

No. 24-337

IN THE
Supreme Court of the United States

NANTUCKET RESIDENTS AGAINST TURBINES, *et al.*,

Petitioners,

v.

BUREAU OF OCEAN ENERGY MANAGEMENT, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

**BRIEF OF CLEAN OCEAN ACTION
AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONERS**

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INTEREST OF THE *AMICUS CURIAE*¹

Clean Ocean Action, Inc. is a § 501(c)(3) nonprofit environmental organization with a mission of improving the degraded water quality of the marine waters off the New Jersey/New York coast, an area of the Atlantic Ocean known as the NY/NJ Bight,² for all forms of life. Founded in 1984, Clean Ocean Action works as a broad-based coalition on a variety of issues with as many as 100 active boating, business, community, conservation, diving, environmental, fishing, religious, service, student, surfing, and women's groups. Clean Ocean Action researches pollution issues affecting the marine environment, educates the public, and launches grassroots campaigns to advocate for the elimination of each pollution source. Its many successful campaigns

¹ Petitioners' and Respondents' counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or part, and no party or counsel other than the *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund preparation or submission of this brief.

² An area of the ocean bounded by the shores of Cape May, New Jersey to Montauk Point, Long Island, and the edge of Continent Shelf to the east of Cape May and to the south of Montauk Point. See NY-NJ Estuary Program Management Conference, *NY Bight Restoration Plan*, N.J. Dep't of Env'tl. Protection at 11 (Mar. 1993), <https://tinyurl.com/NYNJBight>.

include the closure of all eight ocean dumpsites located in the NY/NJ Bight.³

Located in the North Atlantic,⁴ the NY/NJ Bight provides habitat for hundreds of species of fish, birds and other marine life, who depend on these environs for shelter, food, breeding and/or migration. The abundant marine life in the NY/NJ Bight includes numerous threatened and endangered fish, sea turtles, birds and whales. Marine life, of course, is not confined to man-made boundary lines and many species travel beyond the NY/NJ Bight and throughout the North Atlantic, either seasonally or during their life-cycle.⁵

* * *

The question presented by this appeal is whether federal agencies can, consistent with the plain language of the Endangered Species Act (“ESA”),⁶ exclude from their Section 7 analysis, 16 U.S.C. § 1536, known and available science regarding

³ For more information about Clean Ocean Action and its successful campaigns, see *About COA*, <https://cleanoceanaction.org/about-coa>.

⁴ The North Atlantic is the region extending from Virginia to Maine. See *Regions*, Nat’l Oceanic & Atmospheric Admin., <https://tinyurl.com/NOAAregions> (last visited Oct. 5, 2024).

⁵ *Protecting and Conserving Marine Life*, N.Y. State Dep’t of Env’tl. Conservation, <https://tinyurl.com/DEClifecycle> (last visited Oct. 8, 2024).

⁶ 16 U.S.C. § 1531 *et seq.*

impacts on an endangered species resulting from federal actions. As Petitioners explain, the legal answer is that they cannot, and as argued herein by Clean Ocean Action, the practical answer is they cannot, if threatened and endangered (“T&E”) species in the NY/NJ Bight and greater North Atlantic region are to be protected from extinction.

This appeal pertains to the federal approval process of the first commercial-scale offshore wind (“OSW”) development in the North Atlantic—Vineyard Wind 1.⁷ Clean Ocean Action hopes to impress upon this Court that Vineyard Wind is *only the first of 46* OSW facilities in the North Atlantic.⁸ In total, these facilities will occupy over 3,500,000 acres of ocean and result in the installation of 10,000 miles of submarine cables, and 3,400 massive turbines,⁹ each standing as tall as a New York City skyscraper with blades the length of a football field. The federal government intends for many of these OSW facilities

⁷ *Vineyard Wind 1*, Vineyard Wind, <https://tinyurl.com/2jk5nb37> (last visited Oct. 8, 2024).

⁸ See Table 1, *infra* pp. 6-7.

