



December 2, 2022

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RE: Comments on BOEM and NOAA Fisheries Draft North Atlantic Right Whale and Offshore Wind Strategy

Ocean Winds (OW) commends the Bureau of Ocean Energy Management (BOEM) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries on efforts to coordinate together by developing a joint Draft North Atlantic Right Whale and Offshore Wind Strategy (Strategy). OW supports the Strategy's main purpose to protect and promote the recovery of the endangered North Atlantic Right Whale (NARW) while responsibly developing offshore wind energy.

We are, like BOEM and NOAA, keenly aware of the dire threats facing North Atlantic Right Whales. We are proud to be part of the clean energy transition that is needed to abate the most fundamental threat to NARW and many other threatened species: our climate crisis. It is essential that strategies like the one before us today are founded in rigorous science and forthrightly address real threats and opportunities and reflect the "all of government approach" to advancing clean energy that is a hallmark of this administration. As President Biden noted, not that long ago, while standing on the site of a former coal plant that will be the landing sites for the cables for OW's flagship Mayflower Wind project, "We're going to make sure that the ocean is open for the clean energy of our future, and everything we can do [to] give a green light to wind power on the Atlantic coast . . . I've directed my administration to clear every federal hurdle and streamline federal permitting that brings these clean energy projects online right now and right away."¹ This sentiment reflects the fundamental need to aggressively move forward solutions in order to address the existential threat to so many species, including NARW, who are facing food chain disruptions and changing migratory patterns due to warming oceans.

OW was created in 2019 as a 50/50 joint venture between global utilities EDP Renewables (EDPR) and ENGIE. OW develops, finances, builds, and operates offshore wind projects around the world, based on the belief that offshore wind is an essential component of the global energy transition. Through EDPR and ENGIE's combined assets and experience, OW has now established a presence in seven countries and its portfolio has grown to 14.6 GW of gross capacity (owned by OW and its affiliates). Ocean Winds' perspective is based on the experience of

¹ Remarks by President Biden on Actions to Tackle the Climate Crisis, Brayton Point Power Station, Somerset MA, July 20, 2022 available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/07/20/remarks-by-president-biden-on-actions-to-tackle-the-climate-crisis/>

developing offshore wind resources across Ocean Winds' portfolio of projects in the US, Europe, and Asia.

OW is rapidly expanding its presence and pipeline of projects in the North American market. Based in Boston, Massachusetts, the OW NA business unit currently has two projects in the Northeast U.S under development. The flagship Mayflower Wind project (a 50/50 partnership between OW and Shell New Energies) will be installed in a federal offshore wind lease area off the New England coast. The Bluepoint Wind project (a 50/50 partnership between Ocean Winds and Global Infrastructure Partners) holds lease area OCS-A 0537 in the NY/NJ Bight.

Ocean Winds appreciates the opportunity to comment on the Strategy. The Strategy is a non-rulemaking policy intended to evaluate efforts to date and identify areas of future effort where BOEM, NOAA Fisheries, and the offshore wind industry will work together to develop offshore wind energy responsibly while protecting and supporting recovery of the NARW. The Strategy has identified three goals: Mitigation and Decision-Support Tools; Research and Monitoring; and Collaboration, Communication, and Outreach. With BOEM, NOAA Fisheries, and other industry and stakeholder partners, we share a common concern for protections for the NARW due to its endangered status and uncertain future. OW recognizes that the NARW species, listed by NOAA Fisheries as endangered under the Endangered Species Act (ESA) and depleted under the Marine Mammal Protection Act (MMPA), is at high risk of extinction due to multiple stressors affecting their distribution, abundance, and reproductive potential. An Unusual Mortality Event (UME)² has been ongoing since designation in 2017. The serious injury determinations³ completed for the UME found vessel strikes and fishing gear entanglements to be the primary causes of the UME. Other potential and emerging threats have been identified in the *North Atlantic Right Whale Road to Recovery* are associated with climate change, new and expanded ocean uses, and ocean noise⁴.

BOEM and NOAA Fisheries have translated the administration's climate mandate, as articulated by President at Brayton Point and in Executive Orders into specific policy acknowledging that offshore wind energy development is "the cornerstone" of solutions to climate change and the attainment of President Biden's goal to increase renewable energy production by deploying 30 gigawatts of offshore wind (OSW) by 2030 (Executive Order 14008). OW recommends that Strategy development explicitly carry this theme forward in the NARW Strategy by clearly presenting both the pressing need for responsible OSW development to mitigate the negative climate change impacts on NARW and other marine organisms and

² <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event>

³ Serious injury determination is a detailed scientific assessment process. It uses health data, such as body condition and parameters of the human-caused injury, collected from living whales to determine an individual whale's prognosis for survival. A serious injury designation indicates a whale is likely to die from those injuries (although it was alive at its last sighting).

