



Save Long Beach Island, Inc.  
[www.SaveLBI.org](http://www.SaveLBI.org)

July 30, 2025

**Petition to Cancel Atlantic Shores Offshore Wind North and South Leases  
Rationale for Lease Cancellation**

**Legal Mechanism and Action Request**

- 5 U.S.C. § 553(e) – confers the procedural right to petition, within the ambit of the Administrative Procedures Act
- 5 U.S.C. § 555(e) – “Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding.” As such, Save LBI requests that BOEM publish a **written determination** concordant with this provision.
- 43 U.S.C. § 1332 et seq., and 43 U.S.C. § 1337(p) et seq. – governing statutory criteria
- 30 CFR § 585.417 – BOEM Suspension authority [regulations]
- 30 CFR § 585.422 – BOEM Lease Cancellation authority [regulations]
- 43 U.S.C. § 1341 – BOEM national defense cancellation authority
- 30 CFR § 585.102 – Balancing test [regulation]
- 50 CFR § 402.16 – Reinitiation of consultation due to new evidence

Employing the above procedural and substantive legal authorities, Save LBI respectfully requests **that BOEM cancel the lease areas for Atlantic Shores North and South (emergency attention for Atlantic Shores South)**. The evidentiary justification for invoking the above authorities and proceeding with lease abrogation is more fully set forth in the Petition attached herewith.

**Save LBI reserves the right to pursue relief under the Administrative Procedure Act, including 5 U.S.C. § 555(b) and § 706(1), should BOEM fail to act on this emergency petition within a reasonable time. Save LBI respectfully requests a response within 60 days.**

## **Introduction**

This document details how the Atlantic Shores (AS) South and North projects violate the requirements of the Outer Continental Shelf Lands Act (OCSLA) and the Bureau of Ocean Energy Management (BOEM) implementing regulations, and therefore the leases and associated permits cancelled. Support for that position is primarily developed using quotes from BOEM's own final Environmental Impact Statement (EIS) on the AS South projects.

This document also includes a summary of the demonstrably deficient process used to determine the NJ Wind Energy Area and these Atlantic Shores leases. That flawed process resulted in projects that are the closest to shore of any such large offshore wind projects anywhere in the world and that intersect the migratory path of the critically endangered North American Right Whale (NARW). As a result of the defective siting, these projects create unique threats to the nearby shore communities which rely heavily on tourism and the attractiveness of their beautiful beaches, and to the survival of the NARW species.

## **Criteria for Lease Cancellation**

There is a distinction in the statute between oil and gas and renewable energy leasing. **43 USC 1334 sets forth requirements for oil and gas leasing (with a 5-year suspension condition precedent for cancellation). Offshore wind leasing provisions were enacted pursuant to OCSLA 8(p) (43 USC 1337(p)).** That section in (p)(5) provides no statutory criteria for cancellation, but directs the secretary to prepare regulations for lease duration, suspension and cancellation, which are found at 30 CFR Part 585.422. Those regulations **do not** require a suspension prerequisite. 30 CFR 585.422 sets forth the offshore wind lease cancellation criteria.

# TABLE OF CONTENTS

I. The specific activities and location of these projects meet the criteria for lease cancellation by the Secretary of the Interior per 30 CFR 585.422.....	4
A. 30 CFR 585.422 (a) (1) Cancellation for Misrepresentation(also per 43 USC 1337 (o)).....	4
B. 30 CFR 585.422 (b) (1) Cancellation for non – compliance with OCSLA and terms of lease.....	5
(1) The lease activities do not comply with the general provisions of the OCSLA 43 USC 1332.....	5
a) 43 USC 1332 (2).....	5
b) 43 USC 1332 (3).....	7
c) 43 USC 1332 (5).....	7
d) Other violations of 43 USC 1332 (5).....	12
e) Further deficiencies regarding 43 USC 1332 (5).....	12
f) 43 USC 1332 (6).....	13
(2) The specific activities and location of these projects do not meet the “requirements” for a lease per OCSLA 1337 (p) (4) and corresponding “responsibilities” per 30 CFR 585.102.....	15
(3) Non – Compliance with lease terms.....	18
C. Cancellation of the leases should be considered based on conflicts with national security and defense (30 CFR 585.422 (b) (3), 43 USC 1341 (d), 30 CFR 585.102).....	19
D. The projects should be suspended and leases cancelled because they will cause harm and damage to natural resources, the environment, and sites of historical and archeological significance (30 CFR 585.422 (b) (4) (i)).....	21
E. The projects should be suspended and leases cancelled because their threat of harm does not disappear in a reasonable period of time (30 CFR 585.422 (b) (4) (ii)).....	23
F. The projects should be suspended and leases cancelled because the advantages of lease cancellation exceed the advantages of continuing the lease.....	23
II. Major Process Deficiencies in Selecting the NJ WEA and Atlantic Shores leases.....	24
A. Generic Deficiencies in Offshore Wind Project Environmental Impact Statements.....	24
B. Major Defects in the Atlantic Shores (AS) Final Environmental Impact Statement (EIS).....	25
C. Key Issues with the NJ Wind Energy Area (WEA) Selection, Leasing, and Project Approvals.....	26
CONCLUSION .....	29

**I. The specific activities and location of these projects meet the criteria for lease cancellation by the Secretary of the Interior per 30 CFR 585.422.**

§ 585.422 When can my lease or grant be canceled?

(a) The Secretary will cancel any lease or grant issued under this part upon proof that it was obtained by **fraud or misrepresentation**, and after notice and opportunity to be heard has been afforded to the lessee or grant holder.

(b) The Secretary may cancel any lease or grant issued under this part when:

(1) The Secretary determines after notice and opportunity for a hearing that, with respect to the lease or grant that would be canceled, the lessee or grantee has **failed to comply with any applicable provision of the OCS Lands Act or this part**; any order of the Director; **or any term, condition, or stipulation contained in the lease or grant**, and that the failure to comply continued 30 days (or other period BOEM specifies) after you receive notice from BOEM. The Secretary will mail a notice by registered or certified letter to the lessee or grantee at its record post office address;

(2) The Secretary determines after notice and opportunity for a hearing that you have terminated commercial operations under your COP, as provided in § 585.635, or other approved activities under your GAP, as provided in § 585.656;

(3) **Required by national security or defense**; or

(4) The Secretary determines after notice and opportunity for a hearing that continued activity under the lease or grant:

(i) **Would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance; and**

(ii) **That the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and**

(iii) **The advantages of cancellation outweigh the advantages of continuing the lease or grant in force**

**A. 30 CFR 585.422 (a) (1) Cancellation for Misrepresentation(also per 43 USC 1337 (o))**

Atlantic Shores and BOEM through the EIS process repeatedly misrepresented material facts in their goal to get these projects approved. See also, 43 § U.S.C. 1337(o).

Material misrepresentations include: the noise source levels from turbine operation, magnitude of underwater noise levels and their impact on marine mammals; airborne noise levels at the shore; project visibility from the shore; shore breeze and air temperature changes, compliance with the Coastal Zone Management Act; the impact on our NORAD air defense radars at Gibbsboro NJ, and impact of the projects on Tourism, the NJ economy, and NJ electric ratepayers, and in the Cost/Benefit reference that was included in the EIS.

In each case there are detailed reports by Save LBI and others that lay out the AS and BOEM misrepresentations. Those misrepresentations were challenged formally in the EIS process. Yet they were repeatedly ignored. As a result, these misrepresentations are each part of various active lawsuits.

