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January 9, 2023

US President Joe Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Biden:

Clean Ocean Action, (COA), supported by the undersigned groups, is responding to an urgent, timely and grave concern – the unprecedented number of dead, predominately juvenile, whales washing-up in the last 33 days on the New Jersey/New York coastline. The status of these whale species are all protected or endangered.

We are deeply troubled by the heretofore lack of comprehensive public response from federal agencies responsible for their protection, which is required by law under the Endangered Species Act, among others. Many of the beached whales have since been disposed of and further investigations may be impossible, which may allow the cause of death to prove difficult to determine.

We write to you today to demand:

1. An immediate investigation into the marine mammal mortalities from Cape May, NJ, to Montauk Point, NY, and/or beyond, be conducted by qualified scientists including those of the National Marine Fisheries Service (NMFS), but most importantly overseen by a truly independent team of marine mammal scientists who are experts in marine mammal physiology, biology, and behavior. Independent international experts should also be consulted. The investigation must be fully transparent to the public, including investigation status, the activities of the investigation, and the reports.

2. A halt to all current lessees' offshore wind energy development activity within the Atlantic Ocean from Cape May, NJ, to Montauk Point, NY, including assessment, characterization, and construction related activities until an assessment. The cessation should remain in place until an assessment, including of the required monitoring activities, of the cause of these marine mammal deaths is determined. If offshore wind energy activities are deemed a cause, the moratorium should continue until stringent protection measures are established.

3. A full-stop on any new, pending, and planned offshore wind permitting, leasing activities, solicitations, power purchase agreements, consistency reviews, and other offshore wind development activities within the Atlantic Ocean from Cape May, NJ, to Montauk Point, NY, until an assessment of the cause of these marine mammal deaths is determined and publicly agreed upon measures can be enacted.

Six whales washing-up on the New Jersey/New York coastline in just over a month is unprecedented. As concerning, none of the whales exhibited obvious causes of death such as ship strikes, entanglements, or predator attacks. With one major exception, no clear differences can explain or suggest this alarming number of deaths in the region. The exception is the ongoing geological seafloor-mapping and surveying and other pre-construction and construction actions by numerous offshore wind energy developers.

The six dead protected or endangered whales that washed-up on NY/NJ beaches include:

- 12/5/2022, Keansburg, NJ: Infant sperm whale, 12-feet long[1]
- 12/6/2022, Indian Well beach, Amagansett, NY: Adult humpback female, 31-feet long[2]
- 12/10/2022, Strathmere Beach, NJ: Juvenile humpback whale, 30-feet long[3]
- 12/12/2022, Rockaway beach, NY: female sperm whale, 30-feet long[4]
- 12/23/2022, Atlantic City, NJ: humpback whale, near juvenile, 30-feet long[5]
- 1/7/2023, Georgia Avenue beach, Atlantic City, NJ, humpback whale, 30-feet long.[6]

In addition, a dead dolphin, likely short-beaked, washed ashore on January 2, 2023, at Gateway National Recreation Area, Sandy Hook, NJ's Plum Island beach. It is important to note that these are only the animals that we are aware of; many others may have died at sea, the deaths of which will not be witnessed or become known. These deaths warrant an immediate and thorough investigation, especially with increased and proposed geotechnical survey activities, as well as construction activities for offshore wind energy, in this region.

Currently, there are **eleven** active and **five** pending Incidental Take Authorizations (ITAs) and Incidental Take Regulations (ITR) by the National Marine Fisheries Service (NMFS) *just* for offshore wind energy development activities off the New York and New Jersey coast. Through the IHAs and ITRs authorization process, numerous companies have requested permission to harm tens of thousands of marine mammals, including threatened, endangered, and otherwise protected species:

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[1] Asbury Park Press. "Infant 12-foot sperm whale washes up dead on Keansburg beach," by Dan Radel, December 5, 2022. https://www.app.com/story/news/local/animals/2022/12/05/keansburg-nj-infant-sperm-whale-washes-up-dead-beach/69703142007/

[2] The East Hampton Star. "Dead Whale in Amagansett Had No Signs of Trauma," by Christopher Gangemi, December 12, 2022. https://www.easthamptonstar.com/villages/20221212/dead-whale-amagansett-had-no-signs-trauma

