BLUEGREEN ALLIANCE

CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

September 2, 2022

U.S. Bureau of Ocean Energy Management
Office of Strategic Resources
760 Paseo Camarillo (Suite 102)
Camarillo, California 93010

Re: Request for comments on the Draft Environmental Assessment to consider potential offshore wind leasing in federal waters of the Gulf of Mexico [Docket BOEM-2021-0092]

On behalf of the BlueGreen Alliance, our partners, and the millions of members and supporters they represent, we thank the U.S. Bureau of Ocean Energy Management (BOEM) for the opportunity to comment on the Draft Environmental Assessment (Draft EA) prepared by BOEM under the National Environmental Policy Act (NEPA) to consider potential offshore wind leasing in federal waters of the Gulf of Mexico.

The BlueGreen Alliance (BGA) unites labor unions and environmental organizations to solve today's environmental challenges in a way that creates and maintains quality jobs and builds a clean, thriving, and equitable economy. Offshore wind energy presents a once-in-a-generation opportunity to advance this mission if developed in an environmentally responsible manner, with high road labor standards and attention to environmental justice. Robust NEPA analysis plays an integral role in guiding offshore wind development and ensuring the industry realizes its transformative potential as a solution to the intersecting environmental, health, and economic crises of our time.

In the National Environmental Policy Act ("NEPA"), Congress declared "that it is the continuing policy of the Federal Government...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."[1] People in America are already seeing grave impacts of climate catastrophe[2] and rising temperatures.[3] Massive human impacts[4] include droughts[5] and water shortages,[6] extreme weather,[7] wildfires,[8] land loss,[9] air pollution,[10] mental health,[11] and staggering costs.[12] The Gulf South is at the frontline of these impact. A 2022 United Nations Intergovernmental Panel on Climate Change (IPPC) report released earlier this year reviewed the impacts of Hurricane Harvey, a category 4 hurricane that made landfall on Texas and Louisiana in August 2017 causing catastrophic flooding, 80 deaths and inflicted $125 billion (2017 USD) in damage, of which $67 billion (2017 USD) was attributable to climate change. The Report states:

> "Notably, the impacts of Harvey were unequally distributed along racial and social categories in the greater Houston area. Neighborhoods with larger Black, Hispanic and disabled populations were worst affected by the flooding following the storm and rainfall. In additional, racial and ethnic disparities were shown to impact post-disaster needs, ranging from household damage to mental health and recovery."[13]

The IPCC Report further explains that sea level rise is leading to displacement at higher rates in the Gulf South than other places in the U.S., and, globally, indigenous people and ethnic minorities are particularly vulnerable. The United Houma Nation in Louisiana is experiencing such land loss resulting in the relocation

of some tribes causing loss of Houma identity.[14] Using 2017 estimates, the average cost of relocation in coastal Louisiana is $100,000 USD.

To achieve the goals of NEPA in this context requires strong attention to the benefits that offshore wind can provide to people in America and what it will take for those benefits to reach workers and communities most impacted by climate change. The Biden administration has reinforced that it is the policy of the federal government to pursue solutions to the climate crisis with attention to union labor, environmental justice, natural resources, and national security in various executive orders and in the announcement of the National Offshore Wind Target (NOWT) of 30 gigawatts of offshore wind deployed by 2030. In the White House Fact Sheet containing that announcement, the White House declared (emphasis added):

> "The President recognizes that a thriving offshore wind industry will drive ***new jobs and economic opportunity*** up and down the Atlantic Coast, in the Gulf of Mexico, and in Pacific waters. The industry will also spawn ***new supply chains*** that stretch into America's heartland, as illustrated by the 10,000 tons of domestic steel that workers in Alabama and West Virginia are supplying to a Texas shipyard where Dominion Energy is building the Nation's first Jones Act compliant turbine installation vessel.
>
> "Federal leadership, in close coordination with states and in partnership with the private sector, ***unions and other key stakeholders*** is needed to catalyze the deployment of offshore wind at scale.
>
> "…the Administration is taking coordinated steps to support rapid offshore wind deployment and ***job creation***:
>
> 1. Advance ambitious wind energy projects to ***create good-paying, union jobs***
> 2. ***Investing in American infrastructure to strengthen the domestic supply chain*** and deploy offshore wind energy
> 3. Supporting critical ***research and data-sharing.***"[15]

Further, the January 27, 2021 Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad" includes the goal of doubling offshore wind by 2030 while creating well-paying union jobs and economic growth; delivering environmental justice; an equitable, clean energy future; and ensuring robust protection for our lands, waters, and biodiversity.