⁴ <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale#road-recovery>

the need for monitoring and studies designed in accordance with the best scientific and technologically advanced practices.

OW supports the comments submitted by the American Clean Power (ACP) and offers our own detailed comments below:

OSW has the potential to be a collaborative partner in conservation and protection of the NARW and other marine wildlife and habitats.

The development of offshore wind energy has the potential to reduce NARW risk by addressing the greenhouse gas emissions that are contributing to the shifts in habitat and prey species which are a source of changes in the predictability of NARW presence. Therefore, it is crucial that the Strategy not negate or delay the potential benefits of offshore wind development to ocean ecosystems, wildlife, and their habitats.

The OSW industry has the potential to make positive contributions to NARW protection and marine environmental research by supporting solutions that combine best scientific practices with emerging technological innovations. The OSW industry is currently investing tens of millions of dollars in research and technological advancement to identify and implement best science studies and practices to avoid, minimize, and mitigate potential impacts to marine wildlife and habitats including the NARW.

The guidance should focus on developing an overarching research strategy for better understanding NARW impacts and uncertainty should lead to further study, not actions based on unclear science.

Uncertain impacts potentially associated with OSW should not be framed as actual, known impacts but as areas for further study. Efforts should be directed towards advancing research to transform areas of uncertainty while also focusing on increasing NARW and NARW prey detection capabilities.

For example, the Strategy maintains that offshore wind energy has the potential to cause indirect negative effects to NARW based on changes to currents and mixing caused by wind turbines and foundations. There is a paucity of scientific data on this topic as the research referenced is for well-mixed, shallow marine ecosystems (Dorrell et al 2022)⁵. This topic needs to be studied further to identify its applicability in deeper, stratified waters to identify potential effects, including those that could be potentially beneficial.

Working together, the government, scientific community, offshore wind developers and other ocean users should be able to conduct further research to clarify areas of scientific uncertainty while also continuing to advance the goal of developing 30 GW by 2030 to address the climate crisis.

⁵ Dorrell RM, Lloyd CJ, Lincoln BJ, Rippeth TP, Taylor JR, Caulfield CP, Sharples J, Polton JA, Scannell BD, Greaves DM, et al. 2022. Anthropogenic mixing in seasonally stratified shelf seas by offshore wind farm infrastructure. *Frontiers in Marine Science*. 9:830927. doi:10.3389/fmars.2022.830927.

In addition, rather than proposing a piecemeal lease-by-lease monitoring strategy that could result in delays to start of construction, the guidance should seek to leverage existing data that has been collected, identify data gaps, and propose a regional approach for future monitoring and research. OW agrees with the Strategy recommendation that the Regional Wildlife Science Collaboration (RWSC), in partnership with multiple contributing parties, should play a role in the evaluation of existing science and the prioritization of future research towards the aim of the best science-based solutions for NARW protection.

This regional plan should be flexible to include a wide range of options that are appropriate to fill in data gaps and monitor changes over time. Passive acoustic monitoring (PAM) buoys have been important in recording whale species vocalizations in near real time as well as on an archival basis. This technology, and other remote sensing tools, can be used for implementing vessel strike avoidance measures when NARWs are detected, for collecting distribution and abundance data, and is compatible for use with other data (e.g., visual detections). Other emerging innovative ideas, such as the use of eDNA, prey species studies, and mitigation supportive of vessel collision reduction technology and ropeless gear, should be given consideration in the Strategy or any other guidance developed by BOEM and NOAA.

Regulatory requirements coordinated by BOEM and NOAA Fisheries should be objective, feasible, and predictable.