⁹ NOAA Library, *Fisheries, Protected Species, and Ecosystem Science in a New Era of Offshore Wind Energy Development*, YouTube (Mar 9, 2022), <https://tinyurl.com/NewEraOSW> (stated in description); *Gulf of Maine*, Bureau of Ocean Energy Mgmt., <https://tinyurl.com/NewSaleNE> (last visited Oct. 8, 2024); and *BOEM to Hold Central Atlantic Lease Sale Aug. 14*, Mid-Atlantic Ocean Data Portal (Jul. 2, 2024), <https://tinyurl.com/NewSaleMA>.

to be online by 2030.¹⁰ Thus, Vineyard Wind 1 represents a new industrial use of the North Atlantic, and part of a coordinated effort to radically transform who and what can use and occupy its waters in the immediate future. Consequently, the outcome of the subject appeal will affect Clean Ocean Action's interests not only through its impact on the interconnected marine ecosystem but also the precedent for ESA review of future OSW projects throughout the North Atlantic.

We believe that this brief will enhance the Supreme Court's understanding of the importance of the question presented. Clean Ocean Action has a longstanding history of representing a broad base of public organizations with varying ocean protection, conservation, recreational and commercial interests that are concerned about the impact of the large-scale OSW development in the NY/NJ Bight and the North Atlantic. With respect to the protection of T&E species, that interest is wholly dependent upon two federal agencies—the Bureau of Energy Management (“BOEM”) and National Marine Fisheries Service (“NMFS”)—acting in accordance with the ESA. Accordingly, Clean Ocean Action's amicus brief gives a voice to that public interest.

¹⁰ The White House, *Fact Sheet: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs* (Mar. 29, 2021), <https://tinyurl.com/jumpstartOSW>.

SUMMARY OF ARGUMENT

**“But if you are going to wear blinders
then you do not know the world.”¹¹**

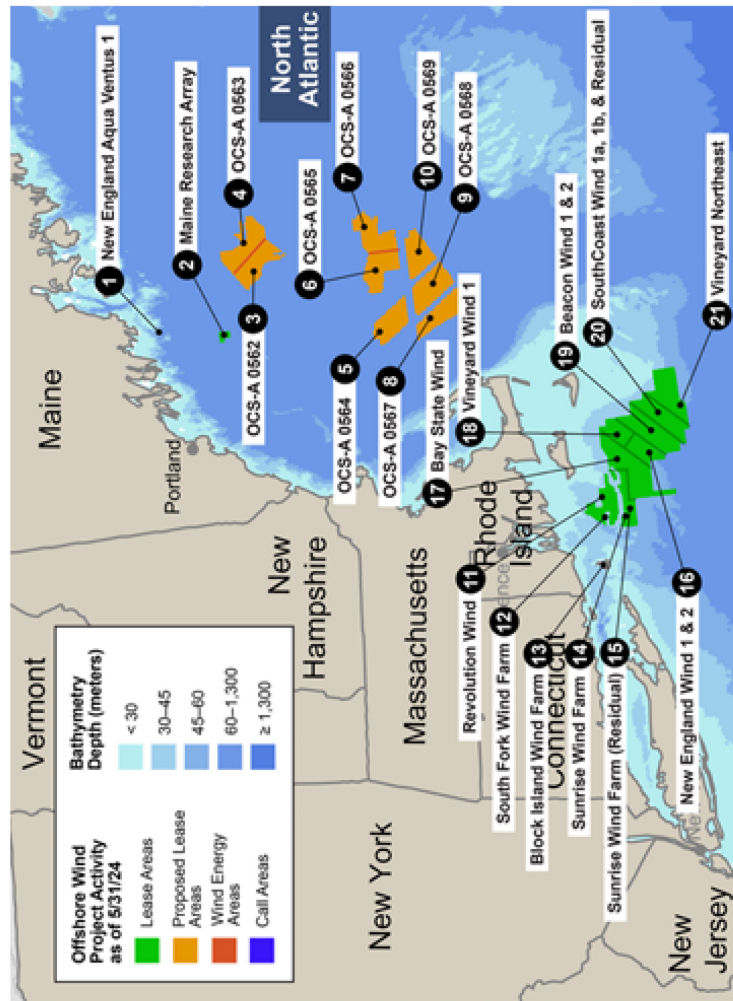
This appeal has far greater implications than one discrete area of the North Atlantic (Nantucket), one project (Vineyard Wind 1), or one species (North Atlantic Right Whale). The greater concern is that numerous T&E species throughout the North Atlantic will be impacted by pervasive OSW development. Accordingly, Clean Ocean Action urges this Court to grant certiorari and to hold that the cumulative impacts of OSW development must be considered during the ESA consultation process.

