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Re: AWEA Comments on the Northeast Ocean Plan

Submitted via email: comment@neoceanplanning.org.

The American Wind Energy Association (“AWEA”)¹ submits comments in response to the notice of and request for comment on the draft Northeast Ocean Plan (“Plan”), published by the National Oceanic and Atmospheric Administration (“NOAA”) in the *Federal Register* on May 25, 2016.² The Plan is a matter of vital importance to our members because a well-crafted Plan that fosters interagency coordination through the use of public engagement, sound science, comprehensive ecosystem-based management, transparent decision making, and adaptive approaches is essential to ensure that the vast offshore wind power potential³ off the Northeast is effectively utilized.

The Plan will also help ensure the protection, maintenance, and restoration of the health of ocean and coastal ecosystems and resources, while supporting sustainable uses and access. Specifically, we believe that the Plan will help encourage and facilitate the responsible development of offshore wind energy, which will, in turn, enable the United States to mitigate the effects of global climate change by displacing greenhouse gases with clean, renewable energy. The Northeast is an integral region for offshore wind development

¹ AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA’s members include wind energy facility developers, owners and operators, construction contractors, turbine manufacturers, component suppliers, financiers, researchers, utilities, marketers, customers, and their advocates. Offshore wind is an important part of AWEA’s efforts to advance the growth of wind energy in the U.S.

² Northeast Ocean Plan, 81 Fed. Reg. 33,213 (May 25, 2016).

³ The U.S. has vast offshore wind energy resources with a power potential of more than 4,000,000 MW that could contribute up to four times the generating capacity of the current U.S. electrical system.



and, in turn, unlocking that potential to accomplish greenhouse gas reduction goals. Indeed, as the Plan recognizes, New England’s abundant offshore wind resources provide the greatest opportunity for offshore renewable energy development in the United States in the near term. Accordingly, the Plan should be implemented in a way that encourages the deployment of offshore wind energy through straightforward, transparent, and collaborative tools and procedures. With that end in mind, our comments reflect the following concerns and recommendations:

- Supports the Northeast Regional Planning Body’s (“RPB”) efforts in the Plan to inform sustainable management, regulatory decision making and enhance agency coordination;
- The Plan provides guiding principles and should allow sufficient flexibility to enable development to take advantage of emerging technology and innovative solutions while providing for the co-existence of marine users and minimizing the impact on ocean resources.
- The Plan should not impact the rights of existing offshore wind projects or those lease areas already identified through the Bureau of Ocean Energy Management’s Wind Energy Area procedures;
- Needs to consider alignment between the Plan and State ocean plans, to the extent that they exist, to ensure compatibility.
- The final plan should revise several flaws that limit the data Portal’s ability to realize its intended benefits;
- The designation of Important Ecological Areas should not automatically create zones where no offshore wind development is permitted regardless of the actual ecological impact;
- The final Plan should not rely on the United States Coast Guard’s Atlantic Coast Port-Access Route Studies (USCG ACPARS) as it is not a final agency policy; and
- Recognizing that additional scientific R&D is a key conclusion of the Plan, agencies should not rely on, or request the development community, undertake the burden of conducting and funding all such activities identified in the Plan.

I. BACKGROUND

Interagency and intergovernmental coordination concerning renewable energy development is crucial to ensure that the significant benefits of deploying offshore wind energy in the Northeast are realized, including job creation, economic development, and displacement of emissions from other sources of electricity. In recognition of these benefits,



the Obama Administration has been committed to promoting the development of offshore wind energy in the United States, which it recognizes “will play an integral role in our future energy portfolio.”⁴ The Department of Energy’s *Wind Vision Report* anticipates that offshore wind will be an important growth area for the United States reaching as many as 22 GW of offshore wind power by 2030 and 86 GW of offshore wind power by 2050.⁵

Thirteen offshore wind projects (representing 5,939 MW) are in various stages of development in the United States, including some in the Northeast.⁶ In the Northeast, the Bureau of Ocean Energy Management (“BOEM”) has designated wind energy areas (“WEAs”) in Rhode Island and Massachusetts. Offshore wind energy projects are already under development off the coast of Maine, Massachusetts, and Rhode Island, which, together, have a potential capacity of 1,510 MW of energy.⁷ In addition, two leases are in development off the coast of Massachusetts after a competitive lease sale.⁸ The lease areas consist of over 350,000 acres and could support approximately 2 GW of wind generation.

