheries (2022, June 28). *Frequent Questions: Northern Gulf of Mexico Sea Turtle Strandings*. NOAA. <https://www.fisheries.noaa.gov/southeast/marine-life-distress/frequent-questions-northern-gulf-mexico-sea-turtle-strandings>

<sup>11</sup> Hart, K. M., Iverson, A. R., Fujisaki, I., Lamont, M. M., Bucklin, D., & Shaver, D. J. (2018). Marine threats overlap key foraging habitat for two imperiled sea turtle species in the Gulf of Mexico. *Frontiers in Marine Science*, 5, 336.

<sup>12</sup> Coleman, A. T., Pitchford, J. L., Bailey, H., & Solangi, M. (2017). Seasonal movements of immature Kemp's ridley sea turtles (*Lepidochelys kempii*) in the northern Gulf of Mexico. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 27(1), 253-267.

population can be found along the shore across Louisiana's coast.<sup>13</sup> Juveniles and post-hatchlings are also associated with Sargassum mats, which they use for food and protection.<sup>14</sup> Sargassum habitat around the Gulf Coast, including parts of Louisiana, has been designated as Critical Habitat for loggerhead sea turtles.<sup>15</sup> In addition, recent tracking surveys show that adult leatherback sea turtles that nest in the Caribbean use Louisiana waters as a residential area.<sup>16</sup> Areas of high risk of vessel collision should be identified, and appropriate mitigation measures taken to avoid take of endangered sea turtles during installation and operation.

## Birds

An estimated 100 million migratory, nesting, and wintering birds rely on Louisiana's coast annually.<sup>17</sup> These include species listed and protected under the ESA, such as Piping Plover (*Charadrius melodus*) (endangered), Red Knot (*Calidris canutus rufa*) (threatened), and Eastern Black Rail (*Laterallus jamaicensis*) (threatened), as well as candidate species such as the Golden-winged Warbler (*Vermivora chrysoptera*). Migratory birds are also protected under the Migratory Bird Treaty Act (MBTA). LDNR should explicitly consider foraging movements around colonial waterbird nesting rookeries (e.g., by Brown Pelican, tern species, heron and egret species), near-shore movements of shorebirds (e.g., sandpipers and plovers), noise and construction effects on marshbirds (e.g., rails and bitterns), and spring and fall migratory movements (including ecological differences thereof) of trans-Gulf migratory species (e.g., passerines, long-distance migratory shorebirds, and various waterbirds and seabirds) when evaluating potential risk of offshore wind development to birds.

## Fishes

Nearshore Louisiana waters are home to two coastal fish species that are protected under the ESA: giant manta rays (*Manta birostris*) (threatened) and Gulf sturgeon (*Acipenser oxyrinchus*) (threatened). As with several sea turtle and marine mammal species, the giant manta ray is often

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<sup>13</sup> Gredzens, C., & Shaver, D. J. (2020). Satellite Tracking Can Inform Population-Level Dispersal to Foraging Grounds of Post-nesting Kemp's Ridley Sea Turtles. *Frontiers in Marine Science*, 7. doi:10.3389/fmars.2020.00559

<sup>14</sup> Witherington, B., Hirama, S., & Hardy, R. (2012). Young sea turtles of the pelagic Sargassum-dominated drift community: habitat use, population density, and threats. *Marine Ecology Progress Series*, 463, 1-22.

<sup>15</sup> NOAA Fisheries (2022a, April 18). *Loggerhead Turtle – Northwest Atlantic Ocean DPS Critical Habitat Map*. NOAA. <https://www.fisheries.noaa.gov/resource/map/loggerhead-turtle-northwest-atlantic-ocean-dps-critical-habitat-map>

<sup>16</sup> Evans, D. R., Valverde, R. A., Ordoñez, C., & Carthy, R. R. (2021). Identification of the Gulf of Mexico as an important high-use habitat for leatherback turtles from Central America. *Ecosphere*, 12(8), e03722.

<sup>17</sup> <https://delta.audubon.org/news/birds-louisiana%E2%80%99s-coast-landscape-vital-habitats>



seen around the Mississippi River Delta (Farmer et al. 2002);<sup>18</sup> this area should be avoided. Part of easternmost coastal Louisiana has been designated as Critical Habitat for the Gulf sturgeon.<sup>19</sup>

## Benthic

Benthic habitat in Louisiana state waters is a mosaic of fine sediment deposits, mixes of fine and sand sediments, and sand deposits which serve as habitat to a variety of organisms that are the base of the marine food web, including molluscs, annelids, and crustaceans.<sup>20,21</sup> Marine seagrass meadows occur east of the Mississippi River, behind the Chandeleur Islands and provide critical nursery and refugia habitat.<sup>22</sup> Louisiana's benthic habitats have been impacted by oil and gas infrastructure, shell mining, bottom trawling, the development of seasonal Gulf Hypoxia, and the Deepwater Horizon Oil Spill. Planning and restoration efforts are underway to address oil spill injuries to these habitats and areas where these efforts are underway should be avoided.<sup>23</sup>

## Coastal Restoration Efforts

Coastal land loss in Louisiana has spawned an extensive effort to restore and sustain a thriving coastal ecosystem. Overall the last ten years, hundreds of millions of dollars of state and federal monies have been invested in the planning, design and implementation of projects throughout Louisiana's coastal area.<sup>24</sup> Many of these projects rely on using sediment from the Mississippi River, the Ship Shoal borrow area in south-central Louisiana at the 10-meter isobath, and sediment dredged from within the basins.<sup>25</sup> It is essential for the success of the restoration program and the protection of the past and future state and federal investments that the location of planned restoration projects, the borrow source sites, and the sediment pipeline corridors be avoided in the

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<sup>18</sup> Farmer, N. A., Garrison, L. P., Horn, C., Miller, M., Gowan, T., Kenney, R. D., ... & Kajiura, S. (2022). The distribution of manta rays in the western North Atlantic Ocean off the eastern United States. *Scientific Reports*, 12(1), 6544.

<sup>19</sup> NOAA Fisheries. (2022, April 18). Gulf Sturgeon Critical Habitat Map and GIS Data. NOAA. <https://www.fisheries.noaa.gov/resource/map/gulf-sturgeon-critical-habitat-map-and-gis-data>

<sup>20</sup> Khalil, Syed M., et al. "Surficial sediment distribution maps for sustainability and ecosystem restoration of coastal Louisiana." *Shore & Beach* 86.3 (2018): 21.

<sup>21</sup> Farrell, Douglas H. "Benthic molluscan and crustacean communities in Louisiana." *Rice Institute Pamphlet-Rice University Studies* 65.4 (1979).

<sup>22</sup> Handley, L., D. Altsman, and R. DeMay. "Seagrass status and trends in the northern Gulf of Mexico: 1940–2002." (2007): 1-267.

<sup>23</sup> Deepwater Horizon Natural Resource Damage Assessment Trustees. (2016). Deepwater Horizon oil spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement.

<sup>24</sup> Coastal Protection and Restoration Authority. Fiscal Year 2024 Annual Plan: Integrated ecosystem restoration and hurricane protection in coastal Louisiana.

<sup>25</sup> Gregory W. Stone, et al. "Ship Shoal as a Prospective Borrow Site for Barrier Island Restoration, Coastal South-Central Louisiana, USA: Numerical Wave Modeling and Field Measurements of Hydrodynamics and Sediment Transport." *Journal of Coastal Research*, vol. 20, no. 1, 2004, pp. 70–88. *JSTOR*, <http://www.jstor.org/stable/4299269>. Accessed 8 June 2023.

siting of wind turbine locations. Consultation with the Coastal Protection and Restoration Authority should be done to avoid conflicts with restoration efforts.

## Avoidance: The First Step in the Mitigation Hierarchy

Siting is the most critical stage for implementing an efficient and responsible development process that avoids the greatest impacts to imperiled species and sensitive habitats, and increases the efficiency for developers and agencies by avoiding costly delays due to avoidable conflicts. By frontloading the environmental assessments of sites and directing developers to appropriate locations for development, permitting agencies can avert the most detrimental impacts of development—particularly those that can not be effectively mitigated or minimized through project design. The state can more efficiently use resources to identify lower conflict sites for development at the earliest stages of the process to avoid major impacts, so that later stages, such as coastal use permit evaluations, focus on minimizing and mitigating impacts. Since developers take risks and devote time and money to nominate a site for a lease, developers also benefit from the increased regulatory certainty that comes with strong guidance on siting that steers them towards more practical, vetted sites.

At the federal level, BOEM initiates its offshore wind leasing through its site identification process, which identifies Wind Energy Areas (WEAs). The process is started either through an unsolicited lease request from a developer or BOEM's own initiative (likely due to explicit interest from nearby states). BOEM may choose to issue a Request for Interest in Commercial Leasing (RFI), which helps the agency determine whether there is competitive interest in an area, as well as glean initial information from stakeholders about site suitability (though this step is not required). A Call for Information and Nominations (Call) is the required process BOEM uses to synthesize the information gathered (either through the RFI or other conversations with stakeholders and experts) into a Call Area. Comments in response to the Call help BOEM to further winnow the area under consideration and to develop WEAs. Recently, BOEM has developed an additional comment opportunity in which it solicits feedback on the suitability of the identified WEAs, and provides the public with an explanation of the spatial modeling and decision making process. Before leasing, BOEM also conducts an Environmental Assessment on the impacts associated with leasing (but not developing) the WEAs as well directs a process (Proposed Sale Notice and Final Sale Notice) to determine stipulations and conditions of the lease.

Through this rigorous process, BOEM gradually eliminates areas from consideration that pose significant resource conflicts in order to identify areas where any risks to wildlife and habitats (as well as other resources) can be reasonably minimized and mitigated. This process has changed over

time, and with stakeholder feedback and over a decade of learning, BOEM has increased opportunities for stakeholder input and transparency into decision making regarding suitability of areas for offshore wind development. LDNR should adopt the lessons learned from the federal process and ensure the state process also incorporates ample opportunities for robust stakeholder feedback and transparency at the earliest stages of the site selection process to help avoid unsuitable areas for offshore wind development.

## Louisiana Department of Natural Resources Obligations Under the State and Local Coastal Resource Management Act

Under the State and Local Coastal Resources Management Act (SLCRMA) of 1978, Louisiana's comprehensive coastal planning law, the Louisiana Department of Natural Resources (LDNR) is tasked with administering the coastal management program.<sup>26</sup> In conjunction with the Louisiana Department of Wildlife and Fisheries (LDWF), LDNR created the Coastal Use Guidelines, which serve as legally enforceable criteria for granting, conditioning, denying, revoking, or modifying coastal use permits and are based on the following environmental guidelines dictated by the SLCRMA:

1. To encourage the full use of coastal resources while recognizing it is in the public interest of the people of Louisiana to *establish a proper balance between development and conservation.*
2. Recognize that *some areas of the coastal zone are more suited for development than other areas* and hence use guidelines which may differ for the same uses in different areas.
3. Require *careful consideration of the impacts of uses on water flow, circulation, quantity, and quality* and require that the discharge or release of any pollutant or toxic material to the water or air of the coastal zone be within all applicable limits established by law, or by federal, state, or local authority.
4. Recognize the *value of special features of the coastal zone* such as barrier islands, fishery nursery grounds, recreation areas, ports and other areas where development and facilities are dependent upon the utilization of or access to coastal waters, and areas particularly suited for industrial, commercial, or residential development and manage those areas so as to enhance their value to the people of Louisiana.

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<sup>26</sup> SLCRMA of 1978 §214.26.

5. *Minimize, whenever feasible and practical, detrimental impacts on natural areas and wildlife habitat and fisheries* by such means as encouraging minimum change of natural systems and by multiple use of existing canals, directional drilling, and other practical techniques.
6. Provide for adequate corridors within the coastal zone for transportation, industrialization, or urbanization and *encouraging the location of such corridors in already developed or disturbed areas when feasible or practicable.*
9. *Minimize detrimental effects of foreseeable cumulative impacts on coastal resources* from proposed or authorized uses.<sup>27</sup>

To adhere to the goals of the SLCRMA, the Coastal Use Guidelines consequently state that, “It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable<sup>28</sup> significant:

1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;
2. adverse economic impacts on the locality of the use and affected governmental bodies;
3. detrimental discharges of inorganic nutrient compounds into coastal waters;
4. alterations in the natural concentration of oxygen in coastal waters;
5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and water bottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
6. adverse disruption of existing social patterns;
7. alterations of the natural temperature regime of coastal waters;
8. detrimental changes in existing salinity regimes;

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<sup>27</sup> Louisiana Revised Statute §49.214.27 (emphasis added).

<sup>28</sup> The “maximum extent practicable” qualifier requires a balancing test to determine if the proposed use conforms with the qualified standard. The permitting authority must perform a “systematic consideration” of the pertinent information pertaining to the use, site and impacts and weigh their relative significance. If the activity does not conform to the qualified standard, it may still be allowed if 1) the public benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the qualified standard; 2) There are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the qualified standard; and 3) The use is water dependent or would result in significant public benefits or would serve an important regional, state, or national interest.: 43 La. Admin. Code, Part 1 § 701; LDNR, Guide to Developing Alternatives and Justification Analyses for Proposed Uses within the Louisiana Coastal Zone (Mar. 2020), available at: [http://www.dnr.louisiana.gov/assets/OCM/permits/NAJ/Combined\\_Document\\_rev1\\_Mar2020.pdf](http://www.dnr.louisiana.gov/assets/OCM/permits/NAJ/Combined_Document_rev1_Mar2020.pdf). It is in the best interest of LDNR to perform a siting analysis to determine if there are “feasible and practical alternative locations” should the activity not comply with the qualified standard.

9. detrimental changes in littoral and sediment transport processes;
10. adverse effects of cumulative impacts;
11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;
13. discharges of pathogens or toxic substances into coastal waters;
14. adverse alteration or destruction of archaeological, historical, or other cultural resources;
15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;
18. adverse disruptions of coastal wildlife and fishery migratory patterns;
19. land loss, erosion, and subsidence;
20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;
21. reduction in the long term biological productivity of the coastal ecosystem.”<sup>29</sup>

## Suggested Changes to to the Wind Leasing Rules

We find that the leasing process, which authorizes LDNR through the State Mineral and Energy Board (SMEB) to award leases for wind energy, does not sufficiently adhere to the goals of the SLCRMA, nor the Coastal Use Guidelines, as it does not include an environmentally robust siting process. We urge the LDNR to use this opportunity to amend Louisiana Administrative Code 43:V. Chapter 7 to enhance the oversight of LDNR regarding nominations of state water for wind leases, the examination and evaluation of those wind leases, and the submission of bids on state tracts offered for wind lease (§709, §711, §713, §715, and 717). The nine step leasing process<sup>30</sup> predominantly puts the onus on the applicant to evaluate the site for environmental concerns, with

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<sup>29</sup> 43 La. Admin. Code, Part I § 701.

