

Texas  **Public**
POLICY FOUNDATION

**BEFORE THE SECRETARY OF THE UNITED STATES
DEPARTMENT OF THE INTERIOR AND DIRECTOR OF
THE BUREAU OF OCEAN ENERGY MANAGEMENT**

Seafreeze Shoreside, Inc.,
Long Island Commercial Fishing Association, Inc.,
XIII Northeast Fishery Sector, Inc.,
Heritage Fisheries, Inc.,
NAT W., Inc., and
Old Squaw Fisheries, Inc.

PETITIONERS

**PETITION TO RECONSIDER VINEYARD WIND 1's
CONSTRUCTION AND OPERATIONS PLAN (LEASE NO. OCS-
A 0501), AS AMENDED JANUARY 17, 2025, AND TO ISSUE AN
ORDER SUSPENDING FURTHER CONSTRUCTION AND
ENERGY GENERATION ACTIVITIES AT THE PROJECT SITE
PENDING RECONSIDERATION**

INTRODUCTION AND EXECUTIVE SUMMARY

Petitioners file this petition with the Secretary of the Interior and the Director of BOEM pursuant to the Right to Petition Government Clause of the First Amendment of the United States Constitution,¹ the Administrative Procedure Act,² and regulations of the Department of the Interior and BOEM. For the reasons set forth hereinafter, Petitioners respectfully request the Secretary of the Interior to (1) direct BOEM to investigate and reconsider the approval process of the Construction and Operations Plan (“COP”) for the Vineyard Wind 1 offshore wind project on the Outer Continental Shelf located within Lease Area No. OCS-A 0501; (2) immediately issue an order suspending any further construction and energy generation activities at the project area pending the investigation and reconsideration; and (3) if the investigation and reconsideration shows that the COP approval was not in accordance with law (a) rescind the COP and (b) order Vineyard Wind, LLC, and its successors to dismantle and remove any and all equipment and other objects from the Vineyard Wind 1 project area installed under color of the COP approval and to place the entire project area back into the condition it was in prior to the COP’s approval.

In 2021, the Biden Administration launched an ambitious initiative to diminish demand for fossil fuels by approving dozens of offshore wind projects. These

¹ “Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances.” U.S. Const. amend. I. The right to petition for redress of grievances is among the most precious of liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967). It shares the “preferred place” accorded in our system of government to the First Amendment freedoms and has a sanctity and sanction not permitting dubious intrusions. *Thomas v. Collins*, 323 U.S. 516, 530 (1945). “[A]ny attempt to restrict those [First Amendment] liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.” *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. 542, 552 (1875).

² 5 U.S.C. Section 553(e).

projects are located in federal waters on the Outer Continental Shelf (“OCS”) off the Atlantic, Pacific and Gulf Coasts of the United States. To accomplish this enormous task, the Department of the Interior’s Bureau of Ocean Energy Management led a whole-of-government effort to approve as many offshore wind projects as possible, as quickly as possible. The first approval under this massive program was the Vineyard Wind 1 Project, located in the North Atlantic off the coast of Massachusetts. Vineyard Wind 1 provided a model for approving other projects and leases on all three coasts.

During the approval process, the Departments of the Interior, Commerce, and Defense, acting through their sub-agencies and officers, acknowledged that the Vineyard Wind Project would harm safety, the environment, and national security. Yet they permitted the project anyway—skirting their mandatory duties under the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1337(p)(4), to “ensure” offshore wind projects are carried out “in a manner that provides for safety; protection of the environment; conservation of natural resources; national security; a fair return; [and] prevention of interference with other reasonable uses,” among other things. In the process, the Biden Administration sidestepped its duties under the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), the Clean Water Act (“CWA”), and the Clean Air Act (“CAA”).

These review processes were not just a legal formality. They were meant to identify and mitigate foreseeable safety and environmental harms. Skipping or shortcircuiting these reviews led to real-world consequences. Indeed, the flaws in the Biden Administration’s rushed approval process became apparent when one of the blades from the Vineyard Wind 1 windmills—the size of a football field—crashed into the ocean last summer. *See* U.S. Coast Guard, District 1 Broadcast Notice to Mariners Message (July 13, 2024), <https://tinyurl.com/4jmxh9cj>; *see also* U.S. Coast Guard, Bulletin: Safety/Vineyard Wind (July 18, 2024), <https://tinyurl.com/4jfp4tuu>. This blade failure scattered fiberglass debris across the Rhode Island and Massachusetts

coasts, closing beaches during the peak summer season. *See* Press Release, Town of Nantucket, Mass., Vineyard Wind Debris Recovery Efforts Underway on Nantucket (July 16, 2024), <https://tinyurl.com/4bxvud74>. On the heels of this massive failure, the Biden Administration issued yet another rushed COP approval—three days before President Trump took office—that allowed Vineyard Wind to continue construction and operation and did not remedy any of the previously identified legal errors. *See* U.S. Dep’t of the Interior, Conditions of Construction and Operations Plan Approval, As Amended (Jan. 17, 2025), <https://tinyurl.com/mwnf4x73>.

The Biden Administration’s review of the Blade failure found that 66 blades on 22 turbines that had already been installed had the same risk of catastrophic failure. *See id.* at 26. Rather than pause construction and operations at Vineyard Wind 1 to address the rushed process that led to these defective blades, BOEM allowed Vineyard Wind to continue constructions and operations so long as the defective blades were removed. *Id.*

This Petition asks the Secretary of the Interior and Director of BOEM to do what the prior holders of those offices should have done last summer: issue an order suspending construction and energy generation activities at the Vineyard Wind 1 project area. This order should go into effect immediately and pending further notice while BOEM investigates the approval process for the Vineyard Wind 1 COP. If the investigation shows that the COP approval was not in accordance with law, the Secretary of the Interior should direct BOEM to rescind the COP and order Vineyard Wind, LLC, and any of its successors, to dismantle and remove any and all equipment and other objects from the Vineyard Wind 1 project area installed under color of the COP approval and to place the entire project area back into the condition it was in prior to the approval of the COP.

There are at least 13 violations of federal law associated with the COP approval, providing ample justification for the requested stop order pending

reconsideration of the COP. These violations are briefly listed below and explained in detail hereinafter:

Outer Continental Shelf Lands Act Violations

1. Failure to ensure safety (OCSLA, 43 U.S.C. § 1337(p)(4)(A))
2. Failure to protect the environment (OCSLA, 43 U.S.C. § 1337(p)(4)(B))
3. Failure to conserve natural resources (OCSLA, 43 U.S.C. § 1337(p)(4)(D))
4. Failure to protect national security (OCSLA, 43 U.S.C. § 1337(p)(4)(F))
5. Failure to ensure a fair return (OCSLA, 43 U.S.C. § 1337(p)(4)(H))
6. Failure to prevent interference with other reasonable uses (OCSLA, 43 U.S.C. § 1337(p)(4)(I))

National Environmental Policy Act Violations

7. Using power generation contracts to define the need for the project (NEPA, 42 U.S.C. § 4332(C))
8. Failure to consider reasonable alternatives in the COP EIS (NEPA, 42 U.S.C. § 4332(C)(iii), (H))

Endangered Species Act Violations

9. ESA Incidental Take Permit relied upon a flawed Biological Opinion (ESA, 16 U.S.C. § 1536(a)(2), 50 C.F.R. § 402.14(h))

Clean Water Act Violations

10. Unacceptable adverse impacts of dredge and fill material (CWA, 40 C.F.R. § 230.1(c))
11. Failure to analyze practical alternatives (CWA, 40 C.F.R. § 230.10(a); 33 C.F.R. § 320.4(a)(1))

Clean Air Act Violations

12. Insufficient consideration of vessel emissions (CAA, 42 U.S.C. § 7627, 40 C.F.R. § 55.6)
13. Insufficient consideration of pile driving emissions (CAA, 42 U.S.C. § 7627, 40 C.F.R. § 55.6)

The OCSLA violations arise from BOEM's erroneous reading of 43 U.S.C. § 1337(p)(4), which contains 12 factors that the Secretary must provide for when considering any offshore wind project. In December 2020, during President Trump's first term, the Department of the Interior's Solicitor issued an opinion stating that one of these factors—preventing unreasonable interference—requires preventing any interference that is not de minimis.³ In April 2021 a then-new Solicitor appointed by President Biden after the presidential election replaced M-Opinion 37059 with M-Opinion 37067.⁴ M-Opinion 37067 adopted a balancing approach that allowed the Secretary to “rationally balance” each of the 12 factors rather than ensure each factor is met. M-Opinion 37067 at 4–5. BOEM then used this balancing approach to approve the Vineyard Wind 1 COP. But this approach allowed the Secretary to ignore or discount OCSLA's mandatory statutory factors—essentially rewriting the statute. The Supreme Court has made clear that “an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.” *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328, (2014).

³ Office of the Solicitor, U.S. Dep't of the Interior, Memorandum Opinion No. 37059, Secretary's Duty to Prevent Interference with Reasonable Uses of the Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), *Alternate Energy-related Uses on the Outer Continental Shelf* 15 (Dec. 14, 2020), <https://tinyurl.com/mu8b77m5> [hereinafter “M-Opinion 37059”].

⁴ Office of the Solicitor, U.S. Dep't of the Interior, Memorandum Opinion No. 37067, Secretary's Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf (Apr. 9, 2021), <https://tinyurl.com/3tzp4ahy> [hereinafter “M-Opinion 37067”].