Although the Northeast is an integral region for offshore wind development (as it possesses vast offshore wind power potential), the cumbersome planning and siting processes have created unnecessary delays and obstacles to offshore development, with the result that this potential has been largely untapped to date. The procedural delays and ineffective coordination between the main agencies with regulatory authority relevant to offshore wind projects have caused excessive delays, severely limiting offshore wind deployment in the region. For example, the Block Island Wind Farm, America’s first offshore wind farm, developed by Deepwater Wind, has taken eight years to pass through the permitting and regulatory process. In order to have a robust offshore wind industry, that timeline must be significantly reduced.

⁴ See e.g., White House, Fact Sheet: White House Summit on Offshore Wind (Sep. 28, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/28/fact-sheet-white-house-summit-offshore-wind>

⁵ U.S. Department of Energy, *Wind Vision: A New Era for Wind Power in the United States*, xxvii (Mar. 2015) (*Wind Vision Report*).

⁶ Smith, A., *et al.*, 2014-15 Offshore Wind Technologies Market Report, p. 7 (National Renewable Energy Laboratory Sep. 2015).

⁷ The Aqua Ventus project in Maine (23MW), Cape Wind Project in Massachusetts (468MW), and Block Island Wind Farm (30 MW) and Deepwater ONE (up to 1,000 MW) in Rhode Island.

⁸ DONG Energy and Offshore MW are currently in the process of developing the leases.



AWEA offers the following comments for consideration to ensure that these objectives are met in a way that promotes healthy ocean and coastal ecosystems while not impeding offshore wind development.

II. COMMENTS

A. AWEA Generally Supports the RPB's Efforts in the Draft National Ocean Plan to Inform Regulatory and Management Decisions and Enhance Agency Coordination.

The Plan includes a list of actions that the RPB and its individual entities intend to undertake to meet the Plan's goals and objectives. With respect to offshore wind energy development, it notes that offshore wind projects off the coasts of Rhode Island, Massachusetts, and Maine have generated substantial interest. In order to encourage the development of these and additional offshore wind projects, it is crucial that the final Plan include actions that effectively strengthen intergovernmental coordination, planning, and policy implementation while also enhancing public participation.

While we generally support the RPB's proposed actions on energy and infrastructure, we caution that, as proposed, some of the actions might not achieve these goals. Accordingly, AWEA offers the following comments that should be addressed in the final plan:

- *Inform commercial leasing for offshore renewable energy development.*

According to the Plan, it will assist BOEM and project developers, to the extent practicable, in identifying the relevant species or locations that require further detailed data collection through the assessment of a site. The Plan notes that developers can use it and the Portal to inform proposed survey work, consistent with BOEM guidelines for developers that recommends the use of the most recent data available to inform surveys and the siting of their structures within a lease. We support the use of a consolidated platform of data in the Portal as it facilitates decision making in the planning and siting processes, including pre-construction surveys and siting determinations. However, as described in further detail below, this data should not be substituted for site- and project-specific data



and analyses conducted during the NEPA process. Data in the Portal will be useful to provide a baseline to inform these decisions but AWEA cautions that the Plan should clarify this data should not be substituted for more specific, granular site-specific data.

- *Identify and notify potentially affected stakeholders.*

The Portal will help agencies identify important user groups, including fishermen, commercial transportation, and the military, that are most likely to interact with new offshore development. AWEA supports the identification of relevant stakeholders early in the process to the extent it creates a more efficient, streamlined planning process. However, we caution that the Portal is limited to the data it receives. To the extent data in the Portal are limited or inaccurate, we caution that this could lead to obstacles to offshore wind development when the specific interactions may not actually occur or may not pose a potential risk. Accordingly, it is important that the Plan clarifies this analysis will only compliment site-specific analyses and is not intended to replace or supersede actual project-specific determinations.