[3] NJ.com. "Dead 30-foot humpback whale washes up on Jersey Shore beach," by Nicholas Fernandes, December 11, 2022. https://www.nj.com/news/2022/12/dead-30-foot-humpback-whale-washes-up-on-jersey-shore-beach.html

[4] QNS. "Beached whale dies at Rockaway Beach after attempted rescue," by Julia Moro, December 13, 2022. https://qns.com/2022/12/beached-whale-dies-at-rockaway-beach-after-attempted-rescue/

[5] Galloway Patch. "30-Foot Dead Whale Washes Ashore in Atlantic City," by Veronica Flesher, December 23, 2022. https://patch.com/new-jersey/galloway/30-foot-dead-whale-washes-ashore-atlantic-city

[6] Channel 6 ABC. "Another dead whale washes up on Jersey Shore beach," by Beccah Hendrickson, January 8, 2023. https://6abc.com/humpback-whale-atlantic-city-beach-necropsy-marine-mammal-stranding-center/12676001/

- 11 active IHA and ITR authorizations total over **63,820** marine mammals "takes" by Level A and B harassment;
- 5 current pending IHA and ITR authorizations propose to harm **93,508** marine mammals by Level A and Level B harassment;
- 18 previously issued and expired IHA and ITR authorizations allowed the additional harassment of thousands of marine mammals.

Based on just the applications Clean Ocean Action reviewed, offshore wind project developers have applied and been approved for the right to Harm, Harass, Injure and/or Kill up to **157,328 marine mammals** for current and pending marine mammal harassment authorizations off the New Jersey and New York coast.

Clean Ocean Action and many other organizations have submitted comments to NMFS on these numerous and extensive IHAs and ITRs for the construction of offshore wind projects as well as for geotechnical survey borings (e.g., drilling), including survey borings or excavations, for the purpose of obtaining information on subsurface ocean floor conditions and for obtaining seismic information. The geotechnical survey boats use sea-floor characterization through high-level focused pulses of low-frequency sound through vast areas of the ocean floor in the same frequency that whales hear and communicate. Use of sonar at higher levels has been known to have harmful impacts on whales including deafening which can lead to starvation and death. Also, there are additional activities going on that can be harmful to marine life.

The active, pending, or expired IHA and ITR authorizations noted above and in the attachment to this letter are *only* those associated with offshore wind activities and *only* off the NY/NJ coast. There are many other IHA and ITR authorizations for offshore wind energy development issued, pending, or expired to the north and south affecting the same species. Considering, reviewing, and evaluating these total harassments in a cumulative manner is essential, as the total numbers are significant, and NMFS also authorizes marine mammal "takes" for other activities as well.

In past comments to NMFS, COA requested all IHAs and ITRs be denied until baseline studies were complete, and a pilot project could be conducted with careful scrutiny to determine potential impacts to marine mammals, especially to protected, threatened, and endangered species. Instead, federal agencies, including NOAA Fisheries, has expedited the process for this massive offshore industrial development.

The IHAs and ITRs require monitoring and protection of *ALL* mammal species, and with particular focus on those that are threatened or endangered. We call for an investigation and upon NMFS to release all data being collected on the many IHAs and ITRs currently and previously issued. The investigation should include, but not be limited to:

- All data collected by the survey boats for all offshore wind power plant projects within the New Jersey/New York region including IHA reporting requirements and numbers and types of geophysical surveys and activities;
- Protected and anonymous interviews with all Protect Species Observers (PSO) serving during the expeditions, with reports and information made available to the public;
- Proximity, number of ships, and ships' logs;
- Number of and species observed and identified during the monitoring and activities;

- Location and pathways of geotechnical and seismic activity, levels of intensity, and duration.

Given the overwhelming scope, scale, and magnitude of the offshore wind power plants, and the fast-tracking by state and federal officials, this investigation must include independent oversight. We note specifically there are currently eleven (11) Memorandum of Understandings ("MOUs"), Memorandum of Agreements ("MOAs"), or "Programmatic Agreements" concerning offshore wind or renewable energy development which are in force between the Bureau of Ocean Energy Management (BOEM) and various agencies, foreign governments, companies, and consultants. Of these eleven (11), four (4) aim to fast-track and advance offshore wind energy in the New York/New Jersey Bight and beyond.

