



**Clean Ocean Action  
49 Avenel Blvd.  
Long Branch, NJ 07740  
info@cleanoceanaction.org  
732-872-0111**

April 28, 2021

Stephen Boutwell  
Office of Renewable Energy Programs  
Bureau of Ocean Energy Management  
45600 Woodland Road, VAM-OREP  
Sterling, Virginia, 20166

**Re: Comments on New York Bight Notice of Preparation of an Environmental Assessment for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore New York; MMAA104000; Docket No. BOEM-2021-0021-0002.**

*Submitted Electronically*

Dear Mr. Boutwell,

Clean Ocean Action (COA), a regional, broad-based coalition of conservation, environmental, fishing, boating, diving, student, surfing, women's, business, civic and community groups with a mission to improve the degraded water quality of the marine waters off the New Jersey/New York coast, submits the following comments on the Bureau of Ocean Energy Management's (BOEM) "Environmental Assessment for Commercial Wind Lease Issuance on the Atlantic Outer Continental Shelf (OCS) Offshore New York, MMAA 104000; Docket No. BOEM-2021-0021-0002."

The proposal seeks to evaluate the environmental impacts of moving forward with lease sales in over 800,000 acres of "Wind Energy Areas offshore of New York." This characterization is misleading much of the areas proposed are closer to the New Jersey shoreline than New York's. Someone reviewing the Public Notice may not have understood that the Wind Energy Areas were off New Jersey as well as New York.

For over 37 years, COA has been the leading coalition successfully campaigning to improve and protect the waters in the region known as the New York/New Jersey Bight (hereafter, the NY/NJ Bight). These shared waters have a long history. COA's campaigns have ended ocean dumping,

resulting in the closing of eight disposal sites, blocked five offshore liquefied natural gas export/import facilities, and prevented commercial seafloor strip-mining for aggregate, offshore oil and gas drilling proposals and associated seismic activities, and other industrialization activities that threaten the marine ecosystem. Thus, COA speaks from this extensive knowledge and commitment to the region.

Despite the progress made in improving the ocean off the NY/NJ coast, the ocean remains threatened, especially due to climate change. Climate change does (and has for decades) represent an existential threat, and all efforts must be made to reduce the causes, particularly the reduction of carbon emissions. **To be clear from the outset, COA supports responsible and reasonable offshore wind energy development; this includes operation, management, and decommissioning, as well as the associated onshore infrastructure support.** However, this new, uncertain industry requires additional investigation of areas with a focus on comprehensive, inclusive assessments of all offshore wind life-cycle impacts.

Further, the need for good governance and responsible development is now critical with the recent accelerated scope and magnitude of cumulative offshore wind activities under President Biden's Executive Order 14008, combined with the exuberance from New York and New Jersey state governments. This rush to build in the ocean, and now in WEAs, is inconsistent with responsible management. BOEM and state agencies appear to continue to apply outdated, silo-based environmental assessments and strategies, which may be in violation of their NEPA mandate. BOEM has required little to no comprehensive cumulative assessment, and there has been a lack of good governance in evaluating current activities.

### **BOEM Expansion of Commercial Wind Lease Issuance is Too Much, Too Fast**

It is essential for offshore wind development to be done correctly and well. With over 400,000 acres available, and five companies planning projects, much can be learned from the existing projects with lessons and benefits for environmental and economic considerations. Selling more ocean areas would limit these opportunities. For the reasons below and in consideration of the ecological concerns described below, COA calls on President Biden and BOEM **to temporarily pause the expansion of lease sales for offshore wind development in the NY/NJ Bight.** The delay of this NEPA review would allow the following to be understood and or rectified to ensure good-governance of the development of offshore wind. There is a need for:

- 1) meeting legal requirements;
- 2) cumulative impacts assessments;
- 3) transparency;
- 4) comprehensive planning;
- 5) coastal resiliency planning;
- 6) interagency review;
- 7) protecting undersea Public Trust lands
- 8) time to make better decisions, and *no* need to sell offshore lands *now* while the five existing and forthcoming offshore wind projects move forward; and
- 9) Rapid implementation of onshore green energy alternatives.

These concerns are described further below.

