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Killing sea life for wind companies

1 message

jimimac1@comcast.net <jimimac1@comcast.net>
To: ITP.clevestine@noaa.gov

Mon, May 15, 2023 at 8:09 AM

I am completely against killing and harming all sea life in the name of green energy and wind turbines . Digging up our precious ocean to place turbines is horrific and will destroy one of our earths best assets . DONOT ALLOW THOSE FOREIGN COMPANIES TO KILL ANYMORE WHALES AND DOLPHINS . We need whales for OUR SURVIVAL.

Penelope Campbell
Stirling NJ 07980
55luckypennies@gmail.com

Sent from my iPhone



itp Clevensline - NOAA Service Account <itp.clevensline@noaa.gov>

Killing sea life

1 message

jimimac1@comcast.net <jimimac1@comcast.net>
To: ITP.clevensline@noaa.gov

Mon, May 15, 2023 at 8:13 AM

I am against allowing the killing of whales and other sea life for wind turbines. Do not allow forget or American companies to destroy our ocean and the sea life that lives in it . Once our ocean is industrialized and sea life killed we will suffer terrible consequences.

Penelope Campbell
Stirling NJ
07980
55luckypennies@gmail.com
Sent from my iPhone



itp Clevensline - NOAA Service Account <itp.clevensline@noaa.gov>

COA's Comments RE: Community Offshore Wind IHA Docket No. RTID 0648-XC817

1 message

Kari Martin (Clean Ocean Action) <KMartin@cleanoceanaction.org>
To: "ITP.clevensline@noaa.gov" <ITP.clevensline@noaa.gov>

Mon, May 22, 2023 at 10:09 PM

Please find attached Clean Ocean Action's comments regarding the request for an Incidental Take Authorization: Community Offshore Wind, LLC Marine Site Characterization Surveys off New Jersey and New York, Docket No. RTID 0648-XC817.

Sincerely,

Kari Martin

Advocacy Campaign Manager

Clean Ocean Action

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Since 1984*

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May 22, 2023

Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

RE: Incidental Take Authorization: Community Offshore Wind, LLC Marine Site Characterization Surveys off New Jersey and New York, Docket No. RTID 0648-XC817

Dear Chief Harrison:

Clean Ocean Action (“COA”) is 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 water quality of the marine waters off the New Jersey/New York coast. COA submits the following comments to the National Oceanic and Atmospheric Administration’s (“NOAA”) National Marine Fisheries Service (“NMFS”) in opposition to the request for an Incidental Harassment Authorization (“IHA”) from Community Offshore Wind, LLC (henceforth, the “Applicants”) for marine site characterization surveys for the development of offshore wind (“OSW”) energy power plants off the coast of New Jersey and New York.¹

The IHA request, if approved, would authorize the “takes” of marine mammals by “Level B harassment” over the course of one year. According to the Public Notice, “Underwater sound resulting from [Community Offshore Wind’s] marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.”²

From the outset, it is shocking that the NMFS is moving aggressively forward reviewing and issuing IHAs, as well as Incidental Take Regulations (“ITR”) and associated Letter of Authorizations (“LOA”), with little to no baseline assessment of marine mammal studies in the region. Indeed, the New Jersey Department of Environmental Protection (NJDEP) has just recently authorized a marine mammal monitoring plan for whales. The absence of baseline data will result in the absence of good science. Indeed, NMFS agency officials are also frustrated: “‘We’re building this ship as we’re sailing it,’ NMFS scientist Andrew Lipsky said last October at

¹ Federal Register Notice, [“Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight”](#) for Community Offshore Wind, Published 4/21/2023.

² See *id.*

a conference on wind power. ‘When we don’t think through the science, we often get ourselves in trouble.’ ”³

This IHA request, if approved, would allow the Applicants to “take” or “harass” **14,193 marine mammals** by “Level B Harassment” during the pre-construction activities for an offshore wind power plant. According to the Federal Register Notice, the marine mammals included in the proposed take amounts are of **15 different species** and include the following endangered species:

- North Atlantic right whale: 24
- Fin whale: 76
- Sei whale: 24
- Sperm whale: 10.⁴

Per the Marine Mammal Protection Act (“MMPA”), other federally protected whales in the Applicant’s proposed take amounts by Level B harassment include:

- Humpback whales: 46
- Minke whales: 304
- Common bottlenose dolphins (offshore and coastal): 1,431
- Atlantic white-sided dolphins: 427
- Common dolphins: 5,572
- Harbor porpoise: 1,912
- Gray and Harbor seals: 3,910, and
- other protected dolphins and porpoise species.⁵

COA notes that this application to “take” marine mammals is in addition to the **14 current “active” take authorizations (IHAs and ITRs)** to harass marine mammals for preconstruction and construction activities for offshore wind power plants on the East Coast.⁶ Collectively, these take authorizations are already allowing the harassment of hundreds of thousands of marine mammals. In addition, there are **14 “in process”** authorizations to harass hundreds of thousands of marine mammals on the East Coast for preconstruction and construction activities, many of which have open public comment periods.

Indeed, it appears there are no limits by BOEM for the allowance of incidental take impacts from the current application as well as for the full scope of pending OSW proposals as provided by the NMFS:

By 2030 the Northeast large marine ecosystem will be occupied by over 2.4 million acres of leases, 3,400 turbines, and 10,000 miles of submarine cables;

³ Sennott, Will and Anastasia Lennon. “Blown Away: Fishermen Endangered by Offshore Wind’s Political Power.” The New Bedford Light, April 18, 2023, <https://www.propublica.org/article/fishermen-endangered-offshore-wind-political-power>.

⁴ Federal Register Notice, [“Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight”](#) for Community Offshore Wind, Published 4/21/2023.

⁵ See *id.*

⁶ National Oceanic & Atmospheric Administration, “Incidental Take Authorizations for Other Energy Activities (Renewable/LNG), as seen 5/22/2023, <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

*and an additional 5.7 million acres is also under consideration for further development.*⁷

It is impossible for marine mammals to adapt to such massive industrial scope and scale of offshore wind development with each project at minimum causing the excessive impacts described by just one Applicant's project. The activities described in the Applicant's IHA request have been documented to result in species harassment, hence the need for incidental take authorizations.

The mission of the NOAA NMFS Office of Protected Species is "responsible for the protection, conservation, and recovery of more than 160 endangered and threatened marine and anadromous species under the Endangered Species Act. The goal of the ESA is to conserve these species and the ecosystems they depend on."⁸ The government is obligated to provide assessments of the potential and real marine ecosystem impacts, and then stipulate policies and regulations to avoid and reduce negative impacts and ensure appropriate and meaningful mitigation of the unavoidable impacts. This also requires, at minimum, a fair, comprehensive, and independently peer-reviewed pilot project for this unproven, large-scale industry in US waters. Indeed, this also requires sound science supported by robust baseline ecological assessments and independent and peer-reviewed studies which are currently planned, only just begun, or underway and incomplete.

Instead, the government is fast-tracking projects, including the Applicant's project. There are numerous Memorandums of Understanding and Memorandums of Agreement between federal agencies to streamline approval of OSW projects. In fact, in early May 2023, the Biden Administration announced a new Memorandum of Understanding.⁹ Further, there are several OSW projects in the NY/NJ region designated federal as "Fast-41 projects." However, fast-tracking projects is not protective of marine species. The government's fast-tracking of OSW projects is inconsistent with good governance of public resources, the precautionary principle, and most importantly, laws including the Endangered Species Act ("ESA"). From the outset:

Section 7(a)(2) of the ESA requires BOEM, in consultation with NOAA Fisheries, to ensure that any action the agencies authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of designated critical habitat; this coordination is accomplished through ESA section 7 consultations. BOEM and

⁷ Andy Lipsky, NOAA Fisheries. "Fisheries, Wildlife, and Ecosystem Science in a New Era of Offshore Wind Energy Development." NOAA Ecosystem Based Management and Ecosystem Based-Fisheries Management Seminar Series, March 9, 2022, <https://www.youtube.com/watch?v=Dh7yBEDHzL8>.

⁸ National Oceanic & Atmospheric Administration, "About Us: Office of Protected Resources," as seen on 12/9/2022, <https://www.fisheries.noaa.gov/about/office-protected-resources>

⁹ The White House, "FACT SHEET: Biden-Harris Administration Outlines Priorities for Building America's Energy Infrastructure Faster, Safer, and Cleaner," May 10, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/10/fact-sheet-biden-harris-administration-outlines-priorities-for-building-americas-energy-infrastructure-faster-safer-and-cleaner/>

NOAA Fisheries are required by the ESA to use the best scientific and commercial data available when carrying out these consultations.¹⁰

It is important to note here that there are ***no*** permitting rules for marine site characterization surveying activities. COA finds it shocking and unconscionable that there are no permitting requirements for geological and geophysical surveys under the Bureau of Ocean Energy Management (“BOEM”). The recent BOEM Modernization Rule proposal states:

Although BOEM requires a lessee to submit the results of certain surveys to BOEM in order to obtain approval of its COP, those regulations do not require BOEM's approval of a permit for such surveys. Instead, BOEM has provided guidance on conducting such surveys and also includes terms and conditions in renewable energy leases that require lessees to submit survey plans to BOEM for review in advance of their survey activities. BOEM's review of the plans, while not an approval process, does provide BOEM an opportunity to communicate with lessees to ensure the lessees' survey results will meet BOEM's information needs and to ensure certain environmental conditions are met in conducting the surveys.¹¹

Given this, it raises more questions about how it was possible that BOEM asserts without question that there is absolutely “no evidence” that offshore wind activities have any connection to the unprecedented number of dead whales that continued to wash-up on beaches in the NY/NJ region since December 2022. It is now clear there are no regulations; there are no “rules of the road” regarding survey work. Without such regulations, how can BOEM possibly make such a claim? Is the only requirement for survey vessels currently under the Marine Mammal Protection Act (“MMPA”) requiring IHA authorizations, which are limited in scope? In the Proposed Modernization Rule, BOEM admits not having the regulatory authority to govern surveys: “BOEM's existing renewable energy regulations do not expressly govern survey activities.”¹²

Further, regarding impacts to marine life from offshore wind development, NOAA Fisheries assumes the success of mitigation measures for impacts from offshore wind development. Before mitigation is considered, avoidance and minimization are required. However, without baseline studies and a pilot project to determine impacts, how can mitigation measures be established? This massive cumulative impact of multiple projects by a nascent US industry has not been assessed, and as described above has no precedence or permitting system. What is this mitigation strategy based on? What if mitigation measures fail? Since there is no transparent, consistent publicly available real-time assessment and reporting activities, how will NMFS even know? How are you judging if mitigation measures are enough to prevent harassment to marine

¹⁰ NOAA Fisheries, “Section 7: Types of Endangered Species Act Consultations in the Greater Atlantic Region,” as seen 4/30/2023, <https://www.fisheries.noaa.gov/insight/section-7-types-endangered-species-act-consultations-greater-atlantic-region>.

¹¹ Federal Register, “Renewable Energy Modernization Rule,” Bureau of Ocean Energy Management, Publication Date: 1/30/2023, <https://www.federalregister.gov/documents/2023/01/30/2023-00668/renewable-energy-modernization-rule>.

¹² See *id.*

mammals during the survey work? What are the ecological guardrails? How and when would it be determined that additional harassment is occurring, and work must stop?

In sum, COA requests that NMFS deny this IHA request because:

1. there are no permitting requirements for geological and geophysical surveys under the Bureau of Ocean Energy Management (“BOEM”).
2. it is an incomplete evaluation due to the lack of new information and new protection strategies under development by federal agencies, particularly for the critically endangered North Atlantic right whale (“NARW”).
3. it would allow thousands of Level B takes of endangered, threatened, and/or protected marine mammal species, including the NARW, which will have significant and more than “negligible” impacts on a species on the precipice of extinction.
4. it will unacceptably add impacts to the already detrimental cumulative impacts of the numerous take authorizations and requests from the Applicant’s previous activities and projects in the region, as well as those requests and authorizations for other offshore wind industry companies’ previous, current, and forthcoming take authorizations for preconstruction, construction, operation, and decommissioning of OSW facilities,
5. it raises other issues of importance, including lack of fairness, transparency, and accountability; and
6. it fails to address the cumulative impacts and effects of previous and concurrent preconstruction surveys and construction activities in the region.
7. an independent assessment is needed to determine if the unprecedented geotechnical and geophysical activities may be linked to the spike of whale and dolphin strandings in the region of the offshore wind project.