- *Improve outreach to industry and stakeholders related to renewable energy development.*

AWEA largely supports the RPB's efforts to improve outreach to renewable energy industries and stakeholders but recommends that stakeholder engagement occur earlier in the process. Specifically, the RPB identified the following two activities to improve communications and engagement with stakeholders: engage industry and stakeholders in renewable energy strategic planning and administrative processes and develop materials clearly describing renewable energy permitting and leasing processes.

First, AWEA supports the action of BOEM and DOE to periodically request responses from industry and other stakeholders via workshops, public meetings, and *Federal Register Notices*. We believe that a comprehensive stakeholder engagement process will help inform and improve the agencies' strategic planning efforts, existing regulations, and renewable energy administrative processes. Second, we support BOEM's efforts in concert with the Mid-Atlantic RPB effort to enhance coordination by developing an online outreach tool to more clearly detail offshore wind energy regulatory processes by identifying how programs intersect and outlining where and when relevant authorities play a role in decision



making. We recommend that, consistent with these principles, BOEM will seek industry input in the development of this tool and look forward to an opportunity to assist in these efforts. In addition, this tool should reflect timely decision making and provide set timelines for responses. The lack of timeliness adds additional uncertainty, delay, and costs to projects.

In addition, AWEA recommends that stakeholder engagement occur much earlier in the development process. As it stands, scoping with stakeholders occurs as part of the NEPA process and after a developer has completed surveys. Consequently, the developer has expended considerable resources by this stage. Scoping at this stage when resources have already been expended creates the potential that developers have to go back to gather additional survey data, which would be unnecessary and impose additional costs. The current process creates uncertainty, unnecessary delays, and excessive costs. Accordingly, the stakeholder scoping process should occur earlier in the development process and before the NEPA process.

- *Enhance intergovernmental coordination related to offshore energy development.*

It is vital that federal and state permits and approvals are addressed in an efficient and coordinated fashion that serves the interests of the relevant agencies as well as the interests of the industry in planning, siting, and developing offshore wind facilities subject to multiple authorities. A more efficient and coordinated process will encourage offshore development and allow the Northeast to better utilize the vast offshore wind resources in the region that have already generated substantial interest. To that end, we support the RPB's efforts to enhance agency coordination but caution that effective implementation of that goal requires several minor adjustments in the final Plan, as discussed in further detail below.

Specifically, we support the RPB agencies' list of activities to improve intergovernmental coordination related to offshore energy development: continuing intergovernmental renewable energy task forces; continuing DOI/DOE collaboration on offshore renewable energy; obtaining public, tribal, and state input on energy-related research; developing an integrated regional ocean research agenda; continuing collaborative federal and state collection efforts; continuing to participate in the Interagency Working



Group on Offshore Wind; and engaging tribes in renewable energy leasing and permitting processes.

B. The Plan Should Not Impact the Rights of Existing Offshore Wind Projects.

While the draft Plan notes that it does not impose new regulatory requirements, it proposes the use of data; intergovernmental coordination between federal agencies, tribes, and states; and stakeholder engagement to guide and inform RPB agency activities. Although there are no new regulatory requirements imposed, the draft Plan and Portal do inform and will potentially influence the RPB-agencies' decision making processes. To the extent the draft Plan impacts agency activities with respect to existing projects, the final Plan should clarify that projects that were sited based on prior information and procedures should not have new requirements imposed absent extraordinary circumstances that require such additional measures, like concerns over safety. Moreover, the final Plan should clarify that these data, intergovernmental coordination procedures, and stakeholder engagement practices should not unnecessarily block or delay projects that are already moving forward as a result of federal and state approvals and competitive processes that engage in project-by-project analyses.

C. The Final Plan Should Revise Several Flaws that Limit the Portal's Ability to Realize its Intended Benefits

AWEA generally supports the data Portal to the extent it increases efficiency in planning and permitting decisions. However, we caution that, as drafted, the Plan could actually lead to a more complicated process that creates procedures that impose additional limitations on offshore wind development.

We recognize that centralized access to relevant data is a crucial component of both effective interagency and intergovernmental coordination and successful public participation in offshore development. A centralized portal with information from RPB agencies will increase efficiencies in the planning and development of offshore wind energy projects. Additionally, it promotes consistency between agencies, states, and other stakeholders. The draft Plan provides that the Portal is intended to be a shared source of peer-reviewed



regional information that will inform and support decision-making and stakeholder activities that interact with the ocean.

