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April 28, 2021

**VIA ELECTRONIC SUBMISSION**

Amanda Lefton, Director  
Bureau of Ocean Energy Management  
Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Re: **Fisheries Survival Fund's Comments on BOEM-2021-0021-0002: BOEM's Notice of Preparation of an Environmental Assessment for the New York Bight Wind Energy Area**

Dear Director Lefton:

On behalf of the Fisheries Survival Fund ("FSF"), we submit the following comments in response to BOEM's notice of preparation of an Environmental Assessment ("EA") for the New York Bight Wind Energy Area. FSF is an industry organization representing most of the full-time Limited Access scallop fishermen from Maine to North Carolina that is dedicated to ensuring the long-term sustainability of the Atlantic sea scallop fishery.

Nearly all FSF members are lifelong participants in the commercial scallop fishing industry, and many can trace their connections to the fishery back several generations. Moreover, FSF has been engaged in the dialogue on offshore wind development along the Atlantic Coast since the beginning. FSF harbors no illusions that BOEM's plans for wind farms in the New York Bight will magically disappear. Rather, especially in terms of the New York Bight WEAs, FSF has expressed specific concerns regarding the potential buildout of wind energy in *certain locations* within these proposed areas. Below, we set forth an overview of these concerns, followed by two proposed alternatives that should be included and considered in BOEM's planning and lease selection process.

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**The New York Bight Area Identification Memo Inaccurately Conveys the Concerns of Scallopers Regarding Offshore Wind Development in These Areas**

FSF has consistently sought workable solutions that will not in any way preclude future reasonable offshore wind development, but that will minimize the potential harms to the scallop resource and the commercial fishery. It is discouraging, though, to see that BOEM has not taken time to understand scallopers' documented concerns.

For instance, BOEM's New York Bight Area Identification Memorandum ("NY Bight Memo") claims that scallopers object to wind farm development on scallop grounds because "[s]callop fishermen, whose gear penetrates the seafloor by a few inches, are concerned about snagging unburied cables." *See* NY Bight Memo, at 14. Neither FSF, nor to our knowledge, anyone within the scallop industry has made this a central contention, if a contention at all. Indeed, the New Bedford-style dredge used in the domestic scallop fishery (also known as a "flying dredge") is not a toothed dredge that digs into the ocean bottom, but rather utilizes hydrodynamic forces that enable it to capture scallops while skimming along the benthic surface.<sup>1</sup> Of course, like other fisheries with bottom tending fishing gear, the scallop fishery is concerned with the documented risk that scour, whether natural or generated by wind farm structures, can unbury interconnection cables.

To the actual point, scallopers have objected to wind farms on scallop grounds because: (1) scallop vessels are too large and their gear is too long to safely operate within planned wind turbine configurations; (2) it is a demonstrated fact—that BOEM stubbornly abjures—that wind turbines disrupt fishing vessels' radar, making it dangerous to operate vessels within or near wind farms; and (3) wind turbine arrays pose a risk to historic, naturally-recurring scallop beds because they change ocean currents, create dense sedimentation plumes, and introduce predators onto the scallop grounds. Moreover, and unlike finfish, scallops are sedentary and cannot move to avoid these perils. Whether the scallop fishery loses physical access to historic scallop beds, or whether these beds are ecologically compromised, the result is the same. These scallops (and historic scalloping areas) are lost to the fishery, the regional economy, and the country.

BOEM needs to fully consider each of these potential impacts, not only to preserve the integrity of the scallop resource and the fishery, but also to comply with its statutory requirements under the Outer Continental Shelf Lands Act ("OCSLA"). Under 43 U.S.C. §1337(p)(4), the Interior Department is required to ensure that the future buildout of these offshore

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<sup>1</sup> *See* <https://fishingheritagecenter.org/exhibits/at-sea/scalloping/> (last accessed on April 27, 2021).

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wind leases provide for, among other things, “conservation of the natural resources of the outer Continental Shelf” and “consideration of...any other use of the sea or seabed, including use for a fishery.” However, BOEM cannot rationally consider these impacts without taking the time to first understand them.

Moreover, there are international standards that should apply to BOEM’s analysis. The “precautionary approach,” an underlying principle for the United Nations’ Sustainable Development Goals, requires that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” Principle 15 of the 1992 Rio Declaration. As explained throughout this letter, as well as in FSF’s prior engagements with BOEM on the development of offshore wind farms in the New York Bight, there exists a tremendous number of potential energy development impacts to fishery resources that are under study and unaccounted for. Yet there are simple solutions available that can avoid the greatest impacts.