The most recent Memorandum is the product of political ambitions to "advance" offshore wind and essentially cuts-out opportunities for public comment from the federal offshore wind energy authorization process. Likewise, these agreements are causing confusion among the public and deprive the public of due process—namely, timely and transparent review of private interests' impacts to public resources. To this end, BOEM and other implicated federal agencies must disclose how applicable MOUs, MOAs, and Programmatic Agreements are being interpreted and implemented.

Further, the federal fast-tracking initiative "Fast 41" has created a new governance structure, set of procedures, and funding authorities to advance the federal environmental review and authorization process for covered infrastructure projects. All of the current proposed offshore wind projects off the NJ coast are listed in the federal "FAST-41" program and have been given the green light for advancement.

These federal agreements and initiatives designed to fast-track and streamline large projects, essentially make it easier for private companies to control and develop our public resource: the ocean. In short, these agreements and initiatives violate the federal government's obligation to protect offshore resources under the public trust, especially in the form of limiting due process.

Racing quickly and carelessly through these processes will prove devastating to marine life, with serious repercussions for onshore communities as well. Scientists are also concerned that there is a lack of information about the cumulative impacts of all the industrialization from offshore wind energy development on the very resources our government is charged with protecting, including your own federal experts charged with protecting marine mammals. As you may know, Sean Hayes, PhD, NOAA's Chief of Protected Species, recently alerted BOEM's Lead Biologist in a letter dated May 13th, 2022, that "The development of offshore wind poses risks to these [protected] species" and that "these risks occur at varying stages including construction and development and include ***increased noise, vessel traffic, habitat modifications***" *(emphasis added).*[7] Moreover, a recent Rutgers University Work Group report summarizing the findings from scientific experts convened by the State of New Jersey to evaluate the state of the science on offshore wind concluded, "The pace of offshore wind development is faster than the pace of

[7] Letter from Sean A. Hayes, PhD, Chief of Protected Species, NOAA NEFSC, to Brian R. Hooker, Lead Biologist Bureau of Ocean Energy Management, Office of Renewable Energy Programs, dated May 13, 2022.

fisheries science."[8] We trust you would agree that statements like these among the nation's top scientists should provide ample reason to support the actions called for in the letter.

Never in human history has such a fast-paced industrialization of an ocean ecosystem taken place. The cumulative effect of the many offshore wind energy projects will devastate ocean habitat and harm multitudes of marine life. Currently, there are 25 offshore wind projects underway in the NY/NJ region with more sought by the New Jersey Board of Public Utilities in its third, and largest, solicitation for offshore wind energy.

With this increase of activities related to offshore wind development, including activities that produce noise that impact marine mammals, NMFS must strictly follow its mission to protect marine life by launching an immediate, comprehensive, and independent investigation into the recent marine mammal deaths in the NY/NJ coastal region, and BOEM must acknowledge and accept this pause on behalf of our coastal marine life.

We look forward to your response. Please contact Cindy Zipf (732-872-0111 or zipf@CleanOceanAction.org) or Kari Martin (732-872-0111 or kmartin@CleanOceanAction.org).

Respectfully,

Cindy Zipf
Executive Director
Clean Ocean Action

Kari Martin
Advocacy Campaign Manager
Clean Ocean Action

Supported by:
Suzanne Hornick, Protect Our Coast NJ
Bob Stern, President, Save LBI
Bonnie Brady, Executive Director, Long Island Commercial Fishing Association
Lisa Daidone, President, Defend Brigantine Beach
More groups to follow

Attachment (1): Marine Mammal Harassment Authorizations for Offshore Wind Development off the NY/NJ Coast*

cc: New Jersey and New York Congressional Delegations
Richard W. Spinrad, Ph. D, NOAA Administrator

[8] Final Report Partners in Science Workshop: Identifying Ecological Metrics and Sampling Strategies for Baseline Monitoring During Offshore Wind Development Authors: Joseph Brodie, Ph.D. (RUCOOL) Josh Kohut, Ph.D. (RUCOOL) Douglas Zemeckis, Ph.D. (NJAES), September 8, 2021. https://rucool.marine.rutgers.edu/wp-content/uploads/2021/09/2021-Partners-Workshop-Report-FINAL.pdf