<sup>30</sup> Steps in the wind leasing process under La. Admin. Code Title 43 Part V § 705; 1) registration by applicants with the Office of Mineral Resources; 2) pre-nomination research; 3) nomination of state lands and water bottoms for wind lease; 4) examination and evaluation of the nomination; 5) issuance of an advertisement of the state tract to be offered for a wind lease and a request for bids; 6) submission of bids; 7) examination and evaluation of bids; 8) award of the state wind lease; and 9) issuance and execution of the state wind lease contract.

little transparent, empirical, or systematic oversight by LDNR or meaningful input from stakeholders.

## Section 709 Pre-Nomination Research [Formerly LAC 43:I.1009]

Additional guidance should be provided by LDNR to direct wind development to the most suitable, lower resource-conflict locations. When an applicant prepares to nominate state waters for lease, they conduct “pre-nomination research” to determine whether the lands or water bodies fall into one of six categories including 1) Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property; 2) School Indemnity Lands; 3) Tax Adjudicated Lands; 4) Vacant State Lands; 5) White Lake; and 6) Legal Areas. The applicant must also ensure that the site is not subject to other active or non-released land agreements. The applicant is not given any other guidance that would advise on the suitability of the site with respect to potential environmental impacts from wind energy.

Other renewable energy permitting agencies have taken a proactive approach to siting that directs applicants towards low conflict, low environmental value sites to avoid high-impact ecological consequences to important resources. By starting with this guidance, the permitting authorities provide increased regulatory certainty to potential developers, and protect the interests of the state. As we outlined above, at the federal level, BOEM’s siting process includes a gradual winnowing of potential areas for commercial lease sales, incorporating multiple opportunities for stakeholder and expert input and analysis. While this process is, in part, dictated by federal law, in its discretion BOEM has elected to incorporate additional processes that enhance its environmental review, including employing the National Centers for Coastal Ocean Science (NCCOS) to create a suitability model that identifies optimal areas for offshore while minimizing conflicts.

States and federal agencies have endeavored to create and implement more robust siting processes. Generally, these efforts to identify suitable sites for renewable energy fall into three categories:

- 1. Spatial Planning Approach:** uses mapping software to identify lowest and highest priority areas for development, factoring in variables including but not limited to, environmental sensitivity, critical habitat, presence of endangered or threatened species, migratory corridors, visual impacts, proximity to environmental justice communities, wind energy resource, bathymetry, slope, sediment type, geohazards, etc. The NCCOS modeling is an example of using a spatial planning approach at the federal level, but this approach has also been used at the state level by the New York State Energy Research & Development

Authority in their Great Lakes Wind Energy Feasibility Study<sup>31</sup> and the Rhode Island Ocean SAMP mentioned above.<sup>32</sup> Environmental Nonprofits have also assisted in these efforts for terrestrial renewable siting. Notably, mapping efforts such as Siting Renewables Right employ spatial planning to synthesize layers of wildlife, land-use, and engineering data to inform siting decisions.<sup>33</sup>

2. **Tiered Approach:** uses a decision framework that collects information in increasing detail to evaluate risk and make siting and operational decisions. The tiered approach provides the opportunity for evaluation and decision making at each tier, enabling a developer and regulatory agency to proceed or abandon the project or collect additional information. The US Land-Based Wind Energy Guidelines are structured under this framework at the federal level, where questions at each tier help determine environmental risks at the landscape and project scales.<sup>34</sup> The Southern Nevada District Office of the Bureau of Land Management implemented a tiered prioritization process to evaluate renewable energy applications on public lands and direct development towards high priority areas and away from low priority sites. The tiers evaluate regulatory compliance, local considerations, and resource considerations before ranking applications as high, medium, or low priority.<sup>35</sup> This approach encourages developers to make environmentally informed siting decisions because high priority applications would move through the leasing process faster and are less likely to face conflict and litigation, while development in low priority areas is disincentivized.
3. **Thematic Approach:** This approach enumerates the principles, themes, or guidelines that direct the regulatory agency in its decision making, however, the approach does not provide an explicit decision framework. The 2009 Offshore Siting Principles and Guidelines for Wind Development in the Great Lakes were an early example of this approach in the offshore wind space.<sup>36</sup> Though the Ocean SAMP uses the spatial modeling

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<sup>31</sup> New York State Energy Research and Development Authority (NYSERDA). 2022. "New York Great Lakes Wind Energy Feasibility Study," NYSERDA Report Number 22-12. Prepared by the National Renewable Energy Laboratory, Advisian Worley Group, and Brattle Group/Pterra Consulting. [nyseda.ny.gov/publications](https://nyseda.ny.gov/publications)

<sup>32</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 2. Report by Rhode Island Coastal Resources Management Council.

<sup>33</sup><https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/sit-e-wind-right/>

<sup>34</sup> US Fish and Wildlife Service (USFWS) (2012). U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines. Report by US Fish and Wildlife Service (USFWS).

<sup>35</sup>[https://www.blm.gov/sites/blm.gov/files/Nevada\\_SNDO\\_IM-SNDO-2020-001\\_Renewable\\_Energy\\_Priority.pdf](https://www.blm.gov/sites/blm.gov/files/Nevada_SNDO_IM-SNDO-2020-001_Renewable_Energy_Priority.pdf)

<sup>36</sup> Great Lakes Commission (2009). Offshore Siting Principles and Guidelines for Wind Development on the Great Lakes. Great Lakes Wind Collaborative.

approach mentioned above, it also enumerates a set of general policies including, “... that the preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured. Proposed activities shall be designed to avoid impacts and, where unavoidable impacts may occur, those impacts shall be minimized and mitigated.”<sup>37</sup>

We strongly encourage LDNR to employ one or multiple of these siting approaches to better guide applicants in their pre-nomination research. Identifying inappropriate sites for development and guiding applicants away from high conflict, high ecological value locations provides greater certainty to developers that their leasing process is less likely to face environmental and legal challenges.

### Section 711 Nomination of State Lands and Water Bottoms for Wind Lease [Formerly LAC 43:I.1011] and Section 717 Submission of Bids on State Tract Offered for Wind Lease [Formerly LAC 43:I.1017]

LDNR requires that the applicant attend a pre-nomination meeting with the Office of Mineral Resources with a packet that includes:

(7) a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation;<sup>38</sup>

This same information is also required to be submitted during the bidding process.<sup>39</sup> Although applicants are not limited to only provide the information included on this list, LDNR has the ability to *require* applicants to conduct baseline research that is critical for future monitoring, minimizing, and mitigating of impacts. LDNR is missing an opportunity at a pivotal point in the offshore wind development process. At *minimum*, LDNR should ensure the applicant addresses the environmental concerns enumerated in Section 701 of the Louisiana Administrative code to ensure compliance with SLCRMA. Notably, LDNR should require applicants to provide information to help the agency evaluate the site for the potential of significant impacts to:

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<sup>37</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 1. Report by Rhode Island Coastal Resources Management Council.

<sup>38</sup> 43 La.Admin. Code, Part I § 711.

<sup>39</sup> 43 La.Admin. Code, Part I § 717.



5. Destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
10. Adverse effects of cumulative impacts;
11. Detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
15. Fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. Adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
18. Adverse disruptions of coastal wildlife and fishery migratory patterns;
20. Reduction in the long term biological productivity of the coastal ecosystem.<sup>40</sup>

## Section 713 Examination and Evaluation of Nomination for Wind Lease [Formerly LAC 43:I.1013]

Under the current regulations, the Secretary of LDNR has the authority to “evaluate the wind lease nomination pursuant to R.S. 41:1733 and determine whether the proposed wind lease is appropriate.”<sup>41</sup> First, we encourage LDNR to make public the criteria used by the Secretary to evaluate, “the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development, or production of energy from wind...”<sup>42</sup>

Second, we urge LDNR to enhance its intra- and inter-agency coordination to assist in the evaluation of environmental impacts of proposed leases. It is our understanding that while SMEB is directed to issue leases with approval from the Secretary,<sup>43</sup> requires some environmental data from applicants,<sup>44</sup> and indicates in its regulations that it will evaluate environmental impacts,<sup>45</sup> SMEB does not employ environmental scientists to conduct that evaluation. We also understand that coordination is limited with internal departments, such as the Office of Coastal Management, which administers Coastal Use Permits and does conduct environmental review, and is completely

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<sup>40</sup> 43 La. Admin. Code, Part I § 701.

<sup>41</sup> 43 La. Admin. Code, Part I § 713.

<sup>42</sup> LA Rev Stat § 41:1733

<sup>43</sup> LA Rev Stat § 41:1733

<sup>44</sup> 43 La.Admin. Code, Part I § 711

<sup>45</sup> LA Rev Stat § 41:1733

separate from the lease process. We strongly advise coupling these processes and ensuring that expert level scientists and analysts assist in environmental evaluations.

Further, we advise that other agencies should also be consulted early to advise on siting decisions at the lease stage, such as the LDWF, the US Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and the National Oceanic and Atmospheric Administration (NOAA).

## Section 715 Advertisement of State Tract Offered for Wind Lease and Request for Bids [Formerly LAC 43:I.1015]

The leasing and bidding process is a unique opportunity to require the potential lessee to adhere to environmental standards as a condition of the lease. In our national advocacy, for example, we leverage the comment opportunity during the Proposed Sale Notice to request BOEM include lease stipulations to hold the lessee to high environmental standards and, when multi-factor bidding is used, to incorporate bid credits that promote stakeholder engagement and environmental mitigation funding.<sup>46</sup>

Under the current framework, LDNR already incorporates language to require compliance with wind energy standards:

The state wind lessee and state wind lease operator shall be required, in the state wind lease contract, to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA),<sup>47</sup> the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to:

- a. wind turbine safety and design;
- b. power performance;
- c. noise/acoustic measurement;
- d. mechanical load measurements;
- e. blade structural testing;
- f. power quality; and
- g. siting.<sup>48</sup>

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<sup>46</sup> See eNGO PSN Comments at <https://www.regulations.gov/comment/BOEM-2023-0021-0042>.

<sup>47</sup>As of 2021, the American Wind Energy Association is now the American Clean Power Association.

<sup>48</sup> 43 La. Admin. Code, Part I § 715.

We strongly encourage LDNR to develop, in consultation with experts and stakeholders, a set of environmentally protective standards to be incorporated as lease stipulations. As state leasing in Louisiana would be precedent setting given that all but one currently planned and leased offshore wind projects reside in federal waters farther out to sea, it is unlikely that current best practice recommendations for mitigation used by BOEM, the industry, and environmental groups will fully capture the unique needs to responsibly develop state waters. Nevertheless, we can generally recommend the following categories of restrictions that seek to address some of the major risks posed by offshore wind to wildlife and habitats.

- **Birds:** Avian impacts are likely to be high in nearshore waters given birds' use of the northern Gulf of Mexico and Louisiana's coast, especially for seabirds,<sup>49</sup> Nearctic-Neotropical migratory landbirds,<sup>50</sup> and shorebirds.<sup>51</sup> As such, LDNR should coordinate with avian experts and wildlife agencies to determine the breadth and magnitude of impacts offshore wind may pose to these populations, including to species listed under the ESA. Upon consultation, it is likely that suggested stipulations would include: siting restrictions, operational targeted curtailment, turbine height restrictions, lighting restrictions, collision monitoring requirements, commitments to using best available minimization technology, and commitments to data transparency.
- **Marine Mammals:** Consultation with cetacean experts and wildlife agencies is highly recommended to develop lease stipulations, particularly considering the vulnerability of coastal dolphin populations and the vulnerability of marine mammals to vessel strikes and noise impacts resulting from offshore wind development. Consequently, protective lease stipulations would likely include vessel speed restrictions (particularly in locations and during seasons of highest risk), noise restrictions and requirements to implement noise attenuation technologies during construction, commitments to use quiet foundations, seasonal and/or time of day restrictions on noisy activities, use of real-time passive acoustic monitoring, requirements for protected species observers, required separation distances, use of exclusion zones, and mandatory reporting of sightings and detections.
- **Sea Turtles:** Given the imperiled statuses of sea turtles and the difficulty of detecting them visually and acoustically, stipulations would likely include speed restrictions (particularly

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<sup>49</sup> Remsen, JV, BP Wallace, MA Seymour, DA O'Malley, and EI Johnson. 2019. The regional, national, and international importance of Louisiana's coastal avifauna. *Wilson Journal of Ornithology* 131:221-242.

<sup>50</sup> Rappole, JH, and MA Ramos. 1994. Factors affecting migratory bird routes over the Gulf of Mexico. *Bird Conservation International* 4:251-262.

<sup>51</sup> Withers, K. 2002. Shorebird use of coastal wetland and barrier island habitat in the Gulf of Mexico. *The Scientific World Journal* 2:514-536.

through areas of visible jellyfish aggregations or floating vegetation lines or mats), requirements for protected species observers, required separation distances, use of exclusion zones, and mandatory reporting of sightings and detections. Consultation with sea turtle experts and wildlife agencies is essential to protect these species.

- **Adaptive Management and Mitigation Funding:** Developers should be required to prepare adaptive management strategies and plans based on ongoing monitoring of the project. Data collection is the cornerstone of adaptive management that allows for iterative reflection on minimization and mitigation measures, and the “adaptation” of those measures based on objective standards or “triggers” that are biologically meaningful. We urge LDNR to impose lease stipulations to require comprehensive baseline and post-construction monitoring, data sharing, and the implementation of an adaptive management framework. The leasing process is also an opportune time to require the lease holder to commit to funding mitigation and or research relevant to impacts of offshore wind to wildlife.