**BOEM’s “Relative Use Index” is an Improper Metric for Assessing Potential Impacts to Commercial Fisheries from a Future Buildout of the New York Bight WEA:**

The annual value of the Atlantic scallop fishery is over \$500 million in landed value to scallop vessels. Moreover, the overall value of this resource is several times larger than landed value when factoring in revenue for shore-side entities including ports, processors, and restaurants, among others. Indeed, the commercial scallop fishery serves as the backbone for most major New England and Mid-Atlantic coastal fishing communities. The value of these WEAs to the fishery is evident, even from a passing review of the NY Bight Memo’s Figure 18, which documents scallop fishing intensity. In June 2018, the National Marine Fisheries Service estimated that scallop landings from the New York Bight Call Areas exceeded \$250 million over a five-year period, even without accounting for these scallops’ “multiplier effect” as they circulate through the regional economy. Moreover, these scallop landings were not inordinately high during the 2012-2016 measuring period that NMFS employed. Therefore, not only does offshore wind development in certain locations within these areas pose a direct threat to the scallop fishery, but these losses will reverberate through coastal communities’ economies.

BOEM applies a “Relative Use Index” (“RUI”) for assessing potential impacts of offshore wind development on commercial fisheries that purposefully degrades the benefits of the scallop fishery to coastal communities and demonstrates a flawed understanding of how the scallop fishery operates. *See* NY Bight Memo, at 14. For instance, BOEM’s RUI depicts the Hudson Canyon Access Area—which directly abuts the Hudson South WEA on the WEA’s southeastern-

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facing side—in shades of blue with occasional streaks of light yellow to convey a low score of relative fishery value. NY Bight Memo, Figure 15. Yet the Hudson Canyon Access Area is one of the most important overall components of the scallop fishery and resource.

More specifically, the scallop fishery operates under a rotational management regime that demarcates areas of historic abundance and manages them rotationally, just as terrestrial farm land is managed. When scallop surveys detect large sets of small scallops, these areas are closed to scallop fishing until the scallops grow out. The New England Fishery Management Council formalized scallop area rotational management in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan, which was finalized in December 2003. Amendment 10 explained that, “[t]his change [to more formal rotational management] would create a more optimal distribution of fishing effort, postponing mortality on small scallops and improving yield, and reducing total fishing time to achieve the fishing mortality targets. Therefore, spatial management would focus fishing effort on larger, more valuable scallops in areas where the effort is more efficient.” Amendment 10, at 4-2. Indeed, the Hudson Canyon Access Area had been designated and utilized as a scallop access area since before Amendment 10 was even finalized. Yet, despite the fact that this access area is central to how the scallop fishery is managed, BOEM’s RUI is so skewed away from the scallop fishery that the access area hardly registers.

Notably, as well, the Central Bight WEA does register more heavily under the RUI (NY Bight Memo, Figure 15), and for scallop effort, more than any other WEA (NY Bight Memo, Figure 18). Nevertheless, it is uniformly shaded yellow under BOEM’s RUI, suggesting less value than the absolute empirical data convey.

The scallop fishery is pound-for-pound the most lucrative commercial fishery in the United States. By undervaluing the scallop resource within its proposed WEAs for the New York Bight, BOEM appears to have selected certain areas because the scallop fishery is both well-managed and lucrative. Rather than looking at the value to the Nation and the regional economy the fishery creates from the New York Bight, BOEM has instead chosen to base its decision-making on some *ad hoc* notion that scallopers are better able to absorb the loss of their historic fishing grounds. Unelected agency officials have no business making decisions on such opaque and subjective grounds.

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**BOEM Needs to Conduct an EIS for the New York Bight WEA Due to the Potential Biological Impacts to Scallops**

The NY Bight Memo makes a point of claiming that BOEM need only scope for an EA, rather than an Environmental Impact Statement (“EIS”), because “BOEM does not consider the issuance of a lease to constitute an irreversible or irretrievable commitment of agency resources toward the construction of a wind energy facility.” NY Bight Memo, at 5. This is inaccurate. In *Sierra Club v. Peterson*, the Court of Appeals for the District of Columbia Circuit recognized that “[a]n EIS is required when the ‘critical agency decision’ is made which results in ‘irreversible and irretrievable commitments of resources’ to an action which will affect the environment.” 717 F.2d 1409, 1414 (D.C. Cir. 1983) (quoting *Mobil Oil Corp. v. F.T.C.*, 562 F.2d 170, 173 (2d Cir. 1970)) (emphasis added). The court’s decision in *Sierra Club* predicated its determination that the issuance of non-surface occupancy (“NSO”) oil and gas leases did not require completion of an EIS on the fact that an irreversible and irretrievable commitment of resources did not occur until the Interior Department authorized surface-disturbing activity, and that an NSO lease did not authorize any surface-disturbing activity. *Id.* In the offshore wind leasing context, by contrast, the planned EA for the New York Bight leasing program will authorize surface-disturbing site characterization activity without any additional approval from BOEM.