It is unacceptable and harmful to marine resources, to be moving forward with incidental take authorizations at the current scope and scale of OSW energy development without sound science, transparency, due diligence, and meaningful public engagement. Clean Ocean Action urges NMFS to reject the Applicant’s IHA request for the construction of an offshore wind power plant for the reasons outlined below in these comments.

I. Deny and Rescind the IHA request, as well as other “in process” take authorization requests, due to the: A.) Five-Year Strategy to protect NARW under development, B.) Lack of basic research about impacts to large whales, C.) Unprecedented number of whale deaths occurring in a short period of time along the NJ/NY coast starting in December 2022.

A. Five-Year Strategy to Protect NARW is Under Development

The Bureau of Ocean Energy Management (“BOEM”) and NOAA Fisheries’ “Draft North Atlantic Right Whale and Offshore Wind Strategy” (hereafter “Draft Strategy”) was proposed for public review but has not yet been finalized. This five-year protection plan for the North Atlantic right whale (“NARW”), while flawed and incomplete, is currently under development and stipulates the dire status of the NARW and need for additional protection. To ensure the best chance of survival, incidental take authorizations for the Applicant must be halted until the

strategy is complete and measures to avoid, minimize or eliminate harm are determined so they can be applied to these projects.

The NARW is one of the most critically endangered species. Based on the population status, the outlook for the survival of the NARW is grim, especially with new threats, including offshore wind energy development. The NMFS' last five-year review of the NARW, published in 2017, notes that the species' population grew from 270 to 483 whales between 1990 and 2010; but the number of individuals remaining declined to 440-458 by 2017.¹³ The 2017 five-year review further notes that NMFS declared an unusual mortality event ("UME") under the Marine Mammal Protection Act ("MMPA") in August 2017 after 15 known NARW deaths occurred within a four-month span. The NARW population has continued to decline. In October 2021, the North Atlantic Right Whale Consortium announced that just 336 individual NARWs remain.¹⁴ The Draft Strategy affirms this dire status in Section 2.3 where it states:

"The potential biological removal (PBR) level for the species, defined as the maximum number of animals that can be removed annually while allowing the stock to reach or maintain its optimal sustainable population level, is less than 1 (Hayes et al. 2022)." ¹⁵ (Emphasis added)

To be clear, ***not one*** of the remaining NARW can be lost, an unambiguous and stern statement. It goes on to state: "The species has low genetic diversity, as would be expected based on its low abundance, and the species' resilience to future perturbations is expected to be very low (Hayes et al. 2018)." ¹⁶ This information suggests that harassment can have population impacts and must be avoided or significantly reduced to protect the NARW population. It is possible that construction "perturbations" would likely trigger Level A & Level B Harassment impacts to the NARW. Yet, the proposed IHA does not list Level A impacts to the NARW. Based on this, for the protection of the NARW, all industrial full-scale construction for offshore wind energy should be paused until the federal agencies determine how best to eliminate or avoid all impacts, Level A or B, on the NARW.

B. Lack of Basic Research About Impacts to Large Whales

In addition, there is a lack of basic research of the impacts of OSW energy development on large whale species in U.S. waters, particularly in the mid-Atlantic region. It is reckless to move forward without the scientific baseline assessments for what harm may or could occur to whales before issuing any permits and authorizations, including IHAs, ITRs, and associated LOAs.

¹³ *North Atlantic Right Whale (Eubalaena glacialis) 5-year Review: Summary and Evaluation*, NATL. MARINE FISHERIES SERV. GREATER ATLANTIC REGIONAL FISHERIES OFFICE (2017), <https://www.fisheries.noaa.gov/resource/document/5-year-review-north-atlantic-right-whale-eubalaena-glacialis> [hereafter "2017 5-Year Review"].

¹⁴ H.M. Pettis, et al., *North Atlantic Right Whale Consortium 2021 Annual Report Card: Report to the North Atlantic Right Whale Consortium* (2022), https://www.narwc.org/uploads/1/1/6/6/116623219/2021report_cardfinal.pdf.

¹⁵ U.S. Department of Interior Bureau of Ocean Energy Management and U.S. Department of Commerce National Oceanic and Atmospheric Administration NOAA Fisheries, *Draft BOEM and NOAA Fisheries North Atlantic Right Whale and Offshore Wind Strategy*. October 2022, page 5.

¹⁶ *See id.*

1. Failure to include crucial scientific assessments and consultations

In a May 2022 letter obtained under the Freedom of Information Act by Bloomberg Law, Dr. Sean Hayes, PhD, Chief of Protected Species, NOAA NEFSC, clearly documents and confirms the NARW's fragile hold on existence. First, the Chief of Protected Species notes that there are less than 350 remaining NARW animals.¹⁷ Again, COA notes, the Draft North Atlantic Right Whale and Offshore Wind Strategy states that not one animal can be lost.

Looking later in the development phases of OSW facilities, the letter from Dr. Hayes states:

The development of offshore wind poses risks to these species, which is magnified in southern New England waters due to species abundance and distribution. These risks occur at varying stages, including construction and development, and include increased noise, vessel traffic, habitat modifications, water withdrawals associated with certain sub-stations and resultant impingement/entrainment of zooplankton, changes in fishing effort and related potential increased entanglement risk, and oceanographic changes that may disrupt the distribution, abundance, and availability of typical right whale food (e.g., Dorrell et al 2022).¹⁸

It is clear that any further disturbance of the NARW species will have an impact on this critically endangered species. Some scientists estimate that the species will go extinct within 20 years with current threats.¹⁹

2. Threats to Marine Mammal Health & Survival

The threats to marine mammals, including NARW, include:

negative impacts to whale habitat which may take the form of development, pollution, noise, overfishing, and climate change. Shipping channels, aquaculture, offshore energy development, and recreational use of marine areas may destroy whale habitat or displace whales which would normally use the area. Oil spills and other chemical pollutants are also a threat to whales and the prey which they feed on.²⁰

Specifically, about offshore wind development impacts on the marine ecosystem, NMFS says,

Scientists around the world are still investigating the potential impacts of offshore wind energy development on marine life. Site assessment, construction, and operations could interact with marine life on the seabed, in the water, and at the surface. For example, offshore wind energy projects could:

¹⁷ 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.

¹⁸ See *id.*

¹⁹ Pennisi, Elizabeth. "The North Atlantic right whale faces extinction." Science, November 7, 2017, <https://www.science.org/content/article/north-atlantic-right-whale-faces-extinction>.

²⁰ Conserve Wildlife Foundation of New Jersey, "New Jersey Endangered and Threatened Species Field Guide: North Atlantic Right Whale," as seen 12/9/2022, <http://www.conservewildlifenj.org/species/fieldguide/view/Eubalaena%20glacialis/>

- *Increase ocean noise, which could affect the behaviors of fish, whales, and other species*
- *Introduce electro-magnetic fields that impact navigation, predator detection, communication, and the ability for fish and shellfish to find mates*
- *Change existing habitats by altering local or regional hydrodynamics*
- *Create a “reef effect” where marine life cluster around the hard surfaces of wind developments*
- *Impact organism life cycle stages, including larval dispersal and spawning*
- *Change species composition, abundance, distribution, and survival rates*
- *Increase vessel traffic, which could lead to more vessel strikes*
- *Release contaminants that can be consumed or absorbed by marine life.*²¹

Offshore wind, in the current proposed scale, scope, and magnitude significantly added to the threats to marine mammals, including noise, vessel strikes, and impacts to prey. Access to food sources for large whales is essential. The importance of the waters off New Jersey as feeding grounds for all marine mammals is increasing.

The threats to marine life, including NARW, from offshore wind development activities are year-round. It is documented that North Atlantic right whales are in the region at all times of the year. Data from WhaleMap and the Mid-Atlantic Ocean Data Portal indicate an abundance of NARWs off the NJ coast throughout the year²². Further, a Right Whale Slow Zone southeast of Atlantic City was effective in December 2021²³. According to the Conserve Wildlife Foundation of New Jersey:

*Within the western North Atlantic Ocean, right whales feed during spring, summer, and fall in temperate and subpolar latitudes near eastern Canada and the northeastern U.S. During the winter, many individuals from this population can be found off the northeast coast of Florida and Georgia, their breeding and calving grounds. Some right whales, however, may remain at their northern feeding grounds during the winter.*²⁴

Other studies concur finding year-round presence of right whales in the mid-Atlantic (Whitt et al Atlantic). Right whales are present in the mid-Atlantic more often than previously believed.”²⁵

The Applicant’s activities will increase the number of vessels in the ocean in the project area, leading to an increased threat of harm by vessel strikes to marine mammals. Specifically,

²¹ National Oceanic & Atmospheric Administration, National Marine Fisheries Service, “Offshore Wind Energy: Protecting Marine Life,” <https://www.fisheries.noaa.gov/topic/offshore-wind-energy/protecting-marine-life>, as seen 5/14/2023.

²² See <https://whalemap.org>; <https://portal.midatlanticocean.org>.

²³ National Oceanic & Atmospheric Administration, Fisheries, “Extension of Right Whale Slow Zone Southeast of Atlantic City, NJ.” As seen, 11/15, 2022: <https://content.govdelivery.com/accounts/USNOAAFISHERIES/bulletins/2fef565>.

²⁴ Conserve Wildlife Foundation of New Jersey, “New Jersey Endangered and Threatened Species Field Guide: North Atlantic Right Whale,” as seen 12/9/2022, <http://www.conservewildlifenj.org/species/fieldguide/view/Eubalaena%20glacialis/>

²⁵ New York State Department of Environmental Conservation, “Species Status Assessment,” as seen 12/9/2022, https://www.dec.ny.gov/docs/wildlife_pdf/sgcnnatrightwhale.pdf.

“collisions with ships are an increasing threat to right whales...Right whales are especially slow-moving, compared to other large whales, and therefore more susceptible to being struck by ships.”²⁶ Further, the take authorizations issued by NMFS include the requirement of Protected Species Observers (“PSO”) on board vessels. However, as NOAA itself states: “Right whales can be very difficult to spot from a boat due to their dark color and lack of a dorsal fin. Poor weather and sea state or low light conditions can make spotting these whales nearly impossible.”²⁷

COA urges NMFS to specifically assess the cumulative impacts on marine mammals, particularly the NARW, from all the vessels associated with the Applicant’s project as well as other offshore wind projects proposed or underway in this region.

3. *Excessive Takes of Marine Mammals*

Under the Marine Mammal Protection Act (“MMPA”), citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region may request authorization for incidental, but not intentional, takes of “**small numbers**” (*emphasis added*) of marine mammals pursuant to that activity for a period of no more than five years.²⁸ The NMFS, which has been delegated the authority to administer the relevant legal framework, may allow takes under the MMPA only if the agency determines that the total number of authorized incidental takes during the five-year period will have a “negligible impact” on the relevant species or stock.²⁹ “Negligible impact” is, in turn, defined as an impact that is not reasonably likely or expected to “adversely affect the species or stock through effects on annual rates of recruitment or survival.”³⁰ Finally, the applicable legal framework distinguishes between “Level A” takes and “Level B” takes. In the context of offshore wind energy development and related activities, “Level B harassment” refers to “any act of pursuit, torment, or announcement which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.”³¹ “Level A” takings, on the other hand, refer to “any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.”³²

Recently, NMFS announced a disturbing “biological opinion”³³ for Ocean Wind 1, another massive OSW project proposed off New Jersey, that states the project will “likely to adversely

²⁶ Conserve Wildlife Foundation of New Jersey, “New Jersey Endangered and Threatened Species Field Guide: North Atlantic Right Whale,” as seen 12/9/2022, <http://www.conservewildlifenj.org/species/fieldguide/view/Eubalaena%20glacialis/>

²⁷ National Oceanic & Atmospheric Administration, National Marine Fisheries Service, “Reducing Vessel Strikes to North Atlantic Right Whales,” <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales> as seen on 5/15/2023.

²⁸ 16 U.S.C. § 1371(a)(5)(A)(i).