## Conclusion

In 2022, Louisiana approved its first Climate Action Plan to drive the state towards net zero greenhouse gas emissions by 2050 and safeguard its vulnerable coasts and resources. As part of that action plan, the state intends to “advance equitable, efficient, and sustainable siting and permitting process for new energy infrastructure projects” including offshore wind. The plan recognizes that to achieve this goal, “[o]ur state’s siting and permitting processes must be updated to ensure that new projects are equitably developed. Meeting our climate goals will also require revisiting Louisiana’s existing practices and regulations that guide the development of new and expanded industrial facilities.”<sup>52</sup> Incorporating our recommendations is an important step towards implementing a more responsible development process that holistically considers the issue of siting at the earliest stages of the process to avoid the detrimental pitfalls of inappropriate siting of projects.

Although developing offshore wind at speed is important to mitigating climate change, poor processes and high conflict projects could erode support for this important clean energy source and ultimately undermine the industry’s future in Louisiana. As discussed above, nearshore projects often have the highest level of conflict with human and natural resources. Prior to issuing leases,

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<sup>52</sup> Governor John Bel Edwards, Louisiana Climate Action Plans: Climate Initiatives Task Force Recommendations to the Governor, pg 109, (2022).  
[https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate\\_Action\\_Plan\\_FINAL\\_3.pdf](https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf)

Louisiana should undertake the recommended assessments to determine whether offshore wind can be responsibly developed in state waters.

Our organizations hope to engage with LDNR in an ongoing dialogue to improve this process. We appreciate the opportunity to comment on the NOI and offer our sincere partnership to ensure that responsible siting of offshore wind occurs in Louisiana for the benefit of its people and the protection of its wildlife and habitats.

Sincerely,

Shayna Steingard  
Wildlife Policy Specialist, Offshore Wind Energy  
**National Wildlife Federation**  
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**From:** [Aaron Pierce](#)  
**To:** [James Devitt](#)  
**Subject:** Proposed Wind turbine development rulemaking  
**Date:** Tuesday, June 13, 2023 10:29:13 AM  
**Attachments:** [image001.jpg](#)

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**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Good morning Mr. Devitt,

The Louisiana Department of Wildlife and Fisheries made us aware of the proposed changes by the State Mineral Board, in accordance with R.S. 30:209 (4) (a) in regards to operating agreements for wind energy development. I was instructed that comments on the issue should be directed to you, my apologies if this is incorrect.

Ducks Unlimited, Inc. Southern Region provides the following comment: “We encourage responsible planning and development that considers birds, their life cycle needs and bird habitat and migratory corridors.”

Thank you for considering our comment.

Sincerely,

Aaron Pierce, Ph.D.  
Director of Conservation Science & Planning  
Ducks Unlimited  
125 Southpark Rd.  
Lafayette, LA 70508  
[apierce@ducks.org](mailto:apierce@ducks.org)  
337-735-2415 (office)  
225-938-7036 (cell)



**From:** [Shayna Steingard](#)  
**To:** [James Devitt](#)  
**Cc:** [Helen Rose Patterson](#)  
**Subject:** eNGO Comments in response to Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy  
**Date:** Monday, June 12, 2023 2:05:54 PM  
**Attachments:** [image001.png](#)  
[DNR Letter re OSW in State Waters.pdf](#)

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**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Good afternoon James Devitt,

On behalf of National Wildlife Federation, National Audubon Society, Coalition to Restore Coastal Louisiana, Healthy Gulf, Louisiana Wildlife Federation, and Orleans Audubon Society we submit our comments on the

Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy. We appreciate the opportunity to provide our input on this docket and look forward to continued work with the Louisiana Department of Natural Resources as the state considers offshore wind siting in state waters.

Please confirm receipt of our comments and feel free to contact us with any questions regarding our comments.

Sincerely,

Shayna Steingard



**Shayna Steingard**

She | Her | Hers

**Wildlife Policy Specialist Offshore Wind Energy**

National Wildlife Federation

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*Uniting all Americans to ensure wildlife thrive in a rapidly changing world*



June 2023

Secretary Thomas Harris  
Louisiana Department of Natural Resources  
LaSalle Building  
617 North Third Street  
Baton Rouge, Louisiana 70802

Re: Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

Dear Secretary Harris:

Our organizations, National Wildlife Federation, National Audubon Society, Coalition to Restore Coastal Louisiana, Healthy Gulf, Louisiana Wildlife Federation, Orleans Audubon Society, and Taproot Earth, promote the responsible deployment of offshore wind energy in the Gulf of Mexico. Responsible offshore wind energy (i) avoids, minimizes, mitigates, and monitors 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 impacts to underserved communities, and (vi) uses the best available scientific and technological data to ensure science-based stakeholder-informed decision making.

Offshore wind offers an opportunity to combat the threats of climate change to both wildlife and communities by transitioning our energy economy to renewable sources and away from high conflict, highly damaging fossil fuels. Collectively, our organizations have a robust history of advocacy, conservation, and coastal restoration work in Louisiana, and we have worked diligently throughout the federal offshore wind permitting process to ensure best practices and responsible wildlife protections are implemented in the deployment of offshore wind in the Gulf.<sup>1</sup> **We have serious concerns about whether offshore wind in state waters can meet the criteria of responsible development, particularly under the current permitting regime, which lacks a robust environmental analysis and comprehensive siting process.** We therefore submit our

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<sup>1</sup> See eNGO RFI Comments at <https://www.regulations.gov/comment/BOEM-2021-0041-0025>;  
See eNGO Call Comments at <https://www.regulations.gov/comment/BOEM-2021-0077-0031>;  
See eNGO Scoping Comments at <https://www.regulations.gov/comment/BOEM-2021-0092-0017>;  
See eNGO Draft WEA Comments at <https://www.regulations.gov/comment/BOEM-2022-0036-0090>;  
See eNGO Draft EA Comments at <https://www.regulations.gov/comment/BOEM-2022-0036-0090>;  
See eNGO PSN Comments at <https://www.regulations.gov/comment/BOEM-2023-0021-0042>.

comments on the Notice of Intent for Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy by the Louisiana Department of Natural Resources.<sup>2</sup>

## Environmental Considerations Specific to Louisiana's State Waters

As the state of Louisiana embarks upon the siting and deployment of offshore wind in state waters, we caution that nearshore (within 3 nautical miles) siting of turbines is unprecedented in the United States and rare in Europe, as it often poses greater risks to wildlife and habitats.

Although the Block Island Wind Farm, the first commercial offshore wind farm in the United States, is located in state waters off of Rhode Island, before the 30 megawatt project was sited, the regulating entity, the Rhode Island Coastal Resources Management Council (a corollary to the Louisiana State Mineral and Energy Board), embarked on a rigorous spatial planning initiative. This planning and adaptive management tool, the Ocean Special Area Management Plan (Ocean SAMP),<sup>3</sup> has been lauded as a national model for marine spatial planning, and enabled the Council to fulfill its mandate to preserve, protect, develop, and restore coastal areas.<sup>4</sup> While Block Island is the only offshore wind farm in state waters, it is located 16 miles from the mainland,<sup>5</sup> and therefore does not present the same risks as a project located within the 3 nautical mile state waters boundary.

Conversely, the Nautilus Offshore Wind Project,<sup>6</sup> a proposed 25 megawatt project 2.8 miles off the coast of New Jersey, failed to proceed to development for a number of reasons, but importantly, was largely opposed by environmental groups for its poor siting and high risk to coastal wildlife and habitats. The project would have placed turbines in a critical avian migratory corridor and the large size of the turbines would have put many birds, including protected species, at risk.<sup>7</sup>

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<sup>2</sup>

[https://www.dnr.louisiana.gov/assets/OMR/media/forms\\_pubs/NOI\\_Wind\\_Leasing\\_Rules\\_for\\_the\\_Register.pdf](https://www.dnr.louisiana.gov/assets/OMR/media/forms_pubs/NOI_Wind_Leasing_Rules_for_the_Register.pdf)

<sup>3</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 2. Report by Rhode Island Coastal Resources Management Council.

<sup>4</sup> <http://www.crmc.ri.gov/aboutcrmc.html>

<sup>5</sup> Tetra Tech Inc. (2012). Block Island Wind Farm and Block Island Transmission System Environmental Report/Construction and Operations Plan. Report by Tetra Tech Inc.. Report for Deepwater Wind. Retrieved from

[https://tethys.pnnl.gov/sites/default/files/publications/BlockIsland\\_2012.pdf](https://tethys.pnnl.gov/sites/default/files/publications/BlockIsland_2012.pdf)

<sup>6</sup> Formerly known as the Fishermen's Energy Atlantic City Windfarm.

<sup>7</sup> Hewett, A. (2018, December 18). News: Environmental groups applaud New Jersey BPU rejection of Nautilus Offshore Wind Project. Offshore Wind Energy. <https://offshorewind.nwf.org/2018/12/news-environmental-groups-applaud-new-jersey-bpu-rejection-of-nautilus-offshore-wind-project/>

In our federal advocacy, we have stressed that the unique characteristics of nearshore waters in general, in combination with the ecological importance and sensitivity of Louisiana's coastal habitat specifically, underscore the importance of making environmentally-informed siting decisions. The Gulf's nearshore and coastal waters (<20 nautical miles) contain the most biologically productive areas. During the federal comment process for siting offshore wind in the Gulf of Mexico, in which the Bureau of Ocean Energy Management (BOEM) solicits stakeholder and expert input to help inform its siting decisions, we cautioned against permitting offshore wind turbines within 20 nautical miles from shore. This science-based precautionary measure was recommended to protect coastal bottlenose dolphin populations, as well as to avoid impacts to the Gulf's billions of neotropical migrant birds, nesting colonies of coastal and marine birds, and wintering waterfowl. BOEM adopted this recommendation, along with other wildlife-focused avoidance, minimization, and mitigation measures designed to protect species in the deployment of offshore wind.

Whether the project is located in state waters or federal waters, Rhode Island or Louisiana, each location and project requires thorough analysis and scrutiny. Ultimately, our organizations evaluate projects based on whether or not they can be responsibly developed at a particular location, meaning, in part, whether or not the risks offshore wind poses to wildlife and habitat can be sufficiently avoided, minimized, and mitigated to reduce significant adverse impacts. Louisiana's wetlands and coastal waters create a productive and vital ecosystem that supports numerous species of marine mammals, sea turtles, birds, fish, invertebrates, and habitats. Our evaluation of projects in state waters will use a science-based approach to assess the unique characteristics of the Louisiana Coastal Zone to help advise the state in its siting decisions. While not an exhaustive list of environmental concerns, below, we outline several key taxa-specific considerations that should inform siting of offshore wind in state waters. For additional information on Gulf of Mexico-specific wildlife concerns, please refer to our past federal comments.<sup>1</sup>

## Marine Mammals

Over 30 marine mammal species reside in the Gulf of Mexico. Louisiana's Barataria Bay in particular is home to a well-known population of over 2,000 bottlenose dolphins. This population is made up of long-term, year-round residents who generally stay within 1.75 km of shore.<sup>8</sup> This population was severely injured from the Deepwater Horizon Oil Spill. Atlantic spotted dolphins and Risso's dolphins are also sometimes found nearshore.

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<sup>8</sup> Wells, R. S., Schwacke, L. H., Rowles, T. K., Balmer, B. C., Zolman, E., Speakman, T., ... & Wilkinson, K. A. (2017). Ranging patterns of common bottlenose dolphins *Tursiops truncatus* in Barataria Bay, Louisiana, following the Deepwater Horizon oil spill. *Endangered Species Research*, 33, 159-180.

Additionally, there is a resident, breeding population of sperm whales that resides just south of, and within 100 km from, the Mississippi River Delta.<sup>9</sup> Although these whales tend to prefer deeper waters, they can be found closer to shore in Louisiana and are keenly sensitive to underwater noise.

Vessel strike and underwater noise, especially from pile driving, have the potential to create serious harm for marine mammals. Additional potential threats include habitat disturbance/loss and behavioral changes leading to reduced fitness. Marine mammals in the US are all protected by the Marine Mammal Protection Act (MMPA), and endangered populations such as the endemic Rice's Whale are also protected under the federal Endangered Species Act (ESA).

## Sea Turtles

Five of the world's seven sea turtle species inhabit the Gulf of Mexico year round, and all five of these species are protected by the ESA: leatherbacks (*Dermochelys coriacea*) (endangered), loggerheads (*Caretta caretta*) (threatened), Kemp's ridleys (*Lepidochelys kempii*) (critically endangered), green (*Chelonia mydas*) (threatened), and hawksbill (endangered) (*Eretmochelys imbricata*).<sup>10</sup>

Adults can be found feeding and resting in surface waters of coastal Louisiana, and therefore are vulnerable to vessel strike and altered foraging and migrating patterns. Coastal Louisiana in particular is considered a hot spot for sea turtle foraging activity, especially for Kemp's ridleys and loggerheads.<sup>11</sup> In recent years, these two species have been making a nesting comeback as well, with loggerhead nesting sites in Grand Isle and Kemp's ridley sites in the Chandeleur Islands. The Mississippi Sound is a crucial developmental habitat for juvenile Kemp's ridleys. During the cooler months especially (December-May), this species tends to migrate to very nearshore waters on both sides of the Mississippi River Delta.<sup>12</sup> As many as 82 percent of juvenile Kemp's ridley sea turtles use the northern Gulf of Mexico to forage with high site fidelity, and individuals from this crucial

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<sup>9</sup> Davis, R. W., Ortega-Ortiz, J. G., Ribic, C. A., Evans, W. E., Biggs, D. C., Ressler, P. H., ... & Würsig, B. (2002). Cetacean habitat in the northern oceanic Gulf of Mexico. *Deep Sea Research Part I: Oceanographic Research Papers*, 49(1), 121-142.

<sup>10</sup> NOAA Fisheries (2022, June 28). *Frequent Questions: Northern Gulf of Mexico Sea Turtle Strandings*. NOAA. <https://www.fisheries.noaa.gov/southeast/marine-life-distress/frequent-questions-northern-gulf-mexico-sea-turtle-strandings>

<sup>11</sup> Hart, K. M., Iverson, A. R., Fujisaki, I., Lamont, M. M., Bucklin, D., & Shaver, D. J. (2018). Marine threats overlap key foraging habitat for two imperiled sea turtle species in the Gulf of Mexico. *Frontiers in Marine Science*, 5, 336.