For instance, a lessee must undertake site characterization surveys (including high-resolution geophysical surveys, geotechnical/sub-bottom sampling, and biological sampling) and include the results of these surveys when the lessee seeks BOEM’s approval for the lessee’s Site Assessment Plan. 30 CFR 585.610-585.611. The following surface disturbing devices are customarily used in site characterization: bottom-sampling devices (piston or gravity cores penetrating from a few centimeters to several meters); vibracore samplers (typically, cores are up to 20 feet long with 3-inch diameters); and deep borings (conducted by a drill rig mounted on a jack-up vessel, and reaching depths of 100 to 200 feet). Each of these site characterization activities constitute “surface-disturbing activities,” certain of which pose serious and damaging effects on scallop populations in these areas.

Seismic testing via sub-bottom profilers (CHIRP, boomer, bubble-pulser or impulse-type systems) throughout the proposed wind lease areas also threatens the scallop resource in and adjacent to the WEAs. Peer-reviewed scientific research studies have revealed significant

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detrimental impacts on scallop populations from marine seismic surveys.<sup>2</sup> These surveys result in higher scallop mortality rates, increased physiological stress, and impaired immune function. Thus, collectively, site characterization in scallop-rich WEAs, such as the eastern and northern parts of the Hudson South WEA and the Central Bight WEA, constitute an irreversible and irretrievable commitment of resources. Therefore, BOEM should prepare an EIS instead of an EA.

Moreover, while the offshore wind leasing process has a long history of discussing “mitigation” of future impacts to fisheries following the buildout of wind turbine arrays, the most valuable form of mitigation is to consider and address those impacts up front when selecting potential lease locations. As explained below, there are a host of environmental impacts (beyond site characterization activities) from offshore wind development that pose a direct threat to the scallop resource, including sediment dispersal, changes to oceanic current patterns, and increased competition and predation. Though some general research has been conducted on each of these issues, little, if any, has been done to understand their specific impacts on scallop populations.

It is well documented that installing large arrays of offshore wind turbines causes unnatural sedimentation. For instance, in the North Sea—where hundreds of offshore wind turbines have been installed—satellite imaging has captured the existence of large sediment plumes that disperse and collect around these farms.<sup>3</sup> These plumes eventually settle in large mats across the seabed. Scallops are filter feeders, and sedimentation negatively impacts their ability to filter feed. Scallops also settle on relatively hard ocean bottom. Many valuable areas, such as the Hudson Canyon Access Area, as well as other areas in and around the Hudson South WEA and the Central Bight WEA, are comprised of ideal substrate and oceanic current conditions for scallop settlement and growth. (This is what makes these areas such historically productive scallop grounds.) Altering the composition of the seafloor and water column in these locations could have significant long-term impacts on the scallop resource inside and adjacent to these wind farms.

These turbine arrays also have the potential to alter the flow of oceanic currents. Indeed, a recent study assessing ecosystem impacts from offshore wind turbine installations concluded that “hydrodynamic impacts are transferred to the ocean via two routes: (1) modification

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<sup>2</sup> See Day et al., *Exposure to seismic air gun signals causes physiological harm and alters behavior in the scallop *Pecten fumatus**, Proceedings of the National Academy of Sciences of the United States of America, October 3, 2017.

<sup>3</sup> See <https://www.offshorewind.biz/2016/11/08/offshore-wind-turbines-make-sediment-plumes-in-north-sea/> (last accessed on April 26, 2021).

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of the wind field and, consequently, the wave and current fields due to the direct effect of power extraction from the wind, and (2) wind turbine foundations' effects on ocean currents and consequently on turbulence, mixing, and vertical stratification."<sup>4</sup> Scallop larvae, or "spat," initially occur within the water column (as opposed to the seafloor), and rely on consistent ocean currents to be transported to favorable ocean bottom. The location of spat settlement in ecologically favorable areas (such as those located within the New York Bight WEAs and the nearby Hudson Canyon Access Area) is important, not only for the fishery, but for the long-term sustainability of the species. Physical obstructions that alter these currents could also alter scallop food availability in and near these WEAs.

