



December 5, 2022

U.S. Department of the Interior
Bureau of Ocean Energy Management
1849 C Street, NW
Washington, D.C. 20240

U.S. Department of Commerce
NOAA Fisheries Directorate
1315 East-West Highway
Silver Spring MD 20910

**RE: BOEM and NOAA Fisheries North Atlantic Right Whale and Offshore Wind Strategy
Dk # BOEM-2022-0066**

Dear Sir or Madam:

Save Right Whales Coalition ('SRWC') is grateful for the opportunity to comment on the Bureau of Ocean Energy Management ('BOEM') and NOAA Fisheries (collectively the 'Parties') joint draft *North Atlantic Right Whale and Offshore Wind Strategy* ('Strategy'). SRWC was formed in response to the impacts of planned offshore wind projects on the critically endangered North Atlantic Right Whale ('NARW').

The Strategy is intended to define a collaborative framework for the Parties to meet the Biden-Harris administration's goal of advancing offshore wind development while adhering to legislative mandates under the Endangered Species Act and other laws meant to protect and recover threatened and endangered species.

The Biden-Harris offshore wind goal, if fully realized, will result in the largest industrialization of U.S. waters ever implemented. By 2030 the Northeast large marine ecosystem will be occupied by over 2.4 million acres of leases, 3,400 turbines, and 10,000 miles of submarine cables. Another 5.7 million acres are under consideration for further offshore wind development.¹ This level of development demands a comprehensive and well-informed approach to protecting listed marine animals that feed, breed, and migrate within these same waters. The Strategy fails on this basic requirement.

Summary of Comments

BOEM, in collaboration with NOAA has granted federal approval for the construction and operation of two offshore wind energy facilities, Vineyard Wind and South Fork Wind, to be situated in southern New England waters. These projects are expected to be fully operational within the next few years. Incidental

¹ NOAA Fisheries e-mail communication

harassment authorizations ('IHA') for North Atlantic right whales and other listed species have been issued by NOAA for the surveying and construction of turbines and associated transmission and substation platforms. To our knowledge no applications have been filed seeking letters of authorization ('LOA') for the operating turbines.

The Strategy is presented as a "living document" that will evolve as offshore wind facilities are brought online and more information about the impacts on NARW and their habitat is available. The Strategy cites a set of preliminary mitigation measures limited to entanglement, vessel strike, construction acoustics/noise and other human activity in, and around project sites that have already been imposed on developers.² Beyond these mitigations, the Strategy offers little more than a general plan to monitor for operational effects with no concrete measures to address them.

There is a broad, but unstated assumption in the Strategy that the Parties will be able to identify and develop methods to avoid, minimize and mitigate for the effects on right whales. However, if the effects are unknown, there is no certainty they can be mitigated, or mitigated in a timely manner. Year 2030 is seven years away. The first wind turbines will be operational by 2025 with thousands of megawatts rapidly following. After an alleged 15-years investigating the impacts of offshore wind on the NARW, the best the Strategy offers is an intent to monitor, research, collaborate and share information. Workshops, working groups, whale monitoring and the litany of other activities cited in Section 2.5 are not mitigation measures.

The Strategy's framework outlined in Section 3 misses the fundamental fact that the right whale is facing extinction. This is not an academic debate. A plan to investigate the risks after projects are placed in service is tantamount to an irreversible experiment that will have deadly consequences. Focus on vessel speeds and construction noise does not address the larger questions of habitat destruction, prey reduction, and whale displacement from important winter foraging areas. Given the dire, and declining condition of the NARW, the species does not have sufficient buffer to survive such an experiment. A single take will jeopardize the species' survival. If the intent is to inform the Parties as they review future projects, there is no time to conduct meaningful studies and to take protective action.