## 1. Need for Meeting Legal Requirements

BOEM's process under NEPA is not meeting its requirements for meaningful environmental review. In effect, BOEM short circuits meaningful environmental assessments by piecemealing the process, as well as undercutting meaningful public involvement leading to and resulting in environmental harm. To date, the BOEM process for public involvement and environmental assessment is woefully unacceptable. In a scathing article describing BOEM's process published in the *Sea Grant Law and Policy Journal*.<sup>1</sup> Wilson Jarrell provides valuable insights providing details on this systemic unacceptable approach:

*Under NEPA and the D.C. Court of Appeals' decision in Public Employees for Environmental Responsibility v. Hopper<sup>2</sup>, BOEM is almost certainly not meeting its legal requirements for a meaningful environmental analysis through its improper deferment of many considerations until a potential future analysis<sup>3</sup>.*

*Considering the practical benefits of marine spatial planning, BOEM is currently inadequately considering conflicting uses with fishing communities, especially given its stated commitment to the practice. Additionally, BOEM appears to be specifically designing lease sales to disproportionately affect fishing communities that do not have the resources to fight back, offending the principles of environmental justice.*

The article goes on to describe BOEM's system approach, justifying inadequate environmental review:

*BOEM relies on the first of these two scenarios to justify its system of environmental analysis. Its reliance is premised on a single principle: that because of the four-stage system of permitting an offshore wind energy project, BOEM need not consider any effects, whether direct, indirect, or cumulative, of the actual building or operation of any project in the environmental analysis done before leasing any of the OCS. BOEM reasons that because no construction or operation of a project can occur prior to issuing a Construction and Operations Permit, and because it will have to do further NEPA analyses before it can issue such a permit, none of these activities must be considered until this point.*

Indeed, BOEM's Notice shows that BOEM inappropriately stacks and reduces the scope of regulatory procedures. According to the BOEM notice, the EA is to "seek comments to evaluate potential environmental consequences of site characterization activities (i.e., biological, archeological, geological, and geophysical surveys and core samples) and site assessment activities (i.e., installation of meteorological buoys) associated with issuing wind energy leases in the WEAs. The EA also considers project easements associated with each potential lease

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<sup>1</sup> Wilson Jarrell, Still Spinning: A Look at the Federal Legal Landscape of Offshore Wind Energy in the United States, *Sea Grant Law and Policy Journal* Vol. 9:1 (June 2018), 60.

<sup>2</sup> Pub. Emps. for Env'tl. Responsibility v. Hopper, 827 F.3d 1077, 1083 (D.C. Cir. 2016).

<sup>3</sup> Wilson Jarrell, Still Spinning: A Look at the Federal Legal Landscape of Offshore Wind Energy in the United States, *Sea Grant Law and Policy Journal* Vol. 9:1 (June 2018), 60.

issued, and grants for subsea cable corridors in the New York Bight.” Following this notice, they will quickly transition to Commercial Sales throughout the WEAs.

Further, BOEM’s Notice asks the public to provide input when no one - BOEM, the National Oceanic & Atmospheric Administration (NOAA), individual state governments, or the public - can yet understand the baseline impacts to the NY/NJ Bight already locked in by previous lease sales. Until we know what the ocean - and its fisheries and ecosystems - will look like after the completion of the already-finalized sales, no one can be expected to properly give input on the potential impacts of these additional lease areas. No EA can be completed without a thorough review of all viable alternatives that incorporates expected impacts from the leases already issued.

## **2. Need for Cumulative Impacts Assessments**

Impacts to marine resources, wildlife, busy port facilities and shipping lanes, and the industries that depend on a clean ocean have not been identified, including the widespread impacts from the existing 400,000 acres of offshore wind areas leased by five companies, of which not one Construction and Operation Plan (COP) Environmental Impact Statement (EIS) has been completed. BOEM did not even consider the impacts of state-planned lease areas until the Vineyard Wind programmatic EIS. Under BOEM’s current approach, cumulative impacts across WEAs cannot be properly assessed. The scope of “reasonably foreseeable” impacts should be expanded beyond the scope used in the Vineyard Wind EIS, to the extent practicable. It is important to consider that the impacts to the ecosystem as the 400,000 acres of WEAs are developed could profoundly increase the ecological value of these 800,000 acres proposed in BOEM’s Notice of Preparation of an Environmental Assessment.