Other studies have demonstrated that the onset of offshore wind towers have significant impacts on local benthic habitats.<sup>5</sup> Monitoring of the Block Island Wind Farm over a four-year period following installation revealed dense aggregations of mussel-dominated colonies along the jacket structures of the turbines, as well as congregations of moon snails and sea stars. Dense mussel populations have been shown to dramatically alter local ecosystem processes due to their high filtration rates of local phytoplankton, increased excretions to the surrounding seabed,<sup>6</sup> and increased carbon assimilation.<sup>7</sup> In essence, these mussels compete for the same resources as scallop populations, removing available phytoplankton and carbon from the area while altering the benthic substrate. Further, moon snails and sea stars are known predators of scallops; thus, an increased presence of these species near productive scallop grounds poses a serious threat to this viable resource.

Again, each of these studies possessed a broader scope to assessing overall ecosystem impacts, rather than a nuanced assessment of potential impacts to local scallop populations. For BOEM to properly mitigate these future impacts, it must first conduct a comprehensive assessment of these effects from wind turbines on the nearby scallop resource, which can only be performed through an EIS.

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<sup>4</sup> Van Berkel, *et al.*, *The Effects of Offshore Wind Farms on Hydrodynamics and Implications for Fishes*, Oceanography, Vol. 33, Issue 4, p. 108-117 (2020).

<sup>5</sup> Hutchison *et al.*, *Offshore Wind Energy and Benthic Habitat Changes: Lessons from Block Island Wind Farm*, Oceanography, Vol. 33, Issue 4, p. 58-69 (2020).

<sup>6</sup> Maar *et al.*, *Local effects of blue mussels around turbine foundations in an ecosystem model of Nysted offshore wind farm*, Journal of Sea Research, Vol. 62, Issue 2, p. 159-174 (2009).

<sup>7</sup> Mavraki *et al.*, *Organic matter assimilation by hard substrate fauna in an offshore wind farm area: A pulse-chase study*, ICES Journal of Marine Science (2020).

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**Alternatives Exist to Significantly Reduce Potential Impacts to Scallops Without Negatively Impacting Other Ocean Commons Stakeholders**

BOEM is seeking alternatives for consideration in the EA. FSF recognizes that BOEM is required to balance the concerns of a range of stakeholders with interests in and around the New York Bight WEAs. FSF would recommend two alternatives for BOEM to develop and consider as part of the New York Bight lease development process. These alternatives would significantly reduce the potential impacts of offshore wind development on the scallop resource in these WEAs.

The first proposed alternative would be to eliminate a five-mile strip from the Hudson South WEA—where it directly abuts the Hudson Canyon Access Area—and move the boundary five miles to the northwest. (The below Figure 1 shows how the proposed Hudson South WEA connects with the existing Hudson Canyon Access Area.) Wind developers expressed very little interest in developing wind farms in this area; indeed, no developer nominations were received for significant portions of it. As demonstrated in the NY Bight Memo's Figure 18 (reincorporated below as Figure 2), which is a NMFS-issued map of scallop fishing intensity in the relevant area, there is an abundant scallop resource that exists along this eastern boundary.

Excision of this strip of the Hudson South WEA would have significant ecological benefits for the scallop fishery, with little loss in terms of overall wind energy production from the New York Bight. Indeed, the overall WEAs are over 1250 square miles in size, significantly larger than the State of Rhode Island. Such an alternative would create an ecological buffer between wind farm arrays and the ecologically and economically significant Hudson Canyon Access Area, allowing for a precautionary approach to wind energy development that would account for impacts on the scallop resource from wind farm-generated sedimentation and the potential impacts on scallop larval dispersal and settlement caused by wind farm arrays. (The scallop fishery is currently funding, through its cooperative research program, research relating to potential wind turbine impacts on scallop larval dispersion and settlement.<sup>8</sup>)

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<sup>8</sup> See [https://s3.amazonaws.com/nefmc.org/16.a-UMASSD\\_WHOI\\_short\\_report\\_05-19\\_2020\\_revision.pdf](https://s3.amazonaws.com/nefmc.org/16.a-UMASSD_WHOI_short_report_05-19_2020_revision.pdf) (last accessed on April 27, 2021).