<sup>12</sup> Coleman, A. T., Pitchford, J. L., Bailey, H., & Solangi, M. (2017). Seasonal movements of immature Kemp's ridley sea turtles (*Lepidochelys kempii*) in the northern Gulf of Mexico. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 27(1), 253-267.

population can be found along the shore across Louisiana's coast.<sup>13</sup> Juveniles and post-hatchlings are also associated with Sargassum mats, which they use for food and protection.<sup>14</sup> Sargassum habitat around the Gulf Coast, including parts of Louisiana, has been designated as Critical Habitat for loggerhead sea turtles.<sup>15</sup> In addition, recent tracking surveys show that adult leatherback sea turtles that nest in the Caribbean use Louisiana waters as a residential area.<sup>16</sup> Areas of high risk of vessel collision should be identified, and appropriate mitigation measures taken to avoid take of endangered sea turtles during installation and operation.

## Birds

An estimated 100 million migratory, nesting, and wintering birds rely on Louisiana's coast annually.<sup>17</sup> These include species listed and protected under the ESA, such as Piping Plover (*Charadrius melodus*) (endangered), Red Knot (*Calidris canutus rufa*) (threatened), and Eastern Black Rail (*Laterallus jamaicensis*) (threatened), as well as candidate species such as the Golden-winged Warbler (*Vermivora chrysoptera*). Migratory birds are also protected under the Migratory Bird Treaty Act (MBTA). LDNR should explicitly consider foraging movements around colonial waterbird nesting rookeries (e.g., by Brown Pelican, tern species, heron and egret species), near-shore movements of shorebirds (e.g., sandpipers and plovers), noise and construction effects on marshbirds (e.g., rails and bitterns), and spring and fall migratory movements (including ecological differences thereof) of trans-Gulf migratory species (e.g., passerines, long-distance migratory shorebirds, and various waterbirds and seabirds) when evaluating potential risk of offshore wind development to birds.

## Fishes

Nearshore Louisiana waters are home to two coastal fish species that are protected under the ESA: giant manta rays (*Manta birostris*) (threatened) and Gulf sturgeon (*Acipenser oxyrinchus*) (threatened). As with several sea turtle and marine mammal species, the giant manta ray is often

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<sup>13</sup> Gredzens, C., & Shaver, D. J. (2020). Satellite Tracking Can Inform Population-Level Dispersal to Foraging Grounds of Post-nesting Kemp's Ridley Sea Turtles. *Frontiers in Marine Science*, 7. doi:10.3389/fmars.2020.00559

<sup>14</sup> Witherington, B., Hirama, S., & Hardy, R. (2012). Young sea turtles of the pelagic Sargassum-dominated drift community: habitat use, population density, and threats. *Marine Ecology Progress Series*, 463, 1-22.

<sup>15</sup> NOAA Fisheries (2022a, April 18). *Loggerhead Turtle – Northwest Atlantic Ocean DPS Critical Habitat Map*. NOAA. <https://www.fisheries.noaa.gov/resource/map/loggerhead-turtle-northwest-atlantic-ocean-dps-critical-habitat-map>

<sup>16</sup> Evans, D. R., Valverde, R. A., Ordoñez, C., & Carthy, R. R. (2021). Identification of the Gulf of Mexico as an important high-use habitat for leatherback turtles from Central America. *Ecosphere*, 12(8), e03722.

<sup>17</sup> <https://delta.audubon.org/news/birds-louisiana%E2%80%99s-coast-landscape-vital-habitats>

seen around the Mississippi River Delta (Farmer et al. 2002);<sup>18</sup> this area should be avoided. Part of easternmost coastal Louisiana has been designated as Critical Habitat for the Gulf sturgeon.<sup>19</sup>

## Benthic

Benthic habitat in Louisiana state waters is a mosaic of fine sediment deposits, mixes of fine and sand sediments, and sand deposits which serve as habitat to a variety of organisms that are the base of the marine food web, including molluscs, annelids, and crustaceans.<sup>20,21</sup> Marine seagrass meadows occur east of the Mississippi River, behind the Chandeleur Islands and provide critical nursery and refugia habitat.<sup>22</sup> Louisiana's benthic habitats have been impacted by oil and gas infrastructure, shell mining, bottom trawling, the development of seasonal Gulf Hypoxia, and the Deepwater Horizon Oil Spill. Planning and restoration efforts are underway to address oil spill injuries to these habitats and areas where these efforts are underway should be avoided.<sup>23</sup>

## Coastal Restoration Efforts

Coastal land loss in Louisiana has spawned an extensive effort to restore and sustain a thriving coastal ecosystem. Overall the last ten years, hundreds of millions of dollars of state and federal monies have been invested in the planning, design and implementation of projects throughout Louisiana's coastal area.<sup>24</sup> Many of these projects rely on using sediment from the Mississippi River, the Ship Shoal borrow area in south-central Louisiana at the 10-meter isobath, and sediment dredged from within the basins.<sup>25</sup> It is essential for the success of the restoration program and the protection of the past and future state and federal investments that the location of planned restoration projects, the borrow source sites, and the sediment pipeline corridors be avoided in the

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<sup>18</sup> Farmer, N. A., Garrison, L. P., Horn, C., Miller, M., Gowan, T., Kenney, R. D., ... & Kajiura, S. (2022). The distribution of manta rays in the western North Atlantic Ocean off the eastern United States. *Scientific Reports*, 12(1), 6544.

<sup>19</sup> NOAA Fisheries. (2022, April 18). Gulf Sturgeon Critical Habitat Map and GIS Data. NOAA. <https://www.fisheries.noaa.gov/resource/map/gulf-sturgeon-critical-habitat-map-and-gis-data>

<sup>20</sup> Khalil, Syed M., et al. "Surficial sediment distribution maps for sustainability and ecosystem restoration of coastal Louisiana." *Shore & Beach* 86.3 (2018): 21.

<sup>21</sup> Farrell, Douglas H. "Benthic molluscan and crustacean communities in Louisiana." *Rice Institute Pamphlet-Rice University Studies* 65.4 (1979).

<sup>22</sup> Handley, L., D. Altsman, and R. DeMay. "Seagrass status and trends in the northern Gulf of Mexico: 1940–2002." (2007): 1-267.

<sup>23</sup> Deepwater Horizon Natural Resource Damage Assessment Trustees. (2016). Deepwater Horizon oil spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement.

<sup>24</sup> Coastal Protection and Restoration Authority. Fiscal Year 2024 Annual Plan: Integrated ecosystem restoration and hurricane protection in coastal Louisiana.

<sup>25</sup> Gregory W. Stone, et al. "Ship Shoal as a Prospective Borrow Site for Barrier Island Restoration, Coastal South-Central Louisiana, USA: Numerical Wave Modeling and Field Measurements of Hydrodynamics and Sediment Transport." *Journal of Coastal Research*, vol. 20, no. 1, 2004, pp. 70–88. *JSTOR*, <http://www.jstor.org/stable/4299269>. Accessed 8 June 2023.

siting of wind turbine locations. Consultation with the Coastal Protection and Restoration Authority should be done to avoid conflicts with restoration efforts.

## Avoidance: The First Step in the Mitigation Hierarchy

Siting is the most critical stage for implementing an efficient and responsible development process that avoids the greatest impacts to imperiled species and sensitive habitats, and increases the efficiency for developers and agencies by avoiding costly delays due to avoidable conflicts. By frontloading the environmental assessments of sites and directing developers to appropriate locations for development, permitting agencies can avert the most detrimental impacts of development—particularly those that can not be effectively mitigated or minimized through project design. The state can more efficiently use resources to identify lower conflict sites for development at the earliest stages of the process to avoid major impacts, so that later stages, such as coastal use permit evaluations, focus on minimizing and mitigating impacts. Since developers take risks and devote time and money to nominate a site for a lease, developers also benefit from the increased regulatory certainty that comes with strong guidance on siting that steers them towards more practical, vetted sites.

At the federal level, BOEM initiates its offshore wind leasing through its site identification process, which identifies Wind Energy Areas (WEAs). The process is started either through an unsolicited lease request from a developer or BOEM's own initiative (likely due to explicit interest from nearby states). BOEM may choose to issue a Request for Interest in Commercial Leasing (RFI), which helps the agency determine whether there is competitive interest in an area, as well as glean initial information from stakeholders about site suitability (though this step is not required). A Call for Information and Nominations (Call) is the required process BOEM uses to synthesize the information gathered (either through the RFI or other conversations with stakeholders and experts) into a Call Area. Comments in response to the Call help BOEM to further winnow the area under consideration and to develop WEAs. Recently, BOEM has developed an additional comment opportunity in which it solicits feedback on the suitability of the identified WEAs, and provides the public with an explanation of the spatial modeling and decision making process. Before leasing, BOEM also conducts an Environmental Assessment on the impacts associated with leasing (but not developing) the WEAs as well directs a process (Proposed Sale Notice and Final Sale Notice) to determine stipulations and conditions of the lease.

Through this rigorous process, BOEM gradually eliminates areas from consideration that pose significant resource conflicts in order to identify areas where any risks to wildlife and habitats (as well as other resources) can be reasonably minimized and mitigated. This process has changed over

time, and with stakeholder feedback and over a decade of learning, BOEM has increased opportunities for stakeholder input and transparency into decision making regarding suitability of areas for offshore wind development. LDNR should adopt the lessons learned from the federal process and ensure the state process also incorporates ample opportunities for robust stakeholder feedback and transparency at the earliest stages of the site selection process to help avoid unsuitable areas for offshore wind development.

## Louisiana Department of Natural Resources Obligations Under the State and Local Coastal Resource Management Act

Under the State and Local Coastal Resources Management Act (SLCRMA) of 1978, Louisiana's comprehensive coastal planning law, the Louisiana Department of Natural Resources (LDNR) is tasked with administering the coastal management program.<sup>26</sup> In conjunction with the Louisiana Department of Wildlife and Fisheries (LDWF), LDNR created the Coastal Use Guidelines, which serve as legally enforceable criteria for granting, conditioning, denying, revoking, or modifying coastal use permits and are based on the following environmental guidelines dictated by the SLCRMA:

1. To encourage the full use of coastal resources while recognizing it is in the public interest of the people of Louisiana to *establish a proper balance between development and conservation.*
2. Recognize that *some areas of the coastal zone are more suited for development than other areas* and hence use guidelines which may differ for the same uses in different areas.
3. Require *careful consideration of the impacts of uses on water flow, circulation, quantity, and quality* and require that the discharge or release of any pollutant or toxic material to the water or air of the coastal zone be within all applicable limits established by law, or by federal, state, or local authority.
4. Recognize the *value of special features of the coastal zone* such as barrier islands, fishery nursery grounds, recreation areas, ports and other areas where development and facilities are dependent upon the utilization of or access to coastal waters, and areas particularly suited for industrial, commercial, or residential development and manage those areas so as to enhance their value to the people of Louisiana.

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<sup>26</sup> SLCRMA of 1978 §214.26.



5. *Minimize, whenever feasible and practical, detrimental impacts on natural areas and wildlife habitat and fisheries* by such means as encouraging minimum change of natural systems and by multiple use of existing canals, directional drilling, and other practical techniques.
6. Provide for adequate corridors within the coastal zone for transportation, industrialization, or urbanization and *encouraging the location of such corridors in already developed or disturbed areas when feasible or practicable.*
9. *Minimize detrimental effects of foreseeable cumulative impacts on coastal resources* from proposed or authorized uses.<sup>27</sup>

To adhere to the goals of the SLCRMA, the Coastal Use Guidelines consequently state that, “It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable<sup>28</sup> significant:

1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;
2. adverse economic impacts on the locality of the use and affected governmental bodies;
3. detrimental discharges of inorganic nutrient compounds into coastal waters;
4. alterations in the natural concentration of oxygen in coastal waters;
5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and water bottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
6. adverse disruption of existing social patterns;
7. alterations of the natural temperature regime of coastal waters;
8. detrimental changes in existing salinity regimes;

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<sup>27</sup> Louisiana Revised Statute §49.214.27 (emphasis added).

<sup>28</sup> The “maximum extent practicable” qualifier requires a balancing test to determine if the proposed use conforms with the qualified standard. The permitting authority must perform a “systematic consideration” of the pertinent information pertaining to the use, site and impacts and weigh their relative significance. If the activity does not conform to the qualified standard, it may still be allowed if 1) the public benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the qualified standard; 2) There are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the qualified standard; and 3) The use is water dependent or would result in significant public benefits or would serve an important regional, state, or national interest.: 43 La. Admin. Code, Part 1 § 701; LDNR, Guide to Developing Alternatives and Justification Analyses for Proposed Uses within the Louisiana Coastal Zone (Mar. 2020), available at: [http://www.dnr.louisiana.gov/assets/OCM/permits/NAJ/Combined\\_Document\\_rev1\\_Mar2020.pdf](http://www.dnr.louisiana.gov/assets/OCM/permits/NAJ/Combined_Document_rev1_Mar2020.pdf). It is in the best interest of LDNR to perform a siting analysis to determine if there are “feasible and practical alternative locations” should the activity not comply with the qualified standard.

9. detrimental changes in littoral and sediment transport processes;
10. adverse effects of cumulative impacts;
11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;
13. discharges of pathogens or toxic substances into coastal waters;
14. adverse alteration or destruction of archaeological, historical, or other cultural resources;
15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;
18. adverse disruptions of coastal wildlife and fishery migratory patterns;
19. land loss, erosion, and subsidence;
20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;
21. reduction in the long term biological productivity of the coastal ecosystem.”<sup>29</sup>

## Suggested Changes to to the Wind Leasing Rules

We find that the leasing process, which authorizes LDNR through the State Mineral and Energy Board (SMEB) to award leases for wind energy, does not sufficiently adhere to the goals of the SLCRMA, nor the Coastal Use Guidelines, as it does not include an environmentally robust siting process. We urge the LDNR to use this opportunity to amend Louisiana Administrative Code 43:V. Chapter 7 to enhance the oversight of LDNR regarding nominations of state water for wind leases, the examination and evaluation of those wind leases, and the submission of bids on state tracts offered for wind lease (§709, §711, §713, §715, and 717). The nine step leasing process<sup>30</sup> predominantly puts the onus on the applicant to evaluate the site for environmental concerns, with

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<sup>29</sup> 43 La. Admin. Code, Part I § 701.