Such repeated material misrepresentations should themselves be grounds for cancelling the permits and leases.

**B. 30 CFR 585.422 (b) (1) Cancellation for non – compliance with OCSLA and terms of lease.**

**(1) The lease activities do not comply with the general provisions of the OCSLA 43 USC 1332**

**a) 43 USC 1332 (2)**

This subchapter shall be construed in such a manner that...**the right to navigation and fishing therein shall not be affected;**

As documented by BOEM in the final Atlantic Shores (AS) EIS – there will be MAJOR adverse impacts on both navigation and fishing.

EIS Section 3.6.1 **Commercial Fishing and For Hire Recreational Fishing.** The affected activity or community would experience substantial disruptions, and, once the affecting agent is eliminated, the affected activity or community could retain measurable effects indefinitely, even if remedial action is taken. Table 3.6.1-35 51

**Quoting further from the EIS:**

BOEM anticipates that the cumulative impacts of these activities would result in major impacts on commercial and for-hire recreational fisheries in the geographic analysis area.

The presence of WTGs (Wind Turbine Generators) would result in a widespread, permanent navigational risk to commercial and for-hire recreational fishing vessels transiting through and fishing near offshore wind farms.

Noise from vessel traffic during the maintenance and construction phases could affect species important to commercial/for-hire fishing, recreational fishing, and marine sightseeing activities (see Section 3.6.1).

Similarly, noise from pile driving from offshore wind activities would affect fish populations that are crucial to commercial fishing and marine recreational businesses (3.6.8).

Irretrievable impacts could occur if growth of individuals or populations is retarded as a result of injury or mortality due to vessel strikes or entanglement with fisheries gear caught on the structures, or due to displacement from the Project area.

Changes in fishing activity resulting from the presence of offshore wind structures would likely result in impacts on shoreside support services (e.g., seafood processing, fuel, ice).

**Conclusion:** Based on the EIS itself, 43 USC 1332(2) is not met. Fishing is clearly negatively affected by these projects. The negative impact on fishing is so great that a financial reimbursement program is being required by BOEM.

EIS section 3.6.6 **Navigational and Vessel Traffic** Vessel traffic would experience unavoidable disruptions to a degree beyond what is normally acceptable, including potential loss of vessels and life. Table 3.6.6-2 10

**Quoting further from EIS:**

The presence of WTGs would result in a widespread, permanent navigational risk to commercial and for-hire recreational fishing vessels transiting through and fishing near offshore wind farms.

The navigational complexity of transiting through the Project area, including the potential effects of WTGs and OSSs (Offshore Substations) on marine radars, would increase risk of collision with other vessels (including non-Project vessels and Proposed Action vessels), and the risk of vessel allusions with the Project structures. Furthermore, the presence of the WTGs, OSSs, and met tower could complicate offshore SAR (Search and Rescue) operations or surveillance missions within the Project area and **lead to abandoned SAR missions and resultant increased fatalities.** This would have localized, **long-term, continuous, major impacts on navigation and vessel traffic.**

1. **Conclusion:** Based on the EIS itself, 43 USC 1332 (2) is not met. Navigation is clearly negatively affected by the projects.

Specific circumstances where the right to navigation and fishing is affected are further explained below:

- The right to navigation is threatened by channeling vessel traffic to a 12-mile-wide corridor in between the Atlantic Shores Project and projects in the Hudson South area, with wind turbines on either side impairing on board radars and creating significant risk of collision and allision.
- The negative impacts of the project on marine radar substantially increases the risk of transiting or fishing within the project area.
- There is limited vessel traffic and fishing access within the lease area during construction and operations due to the proliferation of structures and radar interference. According to the NJ DEP, European countries (except the UK) prohibit fishing within offshore wind projects.
- The right to fishing is affected by the degradation of the seabed from construction and by the operational noise levels within the wind complex that will be above the fish disturbance criteria of 140 decibels(dB), so that even if fishing is allowed, the fish will not be there.
- Construction and operations noise will expose fishermen and boaters to levels above typical state standards.

### **b) 43 USC 1332 (3)**

The outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is **consistent with** the maintenance of competition and **other national needs**.

See section **I C** below for national defense conflicts. These projects will degrade navigation and fishing (as noted above), and hinder other national needs as noted in more detail below.

#### **Quoting from the BOEM/EIS:**

The presence of these structures would introduce navigational complexity and increased vessel traffic in the area that would continue to have short-term to **long-term impacts that range from negligible to major on marine mineral extraction, military and national security uses, aviation and air traffic, cables and pipelines, radar systems, and scientific research and surveys.**

Overall, reasonably foreseeable offshore wind energy projects in the area would have **major effects on NOAA's scientific research and protected species surveys**, potentially leading to impacts on fishery participants and communities; as well as potential **major impacts** on monitoring and assessment activities **associated with recovery and conservation programs for protected species.**

**Conclusion:** 43 USC 1332 (3) is not met. "Other national needs" are clearly compromised by the projects.

### **c) 43 USC 1332 (5)**

The rights and responsibilities of all States and, where appropriate, **local governments, to preserve and protect their marine, human, and coastal environments** through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized;

BOEM in the EIS acknowledges Major impacts on 7 key categories of resources/environments and Moderate impacts on an additional 8 key categories that have not been preserved and protected.

BOEM/EIS - **Major adverse impacts** are acknowledged on: the North American Right Whale 3.5.6, Commercial Fishing and For Hire Recreational Fishing 3.6.1, Cultural Resources 3.6.2, Navigation and Vessel Traffic 3.6.6, Military and National Security 3.6.7 (particularly USCG Search and Rescue Operations), Scientific Research 3.6.7, and Scenic and Visual Resources 3.6.

The Marine Environment - 3.5.6 The North Atlantic Right Whale (NARW)- **Major Adverse Impacts** on individual marine mammals or their habitat would be detectable and measurable; they would be of **severe intensity**, can be **long lasting or permanent**, and would be **extensive**. **Impacts on individuals and their habitat would have severe population-level effects and compromise the viability of the species.** 3.5.6-5 15

The Marine and Human Environment - 3.6.1 Commercial Fishing and For Hire Recreational Fishing - see section IB (1) a) above for Major Impact.

The Human Environment - 3.6.2 Cultural Resources

**Major Adverse effects on historic properties** as defined at 36 CFR 800.5(a)(1) could occur. Characteristics of historic properties would be affected in a way that diminishes the integrity of the property's location, design, setting, materials, workmanship, feeling, or association to the extent that the property is no longer eligible for listing in the NRHP. As compared to Moderate Impacts (for marine/underwater locations): A. Destruction of or greater extent of damage to cultural resources from ground- or seabed disturbing activities; or B. Disturbances are minimized or mitigated but do not reduce or avoid the destruction or loss of scientific or cultural value from the cultural resources; or C. Disturbances are not minimized or mitigated resulting in the destruction or loss of scientific or cultural value from the resources. As compared to Moderate Impacts (for on land locations): A. Physical impacts on cultural resources (for example, demolition of a cultural resource onshore); or B. Greater extent of changes to the integrity of cultural resources or visual disruptions to the historic or aesthetic settings from which resources derive their significance including long-term and/or permanent impacts; or C. Disruptions to settings are not minimized or mitigated. Table 3.6.2 -2

Further from the BOEM/EIS:

The Project would have adverse effects on the 59 ASLFs (ancient submerged land forms) that are historic properties in the marine Area of Potential Effect (APE), I-56.