The White House also recently released strategies for "Advancing Equity and Racial Justice Through the Federal Government" as mandated in Executive Order 13985, including action plans for each federal department to fulfill the whole-of-government equity agenda.[16] The strategies included in the U.S. Department of Interior (DOI) action plan should be integrated in BOEM offshore wind activities and include employment opportunities for historically disadvantaged and low-wealth communities.[17] Another White House report, "Working Organizing and Empowerment" states that union approval is at its highest since 1965, with 68% of Americans approving of labor unions.[18] Support rates increase to 74% for workers aged 18 to 24, 75% for Hispanic workers, 80% for Black workers, and 82% for Black women workers.[19] BOEM can support these initiatives with robust socioeconomic analysis in each NEPA review, including this Draft EA post leasing in the Gulf of Mexico.

Overall, we recommend that in undertaking the final EA, BOEM ensures that future projects are on track to achieve the most beneficial impacts by creating a high-road, responsibly developed offshore wind industry that:

- Maximizes the creation of quality, family-sustaining, union jobs over projects lifetime;

- Expands domestic manufacturing along robust domestic, regional, and local supply chains;
- Delivers community benefits with attention to improving access to disadvantaged communities;
- Protects fisheries, wildlife, and marine ecosystems by avoiding, minimizing, mitigating, and monitoring environmental impacts; utilizing data sharing and adaptive management strategies; and providing community benefits to impacted ocean users such as commercial fishers; and
- Is guided by robust and inclusive stakeholder engagement, including labor organizations, Tribal nations, historically underrepresented or disadvantaged communities, low-wealth communities, communities of color, and impacted ocean users such as commercial fishing.

To do this, we appreciate your attention to the following matters:

Environmental Protection

To comply with state and federal policies and achieve all necessary permits, all offshore wind energy must be developed in an environmentally responsible manner that avoids, minimizes, and mitigates impacts to ocean wildlife and habitat and traditional ocean uses: meaningfully engages stakeholders from the start: and uses the best available science and data to ensure science-based and stakeholder-informed decision making. This includes analysis of cumulative impacts and adaptive management strategies—obtaining all necessary and relevant data—and requires BOEM to identify all methodologies—indicating when information is incomplete or unavailable—acknowledge scientific disagreement and data gaps, and evaluate intermediate adverse impacts based on approaches or methods generally accepted in the scientific community. Avoiding sensitive habitat areas, requiring strong measures to protect wildlife throughout each state of the development process, and comprehensive monitoring of wildlife and habitat before, during, and after construction, are all essential for the responsible development of offshore wind energy.

Socioeconomic Impacts

Environmental justice, demographics, and employment were all scoped out of the draft EA because, the EA states, "impact producing factors (IPFs) from site characterization and site assessment activities were determined to have no or negligible effects."[20] We urge BOEM to review IPFs related to prospective buildout of lease areas and at a very minimum, include a baseline assessment of environmental justice, demographic, and employment at the time leasing is being considered. Such analysis is necessary to achieve the goals of the Outer Continental Shelf Lands Act (OCSLA), recent executive orders, and longstanding practices. We believe that robust socioeconomic analysis should include consideration of use of domestic content, project labor agreements (PLAs), labor peace agreements (LPAs), community benefit agreements (CBAs); utilization of registered apprenticeships and other labor-management training programs; protection against worker misclassification and wage theft; neutrality agreements; local hire; and prevailing wage. BOEM's analysis should also account for impacts on fisheries and engage fishing industry stakeholders at all possible opportunities.

This approach to socioeconomic impact analysis is supported by NEPA, OCSLA, and Presidential executive orders. In the OCSLA, Congress declared that it is the authority of the Secretary (delegated to BOEM) to "grant a lease, easement, or right-of-way on the [OCS]" for activities that "produce or support production, transportation, or transmission of energy from sources other than oil and gas" in a manner that provides for:

> "(A) Safety;
> (B) Protection of the environment;

(C) prevention of waste;
(D) Conservation of the natural resources of the Outer Continental Shelf;
(E) Coordination with relevant Federal agencies;
(F) Protection of national security interests of the United States;
(G) Protection of correlative rights in the Outer Continental Shelf;
(H) A fair return to the United States;
(I) Prevention of interferences with reasonable uses of the exclusive economic zone, the high seas, and the territorial seas;
(J) Consideration of –

a. The location of, and any schedule relating to, a lease, easement or right-of-way for an area of the Outer Continental Shelf; and

b. Any other use of the sea or seabed, including use for a fishery, a sea lane, a potential site of a deep-water port, or navigation;