Marine life is not confined to man-made boundary lines. Many species travel throughout the NY/NJ Bight and the North Atlantic, either seasonally or during their life-cycle.¹² This includes the multiple T&E fish, sea turtles, birds and whales found in the

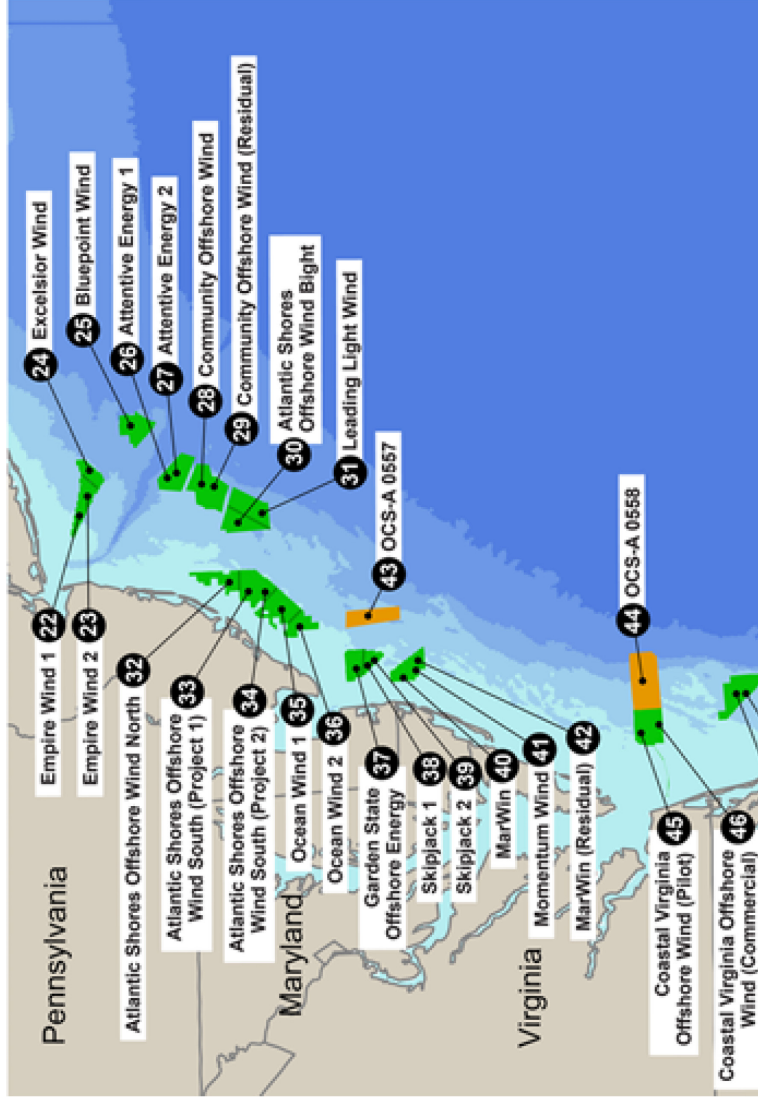
¹¹ Miriam Makeba, South African singer/human rights activist, 1932-2008. *Miriam Makeba Quotes*, Quote.org, <https://tinyurl.com/MakebaQuote> (last visited Oct. 8, 2024); *Miriam Makeba*, South African History Online, <https://tinyurl.com/MakebaBio> (last visited Oct. 8, 2024).