The Biden Administration used the balancing approach of M-Opinion 37067 to brush aside significant safety, national security, and environmental impacts as well as to paper over the Vineyard Wind 1 Project’s interference with commercial fishing. Recognizing this problem, the current Solicitor recently issued M-Opinion 37086,⁵ which withdraws M-Opinion 37067’s balancing approach and reinstates M-Opinion 37059. *See* M-Opinion 37086 at 3. M-Opinion 37086 makes it clear that the Secretary must meet each of § 1337(p)(4)’s factors and not to the detriment of any other factor. *Id.* M-Opinion 37086 also recommends reevaluating any actions that used the balancing approach set forth in the now-withdrawn M-Opinion 37067. *Id.* The Vineyard Wind 1 COP is one such action that should be reevaluated in light of M-Opinions 37086 and 37059.

In turn, the NEPA, ESA, CWA, and CAA violations arose from a misreading of those statutes by the Biden Administration and consequent failure to carefully and properly evaluate the scientific and technical data at its disposal. Those statutory violations, in addition to the OCSLA violations, require reevaluation of the COP approval and a suspension of any further construction and operations activities at the Vineyard Wind 1 project site.

Furthermore, reviewing BOEM’s offshore wind approval process at the Vineyard Wind 1 project, coupled with an order stopping construction and energy generation pending the review, aligns with the Trump Administration’s stated policies. On his first day in office, President Trump ordered a temporary withdrawal of offshore wind leasing on all areas on the OCS. Memorandum. *See* Temporary

⁵ Office of the Solicitor, U.S. Dep’t of the Interior, Memorandum Opinion No. 37086, Withdrawal of Solicitor’s Opinion M-37067 and Reinstatement of M-Opinion 37059, *Secretary’s Duty to Prevent Interference with Reasonable Uses of the Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), Alternate Energy-related Uses on the Outer Continental Shelf 3* (May 1, 2025), <https://tinyurl.com/ys7pynks> [hereinafter “M-Opinion 37086”].

Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 29, 2025) [hereinafter “Offshore Wind Memorandum”]. Among other things, the executive order directed the Secretary of the Interior to lead a comprehensive review of offshore wind leasing that addresses “alleged legal deficiencies” with the prior Administration’s permits. *Id.* at 8363–64.

The President’s executive order covers all renewable energy leases on the OCS, but it does not by its terms suspend construction activities at projects which have already received COP approvals, such as Vineyard Wind 1. *Id.* at 8363. The Administration has already reviewed another offshore wind project already under construction in the Northeast. BOEM announced in April of this year that it was suspending construction activities at Empire Wind project. *See* Director’s Order, Bureau of Ocean Energy Mgmt. (Apr. 16, 2025). However, press reports indicate that the review and suspension at Empire Wind ended as part of a deal with New York’s governor to permit a natural gas pipeline elsewhere in New York state. *See* Nichola Groom & Nora Buli, *US Lifts Ban on New York Offshore Wind Project After Natgas Pipe Compromise*, Thomson Reuters (May 20, 2025), <https://tinyurl.com/4ksu45v6>. That natural gas pipeline approval deal does not involve any state with an interest in Vineyard Wind 1.

INTEREST OF PETITIONERS

Petitioner Seafreeze Shoreside, Inc. (“Seafreeze”) is one of the largest fish dealers in Point Judith, Rhode Island, with sales in both domestic and international markets. Seafreeze purchases, sells, and processes product—primarily squid—from its own customers and other local wholesalers. Seafreeze is also the primary ice supplier to squid fishing vessels in Port Judith. Seafreeze services three company-owned, federally-permitted vessels (which supplies Seafreeze with squid and other marine species) and additionally services approximately 20 independently-owned

vessels, many of which are federally-permitted squid vessels. Seafreeze employs about 40 people, including temporary workers. Squid is vital to Seafreeze's business and the vessels it services. In addition to participating in fishery management processes, Seafreeze has long supported cooperative research and works to enhance scientific understanding of fisheries' resources in the context of the wider marine environment. Seafreeze's entire business is injured because BOEM's approval of the Vineyard Wind 1 COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind 1 lease area, on which Seafreeze depends for a substantial portion of its revenues. If the relief requested in this petition is granted, Seafreeze's injuries will be redressed because fishing activities in the area will be able to recommence.

Petitioner Long Island Commercial Fishing Association, Inc. ("LICFA") is a commercial fishing industry group representing New York's commercial fishermen and fishing industry in 11 gear groups in 14 ports on Long Island. LICFA represents owners and operators from over 150 fishing businesses, boats, and fishermen who are home-ported on Long Island, some of which fish in state and federal waters that include the Vineyard Wind Lease area. LICFA and its members support extensive cooperative scientific research aimed at improving understanding of the marine environment, in addition to engaging in fisheries management, public education, and outreach. LICFA members are injured because issuing Vineyard Wind's lease and approving the COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind lease area, on which some LICFA members depend for a substantial portion of their revenues. If the relief requested in this petition is granted, LICFA's injuries will be redressed because fishing activities in the area will be able to recommence.

Petitioner XIII Northeast Fisheries Sector, Inc. ("Sector XIII") is a private organization of commercial fishermen formed in 2010. Sector XIII has 49 members

responsible for monitoring compliance with 60 fishing permits along the coast of the northeast United States and supporting the commercial fishing industry in the area. Sector XIII's members fish the waters of the Vineyard Wind lease area, and their livelihoods depend upon the availability of that area for fishing. Sector XIII's members are injured because issuing Vineyard Wind's lease and approving the COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind lease area, on which Sector XIII members depend for a substantial portion of their revenues. If the relief requested in this petition is granted, Sector XIII's injuries will be redressed because fishing activities in the area will be able to recommence.

Petitioner Heritage Fisheries, Inc. ("Heritage Fisheries") is a commercial fishing company whose President is Thomas E. Williams, Sr. Williams has been a commercial fisherman since 1967. Heritage Fisheries owns a fishing boat called "FV Heritage" that fishes the waters of the Vineyard Wind lease area. Fishing in the lease area provides approximately 30–40% of the company's annual revenues. FV Heritage is captained by Thomas E. Williams Sr.'s son, Thomas Williams. Heritage Fisheries's continuing economic viability depends on its ability to continue to fish in the Vineyard Wind lease area. Heritage Fisheries is injured because issuing Vineyard Wind's lease and approving the COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind lease area, on which Heritage Fisheries depends for a substantial portion of its revenues. If the relief requested in this petition is granted, Heritage Fisheries's injuries will be redressed because fishing activities in the area will be able to recommence.

Petitioner NAT W., Inc. ("NAT") is a commercial fishing company whose President is also Thomas E. Williams, Sr. NAT owns a fishing boat called "FV Tradition," which is captained by Thomas E. Williams' son, Aaron Williams. FV Tradition fishes the waters of the Vineyard Wind lease area, which provides approximately 50–60% of NAT's annual revenue. NAT's continuing economic viability

depends on its ability to continue to fish in the Vineyard Wind lease area. NAT is injured because issuing Vineyard Wind's lease and approving the COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind lease area, on which NAT depends for a substantial portion of its revenues. If the relief requested in this petition is granted, NAT's injuries will be redressed because fishing activities in the area will be able to recommence.

Petitioner Old Squaw Fisheries, Inc. ("Old Squaw") is a commercial fishing company based in Montauk, New York, whose President is David Aripotch. Old Squaw owns a fishing boat called "FV Caitlin & Mairead," which is captained by David Aripotch. FV Caitlin & Mairead fishes the waters of the Vineyard Wind lease area, which provides approximately 30% of Old Squaw's revenue. Old Squaw's continuing economic viability depends on its ability to continue to fish in the Vineyard Wind lease area. Old Squaw is injured because issuing Vineyard Wind's lease and approving the COP has resulted in the cessation of commercial fishing activities in the Vineyard Wind lease area, on which Old Squaw depends for a substantial portion of its revenues. If the relief requested in this petition is granted, Old Squaw's injuries will be redressed because fishing activities in the area will be able to recommence.

ARGUMENT

OCSLA Violations

1. BOEM Failed to Ensure Safety (OCSLA, 43 U.S.C. § 1337(p)(4)(A)).

OCSLA authorizes the Secretary to oversee mineral exploration and development in the OCS by granting leases. 43 U.S.C. §§ 1331–1356. The law requires that "the character of the waters above the outer continental shelf as high seas and the right to navigation and fishing therein shall not be affected" by BOEM's management and regulation. *Id.* § 1332(2). In 2005 Congress expanded OCSLA to

include renewable energy projects. Energy Policy Act of 2005, Pub. L. No. 109-58, § 388(a) 119 Stat. 594, 744 (2005). That Act included twelve requirements the Secretary must ensure in connection with renewable energy projects, codified at 43 U.S.C. § 1337(p)(4)(A)–(L).

The first of these factors is safety. 43 U.S.C. § 1337(p)(4)(A). BOEM violated section 1337(p)(4)(A) by approving a design for the Vineyard Wind 1 Project that significantly imperils working fishermen and other vessels operating in the Project area. Contrary to the extensive public comments and data submitted by the Responsible Offshore Development Alliance and others, BOEM’s approved COP allows wind turbines to be constructed on a one-mile-by-one-mile grid. For most fisheries and gear types used in the Project area, this spacing between turbines is too narrow to conduct safe fishing operations or even to safely transit the lease area. *See* Responsible Offshore Development Alliance, Comments on Supplement to Draft Environmental Impact Statement 12–13 (July 27, 2020), <https://tinyurl.com/2pjwmnbs>. In addition, the approved Plan violates the U.S. Coast Guard’s own guidance for Closest Point of Approach for a fixed hazard and the United Nations Convention on the Law of the Seas Safety Zone (of 500m) on each side of the “transit lane.” *Id.* at 14.

