

CALIFORNIA COASTAL COMMISSION

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W7a

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TO: Coastal Commissioners and Interested Parties

FROM: John Ainsworth, Executive Director
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SUBJECT: Addendum to Staff Report for Consistency Determination No. CD-0004-22, Bureau of Ocean Energy Management.

This addendum is provided for the purpose of distributing comments received after the initial staff report was issued, making revision to condition language, and providing additions and revisions to specific findings in the May 20, 2022 staff report. This addendum hereby incorporates into the staff recommendation for agenda item W7a (CD-0004-22) and into the pertinent Coastal Commission findings otherwise set forth in the May 20th staff report, the following changes or additions to the findings that were not completed prior to the publication of the staff report. In responding to comments received, Commission staff also hereby revises the staff report and, thereby, its proposed Commission findings, consistent with the responses provided herein.

I. CHANGES TO STAFF REPORT

The following are revisions to the text of the staff report and recommendation. Proposed deletions are marked with ~~strikethrough~~ text and additions are marked with underlined text.

- a) Changes to text on page 61: Summer and fall density maps for these whales may be found in [Exhibit 2-3](#). Limited data is available for winter and spring densities, but generally shows lower densities than the summer and fall.¹
- b) Changes to text on page 62: Southern Resident Killer Whale critical habitat ends further north at Point Sur, but ~~proposed~~ humpback whale critical habitat does overlap with the Morro Bay WEA, as shown in [Exhibit 2-3f](#).

¹ The Navy's marine mammal density models for winter and spring may be found here: [Mapping Tool for the Navy Marine Species Density Database for U.S. Pacific & Gulf of Alaska \(duke.edu\)](#)

II. CHANGES TO EXHIBITS

- a) Change to title of Exhibit 2-3f: ~~Proposed~~ Humpback Whale Critical Habitat

III. RESPONSE TO CORRESPONDENCE

The Commission received correspondence from commenters, some of which requested modifications to the text of the staff report. The main points of these requests, and the responses to them, are as follows:

1. Request: A letter submitted by the Natural Resources Defense Council (NRDC) and other environmental groups describes how the Commission must analyze all reasonably foreseeable impacts of the leasing, including impacts related to foreseeable future wind development activity. It also requests that the Commission impose conditions related to that future wind development activity rather than just set expectations for the types of information that will be needed, and conditions that may be considered, at the future project development stage. NRDC cites caselaw upholding the Commission's right to conduct federal consistency review at the programmatic level in addition to the project-specific level, and it notes that the Commission has previously objected to consistency determinations for offshore oil lease suspensions because they did not contain sufficient information about future development activities related to the lease suspensions.²

Response: As described in the staff report findings, the Commission does have an obligation to analyze the effects of reasonably foreseeable wind development activities at a programmatic level at this time, including effects related to foreseeable future wind activity. These effects have been thoroughly analyzed in the findings. However, it is not necessary or appropriate at this leasing stage to actually impose conditions related to such future wind development projects. The consistency determination before the Commission relates to the leasing of offshore areas, not the actual construction of offshore wind projects. Although it is reasonably foreseeable that some level of development will occur, it is not possible at this stage to know the detailed scope or location of proposed future development. As such, the recommended conditions properly address impacts that occur from leasing activities themselves, including indirect impacts such as the immediate uncertainty that the leasing process itself has on fishing communities (see page 24 of findings). In addition, they properly address the

The court case cited by NRDC related to oil lease suspensions—*State of California v. Norton*—upholds the Commission's authority to analyze long-term, reasonably foreseeable impacts of a programmatic decision (such as offshore leasing), but it does not address the question of whether the Commission may impose conditions to address future, project-specific impacts. Likewise, a recent federal court decision also supports the Commission's authority to analyze the environmental effects of federal activities at a programmatic level even if later, more specific development activities may also receive future review, but it likewise does not address the issue of conditioning a programmatic consistency determination to address later, project-level impacts. (*Environmental Defense Center v. Bureau of Ocean Energy Management*, No. 19-55526 (9th Cir. 2022).)

need to collect data and information and set certain processes in motion—such as coordination with local tribes, communities, and fishing groups—that will be necessary prior to future, specific development proposals. Collection of such information requires time to develop, and by the time consistency certifications are submitted for individual wind projects, it will be too late to collect the information necessary for the Commission to analyze Coastal Act consistency and craft conditions within its statutory review period. Thus, creating these processes is appropriate at the leasing stage.

In contrast, it is not necessary at this time to condition future development proposals to meet certain standards, such as a prohibition on hard bottom habitat or restriction on lighting. Those conditions will be equally effective if imposed later, and it is more appropriate to wait until the Commission knows the exact siting, height, layout, and other details of proposed projects before crafting project-specific conditions to address impacts. However, it is appropriate to discuss general concepts about types of impacts that may occur and set forth expectations so that companies start designing projects and developing technology that will reduce impacts. The staff report findings therefore discuss these issues in a programmatic manner as a way to help set expectations and ensure that energy companies and BOEM will be prepared with adequate consistency certifications in the future. The conditions suggested by NRDC will also be useful for the Commission to consider during future, project-level consistency review.

2. Request: A commenter requested that the consistency determination be conditioned on a Fishing Community Benefit Agreement (FCBA) being in place between OSW developers and the regional commercial fishing associations as such an agreement would create a process for determining and compensating for losses.

Response: Although a Fishing Community Benefit Agreement may be an appropriate vehicle for addressing how to assess and mitigate impacts, it would be premature for the Commission to require this type of agreement at this stage of the process. Condition 7 lays out a process for developing a statewide strategy for avoidance, minimization and mitigation of impacts. This strategy might be implemented by future FCBA's, but first, the components of the strategy must be developed and vetted by the fishing community, agency staff and developers across the state. To address impacts from lease exploration activities that could occur before the statewide strategy is developed, Condition 7 also requires that BOEM require lessees to engage an independent fisheries liaison to coordinate timing of surveys and develop a process for reporting and remediating conflicts. The process developed in Condition 7 does not preclude the development of a fishing community benefits agreement for the lease exploration phase.