BOEM has found that the Proposed Action would have direct visual adverse effects on a total of 29 aboveground historic properties, including 2 National Historic Landmarks, NHLs (the Atlantic City Convention Hall [Jim Whelan Boardwalk Hall] and Lucy, The Margate Elephant) within the visual APE for Offshore Project components (see Table I-8). I-57

3.6.6 Navigation and Vessel Traffic— see I B (1) a) above for Major Impact.

3.6.7 Military and National Security

The installation of WTGs, OSSs, and meteorological towers in the Project area would result in increased navigational complexity and increased allusion risk, creating potential major adverse impacts on USCG Search and Rescue (SAR) operations and potential minor impacts on all other military and national security uses. 3.6.7 -30

See section I C below for more details on Military and National Security impact.

Marine Environment - 3.6.7 Scientific Research and Surveys

Potential impacts on scientific research and surveys would be **major**, particularly for NEFSC surveys that support commercial fisheries and protected-species research programs, and NEAMAP surveys. The presence of structures would exclude certain areas within the Project area occupied by Project components (e.g., WTG,

OSS, and met tower foundations, cable routes) from potential vessel and aerial sampling, and by affecting survey gear performance, efficiency, and availability, 3.6.7-31

### The Human Environment - 3.6.9 Scenic and Visual Resources

Major Adverse, The Project would introduce features that would have dominant levels of visual prominence within the geographic area of an ocean/seascape/landscape character unit. The Project would introduce a visual character that is inconsistent with the character of the unit, which may have a major negative effect on the unit's features, elements, or key qualities. The concern for change (combination of susceptibility/value) to the character unit is high.

The visibility of the Project would introduce a major level of character change to the view; will attract, hold, and dominate the viewer's attention; and have a moderate to major effect on the viewer's visual experience.

Table 3.6.9.

Further from the BOEM/EIS:

The shore areas within the viewshed of the WTGs are highly developed. Public beaches and tourism attractions in this area are highly valued for scenic, historic, and recreational qualities, and draw large numbers of daytime visitors during the summertime tourism seasons. When visible (i.e., on clear days, in locations with unobstructed ocean views), WTGs would add a developed/industrial visual element to ocean views that were previously characterized by open ocean, broken only by transient vessels and aircraft passing through the view, 3.6.9.

**Seascapes with national, state, and/or local designations:** Barnegat Branch Trail, Barnegat Lighthouse State Park, Bass River State Forest, Belleplain State Forest, Cape May National Wildlife Refuge, Cape May State Park, Corson's Inlet State Park, Crook Horn Creek, Edwin B. Forsythe National Wildlife Refuge, Emil Palmer Park, Enos Pond County Park, Forked River State Marina, Forked River Mountain WMA, Garden State Parkway, Gillian's Wonderland Pier, Great Egg Harbor Bay, Island Beach State Park, National Natural Landmark Manahawkin Bottomland Hardwood Forest, Ocean City Boardwalk, Ocean City Park, Peck Bay, Sandcastle Park, Southern Pinelands Natural Heritage Trail, Stainton Wildlife Refuge, Stone Harbor Bird Sanctuary, Tuckahoe WMA, Upper Barnegat Bay WMA, Vincent Klune Park, and Wharton State Forest, Table 3.6.9-6.

### **Jurisdictions with ocean views**

Ocean View Seascape jurisdictions **with an ocean beach:**

Atlantic City, Barnegat Light Borough, Beach Haven Borough, Berkeley Township, Brigantine, Cape May, Egg Harbor, Galloway Township, Harvey Cedars Borough, Long Beach Township, Longport Borough, Lower Township, Margate City, Ocean City, North Wildwood, Sea Isle City, Seaside Heights Borough, Seaside Park Borough, Ship Bottom Borough, Stone Harbor Borough, Surf City Borough, Toms River Township, Upper Township, Ventnor City, Wildwood, and Wildwood Crest.

**Landscape jurisdictions with ocean views from a land area, bay, estuary, marsh, pond, or river:**

Atlantic City, Barnegat Light Borough, Bass River Township, Beach Haven Borough, Berkeley Township, Brick Township, Brigantine, Cape May, Dennis Township, Eagleswood Township, Egg Harbor, Egg Harbor Township, Galloway Township, Harvey Cedars Borough, Howell Township, Lacey Township, Lakewood Township, Little Egg Harbor Township, Long Beach Township, Longport Borough, Lower Township, Manchester Township, Margate City, Ocean City, North Wildwood, Sea Isle City, Seaside Heights Borough, Seaside Park Borough, Ship Bottom Borough, Stone Harbor Borough, Surf City Borough, Toms River Township, Upper Township, Ventnor City, Wall Township, Washington Township, Wildwood, Wildwood Crest  
Table 3.6.7

See also from the EIS: Fig 3.6.9-2 Scenic and Visual Resources geographical analysis area and cumulative impacts and analysis area;

Fig 3.6.9-4 Offshore and onshore facility viewsheds; and Table 3.6.9-14, Offshore Project area key observation point viewer sensitivity ratings. These clearly show the magnitude of the area that will be impacted visually, and the number of communities and locales (including 29 national, state or local parks) that will be impacted. The last (Table 3.6.9-14) shows the high impact on the viewer at key locations.

**All these clearly documented facts show the major impact the industrialized view will have geographically and on significant populations.**

BOEM/FEIS –**Moderate adverse impacts** are judged on: Benthic Resources 3.5.2, Birds 3.5.3, Coastal Habitat and Fauna 3.5.4, Finfish Invertebrates and Essential Fish Habitats 3.5.4, Marine Mammals 3.5.6, Wetlands 3.5.8, Environmental Justice 3.6.4, and Radar Systems 3.6.7.

The Marine Benthic Environment 3.5.2 **Moderate Adverse Impacts on species would be unavoidable** but would not result in population-level effects. Adverse impacts on habitat may be short term, long term, or **permanent** and may include impacts on sensitive habitats, but would not result in population-level effects on species that rely on them.

Birds 3.5.3 **Moderate Adverse Impacts would be unavoidable** but would not result in population-level effects or threaten overall habitat function.

The Coastal Environment - Coastal Habitat and Fauna 3.5.4

**Moderate Adverse Impacts on species would be unavoidable** but would not result in population level effects. Impacts on habitat may be short term, **long term, or permanent** and may include impacts on sensitive habitats but would not result in population-level effects on species that rely on them. Table 3.5.4 -6.

Finfish Invertebrates and Essential Fish Habitats 3.5.5

**Moderate Adverse Impacts** on species would be unavoidable but would not result in population-level effects. Impacts on habitat maybe short term, long term, or permanent, and may include impacts on sensitive habitats but would not result in population-level effects on species that rely on them, Table 3.5.5.

The Marine Environment - Marine Mammals 3.5.6.

**Moderate Adverse Impacts** on individual marine mammals or their habitat would be detectable and measurable; they would be of medium intensity, can be short term or long term, and can be localized or extensive. Impacts on individuals or their habitat could have population-level effects, but the population can sufficiently recover from the impacts or enough habitat remains functional to maintain the viability of the species both locally and throughout their range.

On the North Atlantic Right Whale (NARW)

**Major Adverse Impacts** on individual marine mammals or their habitat would be detectable and measurable; they would be of severe intensity, can be long lasting or permanent, and would be extensive. **Impacts on individuals and their habitat would have severe population-level effects and compromise the viability of the species**, 3.5.6-5.