²⁹ *Id.* § 1371(a)(5)(A)(i)(I).

³⁰ 50 C.F.R. § 18.27(c).

³¹ 16 U.S.C. § 1362(18).

³² *Id.*

³³ National Oceanic & Atmospheric Administration, National Marine Fisheries Service, “NOAA Issuing Biological

affect, but is not likely to jeopardize, the continued existence of any species of ESA-listed whales, sea turtles, or Atlantic sturgeon or destroy or adversely modify any designated critical habitat.” This federal does not exude confidence in the protection of marine life; in fact, it is alarming. This biological assessment and opinion are just for *one* of the many OSW projects – Ocean Wind 1. Cumulatively, with all the issued and pending take authorizations for the 30 projects in the Northeast, how many issued takes will cause impacts on species populations? What are thresholds for action should those cumulative takes cause harm? What are the response plans for impacts to marine mammals should populations decline or be impacted?

a) *COA rejects the numbers proposed in the application as “Small”*

The number of takes in this Draft IHA for the Applicant is **14,193 marine mammals**. These take numbers are not “small;” however, of greater concern is the cumulative impacts of all the projects concurrently under siting and characterization, construction, and operation, and later, decommissioning. The take numbers are outrageous and fail to meet the legal requirements for mammal protection, much less for endangered species.

North Atlantic Right Whales

The harm that offshore wind energy development may inflict upon NARWs throughout site assessment, construction, and operation, is widely recognized.³⁴ Offshore wind projects will significantly exacerbate the existing threats posed to NARWs by ship collisions and entanglements. With such low population numbers, and, as noted earlier, based on the recommendation by a federal scientist that not one NARW can be lost, cumulative impacts must be considered for NARWs and other endangered species.

Moreover, the impacts of activities that may be authorized in this IHA request will compound those that already occurred under the terms of the Applicant’s previous IHA for site characterization and assessment. Moreover, the aforementioned sum must be considered alongside other takes of marine mammal species, including the critically endangered NARWs, that NMFS has authorized for other wind activities along the species’ migratory range from North Carolina to Maine. Such authorizations include those for site characterization, assessment, and construction activities that are simultaneously occurring for offshore wind energy development lease sites.

Again, currently, there are **14 Active Incidental Take Authorizations** (for marine site characterizations and construction) and **14 “in process” Incidental Take Authorizations** (for marine site characterizations and construction) for offshore wind projects from Maine to South Carolina. It is also important to note that this take request precedes the future take authorizations needed for continued construction, operation, and decommissioning.

Opinion on the Ocean Wind 1 Offshore Energy Project,” April 4, 2023, <https://content.govdelivery.com/accounts/USNOAAFISHERIES/bulletins/352c198>.

³⁴ See Conservation Law Foundation, et al., *Strong Mitigation Measures Are Essential to Protect the North Atlantic Right Whale During All Phases of Offshore Wind Energy Development* (Feb. 2022), https://www.nrdc.org/sites/default/files/narw-mitigation_feb2022.pdf; Vineyard Wind – NGO Agreement (Jan. 22, 2019), <https://www.nrdc.org/sites/default/files/vineyard-wind-whales-agreement-20190122.pdf>.

Of all species under consideration in this application, the NARW population is the most susceptible to even the slightest harm. Also, COA notes that vessel strikes pose one of the largest threats to NARWs. According to NOAA, “vessels of nearly any size can injure or kill a right whale³⁵.” If approved, the survey vessels will add more vessels and round-trip vessel trips to an already busy port region, thereby adding more opportunities for vessel strikes. For accountability and fairness, how and who will determine which vessel struck a NARW or other species if that should happen? Especially given the threat posed to NARWs as a species by even one instance of a vessel collision, and the existence of NARW in the project area, NMFS should reject/deny the Applicant’s request.

In addition, noise is a significant threat to the survival of whales:

Noise pollution created by ship traffic or offshore construction may negatively impact whales by disrupting otherwise normal behaviors associated with migration, feeding, alluding predators, rest, breeding, etc. Any changes to these behaviors may decrease survival, simply by increasing efforts directed at avoidance of the noise and the perceived threat.³⁶

A growing source of noise pollution that interferes with NARWs’ most vital social functions is offshore wind-related activities. More specifically, low frequency noise from large ships involved in offshore wind-related activities overlaps with the acoustic signals used by right whales. These large whales rely on sound to breed, navigate coastlines, and find food. Right whales communicate with one another by making calls, which can cover distances of more than 20 miles.³⁷ The calls let whales stay in touch, share information about food, help mates find each other, and keep groups together while traveling.

Rising levels of ocean noise are interfering with whales’ ability to communicate. Anthropogenic noise interferes with their ability to eat, mate, and navigate; therefore, it is essential to their survival that these sounds travel the ocean undisturbed.³⁸ North Atlantic right whales have been observed increasing their call amplitude with the rise of background noise, and noise pollution has been correlated with an increase in stress-related fecal hormone metabolites.³⁹

b. Excessive Takes of Other Marine Mammal Species, including Endangered & Threatened

³⁵ See *id.*

³⁶ Conserve Wildlife Foundation of New Jersey, “New Jersey Endangered and Threatened Species Field Guide: North Atlantic Right Whale,” as seen 12/9/2022, <http://www.conservewildlifenj.org/species/fieldguide/view/Eubalaena%20glacialis/>

³⁷ Woods Hole Oceanographic Institution, “Right Whales,” as seen 11/15/2022, <https://www.whoi.edu/know-your-ocean/ocean-topics/ocean-life/marine-mammals/right-whales/>.

³⁸ National Oceanic & Atmospheric Administration, Fisheries, “North Atlantic Right Whale,” as seen 11/15/2022, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>.

³⁹ *North Atlantic Right Whale 5-Year Review*, NOAA FISHERIES SERV. NE. REG’L OFFICE 11-12 (Aug. 2012), http://www.nmfs.noaa.gov/pr/pdfs/species/narightwhale_5yearreview.pdf

Clean Ocean Action finds the variety of species and total number of individual Level B takes proposed by the Applicant unsupportable. The Applicant's request is for the taking of a small number of marine mammal species by Level B harassment; the 9,086 marine mammal takes is by far not "small." The takes also include endangered and protected marine mammals, including nearly 5,000 dolphins of various species.

Bottlenose dolphin are highly social, and arguably the most recognized and beloved small cetacean.⁴⁰ In addition to their inherent value to the American public, the dolphins are an increasingly important driver of economic growth for tourism and related industries.⁴¹ The cumulative impact of harassing thousands of bottlenose dolphin may be considerable and irreversible, but these impacts are not considered in the application as currently proposed. How can NMFS justify taking this number of bottlenose dolphins, or any animal for that matter, for construction of one private company's offshore wind projects? These shortcomings merit the rejection of the Applicant's take request.

Furthermore, COA also strongly encourages NMFS to reject the take request due to deficiencies in its analysis concerning the proposed activities' effects on harbor seals. Frequently spotted along both the East and West Coasts of the U.S., harbor seals are known for resting on floating ice with their head and rear flippers elevated in a "banana-like" position, leading to their popularity with excited winter beach-goers.⁴² Besides their wide recognition among the American public, harbor seals also play a major role in maintaining balance in marine food webs as well.⁴³

Despite the unique importance of this species, however, COA maintains there is not sufficient baseline information about how harbor seals use the waters at the Applicant's lease site to conclude that the activities covered by the application will have a negligible impact on harbor seals. More specifically, a COA employee attended a virtual "Science Saturday" event in early 2022 at which a representative of the New Jersey Department of Environmental Protection ("NJDEP") indicated that, to date, no one has tracked harbor seals to understand the species' pre-construction use of offshore wind energy lease areas off the NJ coast.⁴⁴ This admission strongly suggests that decisionmakers do not yet have sufficient information about the role of these lease areas in harbor seals' life-cycles to substantiate the numbers of harassments expected to occur by this application. With this in mind, the Applicant requests the taking of **1,955** harbor seals and **1,955** gray seals by Level B takes, for a total Level B harassment of **3,910 seals**. With so little

⁴⁰ *Common Bottlenose Dolphin*, MARINE MAMMAL CENTER (visited Feb. 28, 2022), <https://www.marinemammalcenter.org/animal-care/learn-about-marine-mammals/cetaceans/common-bottlenose-dolphin>.

⁴¹ *The Economic of Marine Mammals*, MARINE MAMMAL COMMISSION (visited Feb. 28, 2022), <https://www.mmc.gov/priority-topics/value-marine-mammals/>.

⁴² *Harbor Seal*, NATL. MARINE FISHERIES SERV. (visited Feb. 28, 2022), <https://www.fisheries.noaa.gov/species/harbor-seal>.

⁴³ *Seals*, INTL. FUND FOR ANIMAL WELFARE (visited Feb. 22, 2022), <https://www.ifaw.org/animals/seals#:~:text=As%20one%20of%20the%20keystone,%2C%20polar%20bears%2C%20and%20sharks>.

⁴⁴ "Science Saturday: Offshore Wind," LONG BEACH ISLAND FOUNDATION OF ARTS AND SCIENCES (Feb. 19, 2022). Specifically, the NJDEP representative identified the tracking of harbor seals off the NJ coast to understand their use of lease areas prior to the construction of offshore wind turbines as a project concept that NJDEP is currently considering.

baseline information available about seals and their use of the project area and waters off New Jersey, NMFS should therefore reject the Applicant's take request.

C. Unprecedented number of whale deaths occurring in a short period of time along the NJ/NY coast starting in December 2022

Especially in light of the NARW's critically endangered status, the ongoing Unusual Mortality Event that this species is experiencing and, consequently, the existential threat posed to the species by obstacles to even one individual's survival, the best scientific literature cannot justify harassing even one of the 336 remaining individuals in a short timeframe for the Applicant's construction activities. Harassing one NARW is not negligible; it is significant. This is particularly true upon consideration of the multitude of additional NARW takings that the Applicant will be pursuing for the continued preconstruction, as well as the construction, operation, and decommissioning phases of the Applicant's projects. Again, not one NARW can be lost according to federal scientists, as previously noted.

Further, according to reports of dead marine mammals to Clean Ocean Action the Marine Mammal Stranding Center⁴⁵ to date, **11 whales and at least 35 dolphins and porpoises** have washed ashore dead in the NY/NJ region since December 2022. COA, along with members of the public, including over 358,250 people, have called for a pause in any offshore shore wind related activities until an investigation is conducted into the potential causes of the whale and dolphin deaths. Based on the NMFS list of impacts caused by offshore wind, which includes noise and ship strikes, it is plausible that the preconstruction offshore wind activities can be connected with these marine mammal deaths and must be thoroughly investigated. Indeed, there are more harassment authorizations under review and in process.

In response to this request, NMFS, BOEM and Marine Mammal Commission have denied a possible link; however, no evidence has been presented to detail these findings by the agencies, to date. Following the denials, these agencies stated that the whale deaths were due to increased ship strikes and increased whale populations in the region. However, no substantiating data was provided on either alleged cause. Can the NMFS provide studies and evidence that whales are increasing in the region during the winter?

It should be noted that less than 50% of the whales had evidence of ship strikes, and ship strikes do not necessarily determine cause of death. Whales may have been hit after death or been impaired by another cause, and then secondarily hit by a ship. Also, due to their erratic and frequent activity, survey ships should not be discounted as a cause without evidence.

To fact check the increased shipping narrative, COA reviewed the data from the Port Authority of NY/NJ Twenty Equipment Unit (TEU) data, which shows commerce was down over 20% in December, when whales first started frequently washing-up, and commerce declined about 25%

⁴⁵ Marine Mammal Stranding Center, "NJ Cetacean Strandings from December 2022 Through Present," <https://mmsc.org/cetaceans-2002-2023> as seen 5/15/2023.

to date from January - March of 2023.⁴⁶ Therefore, it is not accurate to say increased shipping was the definitive cause of ship strikes on whales during this time.

It is imperative for an independent investigation to identify the cumulative impacts of preconstruction activities on marine life prior to moving forward with reviewing and issuing further harassment authorizations, whether it be for marine site characterizations or construction, operation, and decommissioning phases of offshore wind projects. COA urges NMFS to reject the Applicant's take request.

