

Advising the State of New York about a Process to Engage Stakeholders and Support the Environmentally Responsible Development of Offshore Wind Energy:

A Summary of Responses from Stakeholder Interviews

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To:

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Summary

New York State Energy Research and Development Authority (NYSERDA) and Biodiversity Research Institute (BRI) staff conducted a series of loosely structured interviews in October-December 2017, focused on a “straw man” proposal for how to develop best management practices (BMPs) for wildlife and offshore wind. The >50 stakeholders involved in these discussions included representatives from state and federal agencies, developers, eNGOs, and environmental consulting firms. The overwhelming majority of stakeholders indicated that the formation of a standing working group would be a good step towards identifying and developing consensus-driven BMPs, and more generally to build trust and collaboration among stakeholders. A “state of the science” workshop was also identified as a useful approach to review existing BMPs and New York State activities. The term “best management practices” was a source of confusion, however, and stakeholders identified several potential pitfalls for a BMP development process, including the production of BMPs that are too prescriptive and fail to allow for innovative solutions or technological developments.

With the publication of the New York Offshore Wind Master Plan¹, NYSERDA has defined a path forward for BMP development via the formation of an Environmental Technical Working Group. This group will advise the state on the environmentally responsible development of offshore wind energy, with a charge that could include BMP development as well as identification of research needs and other priorities. The group will consist of developers and eNGOs as advisors to the State, and state and federal agencies who will participate as observers. This Working Group will oversee the formation of expert subcommittees, focused on specific topic areas, who will conduct the majority of the work to develop BMPs or other end products. A public “State of the Science” workshop is also planned for late 2018 to meet many of the needs identified by stakeholders.

Background and Methods

During development of the Offshore Wind Master Plan for New York State, state agency efforts around environmental issues primarily focused on siting and baseline data collection. These efforts included both the production and compilation of baseline data, and the use of stakeholder feedback to inform how these data were used in developing the Master Plan.

Following publication of the Master Plan, and as offshore wind energy development moves forward, the state’s decision making will be further informed by highly collaborative conversations among stakeholder groups. In preparation for this new phase, NYSERDA worked with BRI to produce a “straw man” proposal for how to develop best management practices for wildlife and offshore wind. To obtain stakeholder feedback on this environmental BMP development proposal, 24 informal interviews with stakeholders were conducted in October-December, 2017. Discussions included 51 representatives from a broad range of technical organizations, including state and federal agencies, developers, environmental non-governmental organizations (eNGOs), and environmental consulting firms. Stakeholders were initially chosen based on (a) their participation in public comments to the Bureau of Ocean Energy Management (BOEM) regarding New York offshore wind activities, (b) their review of draft reports for NYSERDA’s other offshore wind-related efforts, or (c) personal knowledge of BRI staff or the NYSERDA project manager. In addition, NYSERDA and BRI spoke publicly about this effort with NYSERDA’s Market Advisory Group (MAG) and at the American Wind Energy Association (AWEA) Offshore conference in October 2017, and were approached by stakeholders at both venues who expressed interest in participation in the process. For many conversations, individual stakeholders invited their colleagues to participate as well. Following each interview, BRI staff members transcribed notes and identified key feedback and common themes.

¹ <https://www.nyserdera.ny.gov/All-Programs/Programs/Offshore-Wind/New-York-Offshore-Wind-Master-Plan>

Results

Some of the main points raised by stakeholders during discussions included:

BMPs would be helpful – There was substantial support among stakeholders for the idea of developing BMPs, and a general consensus that BMPs could be useful in reducing uncertainty (a key goal for most stakeholders in this topic area). Many indicated that a standing working group would be useful; at the very least, they felt that a BMP-focused group would provide a forum for communication between developers, eNGOs, and other stakeholders, but that successful development of BMPs would have additional benefits.

Avoid the term “best management practices”² – While many stakeholders expressed no concern with the term, some found it a potential source of confusion about the scope and purpose of the process, and suggested adopting alternative language such as conservation objectives, management principles, or recommended management practices.

A framework for BMPs should be structured by information type, not development phase – It was suggested that BMPs could be divided into four categories, based loosely on the mitigation hierarchy: (1) base science aimed at avoiding impacts, (2) project design and engineering approaches to minimize impacts, (3) management of project activities to minimize and mitigate impacts during pre-construction, construction, and operations phases, and (4) funding to address research or conservation needs, applied in the case of unknown or unavoidable impacts. Within these categories, BMPs should also focus on data collection and monitoring, as assessment of the effectiveness of impact avoidance and minimization efforts will help inform future projects.

BMPs should include both regional and site-specific scopes – Most stakeholders identified the need for both regional and site-specific BMPs, and emphasized the potential for very large differences in relevant and useful BMPs at these geographic scales. Many stressed the importance of having a regional (rather than New York-specific) focus, and indicated that BOEM involvement in the process will be essential for the inclusion and active involvement of other states.

Involve BOEM and other regulatory agencies in developing BMPs – Stakeholders felt that the development of BMPs should be closely coordinated with regulatory agencies, particularly BOEM. This coordination would serve two purposes: (1) to avoid potential duplication or conflict with existing agency requirements and guidelines, and (2) to take advantage of potential synergies with agency efforts. For example, BMPs developed through the New York process could be more regionally specific and/or site-specific than general BOEM guidelines, or could target different taxa or a different level of methodological detail. It was also suggested that NYSERDA’s planned stakeholder engagement framework could potentially support guideline development efforts by federal agencies.