Comments

- 1) The Biden-Harris' policy of achieving 30,000 megawatts of operating offshore wind by 2030 is a goal that does not carry the weight of law. At no point can such a goal take precedence over the legislative mandates imposed on the respective agencies by the Endangered Species Act (ESA).
- 2) The purpose of the ESA is to protect and recover threatened and endangered species and the ecosystems on which they depend. The ESA requires that each federal agency shall "... insure that

² The requirements that vessel speeds be reduced and pile driving stop when right whales are present rely on certified protected species observers ("PSO") and passive acoustic monitors ("PAM") to detect the whales nearby. Neither method is foolproof. Right whales are black and have no dorsal fin, making them hard to spot. They call quietly, making audio detection of the whales difficult. Right whale mothers don't vocalize loudly when traveling with their young calves, so attempts to hear them in an offshore wind construction zone may be missed until it is too late. Studies show that 60-minutes of acoustic listening, can miss the presence of a right whale 60% of the time during the summer months.

any action authorized, funded, or carried out by such agency [] is not likely to jeopardize the continued existence of any endangered species or threatened species” 16 U.S.C. § 1536(a)(2). This “consultation” process “shall use the best scientific and commercial data available.”

- 3) The Marine Mammal Protection Act (MMPA) also includes a “best available science” mandate. For Incidental Harassment Authorizations (IHA) to be granted, the agency must find that the authorized activity will produce no more than a “negligible impact” on a protected species and only a small number of the species will be affected. An IHA cannot be issued for a species unless it is shown the potential for serious injury or mortality can be negated through mitigation.
- 4) The MMPA seeks to ensure that the species and population stocks are not “permitted to diminish beyond the point at which they cease to be a significant functioning element of the ecosystem of which they are a part,” and do not “diminish below their optimum sustainable population.” Congress clearly intends for the agencies responsible for following the MMPA to exercise prudence when permitting activities that could imperil protected marine animals.
- 5) North Atlantic right whales are critically endangered and a species in decline. The most recent population estimates place the species at fewer than 350 individuals with reproductive right whale females now giving birth two to three times less frequently than in the past. Any additional stressors on female right whales could be devastating. The potential biological removal (PBR) level for the North Atlantic right whale is less than 1.³
- 6) The best available science shows that since at least 2017, NARW have been found along the entire East Coast nearly year-round.⁴ Specific to southern New England waters, the July 2021 report issued by NOAA’s National Marine Fisheries Service, the New England Aquarium, and the Center for Coastal Studies found that “southern New England is an important destination for right whales, including conceptive and reproductive females, and qualitative observations included animals feeding and socializing.”⁵ The assumption by researchers that NARW migrates between calving grounds off northern Florida and Georgia in winter months and northern feeding grounds off New England and Canada in summer months is no longer valid.
- 7) Researchers at NOAA Fisheries, New England Aquarium and others publicly agree there is insufficient data available to understand the impact of installing and operating offshore wind turbines in waters that serve as important habitat for the critically endangered North Atlantic Right Whale. The Parties acknowledge the large data gap related to indirect impacts of offshore wind, particularly on “marine mammal prey availability and consumption potential.”

³ U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2021

⁴ Davis, G.E., Baumgartner, M.F., Bonnell, J.M. et al. Long-term passive acoustic recordings track the changing distribution of North Atlantic right whales (*Eubalaena glacialis*) from 2004 to 2014. *Sci Rep* 7, 13460 (2017). <https://doi.org/10.1038/s41598-017-13359-3>

⁵ Quintana-Rizzo, E., Leiter, S., Cole, T. V. M., Hagbloom, M. N., Knowlton, A.R., Nagelkirk, P., O’Brien, O. et al. 2021. Residency, demographics, and movement patterns of North Atlantic right whales *Eubalaena glacialis* in an offshore wind energy development area in southern New England, USA. *Endangered Species Research*, 45: 251–268.