OSW companies are investing billions of dollars in these projects and making deep and binding commitments to communities and partners in reliance on the predictability, transparency, and objectivity of the regulations required for federal authorizations. Overlapping and inflexible regulations have the potential to jeopardize project financing, impact ratepayer costs, and could ultimately adversely impact coastal communities. While OW appreciates that the Strategy is not intended to “define new policy or regulatory actions,” it is likely that the Strategy will be implemented in other regulatory actions including individual project reviews. Therefore, it is important that BOEM and NOAA Fisheries consider the regulatory burden associated with reconciling the many existing regulatory documents that either similarly guide and/or regulate the same issue or that may require extra effort to reconcile differing interpretations. Examples of existing guidance and regulatory documents that the Strategy overlaps with include, but are not limited to, NMFS Vessel Strike Reduction Rule, BOEM Lease stipulations, BOEM Guidelines, BOEM conditions of Construction and Operations Plan (COP) approval, BOEM’s National Environmental Policy Act (NEPA) process, NMFS Biological Opinions, NMFS Incidental Harassment Authorizations (IHAs) and Incidental Take Authorizations (ITAs), NMFS Atlantic Large Whale Take Reduction Plan, North Atlantic Right Whale 2021-2025 Priority Action Plan, Ropeless Roadmap: A Strategy to Develop On-Demand Fishing, NOAA Fisheries and BOEM Federal Survey Mitigation Implementation Strategy - Northeast U.S. Region.

Fishing is not prohibited in nor proven to be excluded from fixed bottom offshore wind farms on a permanent basis. Regarding compensation, OSW should not bear the whole burden of compensating for other industry’s potential impacts to

NARW associated with gear entanglement. NOAA has authority to regulate fishing within and outside of offshore wind farms and has programs to approve or restrict fishing gear for the protection of the NARW such as NMFS' *Draft North Atlantic Right Whale Road to Recovery, Ropeless Roadmap: A Strategy to Develop On-Demand Fishing*⁶. The displacement of fishing from wind farm areas as a cause of increased entanglement has been conceptualized without evidence. The connection between "displacement" of fishing within offshore wind farms and increased entanglement must be better understood and supported by scientific inquiry before it can be a part of any governmental strategy.

In addition, other factors may also influence the spatial and temporal pattern of fishing effort. Other factors not considered include the total issued permits and seasons for fishing, changes to fish stocks due to climate change and/or other natural fluctuations, and the possibility for offshore wind farms to benefit ecosystems and fish stocks through artificial reef effects.

Furthermore, other ocean industries and users contribute to vessel traffic. Section 4.2 of the Strategy identifies industries of relevance as commercial shipping, whale watching, aquaculture, and ecotourism as potential partners to the Strategy but does not identify the potential for other industry impacts to NARW.

Developer Mitigation Measures (Appendix B)

Regarding measures relating to foundation installation: The foundation installation restrictions listed in Appendix B consist of measures or restrictions already existing (e.g., prevention of pile driving when NARWs are detected or when it is not possible to confirm presence/absence) and the introduction of additional, prescriptive measures. The introduction of a surface occupancy measure is unduly restrictive on OSW construction and not supportive of climate impact mitigation. Additionally, the suggestion to expand seasonal timing restrictions extensively may also result in increasing construction duration. Requirements need to leave space to develop improved solutions for protecting marine mammals, including monitoring, reducing overall construction duration, and other operational methods. Developing technology and methods to monitor for the presence of marine mammals should be the goal as they will be the most effective measures for species protection.

Regarding Quieter Foundations, Technology, and Methods: It is concerning that the Strategy cites one article (Koschinski and Lüdemann 2020)⁷ as the basis for the use of gravity-based foundations for inclusion in a quieting performance standard by BOEM and NMFS. The gravity-based foundations referred to have not been widely used, are constrained by the need for high bearing capacity soils, and have disadvantages associated with a larger footprint in sensitive

⁶ [Ropeless Roadmap DRAFT \(noaa.gov\)](https://www.noaa.gov)

⁷ Koschinski S, Lüdemann K. 2020. Noise mitigation for the construction of increasingly large offshore wind turbines. Technical options for complying with noise limits. Isle of Vilm (DE): Federal Agency for Nature Conservation. 40 p.

seabed habitats (Esteban et al 2019)⁸. Moreover, the other impacts of such foundations, like the significant greenhouse gas emissions that would be associated with production of such foundations, must be considered. A specific foundation type may be the best solution in a specific area, but not appropriate in another. BOEM and NMFS should not prescribe specific technologies and engineering designs that that may not be economically or technically viable for developer use. OW recommends that the quieting performance standard be informed by input from the industry to ensure that it is Economically and Technically Viable.