(K) Public notice and comment on any proposal submitted for a lease, easement or right-of-way under this subsection; and
(L) Oversight, inspection, research monitoring, and enforcement related to a lease, easement, or right-of-way under this subsection."[21]

In achieving these requirements, DOI's Principal Deputy Solicitor recently concluded that DOI has great discretion of interpretation and must strike a rational balance. In addition to the authority granted by Congress, the president also has authority to direct requirements on leases of the OCS and notable precedent exists for the president to do so. Current BOEM leases of the OCS include lease terms mandated by presidential executive order, specifically Executive Order 11246, which prohibits employment discrimination and establishes affirmative action requirements for nonexempt federal contractors and subcontractors.[22] Article II, § 1 of the United States Constitution provides that "executive power shall be vested in" the president. Such power gives the president the right—in the absence of an express congressional declaration to the contrary—to control the terms upon which public lands or property may be sold, leased, or used by private individuals or entities.[23] Additionally, the president has been delegated "broad-ranging authority" over governmental procurement under various laws including, for instance, the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq. which authorizes the president to "prescribe such policies and directives . . . as he shall deem necessary" for the promotion of an economical and efficient system for procurement and supply."[24]

A presidential executive order can direct the terms of leases entered into under the OCSLA. In fact, in Crown Central Petroleum Corp. v. Kleepe, 424 F.Supp. 744 (1976), a U.S. federal court affirmed that a lessee of a lease agreement entered into under the authority of the OCSLA is a government contractor under the terms of E.O. 11246 and therefore subject to its directives. This proposition, that leases of public lands by the federal government are "contracts" and lessees are "contractors" has repeatedly been affirmed. [25]

Recent executive orders commit to revitalizing U.S. supply chains and creating well-paying union jobs. Specifically, EO 14008 § 204. states: "It is the policy of my Administration to lead the Nation's effort to combat the climate crisis by example—specifically, by aligning the management of Federal procurement and real property, public lands and waters, and financial programs to support robust climate action. By providing an immediate, clear, and stable source of product demand, increased transparency and data, and robust standards for the market, my Administration will help to catalyze private sector investment into, and accelerate the advancement of America's industrial capacity to supply, domestic clean energy, buildings, vehicles, and other necessary products and materials." In § 206, President Biden further directed all agencies to "adhere to the requirements of the Made in America Laws in making clean energy, energy efficiency, and clean energy procurement decisions" consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers

(Jan. 25, 2021).

Further, the January 27, 2021 Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad" includes the goal of doubling offshore wind by 2030 while creating well-paying union jobs and economic growth; delivering environmental justice; an equitable, clean energy future; and ensuring robust protection for our lands, waters, and biodiversity.

In his Executive Order on Tackling the Climate Crisis at Home and Abroad, President Biden called for a whole of government approach to the climate crisis that will "create well-paying union jobs to build a modern and sustainable infrastructure."[26] The executive order further emphasized that "[t]his Nation needs millions of construction, manufacturing, engineering, and skilled-trades workers to build a new American infrastructure and clean energy economy." Earlier this year, the White House announced in its recent offshore wind fact sheet that it would take coordinated steps to support rapid offshore wind deployment in a way that would invest, "in American infrastructure to strengthen the domestic supply chain."[27]

All of these statements make clear that it is the policy of the United States to ensure that all agencies should take all possible actions to develop clean energy technologies and combat climate change while also strengthening domestic supply chains. Given the whole-of-government approach, the inclusion of these factors in the draft EA is reasonable and consistent with these policies.

It's essential to consider these, particularly in terms of domestic content because strong action is needed to ensure that the United States creates the kind of manufacturing jobs and supply chain growth the administration is actively pursuing. In 2013, "no domestic manufacturing facilities [were] currently serving the offshore wind market."[28] And the major parts and components of the United States' first offshore wind farm at Block Island—with the exception of the foundation—were manufactured outside the United States.[29]

The OCSLA requirement for offshore wind leases to provide a fair return to the U.S. is also relevant. The U.S. Legal Dictionary defines fair return on investment as "reasonable return on the investment of a public utility, determinable only by the exercise of sound judgment and common sense, being a matter of fair approximation, not capable of exact mathematical demonstration."[30] Utilizing domestic content can help secure fair return to the United States for offshore wind leases by maximizing the positive economic impacts of offshore wind development.