¹² *Protecting and Conserving Marine Life*, *supra* n.5.

TABLE 1. OSW Activity / North Atlantic¹³



¹³ Angel McCoy, et al., *Offshore Wind Market Report: 2024 Edition*, U.S. Dep’t of Energy, Nat’l Renewable Energy Lab’y (Aug. 2024), at Figure ES-1, <https://tinyurl.com/OSWReport24>.



North Atlantic.¹⁴ In other words, their habitat is not a given OSW project area, but an entire region.

With their habitat soon to be inundated with as many as *forty-six* new OSW developments,¹⁵ these T&E species will drastically have to alter where they feed, breed, forage and care for their young. Their very survival will depend, in part, on whether BOEM and NMFS properly evaluate the risks to these T&E species presented by not one, but by the scores of pending OSW developments. BOEM and NMFS must remove the “blindness” from their ESA reviews of OSW development for the true jeopardy to T&E species to be properly understood and evaluated.

¹⁴ *Endangered and Threatened Species in the New England/Mid-Atlantic Region*, NOAA Fisheries, <https://tinyurl.com/TESpecies> (last visited Oct. 8, 2024).

¹⁵ See Table 1, *supra* pp. 6-7.

ARGUMENT

The Court Should Grant Review To Decide Whether the Endangered Species Act Requires the Potential Cumulative Impacts Of Additional Offshore Wind Projects To Be Considered In Evaluating the Risks Posed To Threatened and Endangered Species By a Particular Offshore Wind Project

A. The North Atlantic provides habitat for numerous threatened and endangered species

The Petitioners present an excellent case as to the jeopardy presented to the North American Right Whale by OSW development. The North American Right Whale, however, is only one of many federally-listed species that depend on the North Atlantic environs for shelter, food, breeding and/or migration:¹⁶

Whales (All Endangered)

Blue Whale
Fin Whale
Humpback Whale
North American Right Whale
Sei Whale
Sperm Whale

¹⁶ NOAA Fisheries, *supra* n.14, and *New Jersey's Endangered, Threatened, and Special Concern Species*, N.J. Fish & Wildlife, <https://tinyurl.com/DEPte> (last visited on Oct. 8, 2024).

Sea Turtles (Endangered* or Threatened)**¹⁷

Hawksbill Sea Turtle*
Kemp's Ridley Sea Turtle*
Leatherback Sea Turtle*
Green Sea Turtle**
Loggerhead Sea Turtle**

Fish (Endangered* or Threatened)**

Atlantic Sturgeon*
Shortnose Sturgeon*
Atlantic Salmon**
Giant Manta Ray**
Oceanic Whitetip Shark**

Shore Birds (Endangered* or Threatened)**

Roseate Tern*¹⁸
Piping Plover**¹⁹
Red Knot (*rufa* subspecies)**²⁰

¹⁷ *Marine Turtles*, N.J. Dep't of Env'tl. Protection, <https://tinyurl.com/DEPturtles> (last visited Oct. 8, 2024).

¹⁸ *Roseate Tern, Sterna Dougallii*, N.J. Dep't of Env'tl. Protection, <https://tinyurl.com/DEProseate> (last visited Oct. 8, 2024).

¹⁹ *Piping Plover, Charadrius Melodus*, N.J. Dep't of Env'tl. Protection, <https://tinyurl.com/DEPplover> (last visited Oct. 8, 2024).

²⁰ Reg'l Wildlife Science Collaborative for Offshore Wind, *An Integrated Science Plan for Wildlife, Habitat, and Offshore Wind Energy in U.S. Atlantic Waters*, at 137 (June 30, 2023), <https://tinyurl.com/RWSCOWpdf>.

“Endangered” means a species is in danger of extinction through all or a significant portion of its range.²¹ “Threatened” means a species is likely to become endangered within the foreseeable future.²²

By virtue of being listed as “endangered” or “threatened,” the ESA provides that *all* of these species warrant specific protections to stave off the threat of extinction. These protections include the so-called “Section 7 consultation” process with NMFS that culminates with a determination as to whether the subject action would jeopardize the survival of a T&E species or result in a loss of critical habitat.²³ That determination is to be made using the “best scientific and commercial data available.”²⁴

²¹ 16 U.S.C. § 1532(6).