Because predominant wind patterns (summer winds tending to blow from the southwest and winter winds from the northwest) a drifting boat in need of rescue would likely need to be searched for along the diagonal. Expanding the diagonal spacing to 1.0 nautical mile would require 1.41 nautical mile grid spacing. The Coast Guard’s search and rescue operations in the lease area would be limited—that is, to conduct search and rescue operations safely the Coast Guard would be limited to the diagonal only in the straight east-west and north-south corridors. In the most heavily transited directions, the Coast Guard would not have the straightaway needed for safe, efficient, and effective searches.

The Vineyard Wind turbines’ narrow spacing also creates a significant risk that ice buildup on the turbines in winter will be shed or thrown and hit vessels transiting the Project zone—a known risk of wind turbines operating in cold climates. Responsible Offshore Development Alliance, Comments on Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island at 6 (Mar. 16, 2020), available at <https://tinyurl.com/5avbhcwz>.

Layouts with minimal spacing between turbines increase the risk to transiting vessels from falling ice. *Id.* Although turbines can be designed and placed so as to reduce this risk, BOEM failed to ensure that recommended turbine spacing and design maintains a reasonable level of safety, abdicating its oversight role by stating that “evaluat[ing] the potential for icing events and develop[ing] both predictive and operational strategies . . . is the basic responsibility of a prudent operator.” Letter from A. Lefton to Responsible Offshore Development Alliance at 5 (Aug. 6, 2021), available at <https://tinyurl.com/yc49jbc2>.

The Project will also interfere with marine navigational radar, increasing risks for all vessels in the area. BOEM received multiple comments on this matter—including from Petitioners—but disregarded them. *See* Supplemental Draft EIS at 60–62. Petitioner Seafreeze submitted radar interference studies and information to both BOEM and the U.S. Coast Guard. Yet BOEM did not take any meaningful steps to mitigate predictable radar interference. BOEM funded a National Academies of Sciences report in 2022 that not only confirmed the marine radar interference issue but also quoted Petitioner Seafreeze’s comments in its analysis. National Academies of Sciences, Engineering, and Medicine, Wind Turbine Generator Impacts to Marine Vessel Radar 14 n.7 (2022), <https://doi.org/10.17226/26430>.

This interference will only become more pronounced with Vineyard Wind’s decision to use gargantuan 13–14 MW Haliade turbines, rather than the originally-planned 8–10 MW size. BOEM failed to properly review and analyze Vineyard Wind’s

decision to increase its turbine size even though it made the project less safe—a willful lack of due diligence that puts every ship traveling through the Vineyard Wind project area at risk.

Further, no offshore wind turbine that exists today can survive a Category 3 or greater Atlantic hurricane. Neither the Record of Decision nor the Final EIS examine any safety or engineering issues with respect to the new Haliade-X wind turbines. With all the government regulation in place to ensure the safety of virtually every other product and structure in the United States, here there is none. There is no evidence of engineering reports nor tests, and the Bureau did nothing to review the structural integrity and safety of the 84 Haliade-X wind turbines relative to the New England marine environment. (For reference, each of these wind turbine structures is nearly 300 feet taller than the Washington Monument.) Instead, BOEM’s Final Environmental Impact Statement (“EIS”) cites a bare assertion by Vineyard Wind that the turbines “would be designed to endure sustained wind speeds of up to 112 miles per hour.” Final EIS at 2-8. Hurricane Bob, which occurred in 1991 near the Project site, was a Category 2 hurricane on the Saffir Sampson Scale (sustained winds 96–110 mph) when it made landfall, suggesting its wind speeds exceeded 112 mph as it passed through the Project area.

But it did not take a hurricane for the first safety issue to appear. In July 2024 one of the blades from Vineyard Wind’s windmills—the size of a football field—crashed into the ocean. U.S. Coast Guard, District 1 Broadcast Notice to Mariners Message (July 13, 2024), <https://tinyurl.com/4jmxh9cj>; U.S. Coast Guard, Bulletin: Safety/Vineyard Wind (July 18, 2024), <https://tinyurl.com/4jfp4tuu>. This blade failure led the Coast Guard to issue a safety bulletin for vessels traveling in the area. The situation could have been much worse had the falling blade struck a vessel on the ocean surface.

BOEM's review identified 66 blades on 22 turbines that had already been installed and had the same risk of catastrophic failure. U.S. Dep't of the Interior, Conditions of Construction and Operations Plan Approval, As Amended 26 (Jan. 17, 2025), <https://tinyurl.com/mwnf4x73>. Yet BOEM allowed Vineyard Wind to keep operating, so long as the defective blades were removed. *Id.*

All this shows that BOEM failed to "ensure . . . safety" when it approved the Vineyard Wind 1 COP. 43 U.S.C. § 1337(p)(4)(A).

2. BOEM Failed to Protect the Environment (OCSLA, 43 U.S.C. § 1337(p)(4)(B)).

OCSLA also requires the Secretary to protect the environment. 43 U.S.C. § 1337(p)(4)(B). BOEM violated section 1337(p)(4)(B) by failing to protect the North Atlantic Right Whale, fishery resources, and marine habitats.

The Project's construction includes pile driving, installing large turbines, increased vessel presence in the lease area, and other human-driven activities. These activities will injure the endangered North Atlantic Right Whale, fishery resources, and habitat, including during the construction, operation, and decommissioning phase of the Project. *See* Supplemental EIS at 3-114.

Pile driving during construction and wind turbine operation emit low frequency noise impacting the North Atlantic Right Whale and other species. Low frequency noise is known to induce behavioral changes and mortality in squid egg, larval, and adult life stages. Ian T. Jones et al., Changes In Feeding Behavior of Longfin Squid (*Doryteuthis pealeii*) During Laboratory Exposure to Pile Driving Noise, 165 Marine Env't Rsch. 105250 (2021). These impacts likely will cause cumulative population level effects that the Government neither considered nor effectively mitigated. Additional impact producing factors that will go unmitigated include: lights, heat, electromagnetic forces, sedimentation, siltation, habitat conversion, crushing, shadowing, pressure changes, and wake effect, all of which will

impact marine organisms and will have acute effects on the North Atlantic Right Whale. NOAA Fisheries, North Atlantic Right Whale, <https://tinyurl.com/25mexd6r> (last updated Mar. 20, 2025) (“Noise from [boating and construction] activities can interrupt the normal behavior of right whales and interfere with their communication. It may also reduce their ability to detect and avoid predators and human hazards, navigate, identify physical surroundings, find food, and find mates.”). Peak sound pressure from pile driving will kill several marine species and generally interfere with their anti-predator alarm responses, further disturbing the marine population in the Project area. *Id.*

This Project requires adding concrete, boulders, and electrified cables to the ocean floor, making it uninhabitable by marine organisms such as squid and surfclams that require a sandy ocean bottom to grow to maturity. In addition to biological effects, this “conversion of soft sediment habitat to hard bottom via protective cover” is likely to have the effect of “generally decreasing trawlable habitat.” Final EIS at 3-219. Vessel strikes are a common source of injury or mortality to cetaceans. Vessel traffic associated with the Project poses a high-frequency, high-exposure collision risk to marine mammals. These include the North Atlantic Right Whale, other baleen whales, and calves that spend considerably more time at or near the ocean surface. *Id.* at 1-164.

Under the Biden Administration, BOEM underplayed the environmental impact, including to coastal habitats, benthic resources, finfish, invertebrates, essential fish habitat, sea turtles, and marine mammals, by concluding that the impacts are negligible to moderate or just moderate. To the contrary, the final EIS determined “the proposed Project would result in 4.7, 1.6, and 4.0 percent annual increases in vessel traffic during construction, operations, and decommissioning, respectively [in the wind development area].” *Id.* at 3-94. And “Vineyard Wind anticipates that [wind turbine generator and electronic service platform] components,

as well as offshore export cables, would be shipped from overseas ports, either directly to the [wind development area] or through a U.S. port. A total of approximately 122 vessel round trips, with approximately 5 round trips per month[.]” *Id.*

“[A]t the peak of project construction . . . up to 230 vessels associated with offshore wind development along the east coast may be operating in the geographic analysis area.” *Id.* at 3-84. And, cumulatively, there could be thousands of vessels a year for all the offshore wind projects on the East Coast. *See* U.S. Bureau of Ocean Energy Management, Atlantic OCS Renewable Energy: Massachusetts to South Carolina (Aug. 13, 2021), <https://tinyurl.com/yvz9r9x2>. Vineyard Wind stated that the components, as well as offshore export cables, would be shipped from overseas ports, either directly to the Project area or through a U.S. port. Final EIS at 3-94.