On Bottlenose Dolphins

In the NMFS Incidental Take Authorization, Atlantic Shores is allowed an impermissibly high number of bottlenose dolphin “Takes”, coastal and offshore. They are allowed 13% of the offshore bottlenose dolphin stock over the 5-year period (8,153 takes / 62,851 = 13%). For the northern migratory coastal bottlenose dolphin, they are allowed 29.4% of the stock for the maximum annual take, and 46.5% of the stock total over the 5-year project period. The take percentages for both of these species are substantial and, based on prior court opinions that limit small number takes to below 12%, contravene the small numbers limit of the MMPA.

The MMPA small numbers provision is thus violated via the requested takes of coastal bottlenose dolphin, and offshore bottlenose dolphin, and their marine environment is therefore not protected.

The Coastal Environment - Wetlands 3.5.8

**Moderate Adverse Impacts** on wetlands would be minimized; however, permanent impacts would be unavoidable. Compensatory mitigation would be required to offset impacts on wetland functions and values, and mitigation measures would have a high probability of success.

The Human Environment - Environmental Justice 3.6.4

**Moderate Adverse** Environmental justice populations would have to adjust somewhat to account for disruptions due to notable and measurable adverse impacts.

Radar Systems 3.6.7 **Moderate Adverse Impacts** on the affected activity would be unavoidable. The affected activity would have to adjust to account for disruptions due to impacts of the Project, or, once the Project is decommissioned, the affected activity could return to a condition with no measurable effects if proper remedial action is taken.

#### **d) Other violations of 43 USC 1332 (5)**

Human Environment - Demographics, Employment and Economy 3.6.4 and Recreation and Tourism 3.6.8  
The BOEM/EIS Major and Moderate judgments on the impacts of the Atlantic Shores projects are quoted above. Those quotes do not include the demonstrably false judgments made as respects the impacts on Recreation and Tourism, and Demographics, Employment and Economy.

As shown in a study by Tourism Economics who does the annual tourism study for the state of NJ, the negative impact will be very significant.

- Financial Impact from reduction in Tourism\*
- Loss in Revenue due to reduction in LBI Tourism - \$668.2 million per year\*
- Loss in Jobs due to reduction in LBI Tourism – 6729 jobs per year\*
- Loss in state and local taxes in LBI Tourism - \$47.6 million per year\*
- That study focuses on the impact on LBI and Ocean County.
- A similar study by others focuses on Atlantic County.
- Loss in Revenue to Atlantic County due to reduction in Tourism - \$1.6 billion per year\*\*
- Loss in Jobs in Atlantic County due to reduction in Tourism - 10,700 jobs per year\*\*

\*Potential Economic Losses of Reduced Tourism Attributable to Proposed Wind Turbines in Long Beach Island, by Tourism Economics for Pashman Stein and Long Beach Township, March 2024.

\*\*Report to Atlantic County Commissioners on Offshore Wind Developments, the Industrialization of our Oceans, and Impact to Our Local Economy, by Defend Brigantine Beach Inc and Downshore, April 2024.

The significant negative impact on Tourism and the shore communities, as well as the visual blight and noise at the shore would be substantially avoided if the projects were to be sited farther out – as they are everywhere else in the world. BOEM has been negligent in not adequately describing and considering these unique impacts despite repeated questions and concerns from the public and local governments to preserve and protect the shore environment and their local economies that derive from that.

#### **e) Further deficiencies regarding 43 USC 1332 (5)**

While the NJ DEP has ruled that the projects are consistent with its Coastal Zone Management Act rules, that was largely a political decision and the ruling is currently being litigated. The NJ DEP is now proposing a change its regulations to weaken the CZMA requirements for future such projects.

Local government concerns have been largely bypassed, and then ignored, despite the very large impact the projects will have on local environments. Formal opposition to the projects has been expressed in denial of local permits by Atlantic City and Little Egg Harbor, and through detailed comments submitted in the EIS process.

The process itself did not encourage local input until the EIS stage, as the earlier environmental analysis was limited to the impact of offshore survey work with no analysis or description of the potential scope of planned projects. (See section II below for more detailed treatment on failures in defining the lease areas and EIS “process” deficiencies.)

Due to being the “closest to the shore of any such large project in the entire world” the noise from pile driving and operational turbines is expected to exceed local noise ordinances (the subject of current litigation).

Due to being the “closest to the shore of any such large project in the entire world” and the presence of a National Wilderness Area onshore, the air pollutant emissions from pile driving are likely to exceed the stringent prevention of significant deterioration requirements at the Wilderness Area for short term fine particles.

Due to the “closest in the world to the shore of any such large project in the entire world” the impact on the coastal environment from visual blight and change in coastal environment will be major and dramatically impact tourism and coastal economies (including property values and tax revenues).

The significant negative impact on Tourism and the shore communities, as well as the visual blight and noise at the shore would be substantially avoided if the projects were to be sited farther out – as they are everywhere else in the world. BOEM has been negligent in not adequately addressing these unique impacts despite repeated questions from the public, and has refused to consider farther out alternatives despite NEPA requirements to do so.

#### **f) 43 USC 1332 (6)**

**Operations in the Outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.**

Per the EIS (Appendix C) the projects impact a huge ocean area: 102,124 acres for wind project area C-5; 1,025 miles of cabling buried under the seabed C-2; 348 acres of seabed disruption from turbine foundation construction C-5,6); 292 acres of **permanent** disruption of seabed from turbines and OSS (not including cabling).

That massive development of the ocean environment will cause considerable damage (some predictable, some unknown). See preceding section and below for damage assessment.

Quoting from BOEM/EIS:

The impacts on benthic resources depend on many factors but could be widespread and permanent, 3.5.2.

New cable emplacement and maintenance would disturb, displace, and injure or kill finfish and invertebrates, release sediment into the water column, and cause habitat alterations, 3.5.5.

Impulsive, high-source level noise, such as pile-driving noise, may injure, kill, or otherwise disrupt development in early life stages of fish and invertebrates, 3.5.5.

EMF, cable maintenance, and WTG noise impacts would be long term, and EMF, cable maintenance, and WTG would potentially have regional or population level impacts, 3.5.5.

Noise from vessel traffic during the maintenance and construction phases could affect species important to commercial/for-hire fishing, recreational fishing, and marine sightseeing activities, 3.6.1.

Similarly, noise from pile driving from offshore wind activities would affect fish populations that are crucial to commercial fishing and marine recreational businesses. 3.6.8

The intense, impulsive noise associated with impact pile driving can cause behavioral and physiological effects. Behavioral effects may occur up to tens of kilometers from the center of pile-driving activity.

Four marine mammals that are likely to occur in the Project area or are expected to experience acoustic effects are classified as endangered: fin whale, NARW, sei whale, and sperm whale.

Potential acoustic effects of anthropogenic underwater noise on marine mammals include mortality, non-auditory injury, permanent or temporary hearing loss, behavioral changes, and acoustic masking, with the severity of the effect increasing with decreasing distance from the sound source.

Given the uncertainty regarding marine mammal responses to the presence of offshore wind structures, BOEM cannot discount the possibility that the presence of structures could have long-term, intermittent impacts on foraging, migration, and other normal behaviors.

The effect of the increased presence of structures on marine mammals and their habitats is likely to be negative, varying by species, and their significance is unknown.

Comment:

The above documents the damages to the marine environment. There will also be damages to the human environment and property, and endangerment to human life and health from visual blight, noise, accidental releases, vessel traffic, SAR and radar degradation.

BOEM has not been forthcoming on the probability and consequences of blade and other equipment failures (such as happened during the startup of the Vineyard Wind project). Nor has it adequately addressed the risk from Atlantic hurricanes.