²² 16 U.S.C. § 1532(20).

²³ *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(4).

²⁴ 16 U.S.C. § 1536(a)(2).

B. The federal government has recognized that offshore wind facilities have negative impacts, including to threatened and endangered species

Indisputably, each OSW project will impact the marine environment and the life it supports before and during construction and throughout its operational life. *We know this because the federal government has told us so.* The federal government has acknowledged, for instance, that OSW facilities create underwater noise, sea floor disturbance and vessel traffic, to the extent of causing temporary and long-term impacts to T&E species like the North American Right Whale.²⁵

Underwater noise can be generated before construction by seismic surveys, during construction—at excruciating levels—from pile-driving the monopoles, and during operations from the whooshing of the massive turbine blades. The federal government has recognized that such noise can result in “hearing impairment, the masking of vocal communication, physiological impacts (e.g., stress), and/or behavioral disturbance, as well as mortality

²⁵ See Nat'l Marine Fisheries Serv., *Species in the Spotlight: North Atlantic Right Whale, Priority Actions 2021-2025*, at 13 (Mar. 2021), <https://tinyurl.com/NARW21-25>.

and injury” to whales²⁶ and finfish²⁷ as well. NMFS has further acknowledged that some of these noises will be so disruptive that impacted animals will have to leave any area within four kilometers of the origin for a period of up to three hours.²⁸ During that time, the impacted animals will have to find alternative migration routes and alternative places to forage.²⁹

Fish with swim bladders, such as the endangered Atlantic Sturgeon and Shortnose Sturgeon, may not be able to escape underwater impulse sounds generated by OSW pile driving operations. As explained by BOEM:

As pressure waves pass through a fish, its swim bladder would be rapidly squeezed by the high pressure then would rapidly expand as the under pressure component of the wave passes through the fish. The pneumatic pounding on tissues contacting the swim bladder may rupture capillaries in

²⁶ *Id.* at 12.

²⁷ Bureau of Ocean Energy Mgmt., *Vineyard Wind 1 Offshore Wind Energy Project Final Environmental Impact Statement, Vol. 1 (EIS)*, at 3-51 (Mar. 2021), <https://tinyurl.com/VW-EIS>.

²⁸ Nat'l Marine Fisheries Serv., *Endangered Species Act Section 7 Consultation Biological Opinion (BiOp)* (Oct. 18, 2021), at 193, <https://tinyurl.com/NMFS-BiOp>.

²⁹ *Id.*

internal organs as indicated by observed blood in the abdominal cavity and maceration of kidney tissues.³⁰

NMFS recently stated that the sound generated from pile driving operations at an OSW facility in the North Atlantic is the likely cause of a recent fish kill of over 17,000 Atlantic croaker.³¹ Consistent with the rapid expansion of swim bladders, these fish were found to have broken bones and other internal injuries.³²

The federal government recognizes that OSW development will lead to increased vessel traffic, particularly during construction (which can last seven years or more) and during decommissioning activities.³³ A single OSW facility can generate 3,285 annual vessel roundtrips during construction and

³⁰ Ocean Wind, *Construction and Operations Plan: Ocean Wind Offshore Wind Farm, Vol. 3, Appendix I – Atlantic Sturgeon Supplementary Material* (May 18, 2023), at 5, <https://tinyurl.com/SwimBladders>.

³¹ NOAA Fisheries, *Presentation to the Mid-Atlantic Fisheries Management Council: Project-level Monitoring Standards for Offshore Wind* (Oct. 8, 2024), (presentation available at YouTube, <https://tinyurl.com/17Kfishkill>; see slide and remarks at 2:37:46 to 2:39:28).