<sup>30</sup> Steps in the wind leasing process under La. Admin. Code Title 43 Part V § 705; 1) registration by applicants with the Office of Mineral Resources; 2) pre-nomination research; 3) nomination of state lands and water bottoms for wind lease; 4) examination and evaluation of the nomination; 5) issuance of an advertisement of the state tract to be offered for a wind lease and a request for bids; 6) submission of bids; 7) examination and evaluation of bids; 8) award of the state wind lease; and 9) issuance and execution of the state wind lease contract.

little transparent, empirical, or systematic oversight by LDNR or meaningful input from stakeholders.

## Section 709 Pre-Nomination Research [Formerly LAC 43:I.1009]

Additional guidance should be provided by LDNR to direct wind development to the most suitable, lower resource-conflict locations. When an applicant prepares to nominate state waters for lease, they conduct “pre-nomination research” to determine whether the lands or water bodies fall into one of six categories including 1) Louisiana Wildlife and Fisheries Commission/Louisiana Department of Wildlife and Fisheries Property; 2) School Indemnity Lands; 3) Tax Adjudicated Lands; 4) Vacant State Lands; 5) White Lake; and 6) Legal Areas. The applicant must also ensure that the site is not subject to other active or non-released land agreements. The applicant is not given any other guidance that would advise on the suitability of the site with respect to potential environmental impacts from wind energy.

Other renewable energy permitting agencies have taken a proactive approach to siting that directs applicants towards low conflict, low environmental value sites to avoid high-impact ecological consequences to important resources. By starting with this guidance, the permitting authorities provide increased regulatory certainty to potential developers, and protect the interests of the state. As we outlined above, at the federal level, BOEM’s siting process includes a gradual winnowing of potential areas for commercial lease sales, incorporating multiple opportunities for stakeholder and expert input and analysis. While this process is, in part, dictated by federal law, in its discretion BOEM has elected to incorporate additional processes that enhance its environmental review, including employing the National Centers for Coastal Ocean Science (NCCOS) to create a suitability model that identifies optimal areas for offshore while minimizing conflicts.

States and federal agencies have endeavored to create and implement more robust siting processes. Generally, these efforts to identify suitable sites for renewable energy fall into three categories:

- 1. Spatial Planning Approach:** uses mapping software to identify lowest and highest priority areas for development, factoring in variables including but not limited to, environmental sensitivity, critical habitat, presence of endangered or threatened species, migratory corridors, visual impacts, proximity to environmental justice communities, wind energy resource, bathymetry, slope, sediment type, geohazards, etc. The NCCOS modeling is an example of using a spatial planning approach at the federal level, but this approach has also been used at the state level by the New York State Energy Research & Development

Authority in their Great Lakes Wind Energy Feasibility Study<sup>31</sup> and the Rhode Island Ocean SAMP mentioned above.<sup>32</sup> Environmental Nonprofits have also assisted in these efforts for terrestrial renewable siting. Notably, mapping efforts such as Siting Renewables Right employ spatial planning to synthesize layers of wildlife, land-use, and engineering data to inform siting decisions.<sup>33</sup>

2. **Tiered Approach:** uses a decision framework that collects information in increasing detail to evaluate risk and make siting and operational decisions. The tiered approach provides the opportunity for evaluation and decision making at each tier, enabling a developer and regulatory agency to proceed or abandon the project or collect additional information. The US Land-Based Wind Energy Guidelines are structured under this framework at the federal level, where questions at each tier help determine environmental risks at the landscape and project scales.<sup>34</sup> The Southern Nevada District Office of the Bureau of Land Management implemented a tiered prioritization process to evaluate renewable energy applications on public lands and direct development towards high priority areas and away from low priority sites. The tiers evaluate regulatory compliance, local considerations, and resource considerations before ranking applications as high, medium, or low priority.<sup>35</sup> This approach encourages developers to make environmentally informed siting decisions because high priority applications would move through the leasing process faster and are less likely to face conflict and litigation, while development in low priority areas is disincentivized.
3. **Thematic Approach:** This approach enumerates the principles, themes, or guidelines that direct the regulatory agency in its decision making, however, the approach does not provide an explicit decision framework. The 2009 Offshore Siting Principles and Guidelines for Wind Development in the Great Lakes were an early example of this approach in the offshore wind space.<sup>36</sup> Though the Ocean SAMP uses the spatial modeling

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<sup>31</sup> New York State Energy Research and Development Authority (NYSERDA). 2022. "New York Great Lakes Wind Energy Feasibility Study," NYSERDA Report Number 22-12. Prepared by the National Renewable Energy Laboratory, Advisian Worley Group, and Brattle Group/Pterra Consulting. [nyserda.ny.gov/publications](https://nyserda.ny.gov/publications)

<sup>32</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 2. Report by Rhode Island Coastal Resources Management Council.

<sup>33</sup><https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/sit-e-wind-right/>

<sup>34</sup> US Fish and Wildlife Service (USFWS) (2012). U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines. Report by US Fish and Wildlife Service (USFWS).

<sup>35</sup>[https://www.blm.gov/sites/blm.gov/files/Nevada\\_SNDO\\_IM-SNDO-2020-001\\_Renewable\\_Energy\\_Priority.pdf](https://www.blm.gov/sites/blm.gov/files/Nevada_SNDO_IM-SNDO-2020-001_Renewable_Energy_Priority.pdf)

<sup>36</sup> Great Lakes Commission (2009). Offshore Siting Principles and Guidelines for Wind Development on the Great Lakes. Great Lakes Wind Collaborative.

approach mentioned above, it also enumerates a set of general policies including, “... that the preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured. Proposed activities shall be designed to avoid impacts and, where unavoidable impacts may occur, those impacts shall be minimized and mitigated.”<sup>37</sup>

We strongly encourage LDNR to employ one or multiple of these siting approaches to better guide applicants in their pre-nomination research. Identifying inappropriate sites for development and guiding applicants away from high conflict, high ecological value locations provides greater certainty to developers that their leasing process is less likely to face environmental and legal challenges.

### Section 711 Nomination of State Lands and Water Bottoms for Wind Lease [Formerly LAC 43:I.1011] and Section 717 Submission of Bids on State Tract Offered for Wind Lease [Formerly LAC 43:I.1017]

LDNR requires that the applicant attend a pre-nomination meeting with the Office of Mineral Resources with a packet that includes:

(7) a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation;<sup>38</sup>

This same information is also required to be submitted during the bidding process.<sup>39</sup> Although applicants are not limited to only provide the information included on this list, LDNR has the ability to *require* applicants to conduct baseline research that is critical for future monitoring, minimizing, and mitigating of impacts. LDNR is missing an opportunity at a pivotal point in the offshore wind development process. At *minimum*, LDNR should ensure the applicant addresses the environmental concerns enumerated in Section 701 of the Louisiana Administrative code to ensure compliance with SLCRMA. Notably, LDNR should require applicants to provide information to help the agency evaluate the site for the potential of significant impacts to:

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<sup>37</sup> Rhode Island Coastal Resources Management Council (2013). Rhode Island Ocean Special Area Management Plan: Ocean SAMP - Volume 1. Report by Rhode Island Coastal Resources Management Council.

<sup>38</sup> 43 La.Admin. Code, Part I § 711.

<sup>39</sup> 43 La.Admin. Code, Part I § 717.

5. Destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
10. Adverse effects of cumulative impacts;
11. Detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;
15. Fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. Adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
18. Adverse disruptions of coastal wildlife and fishery migratory patterns;
20. Reduction in the long term biological productivity of the coastal ecosystem.<sup>40</sup>

## Section 713 Examination and Evaluation of Nomination for Wind Lease [Formerly LAC 43:I.1013]

Under the current regulations, the Secretary of LDNR has the authority to “evaluate the wind lease nomination pursuant to R.S. 41:1733 and determine whether the proposed wind lease is appropriate.”<sup>41</sup> First, we encourage LDNR to make public the criteria used by the Secretary to evaluate, “the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development, or production of energy from wind...”<sup>42</sup>

Second, we urge LDNR to enhance its intra- and inter-agency coordination to assist in the evaluation of environmental impacts of proposed leases. It is our understanding that while SMEB is directed to issue leases with approval from the Secretary,<sup>43</sup> requires some environmental data from applicants,<sup>44</sup> and indicates in its regulations that it will evaluate environmental impacts,<sup>45</sup> SMEB does not employ environmental scientists to conduct that evaluation. We also understand that coordination is limited with internal departments, such as the Office of Coastal Management, which administers Coastal Use Permits and does conduct environmental review, and is completely

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<sup>40</sup> 43 La. Admin. Code, Part I § 701.

<sup>41</sup> 43 La. Admin. Code, Part I § 713.

<sup>42</sup> LA Rev Stat § 41:1733

<sup>43</sup> LA Rev Stat § 41:1733

<sup>44</sup> 43 La.Admin. Code, Part I § 711

<sup>45</sup> LA Rev Stat § 41:1733

separate from the lease process. We strongly advise coupling these processes and ensuring that expert level scientists and analysts assist in environmental evaluations.

Further, we advise that other agencies should also be consulted early to advise on siting decisions at the lease stage, such as the LDWF, the US Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and the National Oceanic and Atmospheric Administration (NOAA).

## Section 715 Advertisement of State Tract Offered for Wind Lease and Request for Bids [Formerly LAC 43:I.1015]

The leasing and bidding process is a unique opportunity to require the potential lessee to adhere to environmental standards as a condition of the lease. In our national advocacy, for example, we leverage the comment opportunity during the Proposed Sale Notice to request BOEM include lease stipulations to hold the lessee to high environmental standards and, when multi-factor bidding is used, to incorporate bid credits that promote stakeholder engagement and environmental mitigation funding.<sup>46</sup>

Under the current framework, LDNR already incorporates language to require compliance with wind energy standards:

The state wind lessee and state wind lease operator shall be required, in the state wind lease contract, to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA),<sup>47</sup> the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to:

- a. wind turbine safety and design;
- b. power performance;
- c. noise/acoustic measurement;
- d. mechanical load measurements;
- e. blade structural testing;
- f. power quality; and
- g. siting.<sup>48</sup>

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<sup>46</sup> See eNGO PSN Comments at <https://www.regulations.gov/comment/BOEM-2023-0021-0042>.

<sup>47</sup>As of 2021, the American Wind Energy Association is now the American Clean Power Association.

<sup>48</sup> 43 La. Admin. Code, Part I § 715.

We strongly encourage LDNR to develop, in consultation with experts and stakeholders, a set of environmentally protective standards to be incorporated as lease stipulations. As state leasing in Louisiana would be precedent setting given that all but one currently planned and leased offshore wind projects reside in federal waters farther out to sea, it is unlikely that current best practice recommendations for mitigation used by BOEM, the industry, and environmental groups will fully capture the unique needs to responsibly develop state waters. Nevertheless, we can generally recommend the following categories of restrictions that seek to address some of the major risks posed by offshore wind to wildlife and habitats.

- **Birds:** Avian impacts are likely to be high in nearshore waters given birds' use of the northern Gulf of Mexico and Louisiana's coast, especially for seabirds,<sup>49</sup> Nearctic-Neotropical migratory landbirds,<sup>50</sup> and shorebirds.<sup>51</sup> As such, LDNR should coordinate with avian experts and wildlife agencies to determine the breadth and magnitude of impacts offshore wind may pose to these populations, including to species listed under the ESA. Upon consultation, it is likely that suggested stipulations would include: siting restrictions, operational targeted curtailment, turbine height restrictions, lighting restrictions, collision monitoring requirements, commitments to using best available minimization technology, and commitments to data transparency.
- **Marine Mammals:** Consultation with cetacean experts and wildlife agencies is highly recommended to develop lease stipulations, particularly considering the vulnerability of coastal dolphin populations and the vulnerability of marine mammals to vessel strikes and noise impacts resulting from offshore wind development. Consequently, protective lease stipulations would likely include vessel speed restrictions (particularly in locations and during seasons of highest risk), noise restrictions and requirements to implement noise attenuation technologies during construction, commitments to use quiet foundations, seasonal and/or time of day restrictions on noisy activities, use of real-time passive acoustic monitoring, requirements for protected species observers, required separation distances, use of exclusion zones, and mandatory reporting of sightings and detections.
- **Sea Turtles:** Given the imperiled statuses of sea turtles and the difficulty of detecting them visually and acoustically, stipulations would likely include speed restrictions (particularly

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<sup>49</sup> Remsen, JV, BP Wallace, MA Seymour, DA O'Malley, and EI Johnson. 2019. The regional, national, and international importance of Louisiana's coastal avifauna. *Wilson Journal of Ornithology* 131:221-242.

<sup>50</sup> Rappole, JH, and MA Ramos. 1994. Factors affecting migratory bird routes over the Gulf of Mexico. *Bird Conservation International* 4:251-262.

<sup>51</sup> Withers, K. 2002. Shorebird use of coastal wetland and barrier island habitat in the Gulf of Mexico. *The Scientific World Journal* 2:514-536.



through areas of visible jellyfish aggregations or floating vegetation lines or mats), requirements for protected species observers, required separation distances, use of exclusion zones, and mandatory reporting of sightings and detections. Consultation with sea turtle experts and wildlife agencies is essential to protect these species.

- **Adaptive Management and Mitigation Funding:** Developers should be required to prepare adaptive management strategies and plans based on ongoing monitoring of the project. Data collection is the cornerstone of adaptive management that allows for iterative reflection on minimization and mitigation measures, and the “adaptation” of those measures based on objective standards or “triggers” that are biologically meaningful. We urge LDNR to impose lease stipulations to require comprehensive baseline and post-construction monitoring, data sharing, and the implementation of an adaptive management framework. The leasing process is also an opportune time to require the lease holder to commit to funding mitigation and or research relevant to impacts of offshore wind to wildlife.

## Conclusion

In 2022, Louisiana approved its first Climate Action Plan to drive the state towards net zero greenhouse gas emissions by 2050 and safeguard its vulnerable coasts and resources. As part of that action plan, the state intends to “advance equitable, efficient, and sustainable siting and permitting process for new energy infrastructure projects” including offshore wind. The plan recognizes that to achieve this goal, “[o]ur state’s siting and permitting processes must be updated to ensure that new projects are equitably developed. Meeting our climate goals will also require revisiting Louisiana’s existing practices and regulations that guide the development of new and expanded industrial facilities.”<sup>52</sup> Incorporating our recommendations is an important step towards implementing a more responsible development process that holistically considers the issue of siting at the earliest stages of the process to avoid the detrimental pitfalls of inappropriate siting of projects.