We appreciate the RPB's commitment to ensure the Portal is used by agencies and recommended to project proponents. However, in order to realize the benefits of a centralized data collection, the RPB should, in the final Plan, address the following issues and flaws and revise the corresponding provisions therein.

First, in addition to encouraging regular use by agencies, the Plan should clarify that the RPB agencies are committed to ensuring the data is up to date. As part of this commitment, agencies should periodically update data to ensure adequate information is available. The draft Plan indicates that the agencies identified in the energy & infrastructure section (BOEM, USACE, FERC, DOE, DOD, and DHS) will continue to maintain and provide data on existing infrastructure and renewable energy planning areas. The draft Plan further notes that BOEM is committed to maintaining up-to-date maps regarding leasing areas on the OCS, including authoritative data on administrative and planning boundaries through the Marine Cadastre and that updates to the Portal maps will be made as updates are made thereto. State agencies will provide maps of planning areas and infrastructure in state waters when the status or extent of an area changes and when states have new data to provide. According to the draft Plan, the authoritative RPB source will review all existing Portal data on an annual basis. However, there are no specific commitments, with respect to timing or otherwise, for other agencies to update the Portal. The RPB should accordingly clarify in the final Plan agency commitments to review and update Portal data. A database that is out of date will not serve to achieve the intended benefits and will instead create a more complicated and less coordinated process. Accordingly, it should clarify that RPB agencies are committed to periodic reviews of the data to ensure it is up to date, which the RPB will then review on an annual basis.

Furthermore, it is not clear what agency is the overall lead and ultimately responsible for the Portal. At present, various agencies supply input but there does not appear to be an overall lead. It should be the responsibility of the lead agency to maintain the relevant data on the Portal. It is likewise not clear as to how new data sets will be peer reviewed, other



than those in Marine Cadastre that go through a specific process. The RPB should provide clarifications on these issues and address these concerns in the final Plan.

Second, the RPB and Portal Working Group should ensure the portal includes sound, accurate data, and that any data limitations are known to agencies and other users. Data with inherent limitations to its applicability should not be included. To the extent limited or flawed data is included in the Portal, such data should at least indicate its inaccuracies and the RPB agencies should be committed to addressing any data flaws. For example, the Plan indicates that AIS data will be incorporated into the Portal. However, AIS data use annual traffic density estimates instead of actual figures that reflect vessel traffic and is severely limited in its utility. This is an inaccurate representation of vessel traffic as it is on an annual basis and therefore does not account for different traffic patterns on a daily, weekly, or even seasonal basis. Furthermore, it does not track actual traffic but instead relies on traffic density estimates. If AIS data is included on the Portal, it should at a minimum indicate these limitations. The Northeast RPB and Portal Working Group should work with relevant agencies to ensure the Portal reflects sound, accurate data and, at a minimum, clarify where there are known data limitations.

Third, we are concerned that, as drafted, the Portal will lead to the use of general data in decision-making when there are more accurate project- or site-specific data available. In several places, the draft Plan notes that the data in the Portal can be useful for NEPA processes. In fact, one of the action items in the energy and infrastructure section is a commitment to incorporate Plan maps and data into environmental reviews associated with new offshore energy or submarine cable proposals. The draft Plan notes that the “Portal will be used to the extent practicable as important reference information about the distribution and densities of marine life species and presence and extent of important habitats to be considered during environmental review and individual consultations.”⁹ The draft Plan does note that “many large-scale activities will require the additional collection of site-specific information for impact assessment and monitoring.”¹⁰ However, the

⁹ Draft Plan at 109.

¹⁰ Id.

relationship between the general data in the Portal and site-specific data is unclear. This is particularly concerning as the Portal should not lead to the substitution of general data for more granular, specific data that more accurately reflects specific area conditions. At the same time, agencies should not require significant additional site-specific data if the available data are sufficient to undertake robust impact assessments.

As each project undergoes multiple site-specific environmental reviews, the RPB should clarify that the data Portal does not supersede site-specific environmental impacts where specific data are needed. In short, because there are already two NEPA reviews during the offshore wind siting process and those reviews provide a better opportunity to conduct a more accurate project-specific assessment of the impacts on navigational safety, specific impacts should be evaluated at this stage.