Securing a domestic offshore wind supply chain is also essential for ensuring that offshore wind projects can be deployed effectively and on time. The March 2022 offshore wind energy supply chain report by the National Renewable Energy Laboratory (NREL) states that supply chain constraints caused by global bottlenecks are one of the greatest risks for achieving the NOWT.[31] The modeling in the report also shows that average and maximum job creation utilizing 25% domestic content versus 100% domestic content in offshore wind projects results in a difference of approximately 30,000-40,000 jobs from 2023-2030.[32]

A failure to develop a domestic supply chain for offshore wind components would mean fewer jobs and less investment, and thus a lesser return to the United States for offshore wind leases. Across renewables, even this modest increase in manufacturing produces an additional 45,000 good manufacturing jobs per year and an additional $5 billion in wages through the 2020s, as the United States continues greening its electricity grid.[33] These increased benefits are also not likely to come at additional cost. Domestic content requirements are unlikely to influence wind power capital costs.[34] In the rare occurrence that domestic content requirements would increase project costs or that unavailability of any component would slow development, waivers can be issued. Consistent with

application of Buy America policy in other sectors, waivers are also issued for domestic content requirements if domestically manufactured materials or manufactured goods are not available in the United States, would result in unreasonable price increases for the project, or the waiver issued is in the public interest.

Methods for achieving a fair return to the United States also have significant equity implications. PLAs can ensure all workers benefit from well-paying jobs by including targeted hire provisions to provide opportunities for workers of color, women, veterans, formerly incarcerated individuals, indigenous people, economically disadvantaged communities, communities heavily impacted by climate change or climate change policies, and many others. These communities may be targeted through contracting requirements, hiring requirements, or the use or establishment of pre-apprenticeship programs. Ideally, these provisions establish long-lasting pipelines for members of disadvantaged communities to access good jobs and careers in the clean economy.

Decline in union density is cited as a reason for growing economic inequality, growing wage gaps for women and workers of color, and declining voice in our democracy for workers in the United States. In particular, the decline in U.S. manufacturing has been devastating to the middle-class, especially for Black and Hispanic workers and other workers of color who disproportionately do not hold college degrees and whom experience discrimination limiting access to better-paying jobs.[35] Manufacturing wages are substantially larger for median-wage, non-college-educated employees, with Black workers in manufacturing earning 17.9% more than in non-manufacturing industries; Hispanic workers earning 17.8% more, Asian American Pacific Islander (AAPI) earning 14.3% more; and white workers earning 29% more.[36]

According to data recently published by the American Iron and Steel Institute, "The iron and steel industry directly employs 386,753 workers who earn $33.55 billion in wages and salaries annually, an average of $86,736 per year, while generating $206.65 billion in output."[37] A 2017 economic analysis found that the industry, both directly and indirectly—through suppliers and services providers—was "responsible for 1.98 million jobs across the nation, paying a total of $131.26 billion in wages and salaries annually, while generating $522.59 billion in industry output and $55.86 billion in federal, state, and local taxes."[38]

PLAs can also help achieve a fair return to the United States from offshore wind development because they often reduce project cost for developers, save public funds in the long run, and result in increased economic benefits for the local economy.[39] PLAs use a skilled labor workforce and often avoid labor disputes which allows for a project to move forward with greater efficiency.[40] PLAs also see fewer cost overruns thanks, at least in large part, to the stabilizing effects of PLAs.[41] Workers are also benefited by utilizing PLAs, even nonunion workers, because they ensure that wages and benefits are defined and protected at local standards.

In addition, PLAs often lead to safer working conditions as a result of a more skilled workforce. Data suggests that the construction industry is volatile, resulting in a constant loss of human capital. Additionally, accidents, including death, are more common in states with low-road contractors.[42] PLAs and high-road labor standards can mitigate construction industry volatility and increase site safety. Reports indicate that PLAs decrease the significant gap between expected and realized energy savings in various energy efficiency measures.[43]

Utilizing supplier codes of conduct can also increase safety as they are created for the purpose of ensuring that a company's suppliers adhere to high standards for safe working conditions, fair and respectful treatment of employees, and ethical practices.[44] The best outcomes tend to be when companies have a code of conduct in place and are represented by a union, research suggests.

Organizational Science journal found evidence that suppliers with worker's unions are more likely to be compliant with supplier codes of conduct.[45] And, the Harvard Business Review found that following an audit, unionized suppliers improved working conditions more than nonunionized suppliers.[46]

Overall, union workers tend to have more safety protections. According to a 2020 Economic Policy Institute report, *Why Unions are good for workers–especially in a crisis like COVID-19*, union workers were able to negotiate additional health and safety measures, paid sick leave, and job preservation during the pandemic.[47] They also reported that workers without unions are more likely to be retaliated against or fired for advocating for health and safety protections or wage increase.[48]