Although developing offshore wind at speed is important to mitigating climate change, poor processes and high conflict projects could erode support for this important clean energy source and ultimately undermine the industry’s future in Louisiana. As discussed above, nearshore projects often have the highest level of conflict with human and natural resources. Prior to issuing leases,

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<sup>52</sup> Governor John Bel Edwards, Louisiana Climate Action Plans: Climate Initiatives Task Force Recommendations to the Governor, pg 109, (2022).  
[https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate\\_Action\\_Plan\\_FINAL\\_3.pdf](https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf)

Louisiana should undertake the recommended assessments to determine whether offshore wind can be responsibly developed in state waters.

Our organizations hope to engage with LDNR in an ongoing dialogue to improve this process. We appreciate the opportunity to comment on the NOI and offer our sincere partnership to ensure that responsible siting of offshore wind occurs in Louisiana for the benefit of its people and the protection of its wildlife and habitats.

Sincerely,

Shayna Steingard  
Wildlife Policy Specialist, Offshore Wind Energy  
**National Wildlife Federation**  
[SteingardS@NWF.org](mailto:SteingardS@NWF.org)

Dawn O'Neal, Ph.D.  
Vice President Delta Region  
**National Audubon Society**  
[Dawn.ONeal@Audubon.org](mailto:Dawn.ONeal@Audubon.org)

Tyler Bosworth  
Advocacy Director  
**Coalition to Restore Coastal Louisiana**  
[Tyler.Bosworth@CRCL.org](mailto:Tyler.Bosworth@CRCL.org)

Scott Eustis  
Community Science Director  
**Healthy Gulf**  
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Jennifer O. Coulson, Ph.D

President

**Orleans Audubon Society**

[OrelansAudubon@aol.com](mailto:OrelansAudubon@aol.com)

Kendall Dix

National Policy Director

**Taproot Earth**

KDix@Taproot.Earth

Monika Gerhart: Hello, I'm Monika Gerhart and I'm representing myself. These comments were developed in consultation with a number of stakeholders who have been having a conversation in New Orleans primarily that have been focused on new economic opportunities. We welcome DNR's leadership and hope that our state can do a lot here in terms of adding to the economy. One of the things that may be helpful is if the State would consider thresholds for disadvantaged businesses enterprises and women-owned businesses.. For example, the City of New Orleans' DBE threshold is 35%. Based on local demographics and the supply of eligible businesses, that may be a helpful threshold for leaseholder requirements. I also hope you consider Louisiana labor and local content requirements. Finally, if economic opportunity is really going to serve us well, it would be great if leaseholders would be required to demonstrate recruitment efforts of professional management and legal jobs, including associated professional service consulting contracts, from among Louisiana Women's Business Resource Centers, Louisiana Historically Black Colleges and Universities, Black Alumni Associations of accredited Louisiana Law Schools, and Black Alumni Associations of accredited Louisiana universities.

Thank you again for the opportunity to share these thoughts, and that's all I have to add.

**From:** [Suzanne Roberts](#)  
**To:** [James Devitt](#)  
**Cc:** [Travis Woodard](#); [Steve Chustz](#)  
**Subject:** LA Offshore Notice of Intent Comments  
**Date:** Monday, June 12, 2023 7:58:17 PM  
**Attachments:** [csrs\\_primary\\_rgb\\_400px\\_f6789a6b-0cc8-4962-a60e-e197587025ce.png](#)  
[icon\\_linkedin-30px\\_d44e7bb5-4297-4f3b-bcfc-34efdedfaef7.jpg](#)  
[icon\\_facebook-30px\\_d7a3472d-0d07-4237-8963-a316b6f9f30c.jpg](#)  
[230612\\_LA Offshore\\_Notice of Intent Comments.pdf](#)

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Please see attached.

### Suzanne Roberts

*Executive Assistant/Paralegal/Notary Public*

**Direct.** (225) 831-2177 | **Cell.** (225) 439-7322 | **Main.** 1-833-523-2526 | **Ext.** 1277

8555 United Plaza Blvd., Baton Rouge, LA 70809 | [suzanne.roberts@csrsinc.com](mailto:suzanne.roberts@csrsinc.com) | [www.csrsinc.com](http://www.csrsinc.com)



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June 12, 2023  
Louisiana Department of Natural Resources  
Office of Mineral Resources  
Attention: James Devitt  
617 North Third Street, 8<sup>th</sup> Floor  
Baton Rouge, LA 70802

Mr. Devitt,

Emerald Renewable Energy Developers (Emerald) applauds the State of Louisiana for its efforts to revise its regulations regarding wind leasing on State Lands and Water Bottoms to conform with Act 443 of the 2022 Regular Session of the Louisiana Legislature. We appreciate the opportunity to review and provide public comment on the Notice of Intent that was published in the May 2023 *Louisiana Register*. Following are comments that we would like you to consider that we believe would be improvements to the rules that have been proposed.

**Comment 1:**

Section 725 (Page 987) Transfer or Assignment of a State Wind Lease should be modified to specify that a party who transfers or assigns a State Wind Lease to another party who is approved by the Office of Mineral Resources should no longer retain liability for the activities and structures on the leased property.

**Comment 2:**

Section 733 (H) (Page 991) State Wind Lease Decommissioning should be modified to reflect standard practices for the wind industry for removal to a depth of 5 feet rather than the depth proposed in the rule of 15 feet which may be more appropriate for construction techniques used in the oil and gas industry and its construction practices.

Once again, we appreciate the opportunity to provide these written comments and look forward to working with the Department to develop rules and regulations that will promote the wind industry in the State of Louisiana while protecting the Natural Resources of the State and providing a clean source of energy that will be beneficial to the citizens of Louisiana.

Sincerely,

A handwritten signature in blue ink that reads "Elon Hasson".

Elon Hasson  
Founder and Principal

ALWAYS ADVOCATING



email  
[elon@emrend.com](mailto:elon@emrend.com)



phone  
503-481-8622



website  
[www.emrend.com](http://www.emrend.com)

**From:** [Monika Gerhart](#)  
**To:** [James Devitt](#)  
**Cc:** [Monika A. Gerhart](#); [Byron Miller](#); [Rebecca Roberts](#)  
**Subject:** Re: FW: FW: OSW Leasing NOI - Comment Question  
**Date:** Monday, June 19, 2023 2:15:41 PM

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Thank you so much for reaching out!

I've updated the comments

here: <https://docs.google.com/document/d/14sMOBEILOGUvMTM17gV7OsYadVfTMzzsx/edit?usp=sharing&oid=113594603044120977387&rtpof=true&sd=true>.

Best,  
Monika



On Mon, Jun 19, 2023 at 1:55 PM James Devitt <[James.Devitt@la.gov](mailto:James.Devitt@la.gov)> wrote:

Monika,

Please help us transcribe your comments from the public meeting on June 12<sup>th</sup>.

Here is our draft.

Jim Devitt

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**From:** [Helen Rose Patterson](#)  
**To:** [James Devitt](#)  
**Cc:** [Byron Miller](#); [Rebecca Roberts](#)  
**Subject:** RE: FW: OSW Leasing NOI - Comment Question  
**Date:** Wednesday, June 21, 2023 6:06:39 PM  
**Attachments:** [image001.png](#)  
[LA State Waters Oral Comments.docx](#)

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Hello –

Thank you for checking! I've attached the document that I was reading from for reference.



**Helen Rose Patterson**  
she/her  
**Senior Campaign Manager**  
**Offshore Wind Energy**  
National Wildlife Federation

(o) 504-264-6866

(c) 504-256-7580

[www.nwf.org](http://www.nwf.org)

*Uniting all Americans to ensure wildlife thrive in a rapidly changing world*

**Sign up for a monthly wind energy news round-up [here](#).**

---

**From:** James Devitt <James.Devitt@LA.GOV>  
**Sent:** Monday, June 19, 2023 11:51 AM  
**To:** Helen Rose Patterson <PattersonH@nwf.org>  
**Cc:** Byron Miller <Byron.Miller@LA.GOV>; Rebecca Roberts <Rebecca.Roberts@LA.GOV>  
**Subject:** [EXTERNAL] RE: FW: OSW Leasing NOI - Comment Question

**This message originated outside NWF. Please verify the source before you open any attachments or click on any links.**

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**Helen Rose,**

**Please help us transcribe your comments from the public meeting on June 12<sup>th</sup>.**

**Here is our draft.**

**Jim Devitt**

---

**From:** Helen Rose Patterson <[PattersonH@nwf.org](mailto:PattersonH@nwf.org)>  
**Sent:** Monday, June 19, 2023 8:33 AM  
**To:** James Devitt <[James.Devitt@LA.GOV](mailto:James.Devitt@LA.GOV)>  
**Subject:** Automatic reply: FW: OSW Leasing NOI - Comment Question

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Hello –

I will be traveling June 18-25 and will be slow to respond to email during this time.

NWF is closed on Monday June 19<sup>th</sup> in remembrance of Juneteenth. You can learn more about this important day and why you should care about it by watching this video from Vox “[Why all Americans should honor Juneteenth](#)”

I will also be fully away from work on June 20<sup>th</sup>.

I will be attending meetings June 21-24 and will be slow to respond to emails. If you need something urgently, please feel free to call or text.

I will return to work on Monday the 26<sup>th</sup> and you are welcome to resend important communications at that time.

Very best,  
Helen Rose

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Helen Rose Patterson, Senior Campaign Manager for Offshore Wind Energy at National Wildlife Federation. NWF supports the responsible development of offshore wind energy in the United States.

These comments are supported by National Audubon Society, Coalition to Restore Coastal Louisiana, Healthy Gulf, Louisiana Wildlife Federation, Orleans Audubon Society, and Taproot Earth.

Responsible offshore wind energy

- (i) avoids, minimizes, mitigates, and monitors 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 impacts to underserved communities, and
- (vi) uses the best available scientific and technological data to ensure science-based stakeholder-informed decision making.

**We have serious concerns about whether offshore wind in state waters can meet the criteria of responsible development, particularly under the proposed permitting regime, which lacks a robust environmental analysis and comprehensive siting process.**

As the state of Louisiana embarks upon the siting and deployment of offshore wind in state waters, we caution that nearshore siting of turbines is nearly unprecedented in the United States and rare in Europe, as it often poses greater risks to wildlife and habitats.

Siting is the most critical stage for implementing an efficient and responsible development process that avoids the greatest impacts to imperiled species and sensitive habitats, and increases the efficiency for developers and agencies by avoiding costly delays due to avoidable conflicts. By frontloading the environmental assessments of sites and directing developers to appropriate locations for development, permitting agencies can avert the most detrimental impacts of development.

We suggest:

DNR should provide additional guidance to direct wind development to the most suitable, lower resource-conflict locations. Other renewable energy permitting agencies have taken a proactive approach to siting that directs applicants towards low conflict, low environmental value sites to avoid high-impact ecological consequences to important resources.

DNR should require that applicants research and submit detailed information in the pre-nomination packet which will be critical for future monitoring, minimizing, and mitigating environmental impacts.

DNR should make public the criteria that the secretary will use to evaluate and determine if a proposed wind lease is appropriate. In addition, there should be enhanced inter and intra-agency coordination when determining if the lease is appropriate.

DNR should develop, in consultation with experts and stakeholders, environmental standards that can be included in the lease stipulations.

We provide extensive details on these recommendations in our written comments.

Incorporating our recommendations is an important step towards implementing a more responsible development process that holistically considers the issue of siting at the earliest stages of the process to avoid the detrimental pitfalls of inappropriate siting of projects.

We hope to engage with LDNR in an ongoing dialogue to improve this process. We appreciate the opportunity to comment on the NOI and offer our sincere partnership to ensure that responsible siting of offshore wind occurs in Louisiana for the benefit of its people and the protection of its wildlife and habitats.

**From:** [Jenny Netherton](#)  
**To:** [James Devitt](#)  
**Cc:** [Blake Canfield](#); [Greg Roberts](#); [Helen Rose Patterson](#)  
**Subject:** Re: OSW Leasing NOI - Comment Question  
**Date:** Monday, June 12, 2023 1:16:50 PM  
**Attachments:** [-WRD000.jpg](#)  
[SEWC, GNO, Inc., Healthy Gulf, Taproot Earth Comments.pdf](#)

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**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Thanks, Jim! Please find SEWC's comments attached. We will also have a paper copy to present at the hearing just in case. See you all shortly!

Jenny Netherton (she/her)  
*Program Manager*  
New Orleans, LA | 318-470-1144



On Thu, Jun 8, 2023 at 10:23 AM James Devitt <[James.Devitt@la.gov](mailto:James.Devitt@la.gov)> wrote:

You may send digital document comments to my address, Jenny.

---

**From:** Jenny Netherton <[jennyn@sewind.org](mailto:jennyn@sewind.org)>  
**Sent:** Thursday, June 8, 2023 8:41 AM  
**To:** James Devitt <[James.Devitt@LA.GOV](mailto:James.Devitt@LA.GOV)>; Blake Canfield <[Blake.Canfield@LA.GOV](mailto:Blake.Canfield@LA.GOV)>  
**Cc:** Greg Roberts <[Greg.Roberts@la.gov](mailto:Greg.Roberts@la.gov)>; Helen Rose Patterson <[PattersonH@nwf.org](mailto:PattersonH@nwf.org)>  
**Subject:** OSW Leasing NOI - Comment Question

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Hello DNR folks! I have a quick question for y'all. We are getting our comments together for Monday and were curious if there could be an option for digital submission. In trying to make these as useful as possible, we are linking to some other resources and the paper

format is going to make that difficult on y'all's end. Could we submit a digital copy by email?

Alternatively, if you need a paper submission to comply with the requirements, can we submit paper comments and then send a digital copy?

Thoughts?