II. Other Issues of Importance, including Lack of Fairness, Transparency, and Accountability

The COA concerns discussed in the previous section is not exhaustive; as the MMPA recognizes, every marine mammal is important, and the effects of the proposed activities on other species—including those that are also actively included in the recent unprecedented whale deaths and the Unusual Mortality Events, such as the North Atlantic right whale and humpback whale—should encourage NMFS to demand more baseline data and severely restrict the Applicant's authorized takes for the activities in question. COA consequently urges NMFS to reject the Applicant's IHA request.

Further, a serious issue of concern is a lack of accountability. Again, as referenced above,

By 2030 the Northeast large marine ecosystem will be occupied by over 2.4 million acres of leases, 3,400 turbines, and 10,000 miles of submarine cables; and an additional 5.7 million acres is also under consideration for further development.⁴⁷

Never has an ecosystem been under such massive industrial development pressure and impact over a span of less than decade. Given this unimaginable and unprecedented scope and scale of industrial offshore wind development in the Northeast region, and off the New Jersey and New York coasts in particular, NMFS must provide clarity and due process *now* for the determination of accountability. At what point will there be too many accumulated Level A and Level B harassments from offshore wind energy development or other activities? What are the guardrails to determine how many takes will be too many? How will NMFS distinguish between impacts, such as those from the wind industry as compared to those from other shipping traffic, especially as wind facilities are built-out and marine life and ships are concentrated into more narrow corridors? Who will be responsible and how will accountability be managed? How will the number of takes be lowered over time to address the additional, cumulative stress to marine life? Or will it be?

⁴⁶ The Port Authority of New York and New Jersey, "Facts and Figures," as seen 4/30/2023, <https://www.panynj.gov/port/en/our-port/facts-and-figures.html>.

⁴⁷ Andy Lipsky, NOAA Fisheries. "Fisheries, Wildlife, and Ecosystem Science in a New Era of Offshore Wind Energy Development." NOAA Ecosystem Based Management and Ecosystem Based-Fisheries Management Seminar Series, March 9, 2022, <https://www.youtube.com/watch?v=Dh7yBEDHzL8>.

On another matter, how will population dynamics be measured as species populations decline from stress or injury from offshore wind development? Or food scarcity as migratory fish populations move or as fish structure changes? Or will the agencies simply place blame on “climate change” as a catch-all to lower populations of marine mammals? How many marine mammals can be harassed and injured before the populations, and associated ecosystems, collapse, all for the current unfounded benefits of the new offshore wind energy industry? How many takes, for individual projects or requests or cumulatively, are too many? The current process by which takes are evaluated must include cumulative impacts to populations from all incidental take requests and authorizations. These questions and issues, among others, must be addressed at the outset to ensure transparency and accountability for the impacts to the living marine ecosystem from this wholesale, rapid industrial development of the ocean.

Further, numerous IHAs have already been issued, and ITRs and NOAs for construction are already in process for many offshore wind energy projects in the region and along the East Coast of the United States. It is essential that systems are in place to monitor the impacts from these activities in these areas. Impacts must be documented and fully investigated to inform forthcoming incidental take requests and authorizations. Monitoring reports are not enough. It is necessary for on-the-ground independent scientists and response teams to be in the areas included in incidental take authorization areas to monitor for impacts so immediate response or investigation can occur.

As an example, on December 5, 2022, an infant endangered Sperm Whale washed-up on the beach in Keansburg, NJ.⁴⁸ Thankfully, volunteers at the Marine Mammal Stranding Center were able to be on the scene. Given that massive, large-scale offshore wind project activities are already underway in this region, an organization charged with responding to an endangered marine mammal incident should be fully funded by the state and federal agencies to collect the animal, if possible, or be provided the means to conduct a thorough and immediate investigation, including a comprehensive necropsy, to determine that cause of death. The investigation should include what, if any, offshore wind energy related activities, or other offshore activities, were ongoing within the window of time the animal was potentially impacted. An immediate response and thorough investigation of such incidents is necessary to ensure accountability and the protection of marine mammal species.

Of further note, COA protests the double standard that has developed for the offshore wind industry when it comes to protecting marine mammals. COA acknowledges the importance of reducing other common harms to NARWs and other marine mammals, such as entanglements and vessel strikes, but these efforts to help the species will be of limited benefit if they coincide with an increased tolerance for other activities that torment and annoy these invaluable creatures. The noise, electromagnetic fields, and drilling associated with offshore wind development and the site characterization activities that precede them, as well as the construction, operation, and decommissioning activities, must be treated as the serious and amplifying threats to the NARW, and other marine mammals, that they are—no different than entanglements or vessel strikes.

⁴⁸Radel, Dan. “Infant 12-foot sperm whale washes up dead on Keansburg beach.” Asbury Park Press, 12/5/2022. <https://www.app.com/story/news/local/animals/2022/12/05/keansburg-nj-infant-sperm-whale-washes-up-dead-beach/69703142007/>

NMFS should seize the opportunity to set a strong precedent for protecting NARWs and all whales by denying the Applicant's take request.

III. Conclusion

In sum, COA urges the NMFS to reject and deny the Applicant's harassment "take" request of **9,086 marine mammals** for marine site characterization activities for an offshore wind power plant and the associated export cables. It is clear the Applicant's activities would cause an unacceptable number of Level B harassments of extremely at-risk and endangered North Atlantic right whales, as well as an unacceptable amount of Level B take authorizations for other marine mammal species, including other federally protected whales, dolphins, porpoises, and seals.

For the North Atlantic right whale, the activities in question are reasonably likely or expected to adversely affect this critically endangered species—both individuals and the stock as a whole—through effects on the species' annual rates of recruitment and survival; this impact cannot reasonably be merely minimal or negligible. It is imperative that NMFS engage in all means possible to avoid harassment to all the uniquely significant species protected by the MMPA, especially the NARW, and to protect ecosystems.

In addition, the cumulative impacts from all incidental take requests and authorizations for offshore wind projects in the same region, as well as for other uses, must be considered when reviewing each application for "takes" of marine mammal species. The total takes for all species affected must be considered alongside takes that NMFS has authorized for other wind activities including for site characterization, assessment, and construction activities (and later, operation and decommissioning activities) that are simultaneously occurring in the region and in the migration areas for marine life.

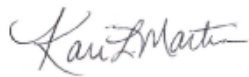
For the foregoing reasons, COA strongly urges NMFS to reject Community Offshore Wind's request for an Incidental Harassment Authorization.

Should you have any questions or would like to further discuss these concerns, please feel free to contact us.

Respectfully submitted,



Cindy Zipf
Executive Director



Kari Martin
Advocacy Campaign Manager



itp Clevestine - NOAA Service Account <itp.clevenstine@noaa.gov>

REQUEST TO STOP THE HARASSMENT OF SEA MAMMALS

1 message

Emily Fiore <ekfiore1225@gmail.com>

Mon, May 22, 2023 at 7:56 PM

To: "itp.clevenstine@noaa.gov" <itp.clevenstine@noaa.gov>

To Jolie Harrison, Chief Permits and Conservation Division, Office of Protected Resources, and National Marine Fisheries Service

I am writing to request to stop the harassment of 14,193 marine mammals by Level B for the Martine Site Characterization Surveys for Community Offshore Wind.

There is currently an unprecedented number of marine mammals washing ashore in the NJ/NY region. I urge you to deny all take authorizations until the cause of these deaths are determined by an independent, comprehensive investigation.

The North Atlantic Right Whale is critically endangered with less than 350 left on Earth. Federal scientists warn that not one of these whale species can be harmed due to the dire status of their population. The Proposed Rule will allow the harassment of 29 North Atlantic Whales. **I urge you to deny this request.**

Sincerely,
Emily Fiore, a very concerned and angry NJ citizen



itp Clevestine - NOAA Service Account <itp.clevestine@noaa.gov>

Opposition to Community Offshore Wind project

1 message

Guarino, Jennifer <jennifer.guarino@cbrealty.com>
To: "ITP.clevestine@noaa.gov" <ITP.clevestine@noaa.gov>

Mon, May 15, 2023 at 9:15 AM

Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service:

I am adamantly opposed to the Community Offshore Wind project that is being considered. They have requested an incidental harassment authorization for the Outer Continental Shelf Lease Area OCS-A 0539 and associated Export Cable Route survey area. This authorization to kill thousands of marine fish and mammals for the pursuit of "green energy" is a travesty to our environment and a disgrace to our communities. Please do not allow for the massive project that will destroy the fishing industries and kill off our healthy oceans. We have a duty to protect our natural resources for ourselves and future generations. This form of energy is not effective or even tested to be possibly effective on the level that is being proposed. Further investigation needs to be done in every area of this project and approving the take numbers at this point is reckless and dangerous.

Thank you,

Jennifer Guarino

Sales Associate

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itp Clevenstine - NOAA Service Account <itp.clevenstine@noaa.gov>

Please stop the Windmill project

1 message

Jaye Hamel <jayehamel@gmail.com>
To: ITP.clevenstine@noaa.gov

Mon, May 22, 2023 at 3:44 PM

Seeing so many marine mammals washing lifelessly ashore these past few months has been alarming. It is clear that something isn't right and it likely has to do with the windmill project going on in the Atlantic.

I feel so helpless and sending this email is one small thing that may help, but probably won't. Our marine life, specifically the mammals that inhabit our waters, deserve a voice. So many have already lost their lives to what appears to be damage to their internal navigation, their ears and their brain. Please stop this project. Please consider other ways to harness energy that are more efficient than the windmills. Consider the fish and birds who will die because of this project.

It's early enough in this that we can stop it. We can defer and save our mammals. Please value their lives over the almighty dollar.

Jaye Hamel
New Jersey Resident

Sent from my iPhone



itp Clevensine - NOAA Service Account <itp.clevensine@noaa.gov>

STOP WIND TURBINES

1 message

Mike Kaz <fex848@gmail.com>
To: itp.clevensine@noaa.gov

Mon, May 22, 2023 at 8:50 PM

Stop the wind turbine project immediately.



itp Clevensline - NOAA Service Account <itp.clevensline@noaa.gov>

Community Offshore Wind Comments

1 message

Jessica Lisa <jlisa610@gmail.com>

Mon, May 22, 2023 at 11:05 PM

To: "ITP.clevensline@noaa.gov" <ITP.clevensline@noaa.gov>

The loss of one marine mammal to offshore wind exploration is horrible. The sacrifice over fourteen thousand marine mammals for one project is beyond comprehension. I am absolutely against this rapid, thoughtless, poorly properly researched, and non-sustainable project. Please protect our oceans and marine life from this harassment and destruction. We can and should do better. Offshore wind is simply not the answer to our climate change problems.

Jessica Lisa, Ph.D.
Assistant Professor of Biology
Department of Biology
Georgian Court University

"It doesn't make any sense if you think we're the most intellectual creature on the planet, that we're destroying our only home," Jane Goodall, Ph.D.



itp Clevestine - NOAA Service Account <itp.clevestine@noaa.gov>

STOP THE HARASSMENT OF 14,193 MARINE MAMMALS BY "LEVEL B" FOR THE MARINE SITE CHARACTERIZATION SURVEYS FOR COMMUNITY OFFSHORE WIND, LLC

1 message

ty1ash2@aol.com <ty1ash2@aol.com>

Mon, May 15, 2023 at 11:22 AM

Reply-To: ty1ash2@aol.com

To: "ITP.clevestine@noaa.gov" <ITP.clevestine@noaa.gov>

Jolie Harrison, Chief, Permits and Conservation Division
Office of Protected Resources, National Marine Fisheries Service

Ms. Harrison,

I urge the National Marine Fisheries Service (NMFS) to deny the proposed HARASSMENT OF 14,193 MARINE MAMMALS BY "LEVEL B" FOR THE MARINE SITE CHARACTERIZATION SURVEYS FOR COMMUNITY OFFSHORE WIND, LLC. Community Offshore Wind has requested an incidental harassment authorization for the Outer Continental Shelf Lease Area OCS-A 0539 and associated Export Cable Route survey area. The cumulative impacts on marine life, including whales, dolphins, and seals, of construction activities and those preconstruction and construction activities of the 30+ offshore wind projects in the Northeast are not known. I urge you to deny Community Offshore Wind's request.