Regarding Monitoring measures:

1. Clearance zones, shut-down zones, PSOs, and sound field measurements, vessel speed reductions, and clean-up of marine debris and gear are addressed by multiple regulatory mechanisms. Of these, the most notable are lease stipulations, IHAs & ITAs, Biological Opinions, and RODs.
2. Flexibility for baseline, pre-construction, and post-construction data collection: This is an area where the scientific basis for the number of years should be made available along with the identification of methods that may be employed by using existing data, near real time or real time data, and complementary methodologies to achieve the same ends.
3. The proposed three- to five-year monitoring either prior to construction or prior to BOEM starting its environmental review process will result in significant project delays and related delays on addressing climate change. In particular, the recommendation for 3 years of monitoring data prior to NEPA is concerning; projects should have the ability to begin NEPA well before three years from lease execution. At 3 years prior to NEPA, lease areas may not yet have been awarded nor COP preparation begun. Aerial surveys are an overly prescriptive monitoring approach when several monitoring approaches and/or combinations of technically advanced approaches are available.
4. The use of available existing regional or site-specific data should be allowed to meet monitoring requirements, especially those pre-NEPA.
5. Assessment of oceanographic environments should be done at a regional rather than project specific level as these dynamics are influenced by climate change effects and other regional and global effects.

Revocation of COP Plan Approval: The Strategy raises the possibility of BOEM withdrawal of project approvals if it finds that “activities previously authorized by BOEM are inadequate to protect NARWs under the relevant legal standards.” This statement undermines other elements of the Strategy by introducing potential internal inconsistency and contradiction. The Strategy should not present itself as “not superseding” project-specific review and approval on one hand, but on the other, suggesting that project specific approvals could be

⁸ Esteban, DM, Lopez-Gutierrez, JS, and Negro, V. 2019. Gravity-Based Foundations in the Offshore Wind Sector. J. Mar. Sci. Eng. 2019, 7, 64; doi:10.3390/jmse7030064

subject to reversal. This contradiction could be especially alarming to banks and other outside financing entities who would look to documents like the Strategy as guidance for understanding the regulatory process during their due diligence reviews: someone lending hundreds of millions of dollars to advance a clean energy project needs certainty that project approvals are solid and literally “bankable”.

Of course, NOAA has the legal power to halt activities if they are found to be an imminent threat to NARW, a last resort authority that is enforced after consultation and through existing authorizations. Regulated entities need to be able to rely in good faith that, absent such an extreme and unanticipated event, that their compliance with permits, authorizations, the relevant legal standards, and that their additional voluntary efforts will result in a path forward that will allow their clean energy project to proceed free from uncertainty about potentially reversible authorizations.

Adaptive approaches must be used proactively as valuable tools for management but such approaches should not decrease certainty and predictability nor jeopardize economic and technical viability for projects that have already met, or exceeded, regulatory requirements.

Connection to the Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (VSRR): ACP’s recommendations from its recent comments on the proposed VSRR amendment should be considered in the Strategy. ACP’s recommendations primarily focused on the need to utilize new technologies to advance real-time detection of NARW to effectively increase detection and avoidance capabilities in Dynamic Speed Zones. This would be a preferable alternative to expanding seasonal speed zones extensively over large areas for extended time periods (e.g., proposed Atlantic Zone from November 1 to May 30) in areas where NARW densities are not predictable.

Conclusion

To conclude, OW considers the Strategy, if modified in an appropriate manner, a positive step towards coordination between BOEM, NMFS Fisheries, and the OSW industry.

For the Strategy to achieve positive results it should be refined to 1) focus on technologically advanced scientific methods and allow for future innovation, 2) provide for a regional research plan approach rather than lease area by lease area monitoring requirements that could delay projects, 3) focus on research to clarify uncertainties, 4) provide regulatory clarity and certainty, and 5) supportive of the positive contributions of the OSW industry to reducing climate impacts, conducting and funding valuable research, and conducting OSW activities responsibly. It is essential that regulatory guidance, like this Strategy rest on the firm bedrock of proven science. There needs to be clarity that discussions of “indirect effects on currents”, “potential fishing effort displacement,” and “potential alternative foundation technologies” presented in the Strategy are laying out important areas of further inquiry, not articulating the kind of tested science and technology that can be used for permitting, regulatory authorization or mitigation requirements.

At the end of the day, it is essential that the permitting process allow, as required by federal law, for optimal use of the lease areas to generate the maximum amount of clean, fossil-fuel displacing, energy that can be responsibly developed and built. Removal of wind turbine locations below those proposed in preferred alternatives, or other steps that reduce clean energy output, during the permitting process should be a last resort after all other mitigation options have been exhausted. And, of course, such steps can only be justified by the soundest of science as reducing benefit to the environment is a profound step that should not be taken lightly.

OW appreciates this opportunity to comment on the Strategy and reiterate our commitment to working with our agency, industry, and stakeholder partners towards our shared goals for climate resilience, environmental protection, and clean energy.

Sincerely,

A handwritten signature in black ink, appearing to read 'MB', with a horizontal line underneath.

Michael Brown
CEO, Ocean Winds North America