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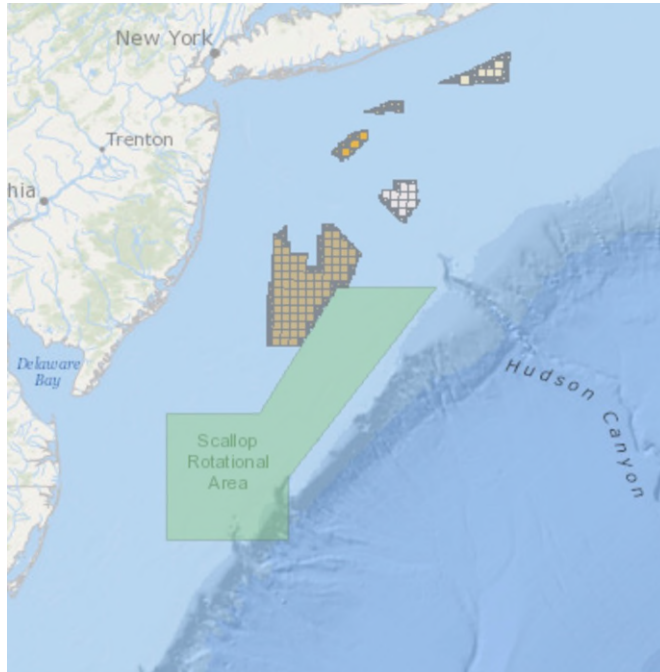


Figure 1: Depiction of Hudson South Proximity to Scallop Rotational Access Area (Source: Mid-Atlantic Ocean Data Portal).

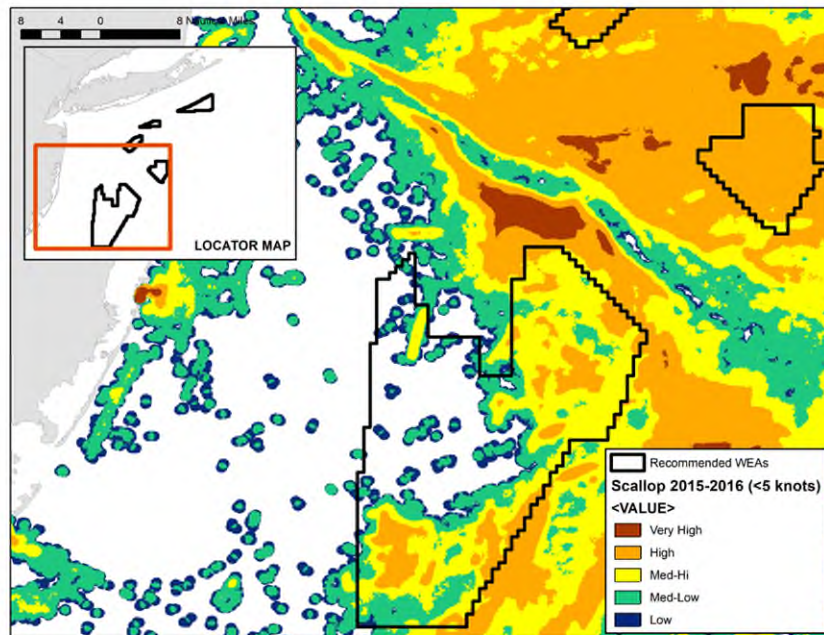


Figure 2: Scallop Fishing Intensity in Relation to the New York Bight WEAs (Source: NY Bight Memo, at 38).

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The second proposed alternative would be to defer leasing within the Central Bight WEA at this time. As BOEM's analyses conclude, the Central New York Bight is of "high" value to the scallop fishery (NY Bight Memo, Figure 18), and scores the greatest among the WEAs even on BOEM's skewed overall RUI (NY Bight Memo, Figure 5). Under OCSLA standards, this should be the last area in the New York Bight that BOEM considers for leasing. At the same time, it is important to recognize the area was nominated by, at most, one wind developer during the Call process. Moreover, BOEM has recognized that not all the WEAs need to be leased at this time. NY Bight Memo, at 5.

By the time BOEM finishes leasing the rest of the New York Bight WEAs, BOEM will have over twenty lease sites in New England and Mid-Atlantic waters, yet construction is not underway on even a single project. Construction and interconnection of wind farms on these twenty-plus lease sites will be a Herculean feat, both in terms of the capacity of domestic and international wind turbine installation and other vessels needed to complete these projects, as well as the needs of other projects planned and underway around the world and off the west coast of the United States and Hawaii. Nor, moreover, has the energy infrastructure along the Mid-Atlantic and New England absorbed so much as a megawatt of offshore wind-generated power, beyond two demonstration projects. We recognize that President Biden and the regions' governors have established incredibly ambitious goals for wind energy development. These goals can be met without immediately creating leasehold interests in the most remote, and heavily-fished, of the New York Bight WEAs, especially when this area is of little to no interest to developers. BOEM has the latitude to be at least a little realistic about the time, effort, and investment required to build the first twenty-plus wind farms off the East Coast, and defer leasing of one single WEA.

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Thank you for the opportunity to submit these comments and for your consideration of these crucial issues. Please do not hesitate to contact us at any time if you require additional information.

Respectfully submitted,



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