There is currently an unprecedented number of marine mammals washing ashore in the NY/NJ region, and beyond. I urge you to deny all take authorizations until a cause of death has been determined for all the dead animals from an independent, comprehensive investigation. The North Atlantic right whale is a critically endangered species with less than 350 left on Earth. Federal scientists warn that not one of these large whale species can be harmed due to the dire status of its population. The Proposed Rule will allow the harassment of 29 North Atlantic right whales. I urge you to deny Empire Wind's request.

Respectfully,

Regina Littwin



itp Clevensline - NOAA Service Account <itp.clevensline@noaa.gov>

Community Offshore Wind, LLC

1 message

Bonnie R. Peterson <brp@petersonfirmnj.com>
To: "ITP.clevensline@noaa.gov" <ITP.clevensline@noaa.gov>

Fri, May 19, 2023 at 2:59 PM

Please see attached.

Thank you.

Mayor John A. Peterson, Jr.

Seaside Park, NJ

 **wind farm letter05192023.pdf**
5201K



The Family Resort

Borough of Seaside Park

BOROUGH HALL

732-793-3700

1701 North Ocean Avenue, Seaside Park, New Jersey 08752
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Email: mayorpeterson@seasideparknj.org

May 19, 2023

Jolie Harrison, Chief, Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Services

ITP.clevenstine@noaa.gov
(mailto:ITP.clevenstine@noaa.gov)

RE.: Objection as to Request from Community Offshore Wind, LLC (COSW) for Authorization to Take Marine Mammals, Alleged to be "Incidental" in Marine Site Characterization Surveys In Coastal Waters off of New Jersey and New York In the "New York Bight"

Dear Chief Harrison,

As the Mayor of the New Jersey coastal community of Seaside Park, I am writing to render the within comment which I would ask you to consider as part of the overall record, with respect to current view of an application of Community Offshore Wind, LLC (COSW), for authorization to take marine mammals. Said mammals to be taken are described as being "incidental", to marine site characterization surveys in coastal waters off of New Jersey and New York, in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM), commercial lease of submerged lands for renewable energy development on the outer continental shelf (OCS), lease area OCS-A-0539 (lease area), and the associated export cable route (ECR) survey area.

As you may be aware, our town, itself, has experienced a tragic avoidable death of a humpback whale, which washed up on our beach. Related to the death of this humpback whale, and the extraordinary number of recent deaths of other marine mammals species, including the critically endangered North Atlantic Right Whale, the Ocean County Mayors Association has passed a unanimously adopted resolution, which calls upon all levels of the federal government and State of New Jersey government, immediately to implement a moratorium on any and all offshore wind farm preconstruction, and construction actions. First, further review should occur, associated with the massive industrialization, proposed, in the form of wind farm projects located off the New Jersey and New York coasts. This pause should continue, until further independent, scientific investigations have been conducted.

Similarly, related to the deceased whales washing upon our shores, the United States Coast Guard at Barnegat Light has also reported several more floating whales off the New Jersey coast, an indication that not all of the whale deaths have even been accounted for.

As your agency is already aware, Benjamin Laws, Deputy Chief for the Permits and Conservation Division with the NOAA Fisheries Office of Protected Resources, has already acknowledged that “there is an expectation that the work will impact marine life, including whales”. Nevertheless, NOAA and several national, self-described, environmental groups have indicated that there is a lack of evidence associated with the dramatic and unexplained recent deaths of whales and other marine mammals.

The proposed, self-described “incidental” taking of the lives of further precious mammals, without adequate independent scientific investigation, is unacceptable, if not outrageous.

Further, the rapid speed of your agency’s review process, and that of other federal and state governmental agencies, as to these fast tracked even “rubber stamped”, proposals for offshore wind development certainly calls into question whether adequate due diligence was done in the very inception of these proposals. Independent scientific inquiry and research must be implemented, as to the ways the effect of the proposed and admittedly adverse impacts of the taking of marine mammals, the Community Offshore Wind, LLC project, will cause upon our tourism industry, recreational and commercial fisheries, the quality of life of the New Jersey shore, and indeed, the very life of the ocean environment itself.

I call upon your agency to recognize the fact that the recently occurring, unexplained numerous deaths of whales and marine mammals, has taken place concurrently, with the ongoing sound surveys and the underwater noise generated by acoustic vessels. These whale deaths have occurred even before the potentially devastating construction activity, pile driving and other noise generating actions have begun.

Most importantly, as I have argued in my July 21, 2022 official comments addressed to BOEM, with regard to Docket #BOEM 2022-0034, I would ask your agency immediately to recommend the aforementioned moratorium, on any further review process, and preconstruction activities. First you should engage in a cumulative, exhaustive, independent scientific review, to be undertaken, as to all the interrelated massive industrial wind farm projects proposed for New Jersey, New York and the Atlantic coast.

Our precious ocean cannot be carved up and looked at, in a piece meal fashion, as to these proposed industrial projects, contemplated to be located directly in the migratory paths of fish and wildlife, including but not limited to various species, which your agency and the applicant have admitted will become “incidental” takes, or collateral damage. An overall independent scientific review process of all these interrelated wind farm

proposals must be undertaken, with adequate scientific inquiry. At the very least, there should first be implemented a thoroughly reviewed and monitored pilot project.

Accordingly, with regard to the currently pending request of Community Offshore Wind, LLC, I am hereby underscoring previously communicated comments your agency and various other federal agencies and offices, substantially discounted, if not ignored. Those relevant meritorious comments, dealing with never answered questions, would include the following:

From a general perspective, as to what many have identified as a rush to judgment, concerning various aspects of the interrelated proposals for the massive construction of off shore wind farms, I would certainly object to the process itself, and the scope of the proposal, as to the New York Bight PEIS. Even if one looks at the narrower interpretation as to the "protection of historic properties", I would render an objection to the bifurcating procedures, as well as to any ultimate decision approving the proposed massive industrial construction of wind farm sites in the New York Bight lease area. While I do not find such a narrow interpretation appropriate, there are numerous known and unknown historic shipwrecks and underwater sites of significant value, which are threatened for destruction, by the proposed massive commercial project.

Of course, the threat to our ocean environment must be investigated first.

Similarly, it is entirely inappropriate to segregate off certain areas of inquiry, which must be looked at cumulatively, for an accurate informed review. Even this too limited approach, exposes the under-valued and devastating impact of the proposed construction. This unique and irreplaceable expanse of the sea off the New Jersey Atlantic Coast, can be viewed from a historical and cultural perspective. The impact to this priceless area of ocean expanse utilized by Henry Hudson's "Half-Moon", up to the present huge vessels, in this major world shipping lane, could include lasting and irreparable harm.

A more appropriate review process must take into account all the interrelated historical, cultural, scientific and economic impacts and threats posed by this seemingly immovable process of massive off shore wind farm, industrial development off of New Jersey's precious coast. As such, I would urge a far more expansive and interrelated review process, so that the appropriate chief looking at the pending "New York Bight PIES" application, reviews all of the cumulative impacts involved.

As I have previously spread upon the record, before various officials of the Bureau of Ocean Energy Management reviewing process, I certainly am in favor of the utilization of some wind energy development, as a viable and productive long term source of power, in order to meet a portion of our State's and our Country's future needs. Insufficient pilot projects and scientific environmental review has occurred, however, to support your agency's seeming conclusion that off shore wind farms must

be utilized, as opposed to lesser scale on shore projects, coupled with energy conservation, and the implementation of other sources of power.

Accordingly, as I have expressed before, I am opposed to the currently proposed ongoing massive leasing of 800,000 acres of public ocean water, for off shore wind farm development, currently the subject matter of BOEM's various ongoing review procedures. The very process itself, of which the within proposal is one part, had been advertised for bidders, without first undertaking a central comprehensive and environmental assessment.

Meaning no disrespect to any one individual BOEM official, I am forced to describe the ongoing ill-conceived process, as representative of a "knee-jerk, feel good rush to judgment". Once the bid process has been finalized, with the actual sale of such lands, and leasing of our precious area of the ocean, there would be similar concurrent, investment of the various bureaucracies, through money, time and the actions of employees and officials. It is therefore, entirely unrealistic, ever to think that the overall rush for industrialization and construction of our unique coast line, in a precious area of the ocean, would ever be rescinded.

As I have already placed on the record, I oppose the proposed ongoing leasing of vast tracks of unique and valuable expanses of the Atlantic Ocean, due to the numerous grave risks presented. Prior to offering up any massive lease sale, and even in finalizing the process, and conducting the within purportedly more narrow review as to "protection of historic" properties, I would ask that you consider the overall cumulative impact of the proposal, and also consider conducting more tests for pilot environmental projects, and an exhaustive environmental study, prior to moving forward. The current proposals are simply too much, too fast, and unsupported by a realistic cost benefit analysis.

The thorough environmental assessment necessary, should immediately be undertaken prior to any further investment of time, resources and the bureaucracy itself. Such an exhaustive study would include, but certainly not be limited to, a complete review of the cumulative impacts, upon all the vast areas of public lands, off the New Jersey Coast, which have already been sold off, yet have similarly not yet been fully studied, and certainly, not developed.

These numerous impacts should therefore, initially, be thoroughly reviewed, before such a totally unvetted experimental technology is the subject matter of virtually irreversible actions. Included in such a non-exhaustive list of the potential impacts, to be first thoroughly reviewed and investigated, as to the specific Community Offshore Wind itself, as well as from a cumulative standpoint, as to all sites off of New Jersey, as with respect to all the other Ocean parcels already awarded, certainly should be the following:

1. The habitat for birds, fish and marine mammals both in the water, as well as the wetlands, and in other coastal areas of our State.
2. Commercial fishery sites, as well as the interests, of recreational fishing.
3. Air quality and water quality, and the specific effects, such a massive industrial construction project itself, would have, as well as the on-going operation of the vast wind turbines, and the ultimate not even explained process of trying to decommission or dismantle this massive industrial site, once its useful life has ended, or, it has been rendered obsolete, by the already ongoing development, of more efficient technologies.
4. Issues of environmental standing, and environmental justice, as to the Atlantic Ocean itself, and the ocean environment.
5. The cumulative effect upon navigation and ocean vessel traffic in this busy commercial corridor, which is already the subject matter of numerous potentially conflicting uses.
6. The interests, of public recreation, and tourism.
7. The visual effects and indeed, visual resources, of the coastal and the ocean setting, in the vicinity of this massive industrial site.
8. Independent of the overall effects upon mammals, marine, and bird wildlife, this massive untested industrial construction project, has the potential for causing a devastating impact upon threatened endangered species, including the extremely endangered North Atlantic Right Whale. The Right Whale frequents this gigantic ocean area in question, and may indeed, be crowded out, and pushed aside, from some of the already leased ocean lands, subject to the prior rapid bidding process, and awards, through BOEM.

Further, from a procedural, as well as a substantive standpoint, I would hereby strongly object to the manner in which BOEM has conducted the pending leasing process, which contemplates an award, for offshore wind farm sites, prior to a complete environmental assessment of this vast area, as well as the cumulative impacts of the already awarded leased sites, off the New Jersey Coast. Initially, I object to the inadequate, and far too short, time period, during which residents, public interest groups, and elected officials, have had the opportunity to have commented on this most recent leasing of 800,000 additional acres in the New York/New Jersey Bight Region. Rather than utilizing the all too convenient cover of the on-going COVID-19 Crisis, BOEM officials should have conducted, and still should consider, holding in-person public hearings in the affected geographic areas of the New Jersey Coast.

Further, BOEM representatives have exhibited an arguably expressed, and certainly, a subconscious, desire, to discount the interests of the State of New Jersey, its citizens, and numerous stakeholders, by inappropriately labeling the entire \$800,000 area to be leased out, as situated, in the "NY Bight". The most affected geographic area includes the precious and valuable New Jersey Coast, (emphasis added), which is far more affected, than more distant areas of New York State.

Just as the State of New Jersey, and this particular significant area of the Atlantic Ocean had previously been the subject matter of numerous dump sites, proposed industrialization, and wood burning, once again, our magnificent State is being dumped on, with the interests of our citizens being severely discounted, if not ignored. The State of New Jersey, and its citizens have become collateral damage, due to this juggernaut of inadequately researched, "feel-good" experimentation, whose potentially devastating and lasting impacts, become generational, and irreversible.