**(2) The specific activities and location of these projects do not meet the “requirements” for a lease per OCSLA 1337 (p) (4) and corresponding “responsibilities” per 30 CFR 585.102**

**43 USC 1337(p) LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES**

**(4) REQUIREMENTS** The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for—

**Important Note:** The 30 CFR 585.102 implementing regulations are very significantly different than this section of OCSLA.

2. § 585.102 What are BOEM's responsibilities under this part?

BOEM will ensure that any activities authorized in this part are carried out in a manner that provides for and reaches a rational balance among the following goals to the extent they conflict or are otherwise in tension, none of which inherently outweighs or supplants any other:

This is a major deviation from the statute which enumerates the individual “requirements” that must be ensured in granting leases (with the meaning that ALL of the enumerated requirements must be met). BOEM’s regulations change that to BOEM “balancing” the “goals”. On this point see specifically Memorandum M-37086 from the Office of the Solicitor of the Department of Interior.

**(a)** safety;

Comment:

See section I B (1) a) above for the major negative impact on navigation, vessel safety, and USCG Search and Rescue Operations. Also there has been inadequate disclosure on the potential for hurricane impacts, and turbine blade and other equipment failures.

**(b)** protection of the environment;

Comment:

See prior sections on the negative impacts on wildlife and the marine and human environments, including: fisheries, navigation, the severely endangered NARW, birds, archeological and historical sites, the shore environment (aesthetics/visual, noise, air quality).

**(c)** prevention of waste; (includes “economic waste” per 30CFR 585.102)

Comments:

The projects will cause enough loss in revenue from fishing that a financial compensation program is being required. As noted elsewhere (Section I F below) the cost impact to the NJ economy from reduced tourism and increased electricity pricing is estimated at \$72 Billion over the lifetime of the projects.

There is no definitive commitment to remove the project components from the seabed as part of the ultimate decommissioning. No such large scale seabed removal has been done anywhere in the world. Nor has a detailed plan been presented as part of the EIS. Nor has an ultimate disposal site for the project decommissioning waste been identified.

**(d)** conservation of the natural resources of the outer Continental Shelf;

Comments:

See prior sections for damage to the seabed and fisheries from 1025 Miles of cabling and 348 acres of structures.

**(e)** coordination with relevant Federal agencies;

Comments:

A specific Mitigation Agreement with DOD/NORAD is required by the Record of Decision (ROD) to deconflict the project with DOD use and access requirements. And the Mitigation is to be developed after the project has been approved. The expectation that the DOD will agree to workarounds and accept reduced operating capacity is reflected in the 10/29/2024 Memorandum of Understanding (MOU) between the Secretary of Interior and Secretary of Defense that establishes the importance of the specific Biden Administrations offshore wind goals.

The new administration does not support those offshore wind goals and the DOD should reevaluate its accommodations in light of the superseding needs of national security.

Coordination with DOD (and FAA) should be done on a wide programmatic basis involving all projected wind areas rather than just on a project by project basis so that cumulative impacts can be more accurately assessed. National security concerns should be given precedence per OCSLA and the MOU should be reexamined.

**(f)** protection of national security interests of the United States;

BOEM/ FEIS- **Major adverse impacts** on Military and National Security 3.6.7 (particularly USCG Search and Rescue Operations)

3.6.7 Military and National Security, and Scientific Research. The affected activity would experience unavoidable disruptions to a degree beyond what is normally acceptable, and, once the Project is decommissioned, the affected activity could retain measurable effects indefinitely, even if remedial action is taken. 3.6.7 -1 11

Also see (e) above and Section I C below for specific details.

Comment:

Identified DOD issues include: interference with the Gibbsboro air defense radar, interference with airborne and ship radar, underwater noise, potential for unauthorized use of under and above water surveillance, operational space conflicts in the air, on the surface, and below the surface. Search and rescue operations are particularly impacted based on radar and structural interference.

**(g)** protection of correlative rights in the outer Continental Shelf;

Comments:

As noted in prior sections the rights of fishermen, boaters, beachgoers, and shore communities will be violated.

**(h)** a fair return to the United States for any lease, easement, or right-of-way under this subsection;

No comment

**(i)** prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

Comment:

As noted in prior sections there will be significant interference with the reasonable uses of large parts of the ocean by fishermen, boaters, beachgoers, and shore communities.

Important Note: The language used in the BOEM regulation 30 CFR 585.102 is different than used in OCSLA. Here see Subsection a (9) Prevention of interference with reasonable uses of the exclusive economic zone, the high seas, and the territorial seas (as determined by the Secretary);". This wording change was not disclosed in the associated rulemaking. By moving the Secretary's determination to the end of the subsection it implies much broader authority than just determining the "reasonable uses" in this particular requirement.

**(j)** consideration of—

**i)** the location of, and any schedule relating to, a lease, easement, or right-of-or right-of-way for an area of the outer Continental Shelf;

Comments:

As noted elsewhere, these lease areas have unique location issues. They are the "closest to the shore of any such large project in the entire world" with the accompanying uniquely serious impacts on Tourism, Nature preserves (e.g. Brigantine National Wildlife area), historical sites and the nearby shore communities.

The leases are in the migration path of the severely endangered NARW.

The leases interfere with prime fishing areas.

The leases interfere with the Gibbsboro air defense radar, Coast Guard Search and Rescue, and other DOD operation areas.

See section III below for the myriad of process mistakes and flaws in defining the NJ Wind Area (which is distinct from the NY Bight wind area) and the specific lease areas.

**ii)** any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

Comment: See prior sections for impacts on fishing, fisheries, and navigation.

**(k)** public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection;

Comments:

See section III on the lease process deficiencies and mistakes.

During the lease area definition process by the State Renewable Energy Task Force the general public was not invited; and when any did attend meetings they were limited to the role of observer and not permitted to comment.

During the site assessment phase there was no disclosure of the implications of the early siting decisions as the full project scope was not included. As a result there was virtually no “local” participation until the project EIS stage. The BOEM response to voluminous local comments was perfunctory. The result is refusal of local entities to issue the necessary local permits and associated litigation.

And

**(l)** oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.

Comments:

BOEM and BSEE largely rely on the lessee and third parties for certifications and compliance. Their direct oversight is inadequate as demonstrated in their unresponsiveness in documenting compliance with ocean survey requirements, and in their response to the Vineyard Wind blade failure.

BOEM had an obvious conflict of interest in pushing to meet the Biden Administrations offshore wind development goals while at the same time assuring that all proposed projects meet the regulatory requirements.

### **(3) Non – Compliance with lease terms**

Atlantic Shores did not comply with its lease provision to perform sound field verification noise measurements for vessel survey activities. No reports or data have been presented in response to FOIA requests.

**C. Cancellation of the leases should be considered based on conflicts with national security and defense (30 CFR 585.422 (b) (3), 43 USC 1341 (d), 30 CFR 585.102)**

**43 USC 1341(d) National defense areas; suspension of operations; extension of leases**

The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense;

**30CFR§585.102 – What are BOEM’s responsibilities under this part?**

BOEM must consult with the Department of Defense (DoD) and other federal agencies to ensure that projects do not conflict with national security or defense operations.

Comment:

Also see section I B (2) (f) above on the evaluations of 43 USC 1337 (p) (4) Requirements E and F for more details and regarding the Memorandum of Agreement between the Department of Interior and DOD based on the prior Administration’s priorities.