Also lacking from BOEM’s approval are the effects decommissioning would have on the environment and any protection measures at the decommissioning phase. BOEM impermissibly waived all required decommissioning payments from Vineyard Wind, LLC during the first 15 years of the Project’s operation. *See* Appellants’ Opening Br. at 76, *Seafreeze Shoreside Inc. v. U.S. Dep’t of the Interior*, 123 F.4th 1 (1st Cir. 2024) (citing to the administrative record BOEM_0077110). The deferral directly contradicts BOEM’s OCSLA Compliance Memorandum set forth in Appendix B of the ROD, which states that “Vineyard Wind is required to satisfy its decommissioning financial assurance obligations prior to the installation of any facilities authorized in the COP [and] said obligation will be included as a COP condition of approval.” *Id.* (citing BOEM_0076922, 0076951).

Furthermore, Vineyard Wind has no approved decommissioning plan, and has never demonstrated that one exists, even in draft form. *See id.* at Appx. 01409 (cross-examination of Vineyard Wind, LLC’s CEO). This deferral presents the risk that Vineyard Wind will not be in a position to bear the costs of decommissioning for at least 15 years after the Project is fully built. The Vineyard Wind 1 Project is now two

years behind schedule, further extending the date that Vineyard Wind, LLC must deliver its decommissioning bond. Anastasia E. Lennon, Vineyard Wind Leases Construction Terminal Into 2026, New Bedford Light (June 4, 2025), <https://tinyurl.com/2n6e6phe>. The longer construction continues, the greater the likelihood that the costs of decommissioning will increase and that Vineyard Wind will default on its decommissioning obligations. Such a default would leave these man-made structures to decay in the marine environment without adequate remediation.

Notably absent from the record is the decommissioning phase and what Vineyard Wind and the Government will do with these enormous turbines, their components, and the other project structures when the lease and easement run out. Nor does the record evaluate the cumulative impacts of decommissioning each of the projects planned in the geographic region. BOEM abrogated its duty to protect the environment by failing to adequately regulate the removal, relocation, and addition of naturally occurred and manmade structures to the marine environment in the Project area and surrounding region, including boulders, concrete, and other materials.

Additionally, the approval did not contemplate a catastrophic blade failure and its attendant environmental damage. Such a failure occurred in July 2024. This blade failure scattered fiberglass debris across the Rhode Island and Massachusetts coasts, closing beaches during the peak summer season. Press Release, Town of Nantucket, Mass., Vineyard Wind Debris Recovery Efforts Underway on Nantucket (July 16, 2024), <https://tinyurl.com/4bxvud74>. In addition to fiberglass shards, the blade failure also polluted the ocean with microplastics and harmful industrial materials from the turbine structure.

Risks to the environment also exist related to extreme weather. As explained in the previous section, no offshore wind turbine that exists today can survive a

Category 3 or greater Atlantic hurricane. A Category 3 or greater hurricane could lead to a catastrophic release of the oil and harmful substances housed in the wind turbine generators, thus causing the take, and possibly jeopardy, of multiple endangered species, and destroying the fishing grounds off the coast of Rhode Island and Massachusetts for generations. With more than 2,000 turbines forecasted for the Northeast and Mid-Atlantic Outer Continental Shelf, a Category 4 or 5 storm could result in an oil spill greater than that of the Exxon Valdez—which involved a 10 million gallon oil spill. *See e.g.*, U.S. Bureau of Ocean Energy Management, Offshore Wind in the US Gulf of Mexico: Regional Economic Modeling and Site Specific Analyses 15 (Feb. 2020), <https://tinyurl.com/4p8adty8> (noting hurricane survival issues).

BOEM’s failure to address these environmental impacts violated its mandatory duty to “ensure . . . protection of the environment.” 43 U.S.C. § 1337(p)(4)(B).

3. BOEM Failed to Conserve Natural Resources (OCSLA, 43 U.S.C. § 1337(p)(4)(D)).

OCSLA also requires the Secretary to conserve the OCS’s natural resources. 43 U.S.C. § 1337(p)(4)(D). BOEM violated section 1337(p)(4)(D) by failing to take into account conservation measures necessary to protect the North Atlantic Right Whale, fisheries resources, and marine habitats. The Project’s construction includes pile driving, installing large turbines, cables, and protective materials, increased vessel presence, and other activities—all of which will injure protected resources, fisheries resources, and marine habitats. Fish and marine mammals are also themselves “natural resources” of the OCS. *See* 16 U.S.C. § 1801.

The Vineyard Wind COP not only fails in general to conserve fish and marine mammals in the OCS—it will permanently harm, displace, and disturb existing fish, sea turtle, and mammal populations in the lease area. See Final EIS at 3-43, 46, 75,

76, 103, 105. BOEM’s approval did not adequately conserve these natural resources, in direct violation of 43 U.S.C. § 1337(p)(4)(D).

4. BOEM Failed to Protect National Security (OCSLA, 43 U.S.C. § 1337(p)(4)(F)).

OCSLA also requires the Secretary to protect national security. 43 U.S.C. § 1337(p)(4)(F). BOEM violated sections 1337(p)(4)(F) by failing to address the substantial impact that wind turbines have on national defense radar.

The COP arbitrarily ignores concerns associated with radar interference. The Department of Defense has repeatedly raised concerns that “radar clutter (i.e. false targets) from the wind turbine blades would seriously impair the agency’s ability to detect, monitor, and safely conduct air operations.” *See e.g.*, Report to the Congressional Defense Committees, The Effect of Windmill Farms on Military Readiness, Department of Defense Office of the Director of Defense and Research Engineering 4 (2006). The National Security Council and several European countries have expressed similar concerns with existing wind arrays. *See* Sandia National Laboratories, IFT&E Industry Report: Wind Turbine-Radar Interference Test Summary, SAND2014-19003 (Sept. 2014), <https://tinyurl.com/3wry7xrr>. BOEM itself has recognized that wind turbines interfere with air surveillance radar detecting offshore targets. Bureau of Ocean Energy Mgmt., Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf 98 (Aug. 2020), <https://tinyurl.com/4shb2z5t>.

In 2016, the federal interagency Wind Turbine Radar Interference Mitigation Working Group (WTRIM)—of which BOEM is a member—acknowledged radar interference as an impediment to air traffic control, homeland security, national defense and weather forecasting, and sought, “by 2025” to address these issues. U.S. Dep’t of Energy, Federal Interagency Wind Turbine Radar Interference Mitigation Strategy, at vii (Jan. 2016), <https://tinyurl.com/4xmpuf8f>. However, from 2016–2023,

the WTRIM only discovered more problems, no solutions, and in 2023 extended its deadline to 2035. U.S. Dep’t of Energy, Federal Interagency Wind Turbine Radar Interference Mitigation Strategy, 7 (Aug. 2023), <https://tinyurl.com/mu27feam>. This extension does not account for the many offshore wind projects presently under construction, and that all current leases are expected to have operational offshore wind projects—over millions of acres of U.S. coastline—well before 2035. WTRIM has essentially written off any concerns about radar interference for the next 10 years.

BOEM also knew the Vineyard Wind Project in particular would interfere with national defense radar. In 2017 the WTRIM determined that radar interference caused by offshore wind leases off Massachusetts and Rhode Island could not be solved by conventional mitigation approaches and that such approaches could not restore low altitude radar coverage. Wind Turbine Radar Interference Mitigation Working Group, Ground-Based Coastal Air Surveillance Wind Turbine–Radar Interference Vulnerability Study 3–4, 7 (Dec. 8, 2017), <https://tinyurl.com/2juvjq99>.

In August 2020 BOEM determined that the Vineyard Wind 1 project would have a moderate impact on radar. Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf, *supra*, at 3. BOEM knew of these concerns before it approved Vineyard Wind 1’s COP, yet they went unaddressed.

This problem is even more pronounced at the Empire Wind Project. Empire Wind received full BOEM approval despite its interference with nearly the entire line of sight of JFK Airport’s ASR-9 air traffic surveillance radar and other NY air surveillance radars. Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf, *supra*, at 95–98. BOEM knowingly approved this project in 2024 despite having zero solutions to the air surveillance radar interference issue. *See* Bureau of Ocean Energy Mgmt., Empire Wind Construction and Operations Plan, <https://tinyurl.com/mumkuxna> (last visited May 1, 2025). BOEM, in its final Environmental Impact Statement, specifically recommends “infill

radar” as a “possible” mitigation measure that DOD could take for air surveillance ARSR-4 and ASR-8/9 radars.⁶ Bureau of Ocean Energy Mgmt., Empire Offshore Wind Final Environmental Impact Statement, Appendix H H-3 (Sept. 2023), <https://tinyurl.com/fusu6bxt>. But in 2023, the WTRIM—in attempts to find mitigation solutions for air surveillance radar from offshore wind farms—admitted that “[s]everal infill radar systems have been evaluated as potential mitigation solutions as of the publishing of this document. None of these systems have met FAA requirements for integration into the National Airspace System (NAS). Each infill radar system tested was intended to mitigate air traffic control/air defense type radar systems” Federal Interagency Wind Turbine Radar Interference Mitigation Strategy (Aug. 2023), *supra*, at 17 n.2. So the “mitigation” measures that BOEM used to approve the Empire Wind project in 2024 were already known to be ineffective for ARSR-4 and ASR-8/9 air surveillance radars. Yet these are the exact types of radar that BOEM in 2020 identified as experiencing major interference from the Empire Wind project. BOEM identifies Empire Wind as having the highest impact on air surveillance radar of all projects analyzed. Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf, *supra*, at 3. The radar interference issue for Empire Wind arose due to a lack of siting analysis prior to the project’s lease sale.