Sean A. Hayes, PhD, Chief, NOAA NEFSC
Amanda Lefton, Director, BOEM
Governor Phil Murphy, New Jersey
Governor Kathy Hochul, New York
Commissioner Shawn LaTourette, NJ Department of Environmental Protection
Commissioner Basil Seggos, NY State Department of Environmental Conservation
Joseph L. Fiordaliso, President, NJ Board of Public Utilities
Richard Kauffman, Chair, New York State Energy Research and Development Authority

FACTSHEET: Marine Mammal Harassment Authorizations for Offshore Wind Development off the NY/NJ Coast*

Currently, there are **eleven** active and **five** pending Incidental Take Authorizations (ITAs) and Incidental Take Regulations (ITR) by the National Marine Fisheries Service (NMFS) *just* for offshore wind energy development activities off the New York and New Jersey coast. Through the IHAs and ITRs authorization process, numerous companies have requested permission to harass, harm, injure, and/or kill tens of thousands of marine mammals, including threatened, endangered, and otherwise protected species. In total, there are over **157,328** marine mammals that offshore wind companies have been given the green light to harm, harass, injure and kill for current and pending offshore wind projects off the New Jersey and New York coast. The tables below outline the current, pending, and expired marine mammal harassment authorizations and requests in this ocean region.

Table 1. Active Incidental Harassment Authorizations (IHA) and Incidental Take Regulations (ITR) for offshore wind projects in the NY/NJ region:

Company	*Purpose*	*Issue Date*	*Effective Dates*	*Total Marine Mammals*		*Total Marine Mammal Species*	*Total North Atlantic Right Whales*
				Level A	*Level B*		
Ørsted Wind Power North America, LLC	Marine Site Characterizations Surveys, New York to Massachusetts	10/6/2022	10/6/2022 - 10/5/2023		7,086	16	17 (Level B)
Vineyard Northeast, LLC	Marine Site Characterizations Surveys, Massachusetts to New Jersey	7/27/2022	7/27/2022 - 7/26/2023		19,934	19	40 (Level B)
Attentive Energy, LLC	Marine Site Characterization Surveys, New Jersey and New York	8/16/2022	9/15/2022 - 9/14/2023		388	15	3 (Level B)
Atlantic Shores Offshore Wind Bight, LLC	Marine Site Characterization Surveys, New Jersey and New York	8/10/2022	8/10/2022 - 8/9/2023		2,345	15	24 (Level B)
Park City Wind, LLC	Marine Site Characterization Surveys for the New England Wind Project, Phase 1, off	7/19/2022	9/1/2022 - 8/31/2023		13,974	16	30 (Level B)

	Massachusetts to New York						
NextEra Energy Transmission Mid-Atlantic Holdings, LLC	Marine Site Characterization Surveys off New Jersey	6/29/2022	7/1/2022 - 6/30/2023		1,149	15	8 (Level B)
Ocean Wind II, LLC	Marine Site Characterization Surveys off New Jersey	5/9/2022	5/10/2022 - 5/9/2023		2,539	16	11 (Level B)
Ørsted Wind Power North America, LLC	Marine Site Characterization Surveys off Delaware	5/6/2022	5/10/2022 - 5/9/2023		3,375	15	11 (Level B)
Ocean Wind, LLC	Renewal of Marine Site Characterization Surveys off New Jersey	5/9/2022	5/10/2022 - 5/9/2023		1,965	16	9 (Level B)
Atlantic Shores Offshore Wind, LLC	Marine Site Characterization Surveys off New Jersey and New York	4/18/2022	4/20/2022 - 4/19/2023		3,456	15	17 (Level B)
South Fork Wind, LLC	Construction of the South Fork Offshore Wind Project off Rhode Island and Massachusetts (near NY)	12/21/2021	11/15/2022-11/14/2023	7	7,602	15	1 (Level A) 11 (Level B)
			SUB TOTALS:	***7***	***63,813***		***1 (Level A) 181 (Level B)***
Total Marine Mammals in Active Authorizations: 63,820							