This supports our recommendation that union neutrality should be considered in the final EA. The Biden administration has made efforts to support union organizing and signaled support for union neutrality. The National Labor Relations Board General Counsel Jennifer Ann Abruzzo has asked the board to prohibit employers from requiring employees on paid time to hear its point of view on unions.[49] Abruzzo also issued in a recent brief, that the board should reinstate its decision in *Joy Silk Mills*, which was abandoned in 1971, which allows the board to order an employer to bargain with a union if the union demanded to bargain and stated that the majority of employees supported the union unless the employer had good faith believe that the majority of employees did not support the union.[50]

As President Biden said in his September 8, 2021 remarks:

> "Government should never be a barrier to workers organizing. It's government's job to remove those barriers. But it's up to workers to make the choice whether to organize or not, whether to form a union or not. And we need to help them understand why that can be the right choice for them."[51]

Ensuring that employers remain neutral in workers organizing efforts throughout the offshore wind supply chain is related to several of the executive orders referenced in these comments and a key tenant for deploying a high road industry.

An expanded socioeconomic analysis is also consistent with the requirements of OCSLA to protect national security interests of the United States when establishing renewable energy lease areas in federal waters. Policies that support domestic manufacturers and workers through procurement preferences ensure that the United States doesn't have to rely on potentially hostile trading partners to supply our energy infrastructure construction needs. In the rebuilding process following Superstorm Sandy which devastated the Mid-Atlantic region nearly a decade ago, Former Homeland Security Secretary Janet Napolitano pointed to the loss of manufacturing capabilities as reason for delay:

> "I'll give you a good example: transformers. You know, utilities use these big transformers to supply power. They are all made overseas. We have lost any domestic production whatsoever. And they're big and they're really expensive and they take a long time to move…After Sandy, we needed transformers and that whole process, I think, fed into some of the delay in getting the lights turned back on. That's just one example that we run into…"[52]

A summary report jointly-commissioned by DOE and the North American Electric Reliability Corporation (NERC), assessing risks to the U.S. electricity generation and distribution infrastructure observed that the "bulk power system is dependent on long supply chains, often with non-domestic sources and links" and determined that the "increased reliance on foreign manufacturers, with critical components and essential spare parts manufactured abroad (e.g. HV transformers)" means the "supply chain itself represents an important potential vulnerability."[53] The report recommends that "efforts should be considered to bring more of the supply chain and manufacturing base for these critical assets back to North America."[54]

In his executive order on supply chains, President Biden stated that "[t]he United States needs resilient, diverse, and secure supply chains to ensure our economic prosperity and national security."[55] The Administration specifically cited supply chain risks that "reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services."[56] As part of this effort to protect economic prosperity and national security, the administration directed the Secretary of Energy to "submit a report on supply chains for the energy sector industrial base."[57] Further, in his executive order on climate change, President Biden directed agencies to "seek to increase the Federal Government's resilience against supply chain disruptions… [because] such disruptions put the Nation's manufacturing sector at risk, as well as consumer access to critical goods and services."

According to analysis from Brookings, having onshore suppliers is a "key tenant" of supply chain resilience.[58] This will be particularly important in sectors, like offshore wind, which are reliant on foreign suppliers. Currently only about a dozen commitments are in place to establish manufacturing facilities for offshore wind components in the United States, meaning that significant portions of the investment to build offshore wind projects could flow out of the economy to purchase technology manufactured abroad, rather than supporting the growth of manufacturing and jobs domestically. Imported parts and materials may also raise costs, delay installation, and complicate ongoing maintenance and repair.

High-volume domestic manufacturing, which brings down the cost, happens when manufacturers see consistent demand. Strong, long-term policy that drives rapid deployment and provides certainty in a U.S. offshore wind industry is necessary, coupled with policies to require utilization of domestically-manufactured material and direct investment in these facilities and the training of workers who will operate them.

Conclusion

When done right, offshore wind power will combat impacts of the climate crisis while creating tens of thousands of high-quality, family-sustaining jobs. Lease stipulations requiring that projects be constructed under PLAs and utilizing domestic content are key to achieving a high road industry and contributing to national security, worker safety, environmental protection, and a fair return to the United States. Investments in workforce training programs and domestic manufacturing of content used in the construction of offshore wind projects are also necessary for ensuring that we attain the maximum employment potential of this promising industry, with quality, family-sustaining, union jobs. And, throughout every phase of development, responsible siting and construction methods should be deployed that avoid, minimize, and mitigate adverse impacts to the environment.

Thank you for your work in advancing this promising new industry and your consideration of our recommendations for ensuring it fulfills its transformation potential as a solution to the intersecting environmental and economic crises of our time.

Signed,

Jason Walsh

Executive Director

BlueGreen Alliance

Endnotes

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