The AS Record of Decision (ROD) requires an agreement to be worked out with DOD. But this agreement should have been worked out prior to permitting. The new DOD leadership should review the potential conflicts with DOD operations areas, etc. with both a big picture overview of the Atlantic Coast and the specifics of these projects.

BOEM/EIS judges the impact on Military and National Security (particularly USCG Search and Rescue Operations) as **Major** 3.6.7.

3.6.7 Military and National Security, and Scientific Research: The affected activity would experience **unavoidable disruptions to a degree beyond what is normally acceptable**, and, once the Project is decommissioned, the affected activity could retain **measurable effects indefinitely**, even if remedial action is taken. 3.6.7 -1 11.

**3.6.7 Military and National Security**

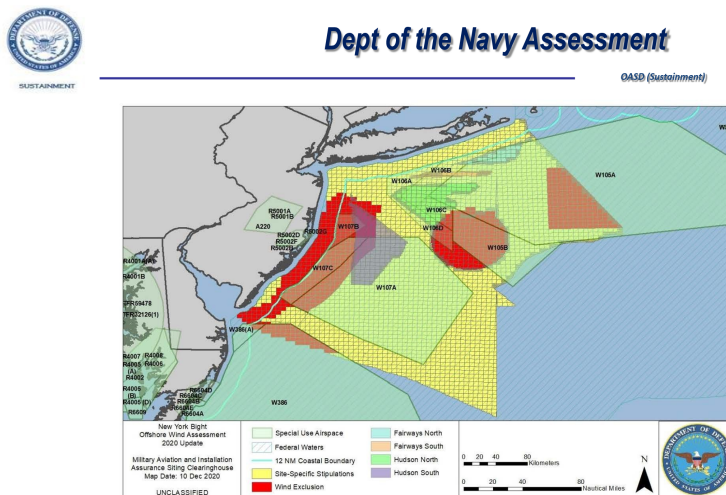
The installation of WTGs, OSSs, and met tower in the Project area would result in increased navigational complexity and increased allision risk, creating potential **major adverse** impacts on USCG SAR operations and potential minor impacts on all other military and national security uses. 3.6.7 -30

Furthermore, the presence of the WTGs, OSSs, and met tower could complicate offshore SAR operations or surveillance missions within the Project area and **lead to abandoned SAR missions and resultant increased fatalities.**

Radar Systems 3.6.7 **Moderate Adverse Impacts** on the affected activity would be present. The affected activity would have to adjust to account for disruptions due to unavoidable impacts of the Project, or, once the Project is decommissioned, the affected activity could return to a condition with no measurable effects if proper remedial action is taken.

Circumstance where these criteria for lease cancellation are met.

BOEM was advised in a DOD letter of December 15, 2020, that the Atlantic Shores project “will adversely affect NORAD’s missions by hampering or degrading air surveillance radar performance”. That letter included the map below showing the inner half of the Atlantic Shores lease area as an exclusion zone for defense purposes, but that inner half of the lease area has been retained without any explanation from the BOEM or the DOD. See the following:



For the Gibbsboro ARSR-4 radars, that Report stated on page 47 that: “At a blade-tip height of 1,048 feet AGL, 101 of the 105 proposed WTGs in the Project 1 WTA, 59 of the 64 proposed WTGs in the Project 2 WTA, and all 31 proposed WTGs in the Overlap Area will be within line-of-sight of and will interfere with this radar site. See Figure 5. The radar effects will include clutter resulting in a partial loss of primary target detection and a number of false primary targets over and in the immediate vicinity of the proposed WTGs within line-of-sight”, and concluded on page 48 that:

“Because wind turbines will be within line-of-sight of the Atlantic City ASR-9, Gibbsboro ARSR-4, and the McGuire AFB DASR, West Slope expects that the DOD and FAA will have concerns with the proposed WTGs within line-of-sight at blade-tip heights of 880 feet AGL, 890 feet AGL, and 1,048 feet AGL based on electromagnetic interference to air navigation facilities.

No mitigation measures were defined in the AS project Record of Decision to mitigate the radar degradation and other potential operational conflicts, only that an agreement with DOD would be worked out.

**D. The projects should be suspended and leases cancelled because they will cause harm and damage to natural resources, the environment, and sites of historical and archeological significance (30 CFR 585.422 (b) (4) (i)).**

BOEM/ FEIS- **Major adverse impacts** on: the North American Right Whale 3.5.6, Commercial Fishing and For Hire Recreational Fishing 3.6.1, Cultural Resources 3.6.2, Navigation and Vessel Traffic 3.6.6, Military and National Security 3.6.7 (particularly USCG Search and Rescue Operations), Scientific Research 3.6.7, and Scenic and Visual Resources 3.6.9.

BOEM/FEIS – **Moderate adverse impacts** are judged on: Benthic Resources 3.5.2, Birds 3.5.3, Coastal Habitat and Fauna 3.5.4, Finfish Invertebrates and Essential Fish Habitats 3.5.4, Marine Mammals 3.5.6, Wetlands 3.5.8, Environmental Justice 3.6.4, and Radar Systems 3.6.7.

Comment:

See above sections for serious harm to: fish; marine mammals; fishing; navigation; marine, coastal and human environments, etc.

Circumstances where the permit or lease suspension criteria are met:

- The projects pose a threat of serious, immediate harm and death to aquatic life, including the NARW from obstruction of its historic migration path through and adjacent to the lease area, from ocean surveying, pile driving, large turbine operations, and vessel traffic which threaten NARW reproduction and survival as a species. This is supported by a Save LBI report showing deaths and systematic underestimation of same by the agencies.
- See Atlantic Shores ITA application, the Save LBI Report on operational noise impact to the NARW, and the Save LBI petition to NOAA for its migration corridor to be designated as critical habitat and kept turbine free.

- Unique threat to aquatic life, the NARW, from increased vessel strike due to the synergistic effect of forcing it to migrate in a 12-mile-wide corridor between the Atlantic Shores south project and the Hudson South projects, and the Coast Guard designating that same corridor as a fairway for large vessels traffic.
- Threat of serious and immediate harm to aquatic life, i.e., marine mammals, from ongoing high intensity noise vessel surveys. Supported by Save LBI and other reports and data correlating the exceptional number of whale deaths along the Jersey Shore in late 2022 and early 2023, with survey vessel presence.
- Unique threat of serious and immediate harm to the human environment from airborne noise levels at the shore, from the exceptional proximity of pile driving and turbine operation, that exceed residential standards, resulting in sleep disturbance and other adverse health effects. Supported by several acoustic expert consultant reports, XI Engineering, Rand Associates, and a noise health consultant.
- Threat of serious and irreparable harm to the coastal and human environment; the extremely long-term navigation safety risk and fishing ground loss from turbine installation without the demonstrated means to remove them at the end of their useful life, and to provide the financial assurance to do so.
- Pile driving and submerged cable installation threaten serious and irreparable harm to now-submerged ancient archaeological sites and artifacts that may have unique value in identifying the first humans that came to North America- supported by Marine Archeological Resource Assessments in the EIS appendices.
- Threat of serious, irreparable damage to human life and property from project interference with the Gibbsboro, NJ ARSR-4 NORAD air defense radars and with Coast Guard Search and Rescue operations.
- Threat of serious harm to the coastal environment by the failure to identify the frequency and severity of turbine component failures, including that from hurricanes, the ocean and coastal impact of such failures, and the means to reverse that impact.
- Threat of serious harm to property and the coastal and human environment from the unique proximity of the project to shore through tourism and property value loss,
- Unique threat of serious and immediate harm to the coastal environment from air quality and visibility degradation at the Brigantine National Wilderness Area Class 1 area from the exceptionally close pile driving for the project -supported by comment letters and EPA decision to remand the CAA Permit.