## **3. Need for Transparency**

BOEM has not provided a region-wide plan detailing all construction, support, operation and management infrastructure. Further they have not analyzed the needs and impacts onshore and offshore or for other related industrial activities. The NY/NJ region has a right and needs to know “what to expect when you’re expecting massive new industrial infrastructure” to fully prepare and plan. Boom and bust industries typical with energy infrastructure have long-term and short-term impacts. Communities need to be prepared, and environmental justice communities must also be considered as they have already sustained negative impacts from previous industrial activities.

## **4. Need for Comprehensive Planning in Coordination with States, Local Governments**

Related to onshore and transmission infrastructure, there has been little planning for affected communities, including recognition of harmful displacement or other consequences. Host community benefits are being discussed or considered. Most construction will need to occur in existing harbors or port communities with potential changes to the character of communities in the region. No advance discussions for this major growth have been discussed, detailed, or provided for all communities that will have infrastructure development. Clearly without this, community involvement is also lacking. Further, the immediate site characterization activities (and the reasonably likely activities which will result from the issuance of the leases themselves) will have impacts on coastal harbors, ports, workforces, fuel cost, dock space, and access to working waterfront facilities and jobs -- impacts that may bring benefits to some, but can also

create impacts elsewhere, most likely in the fisheries sector. Without a full accounting of the expected shore-side impacts from this project -- and, again, a cumulative look at these impacts given the other WEAs already leased -- this EA cannot be completed.

### **5. Need for Coastal Resiliency Planning**

Many proposed activities will occur in the coastal fringe, which is extremely vulnerable to sea-level rise and storm surge. Superstorm Sandy maps denote the region's gravely at-risk coastal systems. Moreover, with a currently sinking coastline, NJ is particularly susceptible for future flooding. Natural wetland and waterfront areas must be protected, however there is no stipulation. This lack of planning is inconsistent with many federal programs, and yet the push for development is being fast-tracked to support offshore wind. Further, South Jersey is experiencing extreme sea level rise -- the worst in the nation. BOEM must consider sea level rise in an EA. How will the impacts of climate change, such as sea level rise, affect the expected shoreside support facilities, and over time. As stated above, without a full accounting of the expected shore-side impacts from this project -- and, again, a cumulative look at these impacts given the other WEAs already leased -- this EA cannot be completed.

### **6. Need for Interagency Review**

Clearly there is a need for a reasonable, region-wide plan based on sound science with meaningful requirements for protecting living marine resources, especially the National Marine Fisheries Service, relevant fisheries councils, Marine Mammal Commission, and other relevant agencies. The BOEM document under-represents marine life and the interconnectedness of hundreds of species -- mobile, fixed, or both. From American Eel to the Northern Atlantic right whale, careful consideration and protection of species must be provided in the environmental review stages of NEPA. This would include a required, mandated hierarchy with standards and protocols to minimize harm with accountable measures to address any unavoidable impacts. Informal and formal interagency review is vital to proper assessment of environmental impacts pursuant to NEPA.

### **7. Protecting Undersea Public Trust Lands**

Once the areas are sold/leased, they are no longer public ocean space, held in the public trust. They are bound to private owners and are costly or nearly impossible to be returned. This permanency requires good governance and careful planning of these public lands.

### **8. Time**

The ocean is not going anywhere. Time is needed to make better decisions. There is no need to permanently sell public offshore lands now, and no immediate need to move forward with the Commercial Leasing. Should the above recommended actions, assessments, and evaluations prove that additional wind development is environmentally suitable, the WEA areas can be reconsidered and evaluated for commercial leasing. This would also allow undersea lands to remain in the public trust. BOEM's priority attention should be to move forward efficiently with the prior five companies' leases in the existing 400,000 acres of WEAs. Each offshore wind energy project will take years to evaluate and develop -- there is time to consider more future leasing -- if we get this right from the beginning. A pause will allow better understanding of the benefits and impacts of offshore wind development and improve lease sale activities.