³² See *id.*

³³ *EIS*, *supra* n.27, at 3-22.

installation.³⁴ That number decreases slightly during maintenance and operations to 2,902 annual vessel roundtrips.³⁵ During decommissioning, the annual vessel trips can be expected to increase back to 3,285 annual vessel roundtrips.³⁶

Vessel traffic “poses a high-frequency, high-exposure, and collision risk to marine mammals, especially North American Right Whales, other baleen whales, and calves that spend considerably more time at/near the ocean surface.”³⁷ The Vineyard Wind 1 development is expected to result in 39 vessel strikes of T&E sea turtles.³⁸ Vessel strikes caused by OSW seismic surveys remains a potential cause of the record number of whale and marine mammal deaths and strandings in recent years.³⁹

OSW development also results in benthic (i.e., sea floor) disturbances. Thousands of monopoles are to be

³⁴ Bureau of Ocean Energy Mgmt., *New York Bight Draft Programmatic Environmental Impact Statement, Vol. 1*, at 3.5.6-68 to 6-69 (Jan. 2024), <https://tinyurl.com/ProgEIS>.

³⁵ *See id.* at 3.5.6.-69.

³⁶ *See id.* at 3.5.6.-69.

³⁷ *EIS, supra* n.27, at 3-84.

³⁸ *See id.* at 3-120.

³⁹ *See e.g.*, Alejandro De La Garza, *Whales are Dying Along the East Coast. And a Fight is Surfacing Over Who’s to Blame*, Time (Feb. 13, 2023, 7:00AM), <https://tinyurl.com/strandings>.

driven deep into the seabed, and thousands of miles of submerged cables are to be buried under the sea floor, destroying any benthic habitat in those areas. The monopoles and service platforms of the Vineyard Wind 1 project will occupy or otherwise impact approximately 45 acres of sea floor, and the cabling will impact an additional 186.4 miles of benthic habitat.⁴⁰ The federal government recognizes these disturbances, coupled with the noise from pile-driving operations and seismic surveys, will be so pervasive as to create moderate to major impacts to commercial fisheries and recreational fishing.⁴¹

There are, of course, other environmental impacts associated with OSW development, including:

- impacts to birds, including migration disturbances and fatal interactions with operating turbines;
- introduction of electro-magnetic fields that impact predator detection, communication, and the ability for fish and shellfish to find mates;
- impacts to organism life cycle stages, including larval dispersal and spawning; and

⁴⁰ *EIS*, *supra* n.27, at 3-38.

⁴¹ *See id.* at 3-210 to 3-211.

- changes to species composition, abundance, distribution, and survival rates.⁴²

OSW facilities also emit thousands of tons of carbon dioxide each year⁴³ and the most potent known greenhouse gas, sulfur hexafluoride⁴⁴. These air emissions cast a brownish hue over this “green” energy source. Clearly, OSW development will inherently impact marine life, including T&E species.

⁴² *Id.* at A-99 to A-100; *Offshore Wind Energy: Protecting Marine Life*; NOAA Fisheries, <https://tinyurl.com/OtherImpacts> (last visited Oct. 10, 2024).

⁴³ See, e.g., *Outer Continental Shelf Air Permit No. OCS-EPA-R2 NJ 02*, U.S. Env'tl. Protection Agency, Region 2 (Feb. 15, 2024), <https://tinyurl.com/AirEmpireWind>; *Outer Continental Shelf Air Permit No. OCS-EPA-R2 NY 01*, U.S. Env'tl. Protection Agency, Region 2 (Sept. 30, 2024), <https://tinyurl.com/AirAtlanticShores>.

⁴⁴ U.S. Env'tl. Protection Agency, Region 2, *Programmatic Environmental Impact Statement for Future Wind Energy Development in the New York Bight: EPA Detailed Comments* (Aug. 10, 2022) at 3, <https://tinyurl.com/USEPAletter>.