Transparency, clarity, and trust-building are essential – Several regulators suggested that this effort must identify clear reasons for developers and other stakeholders to become involved. However, stakeholders from the developer and eNGO communities largely identified these reasons themselves, tending to focus their comments on a desire for a forum to build trust and collaboration, and recognizing the potential benefits to themselves from the development of regional, consensus-driven BMPs.

The working group must be carefully designed to ensure an effective process – The overwhelming majority of stakeholders indicated that the formation of a standing working group would be a good step forward in

² We have continued using the term “BMPs” throughout this document to (1) avoid confusion and (2) allow project participants to provide additional input on the alternative term to be used. This topic will be addressed during stakeholder meetings in 2018.

allowing stakeholders to identify areas of common ground, as well as identify gaps in existing knowledge. Recommendations to ensure the group's effectiveness and functionality included (1) keep group size small, (2) prioritize face-to-face interactions, (3) include a broad array of stakeholders, (4) utilize professional facilitation, and (5) start narrowly, with a focus on very clearly defined topics, and build support through the process.

BMP development must be an iterative process – Stakeholders noted that NYSERDA must make a long-term commitment to update and improve BMPs based on the best available data. All stakeholders who addressed this issue recommended strongly that BMP development be an iterative process, with BMPs revisited periodically and adjusted based on new knowledge. Some suggested a specific timeline be defined for review (e.g., every 2 years).

Don't "move the goalposts" – There were some concerns expressed about new BMPs being applied to existing projects. Several stakeholders suggested that the standing working group should explicitly define rules of applicability for new or revised BMPs, which may help ameliorate this concern.

Hold "State of the Science" workshops – A number of stakeholders suggested that it would be useful to have a facilitated in-person meeting to serve as a starting point for the project. Suggested goals and objectives for this meeting varied, but tended to include one or more of the following components: (1) review of the New York Offshore Wind Master Plan, (2) a "State of the Science" review and assessment of existing BMPs, and (3) identification of key data gaps and priority topics for BMP development. It was also suggested that a similar workshop could be held on a regular basis (every 1-3 years), to inform the stakeholder community and obtain input from them as work progresses.

BMPs should not be overly prescriptive – While it was almost universally agreed that there is room to develop guidelines, the most commonly expressed concern about the proposed effort was that BMPs could become too prescriptive. There was a clear feeling among many stakeholders that guidelines for a relatively new industry must allow room for alternative or innovative solutions in wildlife protection and mitigation.

Focus BMPs on specific topics of importance – Stakeholders noted that successful BMP development will be partly dictated by the topical focus. Specific suggested priorities included:

- *Gap analysis.* As outlined in the original straw man document, several stakeholders suggested that the first step in this process should be an assessment of existing BMPs and a determination of areas where BMPs either do not exist, or require further development.
- *Predicting risk.* Stakeholders suggested the need for a monitoring program designed to detect impacts, to inform the site selection and development of future projects (e.g., by comparing pre- vs. post-construction data for displacement, or detecting collisions and comparing observed risk to predicted risk based on baseline wildlife use of the area).
- *Risks to rare and endangered species.* Stakeholders identified a range of taxa as priorities for BMPs or baseline research, including marine mammals, seabirds, migratory landbirds, turtles, bats, elasmobranchs, benthos, and invasive species. Impact assessment for large whales, especially North Atlantic right whales, was identified as a major gap for developers along the east coast.
- *Understanding avian collision vulnerability.* Stakeholders noted a need to better understand factors that determine species-specific collision vulnerability.
- *Terrestrial migrants.* Several stakeholders noted the current difficulty in predicting risk, including baseline exposure and collision vulnerability, for migratory landbirds and bats in the offshore environment. Lighting was a key concern for these taxonomic groups.

- *Cumulative impacts.* Several stakeholders noted that cumulative impacts must by necessity be addressed at a regional (or larger) scale, and that this regional BMP development effort could be an appropriate venue for additional development of cumulative impact assessment frameworks.

Next Steps

After consideration of stakeholder ideas and recommendations, including these informal interviews as well as input received during development of the New York Offshore Wind Master Plan³, the State has identified a revised path forward for BMP development. An Environmental Technical Working Group will advise the State of New York about approaches for environmentally responsible development of offshore wind energy. This group will consist of developers and eNGOs as advisors to the State, and state and federal agencies who will participate as observers. This Working Group will oversee the formation of expert subcommittees, focused on specific topic areas, who will conduct the majority of the work to develop BMPs or other end products. Subcommittees will report their findings back to the Working Group, who in turn will present their advice and recommendations on these products to the State. In addition to BMPs, this standing working group could choose to address (1) identification of research needs and coordination, (2) multi-agency coordination for adaptive management, and (3) creation of a framework for an environmental conservation fund.

A public “State of the Science” workshop is planned in late 2018. This workshop will introduce the Working Group to the larger stakeholder community, and will also serve as a venue to solicit suggestions from the broader stakeholder community about priority subcommittees. More detailed summaries of stakeholder interviews will be provided as needed to the working group, subcommittees, or at the 2018 “State of the Science” workshop. Regular communications and outreach to stakeholders will be essential components to building trust and transparency throughout this process.

³ <https://www.nyseda.ny.gov/All-Programs/Programs/Offshore-Wind/New-York-Offshore-Wind-Master-Plan>