## 9. Onshore Green Energy Alternatives

At the same time, short-term, meaningful renewable energy and energy efficiency and conservation are readily available on land and must also be expedited. Indeed, the focus on offshore development is a much longer-term solution to immediate problems. There are readily available onshore solutions and opportunities for reducing climate change. Policymakers, legislators, and citizens alike must fully consider the alternatives, account for the onshore energy solutions, and recognize that offshore wind is not the only option.

### **Ecological Effects of Offshore Wind Development in the NY/NJ Bight**

During the leasing and planning phases of offshore wind development, BOEM only reviews impacts that are “reasonably foreseeable” during that <sup>4</sup> As a result, cumulative effects and extensive, precautionary steps have taken a back seat. Even though BOEM expanded the scope of their cumulative impact analysis during the Vineyard Wind programmatic review, there could still be cascading effects to vulnerable New Jersey and New York ecosystems, wildlife, and communities along the Mid-Atlantic Bight. Siting offshore wind turbines in the WEAs may affect these species, many of which are already “on the brink.” Species diversity in this region include over 30 species of whales and dolphins, including the endangered Northern Atlantic right whale; 5 species of sea turtles; 300 species of fish; 350 species of birds; 4 species of seals; hundreds of invertebrates <sup>5</sup>eels and other species; and 20 threatened and endangered species. COA recommends that BOEM and coordinating agencies consider the potential impacts.

In their alternative analysis pursuant to the EA, BOEM should utilize an extensive cumulative impact analysis based on the potential harm to sensitive areas in the NY/NJ Bight. The NY/NJ Bight experiences intense ocean mixing, called a “Cold Pool” effect, that stimulates massive phytoplankton blooms central to the structure of all NY/NJ Bight ecosystems. Due to its relative warmth, heavy flows of freshwater and inland nutrients from the Hudson River, and unique bathymetry, the NY-NJ Bight holds rich habitat for whales and other species. Ocean currents wash over these bottom features and stir up nutrients that are absorbed by phytoplankton. In essence, the NY/NJ Bight has unique features that are ideal for a vast variety of ocean life, ranging from deep sea corals to over 300 fish species.<sup>6</sup>

Throughout their environmental review, COA urges BOEM to consider more extensive surveying and analysis in light of the unprecedented footprint proposed across the East Coast. Many species in the waters and migratory corridors surrounding and within the proposed WEAs could be vulnerable to interruptions in foraging, migration, or other effects of the foundations, cables, and all submerged gear. The Cold Pool in the Mid-Atlantic Bight supports some of the richest ecosystems and fisheries in the nation, including the most profitable shellfish fisheries and “second-most lucrative single-species fishery, sea scallops, in the western Atlantic.”<sup>7</sup> The

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<sup>4</sup> Vineyard Wind Supplemental Environmental Impact Statement, p 1-2.

<sup>5</sup> Hutchison *et al.*, The Interaction Between Resource Species and Electromagnetic Fields Associated with Electricity Production by Offshore Wind Farms, 96 *Oceanography* Vol. 33, No. 4 (December 2020).

<sup>6</sup> New York Ocean Action Plan, Department of Environmental Conservation (2016-2026), *available at* [https://www.dec.ny.gov/docs/fish\\_marine\\_pdf/nyoceanactionplan\\_final.pdf](https://www.dec.ny.gov/docs/fish_marine_pdf/nyoceanactionplan_final.pdf)

<sup>7</sup> Travis Miles, Josh Kohut, and Daphne Munroe *et al.*, Could federal wind farms influence continental shelf oceanography and alter associated ecological processes? A literature review., Rutgers University and Science Center

Bight is also vital to the migratory patterns of many different species, ranging from deep sea corals to invertebrates.<sup>8</sup> The Atlantic sea scallop (*Placopecten magellanicu*), Atlantic surfclam (*Spisula solidissima*), and ocean quahog (*Arctica islandica*) habitat along the Mid-Atlantic Bight is consistently among the most profitable fisheries in the world.<sup>9</sup>