Additionally, from a procedural standpoint, I would hereby object to this ongoing process, as BOEM has failed to follow its own rules and regulations, including those expressly and inferentially, barring the issuance of a proposed sale notice for said leases, prior to any draft environmental assessment being provided for public comment.

Most importantly, I would hereby ask that BOEM rescind this entire process, which in all likelihood is violative of the statutory guidelines provided by the National Environmental Policy Act (NEPA).

On the merits, I would also join in other comments spread upon the record, by the Clean Ocean Action Organization, and other environmental ocean groups, all of whom have pointed out the significant paucity of information, in a draft environmental assessment, from a scientific and environmental perspective, as to the entire ocean ecosystem. It is therefore absolutely critical, that a comprehensive environmental assessment be undertaken, which would facilitate BOEM's understanding of the need for ecological and scientific baselines, so as to observe protections for bio-diversity of all species, as well as the entire ocean ecosystem.

Of particular concern, and contrary to at least one of the comments made on the record in the October 21st public meeting, before BOEM, in which one individual discounted critically endangered species, I would again point out the extremely vulnerable nature of the approximately 350 North Atlantic Right Whales left in the entire world. The potentially devastating impact of the vast industrialization project itself, and its on-going adverse effects, from a noise perspective, and otherwise, would be set in irreversible motion by the ongoing operation of the wind turbines themselves.. The draft environmental statement does not recognize legal and moral standing, of such an invaluable threatened species, whose inspirational value, beauty, and potential worth, as to the bio-diversity of our planet, and to life itself, cannot be overstated. It is "not a stretch", when one considers the absolutely critical and extremely valuable nature of medicines, derived from another New Jersey Coast creature, the Horseshoe Crab,

whose serum is utilized in saving countless human lives. To discount, undervalue, if not ignore, the value of a critically endangered species shuts off forever, the potential hypothetical contribution of that species to the furtherance of mankind, bio-diversity, and to all life. As such, I object, in the most vehement terms possible, to that one particular comment already spread upon the record, at the aforesaid October 21st public meeting.

Most importantly, I echo the sentiments of many scientists who have commented upon the lack of meaningful scientific data, studies and pilot projects, and other research, as to the potentially negative cumulative impacts of the development of these huge industrial, offshore, wind farms, and the impacts the construction of their associated infrastructure, may have on all marine resources, New Jersey's coastal economy, the tourism industry, our fishing industry, and the quality of life, at the New Jersey shore.

In particular, I join in the well-reasoned comments of the Clean Ocean Action Organization previously communicated to BOEM, as to the cumulative impacts upon marine mammals and fish, an industrial wind farm project may cause. In this regard, the vast impact of noise upon marine mammal life, and fisheries, during the construction phase, the actual operation and maintenance of the massive wind turbines, and the barely explored decommissioning of same, have all been severely discounted, if not ignored. True science would dictate all of these potential impacts be thoroughly studied and monitored, through a comprehensive long-term review process, rather than being subject to a rush to judgment, of the award of leases, and the inevitable noise and environmental degradation generated by the impactful construction process ahead. The economic vitality of the Jersey Shore, and our entire region, is at issue.

As such, I would urge BOEM thoroughly, to consider numerous reasonable alternatives, including but not limited to more readily achievable, already vetted, faster, and safer, on-shore, land based alternatives. From a best case scenario, the projected date of completion for already leased sites, to make operational the massive industrial wind farm facilities, targets the year 2035. Even this hypothetical time table does not take into account the inevitable impact from at least one devastating hurricane. The most rapid and efficient efforts to achieve energy efficiency, and the conservation of resources, entail land based solutions, which will reduce and mitigate the effects of global warming, and, not again run the risk of making the precious ocean, at the Jersey Shore, a dumping ground.

The current wind farm construction proposals, also minimize, if not ignore the fact that the proposed location of the lease areas, for these massive industrial sites, occurs in one of the prime hurricane zones, which has been subject to ever worsening storms, over the last decade. What effects, have been studied, as to the impact of locating these gigantic wind turbines in highly congested shipping lanes, thereby creating navigational obstacles and hazards? With the potential for even one inevitable catastrophic storm event, has scientific review, or evaluation been applied as to hypothetical environmental mishaps, if not total environmental disasters? The full range

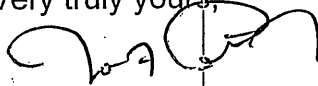
of scientific, inquiry, including establishing sound diversity and ecosystem baselines, engaging in historic projected pilot studies of the full range of impacts upon ecological, fishing, coastal economy and all ocean resources, is called for. Such science must also be applied, in light of the sustainable seafood resource this particular region of the world presents literally, to feed millions of people, on a yearly basis!

Solid science is needed-----not sound bites.

Accordingly, I would ask your agency to deny any pending application from Community Offshore Wind, LLC, (COSW) for authorization to take marine mammals, described as "incidental," to marine site characterization surveys in the coastal waters off of New Jersey, and New York, in the New York Bight. Instead, I would ask that your agency support the implementation of a "no action alternative," on the application, and thereby allow the implementation of a moratorium of any and all further preconstruction, construction activities, and the review process itself, until independent, scientific investigation has taken place to address numerous unanswered questions. Included in these inadequately addressed issues, would be the fact that that no investigation has occurred, as to the all too coincidental recent deaths of whales, and other marine mammals, which occurred concurrently with preconstruction sound surveys, and to the underwater noise, generated by acoustic vessels immediately off of our coast.

Thank you for your consideration.

Very truly yours,



Mayor John A. Peterson, Jr.

JAP/ks

c. Sandra Martin, Clerk (via email only), for distribution to Members of the Seaside Park Borough Council, for informational purposes only
Karen Kroon, Seaside Park Administrator via email only



itp Clevensline - NOAA Service Account <itp.clevensline@noaa.gov>

Community Offshore Wind, LLC Marine Site Characterization Surveys off New Jersey and New York Due 5/22/23

1 message

Betty Quattrochi <bettyquat@gmail.com>
To: "ITP.clevensline@noaa.gov" <ITP.clevensline@noaa.gov>
Cc: Elizabeth Quattrochi <eequat@gmail.com>

Wed, May 17, 2023 at 1:58 PM

Comments Submitted by Elizabeth Quattrochi eequat@gmail.com

 **CommunityWind5.22.docx**
528K

To Jolie Harrison. Chief, Permits and Conservation Division 5/17/23

Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.clevenstine@noaa.gov.

Community Offshore Wind, LLC Marine Site Characterization Surveys off New Jersey and New York Due 5/22/23

Coexistence between offshore wind and our marine mammals is clearly not the plan.

I am stunned by the cold-hearted methodical reissuance of new takes while dead bodies of whales and dolphins wash up on shore without explanation.

More information is becoming publicly available revealing the performance of federal agencies charged with protecting the "health and stability" of our ocean ecosystem.

Do you hear our voices:

1. Save Right Whale Coalition- Whistleblower Statement - Offshore Wind will drive whales to extinction (Dec 4, 2022)

https://saverightwhales.org/media/open-letter-offshore-wind-will-drive-whales-to-extinction?fbclid=IwAR2wrnJpzovxmOt222btFYKIFf11OVx_lpZsMjFPX2XrJHEai8tOmyu4D-Y&mibextid=S66gvF

2. CFACT Evidence says Offshore Wind is killing lots of whales (January 23, 2023)

<https://www.cfact.org/2023/01/23/evidence-says-offshore-wind-development-is-killing-lots-of-whales/?fbclid=IwAR1mVWM2Hr2TwTtrO0tNyURQcFAO9Uq2e6h8Ufd5dsruapmKWQqA8XjxLKY>

3. MSM - Martha MacCallum Fox (May 8, 2023)

Exposes NGOs that have taken money from the foreign Offshore Wind companies (including Audubon). Is this why they are so quiet? **Where are our NGOs?**

[https://www.facebook.com/sylvia.guillodlockwood/videos/1323690578214225/?_cft_\[0\]=AZXWiLnJsha4pHFLAXdK6XJAHyo5aCj_ZrD1V8SPBCIJnHZvv3KvdkCRJ2Ro0gSyfjD8L93WRbn1MhUZgh4AII2K0UZBsJxKU-q1jbcZHIBSxTGEtD0hWYWgZHk321BnDHwUdiB0BJh559CZWJz7aOLOFY3K0mThv3HqVE97bGbzsw&_tn_ =R\]-R](https://www.facebook.com/sylvia.guillodlockwood/videos/1323690578214225/?_cft_[0]=AZXWiLnJsha4pHFLAXdK6XJAHyo5aCj_ZrD1V8SPBCIJnHZvv3KvdkCRJ2Ro0gSyfjD8L93WRbn1MhUZgh4AII2K0UZBsJxKU-q1jbcZHIBSxTGEtD0hWYWgZHk321BnDHwUdiB0BJh559CZWJz7aOLOFY3K0mThv3HqVE97bGbzsw&_tn_ =R]-R)

Did you read this report? There is a total disconnect between the threats outlined in the report and the policy decision to hurry the industrialization of our ocean.

NOAA's March 2023 "Synthesis of Science" memorandum lays out "major knowledge gaps" that require "an enormous amount of research" to understand the "habitat modification" caused by offshore wind development. Note the negative impact to plankton, which contributes 50-80% of the oxygen we breathe. <https://repository.library.noaa.gov/view/noaa/49151>

I have attached a grid prepared by a private citizen showing the total takes or kills authorized of 24 OFFSHORE LEASES (Massachusetts to Virginia). Based on these totals, the administration of the Marine Mammal Protection Act (MMPA) has been perverted beyond any reasonable interpretation.

The numbers authorized are not “small numbers” which is a condition of a permit. The number of takes for the critically endangered Right Whale exceeds the number of North Atlantic Right Whales alive on this planet.

In a healthy population, courts have interpreted a “small number” to fall somewhere under 10% of the population. So far, the takes granted against the critically endangered North Atlantic Right Whale exceed 102% of their population of fewer than 350 whales.

Do not rebut me by saying each location and each time period gets a fresh start on numbers; these are the same 350 whales migrating up the coast from Florida to Maine, through all these locations. There’s no clock reset or fresh start for them; there are no artificial boundaries by state or lease for them.

Do not rebut me by saying “no evidence.” That political narrative is debunked, put forth by the Marine Mammal Commission, comprised of Biden’s political appointees.

The total takes authorized as of this writing for marine mammals is 178,039. Imagine that much suffering. It’s a betrayal to the Marine Mammal Protection Act and all its principles.

The same cruelty inflicted on whales during centuries of whaling is back. Two hundred years ago people needed blubber oil for candles. Now it seems our government “needs” the sea to generate electricity. Now a federal agency designed to protect them is failing its very reason to exist.

INCIDENTAL TOTAL TAKES or KILLS OF 24 OCS-A LEASES

| MARINE MAMMAL SPECIES | TOTAL STOCK SIZE OF SPECIES | TOTAL OF ALL LEASE TAKES | TOTAL % OF STOCK SIZE |
|-----------------------|-----------------------------|--------------------------|-----------------------|
|-----------------------|-----------------------------|--------------------------|-----------------------|

| WHALES – Mysticetes | | | |
|----------------------------------|---------------|--------------|--------------|
| Fin, Endangered | 6,802 | 691 | 10.16% |
| Humpback | 1,396 | 745 | 53.37% |
| Minke | 21,968 | 1,308 | 5.95% |
| North Atlantic Right, Endangered | 338 | 348 | 102.99% |
| Sei, Endangered | 6,292 | 136 | 2.16% |
| Blue Whales, Endangered | 412 | 21 | 5.10% |
| TOTAL Whales | 37,208 | 3,249 | 8.73% |
| Total Endangered Whales | 13,844 | 1,196 | 8.64% |

| DOLPHINS – Odontocetes | | | |
|--------------------------------|----------------|----------------|---------------|
| Atlantic Spotted | 39,921 | 2,137 | 5.35% |
| Atlantic White-Sided | 93,233 | 6,981 | 7.49% |
| Bottlenose, Offshore | 62,851 | 8,840 | 14.07% |
| Bottlenose, Coastal | 6,639 | 6,109 | 92.02% |
| Bottlenose, Offshore & Coastal | 69,490 | 24,757 | 35.63% |
| Short-Beaked Common | 172,974 | 73,316 | 42.39% |
| Long-finned Pilot Whales | 39,215 | 1,152 | 2.94% |
| Short-finned Pilot Whales | 1,981 | 257 | 12.97% |
| Risso's | 35,215 | 806 | 2.29% |
| Sperm Whale, Endangered | 4,349 | 371 | 8.53% |
| TOTAL DOLPHINS | 525,868 | 124,727 | 23.72% |

| | | | |
|-------------------------|---------------|---------------|---------------|
| PORPOISE, Harbor | 95,543 | 11,957 | 12.51% |
|-------------------------|---------------|---------------|---------------|

| SEAL – Pinnipeds | | | |
|-------------------------|---------------|---------------|---------------|
| Gray | 27,300 | 15,838 | 58.02% |
| Harbor | 61,336 | 22,269 | 36.31% |
| Harp | | | |
| TOTAL SEALS | 88,636 | 38,107 | 42.99% |

| | | | |
|---------------------------------|----------------|----------------|---------------|
| TOTAL ALL SPECIES | 747,255 | 178,039 | 23.83% |
| TOTAL ENDANGERED SPECIES | 18,193 | 1,567 | 8.61% |



itp Clevensine - NOAA Service Account <itp.clevensine@noaa.gov>

Fwd: Comments on Docket No. RTID 0648-XC817

1 message

ITP Lock - NOAA Service Account <itp.lock@noaa.gov>

Tue, May 23, 2023 at 8:50 AM

To: itp Clevensine - NOAA Service Account <itp.clevensine@noaa.gov>

Community offshore wind...