On the other hand, the Portal should not rely on site-specific data to the detriment of other projects. For example, site-specific information from NEPA processes should not be applied to other projects. Accordingly, the Portal Working Group and Northeast RPB should clarify that the use of the Portal for the NEPA process will merely compliment and not supplant site-specific data and that it will not lead to the automatic application of data to a project for which the data are not relevant, thereby unnecessarily hindering offshore development.

D. AWEA Cautions that the Designation of Important Ecological Areas Should Not Automatically Create Zones Where No Offshore Wind Development is Permitted.

AWEA appreciates the RPB's efforts to implement an Important Ecological Area ("IEA") framework to protect vulnerable marine life and habitat. The draft Plan incorporates draft IEA framework that, as proposed, will designate areas as areas of: (1) high productivity; (2) high biodiversity; (3) high species abundance, including areas of spawning, breeding, feeding, and migratory routes; (4) vulnerable marine resources; or (5) rare marine resources. The draft Plan provides a list of tasks that will help advance the IEA framework. Although developing new products that build on marine life and habitat data in the Portal is vital, it would be premature to impose a blanket restriction on offshore wind development in



certain areas before these metrics and data are developed. Accordingly, the RPB should clarify that the designation of IEAs does not, by itself, impose an automatic limitation on offshore wind development.

Furthermore, it is unclear what impact the management objectives for IEAs will have on project development. At present, there is no indication of how management objectives will be identified or implemented. This adds more uncertainty to the development process. Moreover, even after the new products are developed, the RPB should clarify that offshore wind activities in particular will not be automatically excluded from development solely on the basis of an IEA categorization in the area. Instead, the IEA framework should be considered in light of the specific impacts found in environmental reviews. If the case-by-case analysis demonstrates that an offshore wind facility can sufficiently mitigate any impacts to vulnerable marine resources, a potential IEA designation should not limit development. These project-specific analyses provide a better opportunity to fully analyze a potential project's ecological impacts in the area that can more accurately ensure protection of the ocean's resources.

For instance, projects proposed for development within BOEM-identified WEAs have undergone and will undergo multiple NEPA reviews. BOEM has already identified and designated several WEAs for the purpose of supporting lease issuance and site assessment activities, which were each subject to NEPA review. Each potential offshore wind facility in a WEA for which BOEM grants a lease is itself subject to two separate NEPA reviews. The first review is an environmental assessment ("EA") that is conducted with respect to a site assessment plan ("SAP"), which the lessee must submit to BOEM no later than 12 months after receipt of the lease.¹¹ The lessee must also submit a construction and operations plan ("COP") to BOEM at least 6 months prior to the completion of the site assessment term, which requires an environmental impact statement ("EIS"). These reviews are crucial elements of the siting process because they are site- and project-specific and therefore provide the best basis for evaluating a particular project's impacts on the overall

¹¹ 30 C.F.R. § 585.



marine environment, including potential IEAs and whether the project can offset any potential impacts.

Accordingly, IEAs should not automatically preclude wind energy development as long as potential impacts can be mitigated. It is vital that potential impacts on any IEA will be analyzed through a robust environmental assessment process at which time any appropriate mitigation measures will be implemented.

E. The Final Northeast Ocean Plan Should Clarify that the ACPARS Is Not a Final Agency Policy.

The draft Plan should clarify that the USCG Atlantic Coast Port-Access Route Studies (“ACPARS”) is not an agency policy that has been adopted, and accordingly, RPB agencies should not utilize it in their decision making of any proposed guidance in ACPARS, including potential setbacks. The draft Plan mentions ACPARS several times in different contexts. For instance, according to the draft Plan, the USCG plans on using internal policies and other maritime safety guidance to evaluate the risk of new activities on an existing waterway and users of that waterway, an example of which “is the guidance that came out of the Atlantic Coast Port Access Route Study.”¹² The RPB should clarify that this is merely an example as ACPARS is a draft guidance document.

III. CONCLUSION

AWEA appreciates the opportunity to provide these comments on the RPB’s draft Plan and respectfully requests that they are addressed in the final Plan. Please do not hesitate to contact us if you should have any further questions.

¹² Draft Plan at 74.



Sincerely,

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