Further, water column stratification could affect a number of species vital to fisheries and local ecosystem health, including summer flounder.<sup>10</sup> The health of habitat for these and other species is closely associated with Mid-Atlantic ocean conditions. Further, increased mortality and reduced reproductive success of shellfish and other species has been associated with warming-induced shifts to the stratification of cycles in oceanographic conditions.<sup>11</sup> This indicates that further alterations to ocean mixing may lead to changes in vital species activities across the board. Turbine arrays may directly or indirectly affect seasonal processes that dictate water column nutrient transfer among ecosystems and species.<sup>12</sup>

In sum, the USCG should account for competing uses and navigation impacts of offshore wind facilities. With increased or altered traffic patterns, the risk of collisions and spills of gas, oil, and chemicals may increase, with negative effects to water quality and marine life. Exposure to oil and other hydrocarbons from oil spills can drastically affect marine mammals and ecosystems. Further, vessel strike mitigation is vital to reducing collision between both commercial and noncommercial vessels and North Atlantic right whales.<sup>13</sup> In their assessment, BOEM should also consider spacing between offshore wind turbines and high-traffic areas through either increased spacing or based on consultation with the National Marine Fisheries Services and the United States Coast Guard.

The North Atlantic right whale may be especially vulnerable to additional barriers in its migratory patterns and prime foraging habitat. BOEM requires mandatory minimization procedures and marine mammal observers for construction and operation of offshore wind farms. However, current minimization measures, including passive acoustic monitoring (PAM) via

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for Marine Fisheries (SCEMFIS) (Dec. 1, 2020), available at <https://scemfis.org/wp-content/uploads/2021/01/ColdPoolReview.pdf>

<sup>8</sup> New York Ocean Action Plan, Department of Environmental Conservation (2016-2026), available at [https://www.dec.ny.gov/docs/fish\\_marine\\_pdf/nyoceanactionplan\\_final.pdf](https://www.dec.ny.gov/docs/fish_marine_pdf/nyoceanactionplan_final.pdf)

<sup>9</sup> National Marine Fisheries Service, 2020: Fisheries of the United States, 2018. U.S. Department of Commerce, NOAA Current Fishery Statistics No. 2018.

<sup>10</sup> T.M. Grothues and E. A. Bochenek, 2011: Fine scale spawning habitat delineation for winter flounder (*Pseudopleuronectes americanus*) to mitigate dredging effects –Phase II (Cycle 8), 2/2011.

<sup>11</sup> D. A. Narvaez, D. M. Munroe, E. E. Hofmann, J. M. Klinck, and E. N. Powell, 2015: Long-term dynamics in Atlantic surfclam (*Spisula solidissima*) populations: the role of bottom water temperature. *Journal of Marine Systems*, 141, 136-148.

<sup>12</sup> Travis Miles, Josh Kohut, and Daphne Munroe *et al.*, Could federal wind farms influence continental shelf oceanography and alter associated ecological processes? A literature review., Rutgers University and Science Center for Marine Fisheries (SCEMFIS) (Dec. 1, 2020), available at <https://scemfis.org/wp-content/uploads/2021/01/ColdPoolReview.pdf>

<sup>13</sup> D.N. Wiley, C.A. Mayo, E.M. Maloney, and M.J. Moore. 2016. Vessel strike mitigation lessons from direct observations involving two collisions between noncommercial vessels and North Atlantic right whales (*Eubalaena glacialis*). *Marine Mammal Science* 32(4):1501–1509.

glider<sup>14</sup> do not account for when marine mammals are not vocalizing. Right whales vocalize frequently. But these vocalizations tend to be “irregular and non-repetitive” and based on activity level.<sup>15</sup> Further, it is likely that most known marine mammal mortalities occur via ship-strike.<sup>16</sup> While PAM, marine mammal observers, shut-down procedures, and other mitigation measures can be useful during construction and building spatio-temporal baseline data, there is uncertainty regarding right whale behavior and offshore wind foundations and vessel activity. COA recommends that the National Marine Fisheries Service and other relevant agencies be involved early and often in both formal and informal consultations on the leasing, siting, and permitting phases of WEAs.