C. The cumulative impacts of numerous offshore wind projects in the North Atlantic must be part of the Endangered Species Act consultation process if threatened and endangered species are to be protected from extinction

As Table 1, *supra*, depicts, Vineyard Wind 1 is not an isolated project; it is one of 46 OSW developments planned for the North Atlantic. As noted above, the federal government intends for many of these OSW developments to be online by 2030.⁴⁵ This means pre-construction, construction and operational activities will be simultaneously occurring throughout the North Atlantic.⁴⁶ The impacts from Vineyard Wind 1 will be intensified by as many as *45 additional OSW projects*. Underwater noise, vessel traffic and habitat disturbances will be generated from multiple sources, creating a web of impacts that may be impossible for some sea life to endure, let alone escape. But with proverbial blinders on, BOEM and NMFS conducted their ESA review as if Vineyard Wind 1 will be the sole OSW development in the North Atlantic. This flawed ESA review does not reflect the altered world T&E species will come to know by 2030.

⁴⁵ The White House, *supra* n.10.

⁴⁶ See e.g., *EIS*, *supra* n.27, at 3-206 (as to simultaneous noise impacts).

The certiorari petition contains an excellent summary of the ESA consultation process and the legal duty of NMFS to review cumulative impacts of OSW development on T&E species. *See* Pet. at 6-8, 10-13. Clean Ocean Action's aim is to highlight the practical reasons why this must be done if T&E species of the North Atlantic are to survive.

As discussed above, Vineyard Wind 1 will have impacts that will force T&E species to leave areas of activity, find alternative migration routes and seek alternative places to forage and breed.⁴⁷ NMFS apparently concluded that the impacts of Vineyard Wind 1 alone will not jeopardize the continued existence of any T&E species.⁴⁸ However, in the context of numerous OSW projects occurring simultaneously (as the federal government knows to be the case here),⁴⁹ such a conclusion is implausible.

With OSW projects being developed and operated across the North Atlantic, where are T&E species to relocate from the Vineyard Wind 1 project area? Can they find alternative areas with the resources needed to feed, shelter and breed? Can they find such alternative areas without experiencing fatigue, starvation, predation or vessel strike? NMFS has not answered any of these questions. Like roadkill whose woodland shelter was bulldozed for yet another

⁴⁷ *BiOp*, *supra* n.28.

⁴⁸ *See id.* at 382.

⁴⁹ *EIS*, *supra* n.27, at 3-206.

residential subdivision or warehouse, T&E species may succumb to the impacts of pervasive OSW activity before finding suitable alternative habitats.

Moreover, every harm NFMS allows T&E species to suffer from a single OSW project will be multiplied by the number of other OSW projects in the habitat. This could be a factor of 45 (for each intended OSW project) or greater. For instance, those 39 T&E turtles that NFMS calculates will suffer vessel strikes from the Vineyard Wind 1 project⁵⁰ are merely a subset of all the T&E sea turtles that will be struck by OSW vessels in the North Atlantic. Can the respective populations of T&E species endure so many casualties and fatalities? In the ESA consultation process for Vineyard Wind 1, BOEM and NFMS did not even address the question.⁵¹

This compounding effect is further illustrated by the number of “takes” of marine mammals (including T&E whale species) the federal government has already authorized for OSW projects. A “take” is the harassment of a marine mammal to the extent (i) of bodily injury (Level A harassment) or (ii) disturbance of behavioral patterns (Level B harassment). Thus far, Vineyard Wind 1 has received authorization to injure 124 marine mammals and to disturb another

⁵⁰ See *supra* p. 15.

⁵¹ See *BiOp*, *supra* n.28, at 329-330.

8,114.⁵² But those are a fraction of the Level A and Level B takes authorized by NMFS for OSW facilities off the East Coast. In fact, NMFS has authorized a total of 1,492 Level A takes and 691,898 Level B takes to date and is considering the authorization of an additional 189 Level A takes and 97,470 Level B.⁵³ Clearly, the impacts of Vineyard Wind 1 contribute to impacts from OSW development throughout the Atlantic Coast.