In fact, the only reason that Empire Wind is sited in its current location is because the New York Power Authority requested that it be sited in that location. *See* Bureau of Ocean Energy Mgmt., Empire Wind Leasing History,

⁶ ARSR-4 is a long range radar that FAA and DOD use to monitor airspace on and around U.S. borders, including coastlines. Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf, *supra*, at 3. ASR-8 and ASR-9 radars are primarily used near airports and in terminal areas to control air traffic. *Id.*

<https://tinyurl.com/mumkuxna> (last visited May 1, 2025). BOEM acquiesced before conducting any review of conflicting uses whatsoever.

BOEM's own data states that “[i]n addition to the detection degradation, there will be many false targets in the vicinity of Empire Wind . . . which appear over the entire wind farm. This can allow aircraft to hide within these false targets, making detection of an aircraft difficult while over the wind farm.” Radar Interference Analysis for Renewable Energy Facilities on the Atlantic Outer Continental Shelf, *supra*, at 103. The approaches to New York City and the entire Atlantic coastline will be put at risk. NATO allies have identified wind farms as problematic for national defense due to radar interference caused by the turbines, including difficulty in military drone detection. *See* Tomasz Sasiada, Estonia’s Defence at Risk: Wind Farms Threaten Security, MSN; Simon Johnson, Sweden Rejects Baltic Sea Wind Farms, Citing Defence Concerns, Thompson Reuters (Nov. 4, 2024), <https://tinyurl.com/29h45tj8>. The recent drone activity off the coasts of New Jersey and New York reinforces the importance of this issue.

In recent project approvals BOEM has appointed DOD to discover “solutions” (which presently do not exist) to the loss of air radar coverage. *See* Empire Offshore Wind Final Environmental Impact Statement, *supra*, at H-3. However, DOD is not assessing what this means for the safety of U.S. commercial air traffic. Neither is the FAA. FAA has conducted no commercial aircraft safety studies, no rerouting studies to address wind turbine obstruction heights, no commercial aircraft radar studies, and no air traffic control studies. Multiple target tracking inside a wind farm will be nearly impossible. Given the recent mid-air collision at Reagan National Airport, the importance of multiple target tracking cannot be overstated.

Most recently, the WTRIM issued a report to Congress in February 2024 that outlines these problems and describes ongoing efforts to address them. U.S. Dep’t of Energy, Update on the Efforts of the Wind Turbine Radar Interference Mitigation

Working Group (Feb. 2024), <https://tinyurl.com/msjctmwd>. The report concluded that the only complete solution to radar interference is to avoid siting wind farms within line of sight of active radar surveillance stations. *Id.* at 10.

BOEM utterly failed in its duty to protect national security. 43 U.S.C. § 1337(p)(4)(F). Both the Vineyard Wind and Empire Wind Projects have significant impacts on national security due to radar interference. These impacts warrant reevaluating the COP for both Projects. Additionally, the Secretary should make radar interference a top priority in his comprehensive review of offshore wind leasing and not delay a solution until the WTRIM's 2035 deadline.

Accordingly, BOEM's approval of the Vineyard Wind COP failed to protect national security, in violation of 43 U.S.C. § 1337(p)(4)(F).

5. BOEM Failed to Ensure a Fair Return (OCSLA, 43 U.S.C. § 1337(p)(4)(H)).

OCSLA also requires the Secretary to ensure a fair return. 43 U.S.C. § 1337(p)(4)(H). Similarly, section 1337(p)(2)(A) also requires a fair return in granting a lease, easement or right-of-way for offshore wind energy production: "The Secretary shall establish royalties, fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or right-of-way granted under this subsection." *Id.* § 1337(p)(2)(A).

BOEM violated these provisions by granting to Vineyard Wind a 65,296-acre annual lease for only \$195,888 (\$3/acre). Furthermore, the Secretary required only \$17,155 for the Project's easement that is 3,592 acres (approximately \$5/acre). On this lease Vineyard Wind will be allowed to generate up to 800 megawatts of electricity and has secured \$2.3 billion in construction loans. *See* Nichola Groom, *Vineyard Wind secures \$2.3 bln Loan, Allowing Construction to Start*, Thomson Reuters (Sept. 15, 2021), <https://tinyurl.com/47sbh7hp>. During the Project's entire 30 year lifespan the United States will have received less than \$3.5 million for the

Project, which is merely .15% of the \$2.3 billion Project. That valuation does not include additional public financial and environmental resources from the federal and state governments upon which it relies. To underscore the valuation of this resource, BOEM itself estimates fisheries value in the lease area to average nearly \$500,000 annually from 2007–2018—revenue that will be lost during the 33-year Project lease term. Final EIS at B-123. In sharp contrast, in OCSLA oil and gas leases, the United States requires royalties be paid to it from the production of wells. *See* U.S. Dep’t of Interior, Natural Resources Revenue Data, <https://tinyurl.com/bdfcshmw> (last visited May 1, 2025); *see e.g.*, Valerie Volcovici, *U.S. Lawmakers Ask Interior to Cut Offshore Oil Royalty Rates Due To Market Slump*, Thomson Reuters (Mar. 20, 2020), <https://tinyurl.com/3sap9n99> (“There is a 12.5% royalty rate for leases in water depths of less than 200 meters and a royalty rate of 18.75% for all other leases.”). But, here, there is no such arrangement for power generation royalties. BOEM has failed to ensure a fair return to the United States, in direct violation of 43 U.S.C. § 1337(p)(4)(H).

6. BOEM Failed to Prevent Interference With Other Reasonable Uses (OCSLA, 43 U.S.C. § 1337(p)(4)(I)).

OCSLA also requires the Secretary to prevent interferences with other reasonable uses of the OCS. 43 U.S.C. § 1337(p)(4)(I). BOEM violated section 1337(p)(4)(I) by failing to prevent interference with commercial fisheries’ use of the OCS.

Under the recently reinstated M-Opinion 37059, when considering offshore wind projects on the OCS,

the Secretary must determine whether the activities proposed on a lease, easement, or right-of-way would interfere with reasonable uses in the area, beyond de minimis or reasonable interference, and take action to ensure that such interference is prevented or disapprove the activity if that interference cannot be prevented to a degree the Secretary deems acceptable within the parameters of the provision.

M-Opinion 37059 at 6. This consideration is mandatory and cannot be balanced with the rest of § 1337(p)(4)'s goals. M-Opinion 37086 at 3. When it approved the Vineyard Wind COP, BOEM used an improper balancing approach to § 1337(p)(4) that ignored the substantial interference the Vineyard Wind Project will cause to commercial fishing. A 2021 M-Opinion adopted that balancing approach, but that Opinion has since been withdrawn. *See id.* The Department of the Interior's Solicitor has recommended all actions that relied on M-Opinion 37067—which includes the Vineyard Wind COP—"be reevaluated in light of" M-Opinion 37086. *Id.*

Vineyard Wind 1's impact on fisheries is major, as the Final EIS and the Record of Decision acknowledge. *See* Record of Decision at 16; Final EIS at ES-13. Because of the Project, fisheries will lose access to their historic fishing grounds. Longer transits to avoid hazards in the Project's lease area will also impose increased costs and lost time harvesting. The disruption in fishing grounds will increase operating costs for vessels, increase safety risk, and lower revenue.

Offshore wind structures and hard coverage for cables will have long-term impacts on commercial fishing operations and support businesses such as seafood processing. Disruptions from construction and cable installation may occur concurrently or sequentially, with similar impacts on commercial fishery resources. Final EIS at 3-126. Disruption may result in conflict over other fishing grounds, localized overfishing, increased operating costs for vessels, and lower revenue (e.g., if the substituted fishing area is less productive, supports less valuable species, poses greater challenges for minimizing bycatch, increases competition with or displacement of other harvesters, or risks increased interactions with protected resources). *Id.*

The spacing between wind turbines provided in the COP is insufficient to permit safe passage by bottom trawl and other fishing vessels that must transverse the area. "The location of the proposed infrastructure within the wind development

area could impact transit corridors and access to preferred fishing locations.” *Id.* at 3-214. Accordingly, “commercial and for-hire recreational fishing fleets may find it more challenging to safely transit to and from homeports as there may be less space for maneuverability and greater risk of allision or collision if there is a loss of steerage.” *Id.*

If vessels must cut a trip short, or if it takes extra time “on the clock” to navigate around the Project because it is unsafe to transit through, the vessel owner and crew will realize a direct financial loss. Once a trip has ended, vessels need to return to port as quickly as possible to sell the freshest product. In addition to safety considerations for personnel and vessels, these reasons limit a vessel’s ability to ride out a storm at sea and are why a vessel operator prefers the most direct route to their port.

If commercial harvesters experience decreased catches because they are unable to operate in the area or are unsuccessful in finding alternative fishing locations that provide comparable catch and fishing revenue, seafood processors and distributors will see lower volumes and/or quality of product. This will impact other businesses that supply the commercial fishing industry and seafood markets themselves including consumers.

Unmitigated disruption of the National Marine Fisheries Service stock assessment surveys’ use of the area will result in increased scientific uncertainty necessitating stock-wide reductions in allowable fisheries catch under the Magnuson-Stevens Fishery Conservation and Management Act, with impacts far beyond the Project area. *See* Pub. L. No. 94-265, 90 Stat. 331 (1976). The resulting impacts to the ability to set sustainable fishing quotas also interfere with the uses of the area.