----- Forwarded message -----

From: **Lane Johnston** <lane@rodafisheries.org>

Date: Wed, May 17, 2023 at 2:41 PM

Subject: Comments on Docket No. RTID 0648-XC817

To: <ITP.lock@noaa.gov>

Cc: Mike Conroy <mike@rodafisheries.org>

Hello,

Please see the attached comments regarding the Community Offshore Wind, LLC request for an IHA.

Thank you,

Lane Johnston

Programs Manager

Responsible Offshore Development Alliance



230522_IHA Community OSW.pdf

339K



Responsible Offshore Development Alliance

May 17, 2023

Jolie Harrison, Chief
Permits and Conservation Division
NMFS Office of Protected Resources

Re: Takes of Marine Mammals Incidental to Specific Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight; Docket No. RTID 0648-XC817.

Submitted electronically via email to ITP.lock@noaa.gov

Dear Ms. Harrison,

The Responsible Offshore Development Alliance (RODA) submits the following comments regarding the National Marine Fisheries Service (NMFS) Incidental Harassment Authorization (IHA) for Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight from Community Offshore Wind, LLC for OCS-A 0539.¹ These comments, while responsive to the proposed IHA for Level B harassment incidentals to site characterization of OCS-A 0539, are also directed toward others under developments (authorized or proposed) in the U.S. Atlantic.

RODA is a national coalition of independent fishing businesses, associations, companies and community members committed to ensuring the compatibility of new offshore development with their businesses. Members of our coalition operate in federal and state waters and shoreside throughout the New England, Mid-Atlantic, and Pacific coasts.

Fishermen and the public are extremely concerned about potential impacts to protected resources arising from the construction of offshore wind energy (OSW) facilities. We have submitted numerous comments expressing the fishing industry's concerns regarding the process for authorization of marine mammal takes in OSW activities, particularly: (1) in contrast to the strict regulations for marine mammal harassment and takes applied to the fishing industry; and (2) authorizations that are segmented throughout OSW project phases without a cumulative, holistic analytical approach. As you know, many Atlantic fisheries are severely constrained by regulations designed to minimize North Atlantic right whale and other protected resource interactions, and any increase in take or harassment of these species will very likely result in further impacts to fishing operations.

¹ 88 Fed Reg. 24594 (April 21, 2023).

There are two active Unusual Mortality Events for whales in the Atlantic region: the Atlantic Humpback Whale and the North Atlantic right whale (NARW).² At least 32 large whales and 38 small cetaceans have washed up on the Atlantic Coast between Dec. 1 and mid-April. A co-founder and ex-president of Greenpeace recently was quoted as saying, “[d]rilling foundations for offshore wind turbines and sound pulses used to prepare for the 900-foot towers may be creating a ‘death zone’ for whales.”³ There is no conclusive evidence that recent whale and other marine mammals deaths off the Atlantic Coast are related to activities supporting offshore wind (OSW) development; but similarly, there is no conclusive evidence that finds such activities are not a contributing factors. NMFS must diligently consider if authorization of additional harassment activities should be allowed, given the recent mortalities, active UMEs, and lack of a definitive answer regarding the role that OSW is playing in those mortalities. BOEM and NMFS are in the press offering carefully worded statements absolving the OSW industrial machine from any responsibility in the strandings and deaths. The absence of evidence is not evidence of absence. As suggested above, requiring and conducting timely necropsies on all dead or stranded marine mammals would provide us and the concerned public some much needed answers.

On May 12, a news story was published that “CIP and Avangrid JV Vineyard Wind is to deploy and test a secondary bubble curtain during foundation installation for the 800 MW offshore wind project.”⁴ The bubble curtain is intended to “absorb and dampen sound during foundation installation”. This begs the question, if sound was not an issue why is there a need to absorb and dampen it?

Local elected officials have called for an immediate moratorium on development until scientists can assure the public that OSW activities do not pose threats to whales.⁵ Environmental groups are calling for similar federal action for a federal probe to better understand the recent whale deaths in the region.⁶ This necessarily requires full necropsies, conducted by an independent body, on any marine mammals which strand in the area and the release of those findings to the public. With increases in strandings coinciding with activities in support of OSW development, the public is

² See <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events> (Accessed May 14, 2023).

³ See <https://nypost.com/2023/05/08/not-unreasonable-to-link-whale-deaths-offshore-wind-farm-work-ex-greenpeace-chief-says/> (Accessed May 14, 2023)

⁴ See - <https://renews.biz/85711/vineyard-wind-to-trial-secondary-bubble-curtain/>. (Accessed May 14. 2023)

⁵ See https://chris-smith.house.gov/uploadedfiles/2023-01-30_letter_to_secretary_raimondo.pdf ;
<https://vandrew.house.gov/media/press-releases/congressman-van-drew-demands-all-offshore-wind-activity-end-immediately-until-and>
<https://www.msn.com/en-us/news/us/republican-demands-nj-gov-murphy-halt-offshore-wind-project-for-30-60-days-amid-spate-of-whale-deaths/ar-AA1baC0d>

⁶ See https://cleanoceanaction.org/fileadmin/editor_group1/Issues/Wind/Updated_Biden_Letter_and_IHA_Factsheet_Demanding_investigation_of_dead_whales.pdf

rightly concerned and asking questions. At a minimum, NMFS should soberly consider if additional authorization for Level A and B harassment should be permissible given the current circumstances.

Lack of Cumulative Effects Analysis and Segmented Process

Every phase of the OSW development process has the potential to impact marine mammals and other protected species. Each of the activities associated with pre-construction surveys, construction, operations, monitoring surveys, and decommissioning will require some type of permit or authorization for interaction with protected species. To our knowledge, there are no resources easily accessible to the public to understand what authorizations are required for each of these activities. This is detrimental not only to having a well-informed public who are then asked to provide comment and input, but suggests a lack of cumulative perspective of OSW development activities from numerous projects to our protected resources. We recommend that NMFS improve the transparency of this process and move away from a segmented phase-by-phase and project-by-project approach to takes of marine mammals by either IHAs or Letters of Authorization (LOAs). The fishing industry has asked for a comprehensive list/table of all Level A and Level B takes under currently approved Authorizations per project, as well as Level A and Level B takes per project being requested in all Authorization applications currently under review. Using the list provides by NMFS on the Incidental Take Authorizations for Other Energy Activities (Renewable/LNG) webpage⁷, we believe that information to be the following:

All Currently Authorized Activities:

- 102,927 marine mammals subject to Level B harassment.
 - This includes 197 NARW and 268 Humpback whales; both of which are experiencing an unusual mortality event.
- 122 marine mammals subject to Level A harassment.
 - This includes 0 NARW and 14 Humpback whales. As will be more fully developed below, it is illogical for an applicant to seek Level A takes for ALL other marine mammals they will be harassing with Level B takes except the NARW.

All Proposed and Unauthorized Activities⁸

- 507,355 marine mammals subject to Level B harassment.
 - This includes 696 NARW and 2,212 Humpback whales; both of which are experiencing an unusual mortality event.

⁷ See - <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. (Accessed May 14, 2023)

⁸ Includes all proposed activities through the LOA request submitted by Dominion Energy which was published in the Federal Register on May 4, 2023.

- 1,188 marine mammals subject to Level A harassment
 - This includes 0 NARW and 57 Humpback whales.

Under currently authorized and proposed IHA/LOA requests submitted to NMFS to support OSW development a combined total of 610,263 whales, dolphins and pinnipeds will be subjected to Level B harassments. Another 1,310 will be subjected to Level A takes. While there are no requests for Level A takes on the critically endangered NARW, there are 893 requests for Level B harassment. As of October of last year, there were an estimated 340 NARW in existence. In support of OSW activities, NMFS will permit/authorize each NARW to be harassed more than 2 times. This information points to the need to take a stark look at permissible incidental takes for marine mammals from OSW development, and that a cumulative approach is absolutely paramount.

Right Whale Abundance Adjacent to the Project Area

The location of the OCS-A 0539 lease is in an area in close proximity to important migration corridors and seasonal management areas set in place to protect NARWs. With over one third of the current population, including up to 30 percent of known calving females, visited the RI and MA Lease Areas between 2010 and 2015,⁹ safe passage through any wind energy area must be assured.

NARWs must locate and exploit extremely dense patches of zooplankton, specifically, high concentrations of a lipid-rich copepod (*Calanus finmarchicus*), to feed efficiently, and these dense patches are likely a primary characteristic of the spring, summer, and fall right whale habitats within the region. Given the small population of NARWs, it is crucial that potential impacts to this population be fully considered before IHA issuance. Scientists agree that the loss of even one more breeding female whale would be catastrophic to the population.

Increased Uncertainty for Marine Mammal Surveys

The Bureau of Ocean Energy Management (BOEM) has previously determined that the effects on survey aerial coverage for marine mammals, including the North Atlantic Right Whale (NARW), will substantially impact NMFS' ability to continue using current methods to fulfill its mission of precisely and accurately assessing protected species. This will result in an unacceptable level of uncertainty in protected resource management. It will also potentially result in an event that may otherwise be a "harassment" event become a mortality event, if entanglement response is delayed, hampered, or made impossible and injured whales cannot be rescued. So too is the cessation of NMFS protected resource surveys a threat to climate science itself; assessment of protected resource and fish stocks over long time series is a key factor in understanding ecosystem health, function and shifts and responses to climate change.

⁹ Vineyard Wind SEIS, p. 3-127.

Concerns Regarding Treatment of Whales in OSW Permitting

A major concern is the high amount of increased vessel traffic associated with offshore wind development throughout the region in areas transited or utilized by certain protected resources. BOEM has also estimated that construction of each future OSW project would require an additional 25-46 vessels per project operating in the proximal geographic area at any given time, and that up to four projects would be under construction at the same time in the next few years.¹⁰ This large increase in traffic would greatly increase the risk of ship strike to protected species, including endangered whales. NMFS has stated that slowing down vessel traffic and reducing ocean noise, as well as reducing risks of entanglements are key to regulation and management plans. However, vessel speed restrictions are not fully mandated or enforced for OSW vessels.

Additionally, associated increases in vessel noise could contribute to the suite of ongoing stressors impacting the NARW population. Noise has been found to interfere with right whale communication and increase their stress levels. In turn, “females that undergo energetic stress from reproduction may be more susceptible than males to dying from chronic injuries such as those from entanglement or vessel strikes.”¹¹ Noise from human activities, such as that which would occur with activities associated with wind energy installation and operation of the proposed project, can disrupt normal behavior of NARWs and may further reduce their ability to identify physical surroundings, find food, navigate, and find mates. In a letter to BOEM dated May 13, 2022, the Chief of Protected Species of NOAA’s Northeast Fisheries Science Center noted “[t]he development of offshore wind poses risks to” the NARW.¹²

The Marine Mammal Commission (MMC) has raised several concerns on other proposed authorizations for OSW development. As they are more knowledgeable on impacts of pile driving and acoustics to marine mammals, we defer to their expertise and recommend NMFS fully review the concerns they identify in their public comments.¹³ In particular, MMC cites poor analyses such as underestimation of harassment takes from impact and vibratory pile driving, noise, insufficient and incomplete monitoring measures and reporting requirements. As identified, those issues may result in costly closures or strict management restrictions for fisheries. We urge NMFS to use the best available science including the most comprehensive models for estimating marine mammal take and developing robust mitigation measures.