**E. The projects should be suspended and leases cancelled because their threat of harm does not disappear in a reasonable period of time (30 CFR 585.422 (b) (4) (ii)).**

Comments:

Please see sections I B, C, and D above for the specifics (“irretrievable”, “long term”, “permanent”, “indefinitely”) on the serious continuing harm from the project. Note that the expected project construction period is 3 years; project operations 30 years. And it is not clear whether decommissioning will actually include removal of the structures and cables. In some cases the harm continues even after the project is decommissioned. So the threat of harm will not disappear “within a reasonable period of time”.

**F. The projects should be suspended and leases cancelled because the advantages of lease cancellation exceed the advantages of continuing the lease (30 CFR 585.422 (b) (4) (iii))**

The advantages of cancelling the leases clearly outweigh the advantages of continuing them. The lease area was poorly determined (see section III below for the details) and should not ever be developed because of its unique location – i.e. “closest to the shore of any such large project in the world” with resulting unique harm to the human environment including the shore economy from noise, air pollution, and visual blight; and being located in the migration path of the severely endangered NARW. Those conditions will not change over time.

The purported benefits are the projects’ contribution to climate change – but the EIS itself acknowledges any such impact would be “not measurable” (3.4.1-10), and to meet specified state and federal goals for renewable energy. But the state goal is under review as being not practical and being hugely expensive (see for example the August 2024 report by Whitestrand Consulting Economic Analysis of the Atlantic Shores South Offshore Wind Project which shows the costs to the NJ ratepayer in subsidies and to the NJ economy due to the higher electricity costs and the project’s negative impact on tourism **exceed the purported economic benefits by \$72 Billion**). The reality is that, contrary to the rosy and demonstrably wrong economic claims in the COP and EIS, the projects are not financially viable. In fact the AS partners have each taken Billion dollar plus write offs on the projects and the AS partners recently asked the state BPU to cancel their order on AS1 (an agreement on AS2 was never done). And the federal offshore development goal has been abandoned by the Trump administration. Thus there is no real “benefit” to continuing the leases, other than a hope for future development if the economics were to change. But even in that event the unique location negatives would still be overwhelming. **Clearly the disadvantages of continuing the lease exceed the benefits.**

The permits and leases need to be cancelled so that they cannot be resurrected without a full ground up review in a new licensing process. Based on current updated knowledge it is clear that these leases should not have been approved, and it is highly unlikely that a new licensing process would again authorize these projects. Furthermore, a new process would give local jurisdictions and interested parties an opportunity to be heard when it mattered, rather than after the fact.

## II. Major Process Deficiencies in Selecting the NJ WEA and Atlantic Shores leases

### A. Generic Deficiencies in Offshore Wind Project Environmental Impact Statements

- The project specific EIS is the first environmental review done on the full contemplated project with defined parameters on location, turbine sizes, number of turbines, transmission route, etc. This is also the first opportunity for the public to be officially heard on the full range of project issues. Each EIS is thousands of pages long with reams of data, but little evaluation and with very confusing evaluation criteria. The public comments submitted are voluminous (e.g. see Appendix N to the Atlantic Shores EIS). Most comments received perfunctory answers. It is not surprising that litigation resulted.

The underlying purpose for the projects as denoted in the EISs is to combat climate change. But the EISs themselves (but only in the “fine print”) admit that the projects (and even the whole offshore wind program) will have immeasurable impact on global climate change. In fact, despite public comments requesting it, BOEM refuses to specifically quantify the impact on climate change (instead it emphasizes a claimed reduction in greenhouse gases). The “fine print” admission runs counter to repeated public statements and announcements by Department of Interior representatives. This failure to directly and clearly show how the projects will not materially impact the primary goal of reducing climate change amounts to deliberate “misrepresentation”.

The more immediate purpose for the projects as denoted in the EISs is to meet a presidential executive order with specific aggressive near term offshore wind development goals (and in the NJ case with a companion comparable executive order from the governor). These specific goals are used in the EIS to preclude the No Action option (i.e. to reject the application) - because rejecting the application would not help meet the specific growth goals. Further, for the same reason, options that would involve smaller size projects also are not considered.

The stated purpose of meeting an aggressive development goal places the supposed regulator in a severe conflict of interest position. How can an agency charged with promoting development also properly regulate on behalf of the public? Such a conflict in the past forced creation of an independent Nuclear Regulatory Commission, which has no development goals.

- A core principal in NEPA regulation is trying to determine the best solution with the least environmental impact, and with particular concern for protecting endangered species. That necessarily means considering alternative options /approaches that will meet the goal. Yet **nowhere in this entire process are real alternatives considered**. The 2007 Offshore Wind PEIS lays out alternative energy options for consideration, but draws no conclusions. None of those options are considered elsewhere in the process. And there is no discussion of whether a different location might be preferable (such as an area farther

from the shore that has less impact on tourism and shore communities, or one that is not in the migratory corridor for the severely threatened North Atlantic Right Whale), or whether a smaller project or one with smaller turbines would be better? Rather, the EIS restricts itself to the given lease area (which has now been subdivided into smaller units leaving even less options to consider) and the given project size/capacity. **Those limitations eviscerate the NEPA review.**

The EIS considers cumulative impacts from neighboring projects, but does not consider the cumulative impact of other projects farther removed. That may be sufficient for some concerns, but not all. If saving the North Atlantic Right Whale from extinction is a goal, then the aggregate impact of all the projects along the Atlantic Coast on or near its migration path and feeding/calving areas should be considered. The same is true for the impact on certain fisheries. **The analysis and authorizations for incidental harassment of marine life on a project by project basis is insufficient.** Nowhere in the entire process is this important cumulative analysis done.

## **B. Major Defects in the Atlantic Shores (AS) Final Environmental Impact Statement (EIS)**

The boilerplate EIS evaluations on tourism and other socio-economic impacts are unsupported and wrong. The AS projects are **uniquely close to the shore**. While the EIS acknowledges the MAJOR impact these massive turbines will have on the pristine ocean aesthetics and on the experience at nearby historical properties and nature preserves, it refuses to acknowledge any significant impact on local tourism and shore economies. And it uses old studies with much smaller turbines in attempting to support its case, when its own studies if corrected for the actual turbine sizes show that the impact on tourism will be substantial. An independent study by Tourism Economics (which does an annual tourism industry study for the state of NJ) projects an **annual** loss of tourism driven revenue of \$668 Million to the businesses on Long Beach Island and Ocean County alone, and an annual loss of tourism related jobs of 6700. Annual losses to Atlantic County businesses are estimated by others at \$1.6 Billion in revenue and 10,700 jobs. Such analysis is ignored in the EIS and in its response to formal public questions on the issue.

- Atlantic Shores has failed twice to get a power purchase agreement from the NJ BPU on AS 2, and also failed to get a rebid on its existing agreement on AS1. Instead the EIS assumes there will be positive cost benefit analyses to support the projects. An Aug 2024 independent study on Atlantic Shores 1 and 2 by Whitestrand Consulting estimates that the cost of the projects will exceed the benefits by a whopping \$72 Billion over their lifetime. Nowhere in the entire evaluation process has there been an assessment of the economics of both projects.