Accordingly, fisheries will have to abandon the Project area, as the Army Corps of Engineers recognized in the Record of Decision. Record of Decision at 39 (“[D]ue to the placement of the turbines it is likely that the entire 75,614 acre area will be

abandoned by commercial fisheries due to difficulties with navigation.”). Despite the comments and data available regarding the significant losses fisheries will suffer and that these losses could have been mitigated, the Project was approved at the expense of fisheries.

Based on the foregoing, it is clear that the Vineyard Wind Project will inflict unreasonable interference with commercial fishing in the lease area. M-Opinion 37059 interprets OCSLA as requiring the Secretary to “prevent[] all interference, if the proposed activity would lead to unreasonable interference.” M-Opinion 37059 at 15. BOEM failed to prevent or attempt to mitigate this unreasonable interference. Because BOEM approved Vineyard Wind’s COP using an improper standard, M-Opinion 37086 recommends the Secretary reevaluate Vineyard Wind’s COP. See M-Opinion 37086 at 3. That reevaluation should determine how to properly mitigate the impact to commercial fishing. If no mitigation is possible, the Secretary must disapprove the project altogether, as required by 43 U.S.C. § 1337(p)(4)(I).

NEPA Violations

7. BOEM Impermissibly Used Power Generation Contracts to Define the Need for the Vineyard Wind Project (NEPA, 42 U.S.C. § 4332(C)).

NEPA requires federal agencies to take a “hard look” at environmental consequences before undertaking major federal actions significantly affecting the quality of the human environment. *Robertson v. Methow Valley Citizens Counsel*, 490 U.S. 332, 350 (1989). This “hard look” means federal agencies must consider “any adverse environmental effects which cannot be avoided.” 42 U.S.C. § 4332(C)(ii). This process requires agencies to “identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” 42 U.S.C. § 4332(B).

Agencies fulfill these duties by preparing a “detailed statement” for all major agency actions “significantly affecting the quality of the human environment,” known as an environmental impact statement (“EIS”). 42 U.S.C. § 4332(C); *see also Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 221 L. Ed. 2d 820, 830 (U.S. 2025) (explaining NEPA’s requirements). For actions that are not likely to have significant effects or where the significance of the effects is unknown, agencies must prepare an Environmental Assessment (“EA”) to analyze the potentially affected environment and consider “connected actions.” *DOT v. Pub. Citizen*, 541 U.S. 752, 757 (2004).

An EIS must include within its scope “not only a proposed project’s direct and indirect effects on the environment . . . but also its cumulative effects. Cumulative effects are the effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions” *Healthy Gulf v. FERC*, 107 F.4th 1033, 1043 (D.C. Cir. 2024) (cleaned up). The EIS must analyze “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health” effects, whether direct, indirect, or cumulative. *City of Port Isabel v. FERC*, 111 F.4th 1198, 1209 (D.C. Cir. 2024). Direct effects are caused by the action and “occur at the same time and place.” *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 737 (9th Cir. 2020). Indirect effects “are caused by the [agency action] and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017).

NEPA requires that the agency specify the underlying purpose and need to which the agency is responding. *Vill. of Barrington v. Surface Transp. Bd.*, 636 F.3d 650, 668 (D.C. Cir. 2011). An agency cannot circumvent its NEPA obligations “by adopting private interests to draft a narrow purpose and need statement that excludes alternatives that fail to meet specific private objectives” nor can it “craft a

purpose and need statement so narrowly drawn as to foreordain approval of” a project proposed by a private party. *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2010).

In its Record of Decision (“ROD”), BOEM, the Corps, and NMFS state that:

[t]he purpose of the [agency action on the Vineyard Wind COP] is to determine whether to approve, approve with modifications, or disapprove the COP . . . to meet New England’s demand for renewable energy. More specifically, the proposed Project would deliver power to the New England Energy grid to contribute to Massachusetts’ renewable energy requirements—particularly, the Commonwealth’s mandate that distribution companies jointly and competitively solicit proposals for offshore wind energy generation

ROD § 2.2 (emphasis added). The ROD also states that BOEM, the Corps, and NMFS used “Vineyard Wind’s contractual obligation with the Commonwealth of Massachusetts to deliver the generated energy to the Massachusetts power grid” as a major criterion when deciding whether to approve the COP. *See* ROD at 32 (emphasis added). BOEM describes the need for its decision as to carry out the agency’s duties under the Outer Continental Shelf Lands Act. *Id.*

This impermissible decision predetermines the result of the federal action and allows state law and the project sponsor’s private contractual obligations to hold federal policymaking hostage, essentially abrogating federal responsibility to a state legislature. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (holding that “[an] agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the . . . agency’s action”).

The statement of purpose in Vineyard Wind 1’s EIS violates NEPA by tying the specific purpose of this federal action to state-determined renewable energy requirements, rather than following the factors Congress intended for agencies to consider under NEPA. *See* 42 U.S.C. § 4331(b)–(c); *see also* *Nat'l Ass'n of Home*

Builders v. Defs. of Wildlife, 551 U.S. 644, 658 (2007) (stating that it is arbitrary and capricious for an agency’s decision to rely “on factors Congress did not wish it to consider”).

BOEM’s decision violates NEPA by aiming the federal action’s purpose at ensuring a single energy distributor’s adherence to a single state’s energy policies and statutes. This purpose is *ultra vires*, arbitrary, capricious, and unreasonably narrow. And it has no relevance to any of the factors Congress wished federal agencies to consider when evaluating a COP. *See* 42 U.S.C. § 4331(b)–(c). By using the COP’s sponsor’s contractual obligations as a major factor when determining whether to approve the COP, BOEM, violated NEPA by allowing existing private contracts to define the need for the project, thereby impermissibly predetermining the outcome of their review and taking agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

8. BOEM Violated NEPA by Failing to Consider Reasonable Alternatives in the COP EIS (42 U.S.C. § 4332(C)(iii), (H)).

NEPA requires that the EIS provide a “detailed statement . . . on . . . alternatives to the proposed agency action . . .” and that the agency “[s]tudy, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(C), (H). “Consideration of alternatives is ‘the heart of the environmental impact statement.’” *Westlands Water Dist. v. United States DOI*, 376 F.3d 853, 865 (9th Cir. 2004). This consideration requires agencies to “rigorously explore and objectively evaluate all reasonable alternatives” and “include reasonable alternatives not within the jurisdiction of the lead agency.” *Id.* at 868.

As explained in Section 7, above, BOEM’s narrow purpose statement improperly excluded a range of alternatives. As a result of this impermissible decision, BOEM failed to analyze other alternatives that are not linked to the power

generation contract. As the lead agency in connection with the NEPA review of the Vineyard Wind 1 Project, BOEM impermissibly limited the range of alternatives to only those within the geographic area of Lease OCS-A-0501 in order to help Vineyard Wind, LLC achieve its contractual objectives, thereby violating NEPA's requirement to review a reasonable range of alternatives.

BOEM, the Corps, and NMFS decided to grant the Vineyard Wind 1 COP knowing that their failure to adequately review reasonable alternatives outside of the lease area would decimate the commercial fishing industry and related shoreside businesses. *See ROD* at 39 (stating that "due to the placement of the turbines it is likely that the entire [lease] area will be abandoned by commercial fisheries due to difficulties with navigation"). BOEM, the Corps, and NMFS violated NEPA by failing to diligently explore and dispassionately evaluate all reasonable alternatives to placing the Vineyard Wind 1 Project in the lease area.

The unduly narrowly-defined nature of the federal action impermissibly cabined the range of reasonable alternatives that BOEM, the Corps, and NMFS considered, essentially limiting them to approving the Vineyard Wind 1 Project in the lease area or nowhere at all. This transformed the agencies' review of the COP into a rubber stamp, not the "hard look" federal law requires, and constitutes a violation of NEPA. *See Robertson v. Methow Valley Citizens Counsel*, 490 U.S. 332, 350 (1989).

BOEM, the Corps, and NMFS also violated NEPA by impermissibly and summarily dismissing significant, concrete, reasonable alternatives during the comment process without adequate explanation, including:

- a. proposals made by Seafreeze that the COP should not be approved until the agencies could fully analyze radar interference caused by Vineyard Wind with search-and-rescue operations;
- b. comments showing that the COP's structural analysis was flawed and should be changed;
- c. concrete proposals to eliminate certain important fishery areas of the lease from the COP;

- d. concrete proposals showing that Vineyard Wind’s decision to use larger turbines would have cumulative impacts necessitating further analysis;
- e. comments urging consideration of the devastating impact the Vineyard Wind project would have on fisheries, specifically the longfin squid fishery;
- f. concrete proposals regarding compensation for commercial fishermen and shoreside industries negatively impacted by the Vineyard Wind Project;
- g. the proposal of the High Frequency Radar Wind Turbine Interference Community Working Group dated June 2019; and
- h. the proposal of a reasonable alternative that set forth proposed transit lanes in the lease area to ensure safety and viability of commercial fishing operations put forward by the Responsible Offshore Development Alliance.