- 8) Such a data gap cannot serve as a basis to move forward with offshore wind under the assumption that mitigation measures will cure all effects from the developments.
- 9) Vineyard Wind I and South Fork Wind will install dozens of turbines and related infrastructure in southern New England waters. These wind energy areas, while not federally designated as critical habitat for the NARW, are confirmed by NOAA scientists to represent the *only winter foraging habitat on the earth for North Atlantic right whales*.⁶ According to the Strategy, “if sublethal effects from impacts to foraging habitats occur, they could follow the cause-effect-impact pathway below and result in impacts to female condition and calving rates.” *Strategy at 10, Figure 2*
- 10) In his May 13, 2022 letter⁷ to BOEM, NOAA Fisheries Protected Species Branch Chief Dr. Sean Hayes informed that “the presence of structures such as wind turbines are likely to result in both local and broader oceanographic effects, and may disrupt the dense aggregations and distribution of zooplankton prey through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column ... Additionally, offshore substations pose an unknown risk related to water withdrawals and impingement/entrainment of zooplankton and other prey species.” There are no apparent means by which these harms can be mitigated.
- 11) Dr. Hayes also states the following:
 - a) Displacement from a prime portion of their [NARW] only winter foraging grounds due to disruptions in forage availability/distribution and/or exposure to other stressors (e.g., increased vessel traffic) could have extremely detrimental energetic effects, resulting in reduced calving success;
 - b) Right whales need dense aggregations of prey to make foraging energetically worthwhile, and disruptions to prey aggregations in the only known winter foraging area for right whales could have significant energetic and population consequences; and ultimately, he states
 - c) *Impacts from installed and operating turbines cannot be mitigated for the 30-year lifespan of the project, unless they are decommissioned.* [Emphasis added]
- 12) The uniqueness of this habitat cannot be discounted. The fact that it lacks a federal designation of ‘critical’ is not a pretext for turbine development to proceed.⁸ Once again, we are dealing with a critically endangered species that is on the brink of extinction. The Strategy fails to even present mitigations should any of the risks cited in the Strategy or the Hayes letter come to fruition. The Strategy must proffer concrete and specific actions that can be undertaken if/when the operating

⁶ Lipsky, Adam. NOAA Fisheries Science Center, Ecosystem Based Management & Ecosystem Based-Fisheries Management Seminar Series (March 9, 2022) <https://www.youtube.com/watch?v=Dh7yBEDHzL8>

⁷ Hayes, SA Letter May 13, 2022

⁸ The Strategy acknowledges the proposal to construct offshore wind in the Gulf OF Maine which is federally designated as critical habitat for the NARW. Hence the critical designation is likely not to pose a barrier for the Biden-Harris offshore wind goal.

turbines create impacts related to noise, wake effect, loss of food or other outcomes. Proposals for further monitoring, data sharing, and more workshop presentations are not mitigations. The best available science shows the NARW population cannot endure further stressors.⁹ Given a PRB of less than 1, it is evident that NARW does not have sufficient buffer to survive a multi-year assessment of offshore wind impacts. ***While climate change is an imperative, it is indefensible for a policy goal that will erect thousands of turbines in ocean waters to result in driving a species to extinction.***

- 13) Despite the Parties claim that the Strategy “will not supersede the policy and regulatory processes,” in fact this is exactly what it sets out to do. Under the plan, NARW will endure years of impacts before any action can reasonably be identified and years more before a plan can be implemented. This also assumes the project owner will cooperate with mitigations that are recommended. For example, if noise and vibrations from the operating turbines displace whales, the only certain mitigation is to curtail turbine operation. Have the Parties discussed this with project owners and secured their agreement despite revenue losses? If not, are the Parties intending to commit on-going taxpayer funding to make project owners whole should curtailment be imposed?
- 14) If the Parties are unable to meet these statutory mandates under ESA, MMPA or other environmental protection laws, further consideration of offshore wind development should stop until such time when the laws can be met.
- 15) The first large-scale offshore wind projects cannot serve as test beds to determine the impacts of turbines on critically endangered NARW. Even if such a strategy were to be followed, it would take years of study and significant funding to determine the level of harm, the methods of mitigation (assuming mitigations are possible), and the effectiveness of such mitigations. Other projects proposed for southern New England, New York, New Jersey, and Maryland that are already under development are unlikely to halt their plans in order to incorporate knowledge gained from post-construction monitoring and adaptation. The fact that the Parties failed to even address the costs and scope of the monitoring and adaptive management studies shows the unseriousness of the Strategy as proposed.

This concludes our comments.

Respectfully,

Lisa Linowes, for
Save Right Whales Coalition
<https://www.saverightwhales.net/>

⁹ “Population comparison of right whale body condition reveals poor state of the North Atlantic right whale,” Marine Ecology Progress Series, vol. 640, pp. 1-16 (2020), 3 Van der Hoop, J., Nousek-McGregor, A.E., Nowacek, D.P., Parks, S.E., Tyack, P., and Madsen, P., “Foraging rates of ramfiltering North Atlantic right whales,” Functional Ecology, vol. 33, pp. 1290-1306 (2019);