- The EIS itself judges there to be **Major** potential negative impacts on: the seriously endangered North American Right Whale, Commercial Fishing and For Hire Recreational Fishing , Cultural Resources, Navigation and Vessel Traffic, Military and National Security (particularly USCG Search and Rescue Operations), Scientific Research, and Scenic and Visual Resources. Yet with all these Major negative impacts plus the unacknowledged Recreation and Tourism and Demographic Employment and Economic impacts it approves the project. As noted above – No Action and true viable alternatives are ruled out by the narrowly defined purpose. The evaluation ignores the Blue Ribbon panel criteria and much of the PEIS direction.
- The EIS consistently understates the impact of underwater noise on marine life and airborne noise at the shore even when formal questions were submitted. Thus it underestimates the potential injuries to marine life and humans.
- The EIS admits there will be injury to the fishing industry and offers a cash replacement plan as mitigation.

These and other deficiencies in the EIS are the subject of current litigation.

### **C. Key Issues with the NJ Wind Energy Area (WEA) Selection, Leasing, and Project Approvals.**

The selection process for the NJ WEA was grossly inadequate - resulting in by far the closest- to- shore large projects anywhere in the world, interference with the migration path of endangered species, and major impact on the local fishing and tourism industries.

- 2004 The selection of the WEA and subsequent leases were made largely based on wind availability and ship/air traffic considerations, and included such old/incorrect assumptions (from a NJ BPU commissioned study done way back in 2004) on maximum feasible water depth and anticipated turbine size that were not adjusted over the 20 year evaluation period. There was no specific consideration in the selection process for visibility and noise impacts on tourism and shore economies, onshore air quality from offshore operations, and inadequate consideration of the noise impacts on marine life.
- 2006 ANJ Blue Ribbon study highlighted the gaps in knowledge of the environmental and economic impacts and recommended that a detailed baseline study be done prior to a controlled test project. It also highlighted criteria for evaluating such a test project and any subsequent commercial scale developments. While an environmental study was done in 2010 (commissioned by the NJ DEP -

OWPEBS 2010), no such study was done on the socio-economic impacts. And the evaluation criteria (such as careful consideration of the impacts on the tourism and fishing industries) were disregarded.

- Nov 2007 An Offshore Wind Programmatic Environmental Impact Statement (PEIS) which covers the Atlantic, Gulf and Pacific areas was completed. Its expected time horizon was 5-7 years. The areas assessed went out to 100 **meter** depth, much farther out than would be considered for the NJ WEA. This PEIS identified generic issues that needed to be addressed in subsequent more localized EISs. Several of those identified generic issues (such as proper siting to minimize tourism and economic impacts on the shore, endangered species, and fishing communities) were not addressed adequately in the subsequent localized environmental reviews or in the State Taskforce identification of the NJ WEA. And considerable new information was developed since the 2007 PEIS that would better inform the assessment. But no update has been done. And the lease sales for the NJ Wind Area were conducted in Nov 2015 well past the defined 7 year time horizon for this PEIS.
- No regional Environmental Impact Statement (EIS) was done for this NJ WEA as was done for subsequent WEAs (such as the NY Bight which includes other locations farther out from the NJ shore). As a result, no regional impacts from the multiple proposed projects in the region are considered - such as on the fishing industry or the marine environment (including the impact on essential endangered whale migration). And no consideration was made of preferred alternatives within the region (such as farther out versus closer- in siting).
- June 2009 Environmental Assessment issued for interim leases for **wind resource data collection** on the Outer Continental Shelf off NJ and Delaware. The assessment was limited to data collection activities in the WEAs, not for full development of the leases.
- Apr 20, 2011 Initial “call” for information and nominations for commercial leasing offshore New Jersey. This call defined the NJ WEA still using the 100 **ft** depth criteria to approximate the eastern boundary and now defined the western boundary at 7 nm to avoid avian migration paths and a tug/barge traffic lane. No consideration was given to aesthetic and tourism impacts as had been raised in the PEIS. This call would eventually result in 3 non- competitive leases granted for resource assessment, all 3 of which expired with no development.
- Feb 2012 A regional Environmental Assessment (EA), as distinguished from a more detailed EIS, was completed. It was an overview for NJ, Delaware, Maryland and Virginia WEAs (but not the immediately

adjacent NY Bight WEA). This EA was limited to individual **site assessment activities** related to anticipated leases. It did **not** include an assessment of a completed project. It also did not assess the potential impacts from multiple concurrent site assessments. (The impact of concurrent site assessment ocean surveys associated with the NJ WEA and the NY Bight WEA is the subject of litigation, as unexplained marine mammal deaths occurred during a period of intense underwater surveying in 2022 and 2023.)

- As of 2013, according to NJ Renewable Energy Task Force presentations (the Task Force was a combination of BOEM and NJ state representatives whose task was to determine the NJ WEA), the assumed turbine size was 5 megawatts (MW) with a 126 meter (m) diameter rotor, much smaller than the turbines that were later accepted by the State. There is no mention of consideration of visual impacts in its WEA determination in Task Force meeting documentation – contrary to the recommendations in the 2007 PEIS, or that it evaluated the potential for farther out sites such as were included in the PEIS (keeping to the 100 ft depth limit versus 100 meters). But to the extent there were any deliberations on visibility impact, they would have been based on turbines of around the 5 MW size. Yet when the DOI approved the COP documents in 2023 and 2024 for the actual wind development projects in the lease areas, Ocean Wind 1 and Atlantic Shores South, the approved turbine specifications had grown to a size of 12 MW with 220m diameter rotor and 15 MW with 280m diameter rotor, respectively. In the latter case the turbines would be as tall as the Eiffel Tower and more than twice as tall as those the Task Force had considered. In both projects the much larger approved turbines would have a substantially greater visual (and noise) impact than those considered by the Task Force in determining the WEA.
- Sept 2015 Notice published for competitive sale of leases in the NJ WEA with 2 adjacent lease areas now defined (OCS – A 0498, and OCS- A 0499). The sale was completed on Nov 15, 2015. The pricing for those 2 leases was \$880,715 and \$1,006,240 respectively (\$5.49/acre for each). As of this 2015 date there still had been no evaluation of the potential impact of a project or multiple projects in the WEA or cumulatively with other projects in other WEAs.

**The 0498 lease was subsequently split into 2 leases 0498 and 0532 which became Ocean Wind 1 and Ocean Wind 2 – both owned by Orsted. The 0499 lease was subsequently split into 0499 Atlantic Shores (AS) South and 0549 Atlantic Shore North. 0499 was then split into 2 leases 0499 Atlantic Shores 1 and 0570 Atlantic Shores 2.**

- The Ocean Wind 1 draft EIS was available June 2022 and the final EIS May 2023. The Record of Decision (ROD) was in July 2023. Lawsuits challenging the approvals were filed. Orsted announced on Oct 2023 that it was ceasing further development of Ocean Wind 1 and 2.
- The Atlantic Shores South (projects 1 and 2) draft EIS was available May 2023 and the final EIS May 2024. A notice of intent to develop a draft EIS for Atlantic Shores North was announced in March 2024. The Record of Decision for Atlantic Shores South was in July 2024. Several lawsuits opposing the approvals have been filed. (Note that the very late in the process filing of lawsuits is because they are precluded until the final agency decision is made.)

## CONCLUSION

As set forth here in above and in the Save LBI cover letter, Save LBI urgently requests that the Secretary and BOEM invoke their legal authority to cancel the Atlantic Shores North and South lease area, with emergent treatment for Atlantic Shores South due to the near completion of their federal approvals and the intersection of these projects with the NARW critical migration route and essential migratory habitat.

Thank you very much for your careful consideration of these matters.

Respectfully submitted,

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