After BOEM used an improperly narrow statement of purpose to bypass the Vineyard Wind 1 project’s alternatives analysis, BOEM then codified this shortcut procedure. In a 2022 memo, BOEM explained its process to identify and evaluate alternatives for its NEPA analysis. Bureau of Ocean Energy Mgmt., Process for Identifying Alternatives for Environmental Reviews of Offshore Wind Construction and Operations Plans pursuant to the National Environmental Policy Act (NEPA) (June 22, 2022), <https://tinyurl.com/4esusnhx> [hereafter “2022 NEPA Alternatives Policy”]. Under this policy, when BOEM screens potential alternatives, the agency will exclude alternatives first if it does not respond to BOEM’s purpose and need, and second if it does not meet the project developer’s goals. *Id.* at 5. The policy excludes any analysis of alternatives that are outside the project area (i.e. onshore electric generation as an alternative to offshore generation) and alternatives that do not meet the project developer’s power purchase agreements, even those that predate the project’s approval. *Id.* at 6. The alternatives screened out under this policy never make it to the EIS for detailed analysis. *Id.* at 4. BOEM’s 2022 NEPA Alternatives Policy artificially narrows the EIS process and excludes reasonable alternatives that NEPA requires the agency to consider.

An agency’s EIS is arbitrary and capricious when it is not “reasonable [or] reasonably explained.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 221 L. Ed. 2d 820, 835 (U.S. 2025). An EIS’s evaluation of reasonable alternatives cannot meet the “reasonably explained” if it fails entirely to address statutorily required alternatives. This lack of full and fair consideration of a reasonable range of alternatives available outside the area of Lease OCS-A-0501 and the full and fair consideration of proposals submitted by the public within the area of Lease OCS-A-0501 violates BOEM’s duties under NEPA. 42 U.S.C. § 4332(C)(iii), (H). This NEPA violation provides a basis to reevaluate the Vineyard Wind 1 project and any other projects approved using BOEM’s 2022 NEPA Alternatives Policy.

ESA Violations

9. The National Marine Fisheries Administration Violated ESA By Issuing The Incidental Take Permit (16 U.S.C. § 1536(a)(2), 50 C.F.R. § 402.14(h)).

Congress enacted the ESA to protect species vulnerable to extinction. Once a species is listed as “threatened” or “endangered,” the ESA protects it by making it unlawful for any person to “take” such species. 16 U.S.C. § 1538(a)(1)(B). To “take” means to “harass, harm, hunt, pursue, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19). Moreover, the government has a duty to specify critical habitat for any threatened or endangered species “to the maximum extent prudent and determinable.” *Id.* § 1533(a)(3)(A). Critical habitat means “the specific areas within the geographical area occupied by the species . . . on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection,” as well as specific areas outside an endangered species’ range “upon a determination by the Secretary [of Commerce] that such areas are essential for the conservation of the species.” *Id.* § 1532(5)(A)–(B) (cleaned up).

Federal agencies must ensure that any action they authorize, fund, or carry out “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” *Id.* § 1536(a)(2). If a permit applicant “has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species[.]” the federal agency involved must consult with the Secretary of the Interior for terrestrial and freshwater species or the Secretary of Commerce for marine species. *Id.* § 1536(a)(3).

The relevant federal agency must provide the consulting agency and applicant with a Biological Opinion summarizing how the project will impact a species or its critical habitat, and the basis for that decision. *See id.* § 1536(b)(3)(A). If the Biological Opinion finds jeopardy or adverse modification, it must suggest “reasonable and prudent alternatives” for the agency and applicant to avoid these negative outcomes. *Id.* If the Biological Opinion finds no jeopardy or adverse modification, the Secretary must issue a written incidental take statement. This statement must (1) specify the impact of an incidental taking on the species, (2) specify reasonable and prudent measures necessary or appropriate to minimize that impact, and (3) set forth the terms and conditions with which the agency or applicant must comply to implement those measures. *Id.* § 1536(b)(4)(B)(i)–(iv). A biological opinion is arbitrary and capricious if it fails to consider relevant factors and articulate a rational connection between the facts found and the choice made. *See U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606 (D.C. Cir. 2016).

NMFS violated the ESA by issuing a biological opinion that falls short of satisfying its statutory and regulatory responsibilities. Specifically, the biological opinion:

- a. does not properly establish the correct environmental baseline;

- b. does not properly set forth the “[e]ffects of the action” by excluding the direct, indirect, interrelated, and cumulative effects of the Vineyard Wind lease and COP approval will likely have on endangered species and critical habitat, most notably the habitat of the North Atlantic Right Whale;
- c. does not properly consider the impacts of the Vineyard Wind project on survival and recovery of endangered species in the project area;
- d. does not properly outline reasonable and prudent alternatives in its incidental take statement or the conditions for complying with those alternatives that would prevent an ESA violation;
- e. disregards the “best scientific and commercial data available” by failing to adequately consider research studies demonstrating that wind farms harm the marine environment more in the short-term than coal or gas emissions;
- f. disregards the “best scientific and commercial data available” by ignoring scientific data showing the prevalence of North Atlantic Right Whales in the lease area, the danger posed to North Atlantic Right Whales by increased boat traffic during construction, and the likelihood of substantial takes of the endangered North Atlantic Right Whale during construction of the Vineyard Wind project;
- g. disregards the “best scientific and commercial data available” by downplaying the substantial negative impact of pile driving on marine endangered species during construction of the Vineyard Wind lease; and
- h. disregards the “best scientific and commercial data available” by dismissing the impact that underwater noise produced by construction and turbine operation in the Vineyard Wind lease area will have on endangered species.

The ESA and its attendant regulations require BOEM to “ensure that its actions will no[t] jeopardize a listed species.” 50 C.F.R. § 402.14(h). NMFS issued a flawed biological opinion, and BOEM relied on it to approve the Vineyard Wind 1 COP. Both of these actions are arbitrary, capricious, an abuse of discretion, in excess of statutory authority, without observance of procedure required by law, and otherwise not in accordance with law. 5 U.S.C. § 706(2)(A), (C), (D).

Clean Water Act Violations

10. Construction Dredge and Fill Material Has Unacceptable Adverse Impacts At The Project Area (CWA, 40 C.F.R. § 230.1).

Congress enacted the Federal Water Pollution Control Act, subsequently amended as the Clean Water Act (“CWA”), in 1972 to regulate “navigable waters,” meaning the “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). The CWA prohibits discharging dredged and fill material into navigable waters without a permit. 33 U.S.C. § 1311(a). The Secretary of the Army, through the Army Corps of Engineers (the “Corps”), may issue permits for such discharges. 33 U.S.C. § 1344.

When making permitting decisions, the Corps must follow the CWA’s statutory and regulatory guidelines. 33 U.S.C. § 1344(b); 40 C.F.R. pt. 230. The CWA’s guidelines bar the Corps from granting a permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” 40 C.F.R. § 230.10(a). The CWA’s implementing regulations define an “unacceptable adverse impact”

as impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR part 230).

Id. § 231.2(e).

The dredge and fill activities authorized by the May 10, 2021, Section 404 permit for the Vineyard Wind 1 Project will have unacceptable, adverse impacts on fisheries, shellfishing, and the aquatic ecosystem, in violation of 40 C.F.R. § 231.2(e) and Section 404 of the Clean Water Act. As the Corps acknowledged in the Record of Decision authorizing this discharge of pollutants into waters of the United States,

“due to the placement of the turbines it is likely that the entire 75,614 acre area will be abandoned by commercial fisheries due to difficulties with navigation.” Record of Decision at 39.

Further proving the damage to fisheries and shellfishing authorized by the May 10, 2021 permit, Vineyard Wind, LLC has created several compensation funds as part of its agreement with states to compensate fisheries for their losses and damages:

No later than 1 year after the approval of the COP, the Lessee must establish the following compensation/mitigation funds to compensate commercial fishermen for losses directly related to the Project and mitigate other impacts:

Rhode Island Compensation Fund - \$4,200,000 . . .

Massachusetts Compensation Fund - \$19,185,016 . . .

Other States’ Compensation Fund - \$3,000,000 . . .

Rhode Island Fisherman’s Future Viability Trust - \$12,500,000 . . . ; and

Massachusetts Fisheries Innovation Fund - \$1,750,000

U.S. Dep’t of the Interior, Conditions of Construction and Operations Plan Approval, As Amended, at 79, § 6.3.1 (Jan. 17, 2025), <https://tinyurl.com/mwnf4x73>.

All of this shows that the permitted dredge and fill activity will have unacceptable adverse impacts on the environment in violation of 40 C.F.R. § 230.10(a).

11. The Corps Failed to Analyze Practical Alternatives (CWA, 40 C.F.R. § 230.10(a); 33 C.F.R. § 320.4(a)(1)).

As explained above, the CWA bars the Corps from granting a permit if there is a practical alternative. 40 C.F.R. § 230.10(a). A practicable alternative is one that is “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” *Id.* § 230.10(a)(2). This includes locations that the permit applicant does not currently own, but could

“reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.” *Id.* And practicable alternatives also include “[a]ctivities which do not involve a discharge of dredged or fill material into the waters of the United States[,]” including onshore renewable energy projects. *Id.* § 230.10(a)(1)(i).

On May 10, 2021, there were numerous practicable alternatives to the Vineyard Wind 1 Project that would have provided electric energy without the massive discharge of dredge or fill material into the aquatic ecosystem that the Project required. These practicable alternatives include not only traditional fossil fuel generating plants using natural gas, oil, or coal, but also nuclear energy power plants and other forms of renewable energy such as onshore wind turbines, solar panels, and improved energy efficiency. The Record of Decision shows that the Secretary of the Army, acting through the Corps, gave no consideration to any of the practicable alternatives to the proposed activity, none of which require discharge of pollutants into navigable waters.

Despite its finding that the Vineyard Wind project is not water-dependent, the Corps restricted its analysis of practicable alternatives to sites in the water—simply because the existing Vineyard Wind lease was located in the ocean. This restriction was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and unsupported by the evidence.