On September 9, 2020, seventeen environmental NGOs submitted a public comment letter

¹⁰ Vineyard Wind SEIS, p. 3-111.

¹¹ See <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>.

¹² See - https://newbedfordlight.org/wp-content/uploads/2022/11/UR1-2023-000009_10_17_2022.pdf. (Accessed Feb 10, 2023)

¹³ RODA has cited these comments in previous comment letters.

outlining several concerns and recommendations related to the IHA for site characterization surveys required for OSW projects. Many of the items raised can be extended to LOA request reviews. Again, we defer to their expertise but echo their concerns regarding: a) the lack of sufficient data and observations of NARWs and other protected species in areas under for considerations for OSW development and associated cable routes that are not sufficiently described by the models used by NMFS, b) the failure to take a cumulative look at take and harassment as there are numerous areas to be developed and each project will submit an IHA and LOA, c) the untested proposed mitigation and insufficient monitoring measures intended to minimize impacts to protected species, and d) no long term monitoring plans for marine mammals and protected species. This coalition provided concrete recommendations for improving mitigation measures for surveys, including: (1) incorporate additional data sources including real-world observational data into calculations of marine mammal density and take; (2) not adjust take numbers downward for large whales based on unproven mitigation measures; (3) require mitigation measures that meet the least practicable adverse impact standard; and (4) strengthen its vessel speed restrictions. We urge NMFS to ensure that each of these important topics raised by whale experts are fully addressed.

Fishermen Will be Affected by Protected Resource Take

Negative impacts to local fishermen and coastal communities as a result of a potentially adverse impact to marine mammals (e.g. vessel strike resulting in death or severe injury) are not mentioned nor evaluated in the IHA request for this project, and should be included in a comprehensive analysis. The lack of an adequate analysis of individual and cumulative impacts to these protected mammal species is concerning, given that fishermen are already highly restricted in their ability to harvest due to NARWs protections.

The entire fishing industry pays the price to protect highly migratory NARWs, not just those closest to the project area. An impact to NARWs off the South Atlantic will result in impacts to fisheries in Maine, impacts in Cape Cod Bay impact fishermen in Southern New England, and so on. These reverberating impacts are not addressed in this request.

Robust Mitigation and Clarified Accountability Measures

RODA is appreciative of the efforts OSW developers, NMFS, and others have conducted to develop and adopt mitigation measures in order to minimize construction impacts to marine mammals. However, the adequacy of these measures, as all information provided to the government by interested private parties, requires robust independent review. For example, multiple studies exist suggesting that Passive Acoustic Monitoring (PAM) has limited success in detecting NARWs due to their infrequent vocalization. The effectiveness of visual observation in detecting NARW is similarly uncertain, particularly since at-sea conditions rarely meet ideal standards (i.e. crew breaks, rough seas, location of spotter vessels, low light, or other factors that limit visual detection). We encourage NMFS to evaluate the proposed IHA with utmost care, utilizing the best available science.

Mitigation measures in this IHA request include marine mammal shutdown zones, specific to the activity and marine mammal present in the project area and while transiting. For the NARW, the shutdown zone is 500 meters. Even in the most favorable weather conditions, it can be difficult to spot a whale when it is roughly a third-of-a-mile away. In inclement weather, this can be much more so. Because observations will determine if survey activity may commence and/or continue in these zones, further clarification should be included in the IHA that explicitly states if weather or other conditions that limit the range of observation, shutdown zones will be initiated.

Fundamental questions still remain regarding what happens if harm exceeds the threshold under the proposed IHA, or any forthcoming LOAs: what can be done if take or harassment surpasses expected levels? Can a project realistically stop mid-construction or mid-operation after taxpayers have spent billions of dollars on its development? Fisheries are subject to accountability measures by law – up to and including cessation of all activity – if scientifically-based catch limits are exceeded. What accountability measures will apply to ensure that OSW developers are likewise responsible for their own impacts, and the burdens of those are not also assigned to fishermen, should they occur?

The fishing industry wants to see the protection of marine mammals and protected species and thus ask that NMFS consideration of IHAs and LOAs for offshore wind developers be applied equitably across industries. First and foremost, we must protect the marine ecosystems upon which we all rely. Secondly, the OSW industry must be accountable for incidental takes from construction and operations separately from the take authorizations for managed commercial fish stocks. Lastly, there must be a clear IHA threshold for OSW activities regionally and across project phases. With dozens of projects conducting surveys, construction, operation, and decommissioning now and in the next 30+ years, there appears to be no forward-looking plan to address all this new activity that poses a threat to marine mammals and protected species.

Thank you for your consideration of these comments.

Sincerely,



Lane Johnston, Programs Manager



Mike Conroy, West Coast Director
Responsible Offshore Development Alliance



itp Clevestine - NOAA Service Account <itp.clevestine@noaa.gov>

STOP THE HARASSMENT OF 14,193 MARINE MAMMALS BY "LEVEL B" FOR THE MARINE SITE CHARACTERIZATION SURVEYS FOR COMMUNITY OFFSHORE WIND, LLC

1 message

Martin Vongrej <martin.vongrej@yahoo.com>

Mon, May 22, 2023 at 1:51 PM

To: "ITP.clevestine@noaa.gov" <ITP.clevestine@noaa.gov>

Dear Sirs,

Recently, an important report and a federal "opinion" were issued about the impacts of offshore wind (OSW) development on marine resources that validate the need for good science and due diligence. This new information supports Clean Ocean Action's call for a comprehensive, independent, reasonable, and responsible pilot project to understand the impacts of OSW development on marine and coastal ecosystems prior to large-scale industrialization of the ocean.

First, the [report](#) "Fisheries and Offshore Wind Interactions: Synthesis of Science," jointly authored by the Responsible Offshore Development Alliance (RODA), and representatives from the Bureau of Ocean Energy Management (BOEM) and National Marine Fisheries Service (NMFS), reviews current and past scientific research examining "the interactions between OSW, fisheries, and the marine ecosystems." What is clear from this report is that critical information is still needed on offshore wind impacts, especially on a cumulative scale to marine ecosystems. Some important findings from the report:

- "Because the local effects of benthic habitat modification are multiplied many times within and between OSW development areas, these installations can have population-level effects on regional spatial scales."
- "The impacts on fish species from changes in upwelling, habitat type, and ocean circulation are largely unknown, including cumulative effects."
- "The effects of EMF emissions from high voltage OSW cables on electrically and magnetically sensitive marine fishes are largely unknown."

Second, a recent, disturbing "[biological opinion](#)" announcement by NMFS states that Ocean Wind 1 – the 98-turbine offshore wind project off southern New Jersey – is "likely to adversely affect, but is not likely to jeopardize, the continued existence of any species of ESA-listed whales, sea turtles, or Atlantic sturgeon or destroy or adversely modify any designated critical habitat." This includes the critically endangered North Atlantic right whale, of which there are less than 340 left on Earth. The less than one page opinion was absent analysis, and no document was immediately released for public review until a [600-page document](#) was released days after the announcement.

"Not likely to jeopardize the continued existence" of any endangered marine life, does not exude confidence; in fact, it is alarming. Anyone concerned about ocean life should demand the precautionary principle. This "opinion" is especially important since there are dozens of projects with thousands of wind turbines progressing rapidly in the region. Prior to further development, more scientific evidence is needed to ensure the protection of the marine environment.

I have lived in Ocean County for over 25 years. Never have I seen the amount of marine mammal death and strandings as seen since sonar work started for offshore wind development. It is truly unbelievable that one bureaucracy can destroy the work of another federally protected species, not to mention the livelihood of those whose living comes from the oceans. Offshore wind is pathetic green attempt to look good with little benefit.

Regards,

Martin Vongrej



itp Clevestine - NOAA Service Account <itp.clevestine@noaa.gov>

DENY COMMUNITY OFFSHORE WIND & ATTENTIVE ENERGY'S LEVEL B HARASSMENT REQUESTS (HELP PROTECT OVER 23,000 MAMMALS)

1 message

Devin Waldron <drwaldron95@gmail.com>
To: ITP.clevestine@noaa.gov

Mon, May 22, 2023 at 8:02 PM

Jolie Harrison
Chief, Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
ITP.clevestine@noaa.gov

Dear Jolie Harrison,

My name is Devin Waldron, and I write to you with a similar plea as I have recently, this time urging the National Marine Fisheries Service to stop the harassment of over 23,000 marine mammals: Community Offshore Wind's Level B request to harass 14,193 marine mammals and Attentive Energy's Level B request to harass 9,086 marine mammals must be DENIED. Nothing has changed, yet these requests roll in like the dead bodies of marine mammals onto our beaches. And because of this, my note is very much the same as the last one to you.

I think it's most important to first note that I am in favor of clean energy, however, my objection here is that it is all at the cost of marine life, which is needlessly impacted despite there being better and already-approved locations, such as the Hudson South Call Area, that would pose less danger and damage to marine life and coastal communities. Obviously these should be considered. After all, what's the point in doing something for the environment if the environment will be paying the greatest toll? How "green" is green energy with the red blood of mammals adrift in our waters?

Far too many marine mammals have already paid the price. Between December and February, 23 whales washed up along the East Coast, with 12 (and a 13th spotted) in New York and New Jersey alone. Six of these whales washed up in New Jersey, where the annual average is usually only 7 a year. Many of these majestic creatures now find themselves buried beneath our beaches or in a landfill. This is not to mention the dolphins that have been dying too.

The only relevant change we are aware of is the large number of these aforementioned surveys off the coast. As I am sure you know, the projects for which they are surveying are immense and will do irreparable damage to the environment it pledges to protect. The plans for them in the northeast alone over just the next 6 years will impact 2.4 million acres with 3,400 turbines as tall as the Chrysler building (wowza!) and 10,000 miles of cable ripping through the seafloor—that's 3 ½ times the distance of LA to NY! Plus an additional 5.7 million acres are under consideration.

Beyond the headline-stealing whales washing up on the beach, the entire ocean realm off of New Jersey and New York is generally one of the most diverse in the world with 33 species of whales (including the endangered North Atlantic Right Whale), dolphins and a porpoise (5 endangered and all protected species), 4 species of seals (all protected) and 5 species of sea turtles (all endangered and protected). Plus, the threatened Piping Plover resides along the coast of New Jersey. We must do more to protect these beautiful creatures.

As you know, these IHAs allow “the potential to disturb (but not injure) a marine mammal or marine mammal stock in the wild by disrupting behavioral patterns, including, but not limited to, MIGRATION, BREATHING, NURSING, BREEDING, FEEDING, or SHELTERING.” The idea that someone can think an animal will not be injured (or worse) but can have its migration, breathing, nursing, breeding, feeding, and/or sheltering affected is disturbing. I cannot imagine what having my breathing being “disturbed” is like. These authorizations must be DENIED until there is a proper investigation until the effects of the previous surveys can be investigated and understood.

Animals are being “allowed” to be disturbed and harassed on an unprecedented scale, yet it’s not at least possible that this increase in disturbances and harassments could’ve led to an unprecedented number of whale deaths along our coast? An increase in both seems like a correlation worth investigating to me, and until then, IHA requests should be denied and current/future work paused.

Over 358,000 people have signed the Change.org PETITION TO DEMAND INDEPENDENT INVESTIGATION OF WHALE DEATHS. Please help protect any further mammals from harm by DENYING the Level B harassment of over 23,000 marine mammals as requested by both Community Offshore Wind and Attentive Energy. These majestic creatures care as deeply about their own safety, travel, breathing, families, eating and homes as we humans do and they are unfortunately already paying the price for this massive and rapid industrialization. We must act and do more before it’s too late.

Sincerely,

Devin

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Devin Waldron
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