Jenny Netherton (she/her)

*Program Manager*

New Orleans, LA | 318-470-1144



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**TO:** Department of Natural Resources, Office of Mineral Resources

**FROM:** The Southeastern Wind Coalition, Greater New Orleans, Inc., Taproot Earth, and Healthy Gulf

**DATE:** June 12, 2023

**RE:** Rulemaking Amending LAC 43:V.Chapter 7, 707, 711-717, and 725-733- Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

## I. Introduction

We appreciate the opportunity to provide comments on this Notice of Intent (“NOI”). First, we wish to impress upon the Office of Mineral Resources (“OMR”) that wind leases near shore are rare worldwide. Louisiana will be leading the charge in this area, and maximizing the potential for offshore wind energy is beneficial for both the state and the industry to ensure the market develops with certainty. We believe that the Office of Mineral Resources should seek to increase regulatory certainty in the leasing process, ensure that industry standards are considered as a baseline, and embrace a holistic approach to leasing in state waters.

## II. OMR Should Increase Regulatory Certainty in Developing Leasing Rules

As a threshold issue, Louisiana’s process for leasing as outlined in the NOI is uncommon. In the federal leasing process executed by the Bureau of Ocean Energy Management (“BOEM”), potential locations for wind leases are determined through a stakeholder engagement process designed to narrow down to areas that BOEM deems to be the most suitable for leasing, accounting for both commercial viability and avoidance of conflicts. Louisiana’s leasing process works in reverse - all potential sites are on the table, even those that may have obviously conflicting uses, and the burden is on the nominating party to demonstrate a lack of environmental impacts and recommend mitigation techniques<sup>1</sup>. Without additional environmental review by the state prior to granting a lease, the state is relying solely on bidders who are not experts on Louisiana or environmental issues to point out potential problems, dramatically increasing the risk to the state.

There does appear to be a threshold level of environmental review before the granting of a lease. §713.B provides that the Secretary of the Department of Natural Resources shall evaluate wind leases pursuant to R.S. 41:1733. *“In evaluating the proposed lease, the secretary of the Department of Natural Resources shall consider the capability of the lease proposal to fulfill the intent of this Chapter<sup>2</sup>, **the environmental impact of the placement of wind turbines***

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<sup>1</sup> §711.D.7 of the NOI requires nominators to produce “a summary of the environmental issues including, but not limited to, avian and baseline noise levels, the environmental impact of the placement of wind turbines and other equipment necessary for the exploration, development and production of wind energy, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation” in their bidding packet.

<sup>2</sup> The stated intent of the law authorizing state wind leases is to “ensure the viability of the state's natural resources, to provide a continuing energy source for the citizens and businesses of Louisiana, to promote economic development through job retention and creation in Louisiana, and to promote a clean and lasting environment.” La. R.S. § 41:1731.

***and other equipment necessary for the exploration, development, or production of energy from wind, the impact of the proposed lease on any other leases, including leases for the exploration or production of subsurface deems appropriate.***” (La. R.S. 41:1733) (emphasis added) We request more clarity on how the environmental review by the Secretary will be conducted, whether it will be limited to the summary statement, and what independent evaluations will ensure that the information in the submission packet is correct.

Additionally, offshore wind differs from oil and gas development in that many environmental issues can be avoided, minimized, or mitigated with proper siting. We would encourage adequate consultation before the issuance of a lease to ensure that siting is conducted in an efficient and environmentally protective manner. Under this framework, the permitting process itself will not happen until after a lease is issued and the potential exists for significant issues to not be discovered until well after the lease is granted. Greater transparency throughout the process of area identification would be beneficial both to the state and potential bidders. Public disclosure of the nominating memorandum would ensure that the siting process has been adequately considered and validated by the state.

We also encourage OMR to consider the larger structure of the wind industry and how its process might best benefit the long-term development of offshore wind in Louisiana – carrying with it tremendous economic potential for both local labor and heavy-industry. The BOEM process provides lessees with regulatory certainty regarding potential locations and ensures that preliminary issues are discovered before significant time and investments are made by potential lessees and associated contractors. Louisiana’s proposed process would allow for an outcome wherein a lessee makes significant investment towards their lease, but ultimately cannot develop the area. More closely following the BOEM process would provide more certainty both for bidders and for the state that time and resources are well spent and advance each party's objectives.

In order to ensure regulatory and financial certainty, we also encourage OMR to coordinate with BOEM regarding its own leasing in federal waters. It is anticipated that federal leases for offshore wind will be auctioned later this year. These leases will also require right-of-ways for cable landings and transmission equipment, and early coordination to ensure projects are able to co-exist will ensure to potential bidders that their projects will be successful. Additionally, coordination could have benefits such as sharing costs for shared transmission of electricity or green hydrogen.

### **III. OMR Should Restrict Nomination and Bidding Eligibility to Prospective Leaseholders in Compliance With All Aspects of §707**

§707 lays out the requirements to register as a Prospective Leaseholder. The leaseholder registration form requires a certificate of good standing from the Secretary of State for corporations and LLCs but only requires a certificate of “existence” for partnerships. To be in good standing (or to be certified to exist) requires annual reports, and governing documents and



amendments be filed with the Secretary of State. Those are ongoing duties, and a partnership certificate will not ensure the same level of historical compliance.

§707A only requires that applicants be in good standing or exist on the day they file and is explicitly described as a “one-time basis”. §707A.1 requires annual renewal on January 31. These provisions seem in conflict. Further, failure to renew does not seem to impact eligibility to apply for and receive a lease (the one time provision seeming to control). The only consequence for failing to renew or to remain in good standing seems to be the \$100 per day liquidated damages set out in §707 A.1.b. We suggest that OMR require a current certificate of good standing to accompany each lease application, and a representation and warranty that there have been no changes in ownership or status since the certificate was issued. Failure to comply with all aspects should also make the lease application voidable by the state or a competing bidder.

Additionally, §711.B does not require ongoing compliance with §707A to nominate an area for leasing. This is an example of how the one time only registration could pose problems. We suggest that the state should restrict eligibility to persons registered and compliant with all aspects of §707A.

#### **IV. OMR Should Consider Industry Standard Practices in Developing Leasing Requirements**

§713.A provides that if OMR determines that the nomination complies with all legal, procedural, and technical requirements, as well as "current policies and practices" it shall place the tract nomination with the Mineral Board. We request more information on these current policies and practices, as well as how compliance will be determined. The word “shall” does not indicate the state has a choice to then place the tract nomination at the board, so compliance with “current policies and practices” is an integral requirement.

§715.B.18 provides that “any and all wind data collected by the state wind lessee during the primary term of the lease shall become public record at the end of the primary term.” This type of requirement is uncommon in the industry and, if required, is usually done in coordination with an academic institution or research project. We encourage OMR to consider that this may deter developers for fear that proprietary information may be disclosed. An alternative would be to have the data remain proprietary for a period of time before being publicly disclosed. Granular wind speed data is the wind equivalent to proprietary oil and gas research, and leaseholders will want to protect their data.

§715.B.21 provides that the lessee and operator “will be required to take measures to reduce risk to the state, including but not limited to, effecting compliance with any and all wind energy standards established by the American National Standards Institute (ANSI), the American Wind Energy Association (AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards. Standards for wind energy development/operations include, but are not limited to: a) wind

turbine safety and design; b) power performance; c) noise/acoustic measurement; d) mechanical load measurements; e) blade structural testing; f) power quality; and g) siting.” We offer several comments on this requirement. As an initial matter, ANSI accredits standards development organizations (SDOs), but does not develop standards themselves. We suggest language requiring “ANSI-accredited standards, including the American Wind Energy Association (AWEA), American Clean Power Association (ACP, formerly AWEA), the International Electrotechnical Commission (IEC), and any other entity responsible for establishing wind industry consensus standards.” We recommend reconsidering the enumerated standards for wind energy development, as some elements may not have specific standards, those standards may be specific for land-based wind, some standards may be international and need revisions to work in the United States, and to account for additional standards that may not yet be foreseeable. It is also unclear who will determine compliance with §715.B.21, though we suggest the state follow BOEM and BSEE’s leads and allow developers to use independent third-party Certified Verification Agents to ensure compliance with the most updated standards.

§717 covers the information required to be submitted in the bidding packet. Much of the information the state is requesting is information that cannot reasonably be ascertained without the developer having access to a large amount of bespoke data on wind speeds and site conditions. Without already having site control, it is generally uneconomical for developers to invest the tens of millions of dollars in surveys (biological, geophysical, geotechnical) and deployment of wind measurement devices required to collect this data. For instance, §717.C requests “ [a] summary of the wind development (include plat) proposed on the state lands and water bottoms sought to be leased including layout of wind power and transmission facilities, proposed wind tower information (size, location, number), which towers will be affixed to existing platforms, which towers will necessitate newly constructed platforms, turbine make, type, nameplate power production capacity, and selection criteria used, and supporting infrastructure.” It is unrealistic for the state to expect developers to be able to credibly provide such detailed information absent site control. OMR has several potential options to address this concern, including collecting the data themselves and providing it to all bidders, or scaling back the requirements to focus on ensuring that all bidders have the technical experience and financial wherewithal to design, build, and operate an offshore wind farm.

§729.A.2.a instructs that lessees are required to provide updated proof of general liability insurance by January 31 of every year. The only penalty for failing to comply with this provision is \$100 dollars a day until such proof is received. The penalties for failing to comply with this provision do not take into account the potential risk and damages to the state. The state should add additional penalties, including termination, for failure to comply with this provision.

§729.A.3 requires financial security in a form acceptable to the State Mineral Board. It also dictates that the “financial security amount for individual turbines shall be equal to the estimated cost to decommission found in the plan required by subsection A.9.” Subsection A.9 requires “a decommissioning plan for the end of the proposed facility’s expected life or upon circumstances that would require closure of the facility; such plan shall include the estimated

cost of site closure and remediation in accordance with these rules.” We suggest the state follow BOEM’s Financial Assurance provisions found in the proposed BOEM Modernization Rule, which would allow for decommissioning financial assurance to be provided in a phased manner during the operational term of the project.<sup>3</sup> Additionally, the language in §729.A.3 implies that the financial security will be based on individual turbines. We suggest the bond should be calculated based on the whole plant and not assessed on a turbine-by-turbine basis.

§729.B provides that “At the expiration of the primary term ... if the lessee is producing wind generated electric power, the lease shall continue in force so long as production of wind generated electric power continues without lapse of more than 180 days. Any lapse in production of wind generated electric power greater than 180 days shall result in automatic termination of the lease.” Given the high cost of wind energy infrastructure and the peculiarities of wind power, we believe this provision is highly restrictive and could have unintended consequences. In 2021, Hurricane Ida provided a stark reminder of how weather events can interrupt business in Louisiana, and repairs after a similar event could take upwards of 180 days. Tying this condition to a lapse in general operations or maintenance could ensure that no wind installations are abandoned and would provide an ability to return to business as usual in such an event. Developers already have significant economic incentives to ensure their lease is active.

§731.D contains the only discussion regarding a termination of leases by the state for noncompliance, and it is triggered only by failing to pay royalties. DNR should establish procedures that allow for termination of a lease for noncompliance with lease terms, operating agreements, or state or federal law.

§733.D instructs that lessees “...shall remove all facilities within one year after the lease terminates unless you receive approval to maintain a facility to conduct other activities.” Offshore wind installations are large and require specific equipment to achieve total removal. One year is a short time period to conduct all removal activities. We urge OMR to consider replicating BOEM’s proposed facility removal requirement in the Gulf of Mexico, which provides two years for complete removal.<sup>4</sup>

§733.J, which contains decommissioning requirements, provides that OMR “may grant a departure from the requirement to remove a facility by approving partial facility removal or toppling in place for conversion to an artificial reef or other use” if 1) the “structure becomes part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers and accepts title and liability for the facility” and 2) satisfies U.S. Coast Guard navigational requirements for the facility. We request more information on potential “other uses” and how they will be determined as valid.

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<sup>3</sup><https://www.federalregister.gov/documents/2023/02/06/2023-02398/renewable-energy-modernization-rule-correction>

<sup>4</sup><https://www.boem.gov/renewable-energy/state-activities/gom-ren-proposed-lease-ocs-g-37334-lake-charles>

## **V. OMR Should Consider the Market for Electricity Generated by Offshore Wind and Require Consultation with the Public Service Commission**

§731.A of the NOI mandates that state wind leases shall contain a provision permitting the state to receive payment in kind of wind generated electric power produced from the leased premises. While oil and gas need to be processed in order to be useful, wind power must be used immediately when generated, or stored. Furthermore, electricity generated by offshore wind is almost always accounted for - in order to offset high costs of construction, lessees must have a buyer to ensure the financial success of the market. Offshore wind leases often operate under Power Purchase Agreements that determine where the electricity will be offloaded. The State being able to demand payment in kind at any time during the lease could create issues for lessees who have already done extensive work to make a project financially feasible. We also believe that additional consideration should also be given to whether payment in kind will also be applicable to hydrogen. We recommend hewing to BOEM's approach to royalties, which provides a predictable formula tied to revenues. Wind isn't a commodity like traditional oil and gas development as developers prefer to lock themselves into long-term contracts to provide predictability, and need to build a predictable royalty structure into their business case.

Additionally, a requirement that potential lessees should consult with the Public Service Commission should be part of the bid submission package. The state cannot determine if a project is in its best economic interest without a plan for ensuring that there will be a buyer of the power and transmission access will be granted. BOEM addresses these cross-agency questions through the creation of a Regional Task Force that includes all relevant parties. A similar Task Force for the state would be beneficial to ensure the state is engaging in the most financially prudent course of action.

## **VI. Green Hydrogen Considerations**

As Louisiana has received significant grant funding for green hydrogen and is currently applying to be a Hydrogen Hub, OMR should include specific requirements for green hydrogen. Much of the language in the lease stipulations refers directly to electricity generation, and green hydrogen is not mentioned in the NOI at all. Green hydrogen installations will likely need to be connected to the grid to operate at full capacity, which could also cause challenges with Public Service Commission approval. Additional safety plans should also be required for green hydrogen production where electrolyzers will be present.

## **VII. The State Should Conduct Its Own Analysis of §717.C.3.h**

This section requires bidders to submit “a summary of how the wind energy project will ensure the viability of the state's natural resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state of Louisiana, and promote a clean and lasting environment.” This is also the stated intent of the law that allows for wind leasing in state waters. (La. R.S. § 41:1731) We would request clear criteria for how DNR will evaluate what is submitted by the bidder, and how this

summary will be used by the Secretary in determining whether projects ensure the viability of the state's natural resources and promote a clean and lasting environment.