Clean Air Act Violations

12. EPA Did Not Sufficiently Consider Vessel Emissions (CAA, 42 U.S.C. § 7627, 40 C.F.R. § 55.6).

The analysis and attendant fact sheet for Vineyard Wind 1 does not account for emissions related to and resulting from blade failures, which would warrant emergency repairs or replacement activities. This could involve emissions from specialized heavy-lift vessels (HLVs), additional transport vessels, which could

significantly increase volatile organic compounds (VOC), NOX, and particulate matter (PM10 and PM2.5). These compounds are regulated under the Clean Air Act.

Moreover, the analysis regarding emissions eventuating from operational maintenance and servicing is deficient. Customary wear and tear on turbine blades and unanticipated failures due to severe weather conditions should have been explicitly analyzed for emissions. Not accounting for these activities would also lead to an underestimation of potential emissions. Furthermore, the analysis mostly focuses on routine operations and worst-case annualized emissions from construction and operation phases but appears to lack dispersion modelling for short term emission spikes induced by emergencies (blade failures and repairs). This could lead to temporary exceedances of NAAQS for pollutants such as NOX and PM.

Finally, the analysis fails to consider emissions derived from transportation vehicles (trucks, etc.), vessels, and helicopters, all delivering materials, equipment, or personnel to the Wind Development Area for repair, replacement, and emergency activities related to blade failures. For example, BOEM itself has acknowledged the failure modes:

This limited accessibility is in addition to harsh environmental conditions, such as exposure to contamination and wear from dust and debris (e.g., sand, dirt); wide temperature ranges with the environmental temperature reaching about -30° Celsius (C) and drivetrain temperatures reaching about $+100^{\circ}$ C; high humidity and water ingress; nacelle and blade icing events; and lightning strikes. Both land-based and offshore wind turbine components can experience complex failure modes.

U.S. Dep't of Energy, An Operations and Maintenance Roadmap for U.S. Offshore Wind 3, (May 2024), <https://tinyurl.com/hfwnbajw> (emphasis added). Furthermore:

Three main failure mechanisms are of concern for offshore wind blades, structural failure due to mechanical loads (often coinciding with manufacturing flaws), leading-edge erosion, and lightning strike damage (Katsaprakakis et al. 2021). These failure modes are the same as for land-based turbine blades; however, they may become more prevalent offshore due to scale and a more extreme environment, and

the consequence from failure increases given the added difficulty of performing maintenance at sea.

Id. at 13 (emphasis added).

When the Vineyard Wind blade failed on July 13, 2024, it became clear that such an event had not been adequately forestalled. The resultant vessel traffic to search for and collect debris, the removal of 66 installed blades (including international transport of damaged and replacement blades) and re-installment of new blades was never considered even as a possibility, thus further illustrating the short-sighted review process. Furthermore, there is not even a pollution plan in the permitting documents. In terms of pollution events, the documents state that the oil spill response plan will be followed, however, it was learned after the July 13, 2024, blade failure that the oil spill plan was not followed and also not relevant to the type of marine debris caused by the blade failure. Vessels searched for debris at sea for months, and the land effort on Nantucket also lasted months and involved heavy trucks, beach vehicles, and transport of many tons of debris off the island. All of the aforesaid should have been examined in the Vineyard Wind Project emissions analysis. Emissions generated via pollution (both onshore and offshore) and marine debris remediation efforts were not considered. Emissions from blade replacement and repair activities (transportation of materials, personnel, equipment, etc.) were likewise not considered.

The preconstruction air permit for the Vineyard Wind 1 Project inadequately addressed the cumulative effects of concurrent vessel emissions, likely resulting in exceedances of the 1-hour National Ambient Air Quality Standard (“NAAQS”) for NO₂. Primary sources of vessel emissions include:

- Construction activities: Heavy-lift vessels, jack-up barges, and anchor-handling tug supply vessels used for foundation installation, cable-laying, and turbine assembly.
- Crew transfer vessels (CTVs) and support vessels operated continuously to transport personnel and equipment.

- Operational and maintenance activities to service operation vessels, CTVs, and auxiliary vessels.
- Emergency situations (additional vessels deployed for blade failures and repairs, or cable malfunctions) leading to short term spikes in emissions.

The data provided indicate that there are deficiencies in terms of accounting for situations wherein numerous vessels operate concurrently, such as contemporaneously heavy lift vessels installing foundations while cable laying vessels and CTVs transport materials and personnel. During these high operation periods, innumerable (potentially 10+) vessels can potentially be operating concurrently within a concentrated zone, generating overlapping emissions plumes.

While the data provided focuses on annualized emissions, there is no modelling on 1-hour NO₂ impacts of vessel emissions, particularly during high intensity construction (or emergency) activities. These emissions can induce concentrated plumes of NO₂. Furthermore, there is no modeling on stable atmospheric conditions in the context of contemporaneous vessel operations in concentrated areas, and the resultant impacts on 1-hour pollutants. Finally, overlapping emissions plumes from concurrent activity at Vineyard Wind and other adjacent projects likely exceed the 1-hour NO₂ standard.

EPA should quantify the worst-case emissions scenarios (e.g., through Gaussian dispersion models or otherwise), the total NO₂ emissions from contemporaneously operating vessels under worst case stable atmospheric conditions, and including background NO₂ levels. These scenarios should also be modelled in the context of possible concurrent project construction activities adjacent to Vineyard Wind 1.

Without extensive modelling on contemporaneously operating vessels in high intensity construction periods and stable atmospheric conditions, compliance with 1-hour NO₂ NAAQS cannot be established.

13. The EPA Did Not Sufficiently Consider Pile Driving Emissions (CAA, 42 U.S.C. § 7627, 40 C.F.R. § 55.6).

Hydraulic hammering during pile driving produces significant short-term emissions via hydraulic hammers, hydraulic power units, and vessels, and heightened activity from vessels and ancillary equipment. Such emissions can occur in concentrated bursts, increasing the probability of localized exceedances of the 1-hour NO₂ NAAQS (188 µg/m³).

Note that during peak construction phases, pile driving emissions can occur coterminous with emissions from vessels transporting personnel, materials, and equipment. This can amplify NO₂ concentrations.

Critically, there is apparently no short-term modelling for worst-case effects from contemporaneous vessel operations (i.e., multiple vessels operating concurrently during construction) and pile driving activities (i.e., hydraulic hammering emissions). The emissions from hydraulic hammering are not separately modeled either.

Furthermore, no modelling was done under temperature inversions that are common to ocean environments. Temperature inversions have the capacity to trap pollutants near the surface, worsening concentrations of NO₂. This is especially troublesome given contemporaneous vessel operations and pile driving at peak construction activity in the presence of temperature inversion conditions. Vineyard Wind's 1 Mariner Update for the Week of March 10, 2025, indicates 28 currently operating vessels. Vineyard Wind, Weekly Report of Offshore Wind Mariner Updates (Mar. 10, 2025), <https://tinyurl.com/2s39pum4>. EPA should run modelling iterations of putative 1-hour NO₂ as a function of different numbers of concurrently operating vessels (under different atmospheric conditions and background emissions, most notably, stable atmospheric conditions). Without this analysis, there is no assurance that activities on the Vineyard Wind lease comply with the applicable CAA pollution limits.

Ceasing Activities at Vineyard Wind 1 Promotes This Administration’s Efforts to Review Offshore Wind Leases

Furthermore, an order stopping construction and energy generation and reviewing BOEM’s offshore wind approval process align with this Administration’s stated policies. On his first day in office, President Trump ordered a temporary withdrawal of offshore wind leasing on all areas on the OCS. Offshore Wind Memorandum, 90 Fed. Reg. 8363 (Jan. 29, 2025). The order also directed the Secretary of the Interior to lead “a comprehensive assessment and review of Federal wind leasing and permitting practices” on the OCS. *Id.* at 8363–64. This review will examine “various alleged legal deficiencies underlying the Federal Government’s leasing and permitting of onshore and offshore wind projects, the consequences of which may lead to grave harm.” *Id.* at 8363. As previously mentioned, the Vineyard Wind 1 project has already led to environmental harms.

Although the President’s order covers all areas on the OCS, it does not affect existing leases, such as Vineyard Wind’s lease. *Id.* (“Nothing in this withdrawal affects rights under existing leases in the withdrawn areas.”). That is why BOEM must take affirmative action to stop construction and energy generation activities at the Vineyard Wind 1 project site.

CONCLUSION

For these reasons, Petitioners respectfully request the Secretary of the Interior to (1) direct BOEM to investigate the approval process of the Vineyard Wind 1 COP, (2) immediately issue an order suspending any further construction and energy generation activities at the Vineyard Wind 1 project area, and (3) if the investigation shows that the COP approval was not in accordance with law (a) rescind the COP and (b) order Vineyard Wind, LLC, and any of its successors, to dismantle and remove any and all equipment and other objects from the Vineyard Wind 1 project area

installed under color of the COP approval and to place the entire project area back into the condition it was in prior to the approval of the COP.

DATE: July 29, 2025

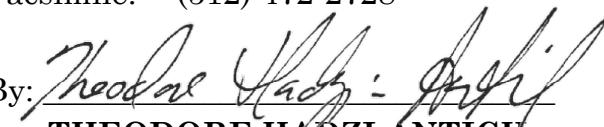
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