Table 2. <u>Pending</u> Incidental Harassment Authorizations (IHA) and Incidental Take Regulations (ITR) for offshore wind projects in the NY/NJ region:

Company	***Purpose***	***Total Marine Mammals***		***Total Species of Marine Mammals***	***Total North Atlantic Right Whales***
		Level A	***Level B***		
TerraSond	Limited Marine Site Characterization Surveys in the New York Bight and Central Atlantic Call Area	0	19,759	19	15 (Level B)
Ocean Wind, LLC	Construction of the Ocean Wind 1 Wind Energy Facility off New Jersey (ITR)	206	13,173	17	14 (Level B)
Atlantic Shores Offshore Wind, LLC	Construction of the Atlantic Shores Offshore Wind Energy Projects	92	15,372	17	33 (Level B)
Empire Offshore Wind, LLC	Construction of the Empire Wind Project (EW1 and EW2) off New York	5	10,428	16	0 (Level B)
Sunrise Wind, LLC	Construction and Operation of the Sunrise Wind Offshore Wind Farm off New York	29	34,444	16	70 (Level B)
	SUBTOTALS:	***332***	***93,176***		***132 (Level B)***
TOTAL Marine Mammals in Pending Authorizations: 93,508					

Previously issued and expired Incidental Harassment Authorizations (IHA) and Incidental Take Regulations (ITR) for offshore wind projects in the NY/NJ region:

1. Ørsted Wind Power North America, LLC Renewal of Site Characterization Survey off New York to Massachusetts, effective 3/3/2022 - 9/24/2022
2. Vineyard Wind, LLC Marine Site Characterization Surveys off Massachusetts, Rhode Island, Connecticut, and New York, effective 7/15/2021 - 6/20/2022
3. Garden State Offshore Energy, LLC Marine Site Characterization Surveys off Delaware and New Jersey, effective 6/11/2021 - 6/10/2022
4. Ocean Wind, LLC Marine Site Characterization Surveys off New Jersey, effective 5/10/2021 - 5/9/2022
5. Atlantic Shores Offshore Wind, LLC Renewal of Marine Site Characterization Surveys off New Jersey and New York, effective 4/20/2021- 4/19/2022
6. Skipjack Offshore Energy, LLC Marine Site Characterization Surveys off Delaware, effective 4/5/2021- 4/4/2022
7. Ørsted Wind Power North America Site Characterization off Massachusetts to New York, 9/25/2020 - 9/24/2021
8. Equinor Wind, LLC Site Characterization off Massachusetts, Rhode Island, Connecticut, New York, New Jersey, effective 9/20/2020 - 9/19/2021
9. Vineyard Wind, LLC Reissuance of Marine Site Characterization Surveys off Massachusetts, Rhode Island, Connecticut, and New York, effective 6/21/2020 - 6/20/2021
10. Atlantic Shores Offshore Wind, LLC Marine Site Characterization Surveys off New Jersey and New York, effective 4/20/2020 - 4/19/2021
11. Vineyard Wind, LLC Marine Site Characterization Surveys off Massachusetts, Rhode Island, Connecticut, and New York, effective 6/1/2020- 5/31/2021
12. Skipjack Offshore Energy, LLC Marine Site Characterization Surveys off Delaware and Maryland, effective 11/25/2019- 11/24/2020
13. Ørsted Wind Power LLC Site Characterization Surveys for Renewable Energy off the Coast of New England in the Areas of OCS-A 0486, OCS-A 0487, and OCS-A 0500, effective 9/26/2019 - 9/25/2020
14. Equinor Wind US LLC Renewal of Wind Site Characterization Surveys off New York, effective 4/25/2019 - 4/24/2020
15. Garden State Offshore Energy, LLC Geophysical Survey for Skipjack Wind off Delaware, effective 5/15/2018- 5/14/2019
16. Statoil Wind U.S. LLC, Wind Site Characterization Surveys off New York, effective 4/24/2018- 4/23/2019
17. Deepwater Wind, LLC Marine Site Characterization Surveys, off New York, effective 6/16/2017 - 6/15/2018
18. Ocean Wind, LLC, Marine Site Characterization Surveys, off New Jersey, 6/8/2017- 6/7/2018