We believe this analysis is best conducted by the state itself. The structure of the state leasing framework in the NOI only allows for a project-by-project consideration, and bidders are not in the best position to speak to the benefits of offshore wind. We believe a programmatic approach to planning for offshore wind will maximize economic benefits to the state. Many other states have developed plans for offshore wind, detailing their opportunities and barriers.<sup>567</sup> If Louisiana intends to fully realize the economic benefits of a new offshore wind industry, a comprehensive plan would ensure that all decisions work towards a larger goal.

The Louisiana Climate Action Plan<sup>8</sup> also provides a compelling argument for the state to conduct a planning process. Strategy 26<sup>9</sup> asserts that Louisiana should “advance an equitable, efficient, and sustainable siting and permitting process for new energy and infrastructure projects.” Action 26.4<sup>10</sup> recommends establishing an interagency working group to review existing siting and permitting procedures, noting that siting decisions are currently made on a permit-by-permit basis without having the benefit of a comprehensive statewide plan or framework.

Conducting a comprehensive analysis of environmental considerations, ports and vessels, commercial and recreation fisheries, supply chain and workforce development, and energy markets and transmission will put the state in the best position to make economically beneficial decisions. Conducting spatial planning, where mapping software is used to identify lowest and highest priority areas for development, factors in numerous environmental considerations, including commercial and recreational fishing, existing uses, wind energy resource, and proximity to environmental justice communities, would provide a guidepost for developers who wish to submit areas for consideration and provide economic certainty to the state regarding nominated areas.

## **VIII. Conclusion**

We appreciate the opportunity to submit these comments and look forward to working with the Office of Mineral Resources in the future.

Sincerely,

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<sup>5</sup>[https://www.maine.gov/energy/sites/maine.gov.energy/files/inline-files/Maine\\_Offshore\\_Wind\\_Roadmap\\_February\\_2023.pdf](https://www.maine.gov/energy/sites/maine.gov.energy/files/inline-files/Maine_Offshore_Wind_Roadmap_February_2023.pdf)

<sup>6</sup> [https://www.nj.gov/bpu/pdf/Draft\\_NJ\\_OWSP\\_7-13-20\\_highres.pdf](https://www.nj.gov/bpu/pdf/Draft_NJ_OWSP_7-13-20_highres.pdf)

<sup>7</sup> <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/About-Offshore-Wind/Master-Plan>

<sup>8</sup> [https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate\\_Action\\_Plan\\_FINAL\\_3.pdf](https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf)

<sup>9</sup> *Id.* at 109.

<sup>10</sup> *Id.* at 111.

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These comments are supported by National Audubon Society, Coalition to Restore Coastal Louisiana, Healthy Gulf, Louisiana Wildlife Federation, Orleans Audubon Society, and Taproot Earth.

Responsible offshore wind energy

- (i) avoids, minimizes, mitigates, and monitors 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 impacts to underserved communities, and
- (vi) uses the best available scientific and technological data to ensure science-based stakeholder-informed decision making.

**We have serious concerns about whether offshore wind in state waters can meet the criteria of responsible development, particularly under the proposed permitting regime, which lacks a robust environmental analysis and comprehensive siting process.**

As the state of Louisiana embarks upon the siting and deployment of offshore wind in state waters, we caution that nearshore siting of turbines is nearly unprecedented in the United States and rare in Europe, as it often poses greater risks to wildlife and habitats.

Siting is the most critical stage for implementing an efficient and responsible development process that avoids the greatest impacts to imperiled species and sensitive habitats, and increases the efficiency for developers and agencies by avoiding costly delays due to avoidable conflicts. By frontloading the environmental assessments of sites and directing developers to appropriate locations for development, permitting agencies can avert the most detrimental impacts of development.

We suggest:

DNR should provide additional guidance to direct wind development to the most suitable, lower resource-conflict locations. Other renewable energy permitting agencies have taken a proactive approach to siting that directs applicants towards low conflict, low environmental value sites to avoid high-impact ecological consequences to important resources.

DNR should require that applicants research and submit detailed information in the pre-nomination packet which will be critical for future monitoring, minimizing, and mitigating environmental impacts.

DNR should make public the criteria that the secretary will use to evaluate and determine if a proposed wind lease is appropriate. In addition, there should be enhanced inter and intra-agency coordination when determining if the lease is appropriate.

DNR should develop, in consultation with experts and stakeholders, environmental standards that can be included in the lease stipulations.

We provide extensive details on these recommendations in our written comments.

Incorporating our recommendations is an important step towards implementing a more responsible development process that holistically considers the issue of siting at the earliest stages of the process to avoid the detrimental pitfalls of inappropriate siting of projects.

We hope to engage with LDNR in an ongoing dialogue to improve this process. We appreciate the opportunity to comment on the NOI and offer our sincere partnership to ensure that responsible siting of offshore wind occurs in Louisiana for the benefit of its people and the protection of its wildlife and habitats.



Public Hearing - Leasing State Lands for Wind Energy - 6/12/23

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TO: Department of Natural Resources, Office of Mineral Resources

FROM: Taproot Earth

DATE: June 12, 2023

RE: Rulemaking Amending LAC 43:V.Chapter 7, 707, 711-717, and 725-733- Leasing State Lands and Water Bottoms for the Exploration, Development and Production of Wind Energy

## **I. Introduction**

Please accept these comments on behalf of Taproot Earth. Taproot Earth is a global climate justice organization with a mission to build collective systems of self-governance and restoration to advance a just transition to a sustainable economy. We have long been based in Louisiana and our vision and initiatives partner Colette Pichon Battle is a member of the state's Climate Initiatives Task Force, as well as the chair of the Equity Working Group. We would like to offer some guidance on best practices for community outreach and engagement.

### **I. Executive Order Number JBE 2022-19 and The Louisiana Climate Action Plan Strategy #26 justify a robust engagement process with disadvantaged communities**

The state of Louisiana has recognized the importance of equitable implementation of federal infrastructure funding and should apply these principles throughout its state agencies, including offshore wind permitting. On November 15, 2022, Governor John Bel Edwards issued Executive Order Number JBE 2022-19 which addresses equitable implementation of federal stimulus funding. JBE 2022-19 recognizes

President Biden’s Executive Order 14008, which states the policy of the Biden–Harris Administration to organize and deploy the full capacity of its agencies to combat the climate crisis. President Biden’s Executive Order 14008 also created the Justice40 Initiative, which ensures that federal agencies work with states and local communities to realize President Biden’s promise to deliver at least 40 percent of overall benefits from federal investments in climate and clean energy to disadvantaged communities. JBE 2022–19 affirms the state’s commitment to comply with Justice40 and “[e]ngage with local and tribal governments, nonprofits, and other community organizations to increase access to [Infrastructure Investment and Jobs Act (“IIJA”)] funding opportunities.” We endorse this executive order and urge the Louisiana Department of Natural Resources to apply these principles to its entire offshore wind permitting regime in addition to its implementation of IIJA funding opportunities.

As evidenced by the Justice40 Initiative, disadvantaged communities are less likely to see benefits from renewable energy projects and that efforts are needed on behalf of agencies to ensure benefits are directed to these communities. We believe that Executive Orders JBE 2022–19 provides justification for a more thorough plan of community engagement that focuses on disadvantaged communities.

Interim guidance provided by the Biden Administration details examples of benefits of covered programs that apply to the Department of Interior, under which the Bureau of Ocean Energy Management “BOEM” falls.<sup>1</sup> These benefits include “increased technical assistance and community engagement of disadvantaged communities” as well as “increased participation in good job training programs that target participants from disadvantaged communities.”<sup>2</sup> These examples

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<sup>1</sup> Interim Implementation Guidance for the Justice40 Initiative, M-21-28 (OMB Interim Guidance)

<sup>2</sup> *Id.*

demonstrate measurable benefits to disadvantaged communities, as well as clear authorization for targeted increases in resources for disadvantaged communities. Further in the guidance, the Administration encourages covered programs to establish targets or minimum thresholds for specific benefits. We urge LDNR to work with BOEM to provide a state offshore wind leasing program that will mirror a federal process and require lessees to specifically describe how they will comply and further the Justice40 Initiative and to broadly consider the total impact and benefits of potential projects on disadvantaged communities.

We encourage LDNR to consider public education needs unique to Louisiana. We request that LDNR coordinate with the BOEM to educate residents on the differences between federal and state leasing, particularly as both are in the process of development. We also request that LDNR educate stakeholders on potential uses for wind energy and how those may affect their communities, including green hydrogen.

Furthermore, the Louisiana Climate Action Plan Strategy #26 calls for more equitable siting and permitting of energy projects. The strategy calls for "Community Engagement: Community input into revised permitting and siting practices is necessary to ensure the updated processes are equitable and sensitive to the needs of groups who have historically been marginalized." ACTION 26.3 calls on the state to "[c]ollaboratively develop regulatory frameworks and statewide siting plans for new energy technologies with considerations for both climate and environmental justice."

LDNR can help achieve this action by creating a formal process for consultation with state-recognized tribes AND environmental/climate justice communities who will be impacted by offshore wind development in state waters. The state must be proactive in reaching out and partnering with local community organizations. The state's standard should seek to obtain Free, Prior, and Informed Consent from impacted

communities.

**II. To extend the opportunity for benefits to historically underserved, marginalized, and adversely affected communities, LDNR should consult with state-recognized tribes.**

LDNR should create rules for consultation with state-recognized tribes prior to the permitting of offshore wind farms in state waters. LDNR should recognize the historical and ongoing harms inflicted by the energy industry on the indigenous communities of coastal Louisiana. Louisiana's indigenous communities have a vested interest in the future of energy development in the Gulf of Mexico and have vast expertise and knowledge about Louisiana's working coast.

Of all the Tribal communities in Louisiana, only four are federally recognized while eleven are recognized only at the state level.<sup>3</sup> Several of these Tribes live and work on their remaining traditional lands within Louisiana's coastal zone.

Under Louisiana law, state recognized Tribes are most commonly classified as non-profit corporations. Due to the structure of federal law with respect to Tribal Nations, an overwhelming majority of federal programs, from access to disaster relief funding to participation in governmental decision-making, are only available to federally recognized Tribes. Yet, the procedural and documentary requirements of the application process present overwhelming barriers to securing recognition. For example, a Tribe must provide a concise written narrative with citations showing that the entity has, since 1900, been identified as a Tribe on "a substantially continuous basis" and that they maintain a distinct community, which is loosely defined as "an entity with consistent interactions and significant social relationships within its

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<sup>3</sup> Louisiana Governor's Office of Indian Affairs, Federal and State-Tribal Contact Information, <https://gov.louisiana.gov/assets/Programs/IndianAffairs/LouisianaUpdatedTribalListJAN302023.pdf>.

membership and whose members are differentiated from and distinct from nonmembers.”<sup>4</sup> These requirements are especially arduous for the tribes of coastal Louisiana considering many communities were driven from their ancestral lands to remote swamps and coastal regions of Louisiana by colonial encroachment. Moreover, continuity is a concept innately at odds with the ever-changing Gulf coast—a process accelerated by actions from oil and gas development.

Louisiana’s non-federally recognized tribes have been historically underserved and adversely affected by energy industry operations in Louisiana.<sup>5</sup> For example, many Tribes have sustained themselves for generations through trapping, fishing, hunting, and farming in Louisiana’s coastal zone and were therefore drastically harmed by environmental impacts of the Deepwater Horizon Oil Disaster. Impacts of oil and gas extraction continue to harm the subsistence lifestyle, sacred sites, and historical sites of these Tribes by accelerating subsidence, coastal erosion, and saltwater intrusion.<sup>6</sup> Additionally, in the early 1990s, Exxon disposed of oil field waste from Alabama, where it would have been treated as hazardous waste, in Grand Bois, Louisiana, leading to serious harms to the citizens of the mostly-Houma community who lived nearby.<sup>7</sup> Although offshore wind development is in its relative infancy in the United States, there are already documented concerns over the adequacy of indigenous consultation and inclusion in benefits.<sup>8</sup> To fully include the interests of all indigenous stakeholders in the development of offshore wind in the Gulf of Mexico, BOEM must consider both federally and state recognized Tribes in Louisiana.

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<sup>4</sup> 33 C.F.R. § 83.11(a), (b).

<sup>5</sup> See UN Complaint, Rights of Indigenous People in Addressing Climate-Forced Displacement (Jan. 15, 2020).

<sup>6</sup> See Patty Ferguson-Bohnee, The Impacts of Coastal Erosion on Tribal Cultural Heritage, 29 Forum J. 58 (2015).

<sup>7</sup> See J. Brooke Hamilton, III & Eric J. Berken, *Exxon at Grand Bois: A Three-Level Analysis of Management Decision Making and Corporate Conduct*, 15 BUS. ETHICS Q. 385 (2005).

<sup>8</sup> See Eana Bacchiocchi et al., *Energy Justice and the Co-opting of Indigenous Narrative in U.S. Offshore Wind Development*, 41 RENEWABLE ENERGY FOCUS 133 (2022).

Louisiana’s non-federally recognized tribes fall under the umbrella of “historically underserved, marginalized, and adversely affected by persistent poverty and inequality” identified by the Biden Administration in “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” Executive Order 13985 defines “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as . . . Indigenous and Native American persons . . .” This is a notable deviation from the more common use of the term “Tribal” in other executive orders.<sup>9</sup> Therefore, Executive Order 13985 demonstrates an intent by the Biden-Harris Administration for efforts by the Federal Government that advance equity to be more inclusive than the Federally Recognized Indian Tribe List Act. For these reasons, LDNR should “ensure that communities, particularly underserved communities, are considered and engaged with early and often throughout the offshore wind energy development process, that potential impacts and benefits from lessees’ projects are documented, and lessees’ project proposals are informed by or altered to address those impacts and benefits,” by being inclusive of Louisiana’s non-federally recognized indigenous communities.

We also encourage LDNR to consult with Tribes themselves to determine community engagement plans. There are inherent issues in any process that only uses federal or state designation as the criteria for engagement, and Tribal leaders are best suited to determine the issues relevant to their Tribes.

### **III. Conclusion**

We appreciate the opportunity to provide these comments. We look forward to working with LDNR as offshore wind leasing in the Gulf moves forward.

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<sup>9</sup> See, e.g., Exec. Order No. 12,898, 3 C.F.R. § 859 (1994); Exec. Order No. 13,175, 3 C.F.R. § 304 (2000).

Sincerely,

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