Where is the tipping point for a particular T&E species? NMFS is not going to find it looking through blinders at a single OSW project that may not generate any more noise, vessel traffic or benthic destruction than any of the projects that preceded it. However, those impacts, which in a vacuum may be regarded as “negligible” or “insignificant”, may prove to be the tipping point for species already or foreseeably stressed by other OSW projects. If the federal government continues to ignore cumulative impacts in future ESA reviews, T&E species may

⁵² Nat’l Marine Fisheries Serv., *Incidental Harassment Authorization* (May 21, 2021), at 22, <https://tinyurl.com/VW1iha21>; Nat’l Marine Fisheries Serv., *Incidental Harassment Authorization*, Sept. 6, 2024, at 31, <https://tinyurl.com/VW1iha24>

⁵³ *IHAs for Marine Mammal Takes Offshore Wind Projects on the East Coast*, Clean Ocean Action (Oct. 10, 2024), at 1, <https://tinyurl.com/IHAreview> (data from April 24, 2014 through October 10, 2024); see also, *Incidental Take Authorizations for Other Energy Activities (Renewable/LNG)*, NOAA Fisheries, <https://tinyurl.com/IHAData> (last visited Oct. 11, 2024).

experience “death by a thousand papercuts” and move closer or succumb to extinction as OSW development grows throughout the North Atlantic.

D. A conservative approach to the Endangered Species Act consultation process is warranted because the federal government admittedly lacks critical data and processes regarding the ecological effects of offshore wind development

As the rush to develop 30 gigawatts of OSW energy by 2030 has begun, the science necessary to protect marine life, including T&E species, is lagging behind. The federal government has openly admitted that it lacks fundamental data and processes for its evaluative models for the ecological impacts from OSW development. Inaccurate modeling for a given project can lead to injurious results. Inaccurate modeling for scores of projects encompassing millions of acres of ocean habitat can lead to disastrous results. Accordingly, it is imperative that BOEM and NMFS are conservative in their approach to the ESA consultation process, which would include consideration of cumulative impacts from other OSW developments.

At the 2024 State of the Science symposium on OSW, NMFS⁵⁴ made some damning admissions as to the “constraints” it is experiencing in attempting to create ecosystem models to assess the impact of OSW development (“OWD”). During a panel on environmental impact assessment, NMFS presented the following “constraints” to properly modeling the impacts of OWD:

- Limited empirical data to ground truth, calibrate, or validate models
- Limited species specific and life stage specific data available
- Limited knowledge on the spatial extent of impact producing factors
- Most published studies are from a few locations in Europe which are not directly comparable to Northeast U.S. shelf ecosystem
- Limited knowledge of the spatial scale of biological impacts
- High levels of uncertainty for individual effects and for cumulative effects

⁵⁴ NMFS is an office of the National Oceanic and Atmospheric Administration and is also known as “NOAA Fisheries”, the name it used during the symposium.

- Limited information on how OWD development will interact with other ecosystem stressors
- Limited ability to integrate across OWD development because different methods and approaches are used to collect data
- Access to data collected by numerous project monitoring programs
- No established monitoring programs for socio economic impacts from OWD development.⁵⁵

NMFS concluded by stating there is a “design challenge” to fill the above-referenced data gaps “so we can make sure our models are grounded in understanding what really is happening in the ocean”.⁵⁶

These concessions are alarming. If NFMS does not yet “understand what is really happening in the ocean” as OSW development accelerates, how can it properly evaluate the jeopardy a single development presents to T&E species? The answer is that it cannot,

⁵⁵ Andrew Lipsky, NOAA Fisheries Chief, Offshore Wind Ecology Branch, *Symposium: Progression Toward an Integrated Ecosystem Based Approach to Assessing Environmental Impact of Offshore Energy Development* (July 18, 2024) (presentation available at YouTube, <https://tinyurl.com/OSWconstraints>; see slide and remarks at 53:58-55:33).

⁵⁶ *Id.* at 55:40-55:51.

which makes its choice to ignore the cumulative impacts of an “armada” of OSW projects even more concerning. Until such data and processes build a better model, it is imperative that the ESA consultation process be as conservative as possible in evaluating the threats to T&E species. Such an approach demands that the cumulative impacts from all OSW development within a given habitat be carefully evaluated by BOEM and NFMS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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