The current WEAs also contain vital breeding, migration, and seasonal habitat for several species of birds, including the endangered and threatened Roseate Tern and Red Knot. The area is a seasonal habitat for other species, such as the Common Tern and the Northern Gannet. Current baseline survey and telemetry data is not suitable for assessing the distribution of normal or seasonal use patterns within current WEAs.

Further research and surveys must be conducted to reduce impacts to migratory birds, fish, seabirds, and marine mammals, among others.<sup>17</sup>

### **Recovering from Decades of Pollution: A Note of Caution**

NOAA Charts indicate, and news reports confirm, that there are areas off the coast of New Jersey where military weapons were disposed, including chemical weapons. These materials may also have been moved by ocean processes. Thus, care and caution must be used when conducting seafloor investigations. There are multiple, documented instances of substantial ocean dumping occurring from 1957-1968. Both the long-term and site-specific consequences of this harmful practice should be considered throughout the environmental review process for the NY/NJ Bight.

### **CONCLUSION**

**Clean Ocean Action supports responsible and reasonable offshore wind energy development; this includes operation, management, and decommissioning, as well as the associated onshore infrastructure support.** Based on the above, these WEAs do not meet the standard of responsible and reasonable. Therefore, COA calls on BOEM to temporarily pause its NEPA review of these additional "New York WEAs." Such a pause would allow for a good-governance approach to addressing concerns surrounding these projects, especially given the

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<sup>14</sup> Moscrop *et al.*, Vocalization rates of the North Atlantic right whale, *J. CETACEAN RES. MANAGE.* 3(3):271–282, 2001, available at

[https://www.researchgate.net/publication/268273193\\_Vocalisation\\_rates\\_of\\_the\\_North\\_Atlantic\\_right\\_whale](https://www.researchgate.net/publication/268273193_Vocalisation_rates_of_the_North_Atlantic_right_whale)

<sup>15</sup> *Id.*

<sup>16</sup> Ship Strikes and Right Whales, Marine Mammal Commission (last accessed 4/28/2012), available at <https://www.mmc.gov/priority-topics/species-of-concern/north-atlantic-right-whale/ship-strikes/>

<sup>17</sup> P.H. Loring. “Evaluating Digital VHF Technology to Monitor Shorebird and Seabird Use of Offshore Wind Energy Areas in the Western North Atlantic.” (2016). Doctoral Dissertation. 761.; Williams, K.A., Stenhouse, I.J., Connelly, E.E., and Johnson, S.M. 2015. Mid-Atlantic Wildlife Studies: Distribution and Abundance of Wildlife along the Eastern Seaboard 2012-2014. Biodiversity Research Institute. Portland, Maine. Science Communications Series BRI 2015-19.; “Roseate Tern Fact Sheet.” New York State Department of Environmental Conservation. Accessed July 24, 2018, <https://www.dec.ny.gov/animals/7084.html>.; New Jersey Field Office. “Rufa Red Knot (*Calidris canutus rufa*).” U.S. Fish and Wildlife Service. Accessed July 25, 2018, <https://www.fws.gov/northeast/njfieldoffice/endangered/redknot.html>.



scale and scope of the WEAs already approved by the Bureau. First, these new areas cannot be adequately assessed under NEPA without a thorough understanding of the baseline conditions of and cumulative impacts on the NY/NJ Bight from the development of the 400,000 acres of existing WEAs. A thorough environmental assessment must include impacts to living marine resources, particularly endangered species, marine mammals, and the NY/NJ Bight's ecosystems. Second, these new areas propose a near complete occupation of the waters off the Jersey Shore which are home to some of the world's most sustainable fisheries and must remain so, which must be fully captured in any NEPA review before BOEM can make any decisions regarding any use of these WEAs. Lastly, as the home for the most current offshore wind leases along the Eastern Seaboard, there must be a full assessment of the impacts to New York and New Jersey's communities, living marine resources, and ecosystems from Cape May to Montauk.

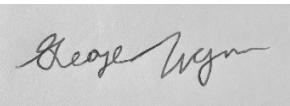
Respectfully submitted,



Cindy Zipf  
Executive Director  
Clean Ocean Action



Kari Martin  
Advocacy Campaign Manager  
Clean Ocean Action



Connor Fagan  
Legal Policy Advocate  
Clean Ocean Action

Open letter