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### **SMART FROM THE START: NOT THE SMARTEST**

### **SOLUTION TO OCEAN ZONING**

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# **SMART FROM THE START: NOT THE SMARTEST SOLUTION TO MARINE SPATIAL PLANNING**

## **I. Introduction**

On November 23, 2010, Secretary of the Interior, Ken Salazar, “launched a ‘Smart from the Start’ wind energy initiative for the Atlantic Outer Continental Shelf to facilitate siting, leasing and construction of new projects, spurring the rapid and responsible development of this abundant renewable resource.”<sup>1</sup> The core idea behind “Smart from the Start” is to establish an accelerated leasing process for wind energy development on the outer continental shelf (OCS). Under the program, the regulatory process for leasing and development will be streamlined by establishing Wind Energy Areas (WEA). Secretary Salazar claimed, “Our ‘Smart from the Start’ Initiative for Atlantic wind will allow us to identify priority Wind Energy Areas for potential development, improve our coordination with local, state, and federal partners, and accelerate the leasing process.”

Launched only a month after the approval of the lease for Cape Wind, Smart from the Start is an overreaction to the regulatory quagmire experienced with Cape Wind. Cape Wind, the nation’s first expected offshore wind farm, was first proposed in 2001 in Nantucket sound. The project was met with great resistance and was the basis for several lawsuits. After 9 years of environmental reviews and lawsuits, Secretary of the Interior Ken Salazar and Cape Wind Associates President Jim Gordon signed the nation’s first lease for commercial wind energy development on the OCS on October 6, 2010.<sup>2</sup>

The Smart from the Start Initiative is clearly intended to avoid future leasing problems such as those experienced with Cape Wind. However, it is vital that the Department of the Interior (DOI) does not bypass desired regulations and processes for public involvement in the leasing of offshore wind farms. This is especially important, because only two weeks after the

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<sup>1</sup> The Department of the Interior, *Press Release: Salazar Launches ‘Smart from the Start’ Initiative to Speed Offshore Wind Energy Development off the Atlantic Coast*, November 23, 2010, available at <http://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start-Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast.cfm>.

<sup>2</sup> The lease is available here: [http://www.boemre.gov/offshore/RenewableEnergy/PDFs/CapeWind\\_signed\\_lease.pdf](http://www.boemre.gov/offshore/RenewableEnergy/PDFs/CapeWind_signed_lease.pdf)

Smart from the Start Initiative was announced, Deepwater Wind LLC announced its intentions to build the largest offshore wind farm in the United States. In fact, Deepwater Wind executives attribute the plans for the wind farm to Smart from the Start. Deepwater Wind executive Jeff Grybowski stated, “The White House and the Department of the Interior are throwing a lot of resources at the permitting process. We want to take advantage of that federal momentum.”<sup>3</sup> The proposed wind farm will consist of 200 wind turbines producing 1,000 megawatts of electricity and will provide 350,000 homes across several states with electricity. The size and scope of the project are unprecedented in the United States.

Undoubtedly, the Rhode Island Wind project will have a substantial impact on other ocean uses and it is imperative that Smart from the Start does preempt the marine spatial planning process mandated by the establishing of the National Ocean Policy. It is clear that licensing process should not be as difficult as it was with Cape Wind; however, as Smart from the Start currently stands, it will bypass many of the desired avenues for public input and a more comprehensive approach to ocean planning.

The purpose of this paper is to analyze the impact that Smart from the Start Initiative will have on the regulatory process for issuing leases for OCS wind development and its interplay with the comprehensive ocean zoning called for with Coastal and Marine Spatial Planning (CMSP). Section I of this paper begins by providing an overview of the Smart from the Start program and explains how it will streamline the process for issuing leases. Section II provides an overview of the proposed wind project in Rhode Island. It discusses the expected cost, size, energy production capacity, and current regulatory timeline. Section III explains why wind energy development in the OCS has taken a non-science based priority over other ocean uses for ocean zoning.

Section IV analyzes the opposition to the Rhode Island Wind project and describes how little input it has had in the development of the Rhode Island project. Finally, section V concludes the paper by arguing that Smart from the Start will do more harm than good by

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<sup>3</sup> Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at [http://www.projo.com/news/content/DEEPWATER\\_CHANGES\\_12-08-10\\_GLLB4TV\\_v50.4f9d955.html](http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html).

moving ahead before the CMSP is in place. The CMSP is designed to use comprehensive approach in allocating on best to utilize the resources provided by the United States' oceans. However, by zoning WEAs under the Smart from the Start Initiative in the Atlantic ahead of the comprehensive spatial planning in the CMSP, undermines the purpose and effectiveness of the CMSP.

## II. Overview of Smart from the Start

The massive offshore wind energy project in Rhode Island is being developed alongside a new regulatory program by the Department of the Interior (DOI)—“Smart from the Start.” Smart from the Start is an initiative aimed at ensuring the process for developing wind energy in the OCS is streamlined. The key provision of the initiative is to implement a comprehensive, expedited leasing framework, which entails identifying “Wind Energy Areas” (WEAs) along the OCS.

The WEAs are areas in the ocean along the OCS that the DOI has designated as particularly well suited for the development of offshore wind projects. The WEAs are identified by interagency task forces. Task forces bring together the knowledge and perspectives of tribes, local and state governments, and other federal agencies. The task force members cannot alter the regulatory framework or leasing process, but rather they function to provide input on how to implement the processes and their impact.<sup>4</sup> The task forces have identified potential resource and user conflicts that might preclude offshore wind development.<sup>5</sup> Thus far, task forces have been established in nine states along the Atlantic Coast.<sup>6</sup> With the help of these interagency task forces, WEAs have been established offshore of the following four states in the Mid-Atlantic: Delaware, Maryland, New Jersey, and Virginia.

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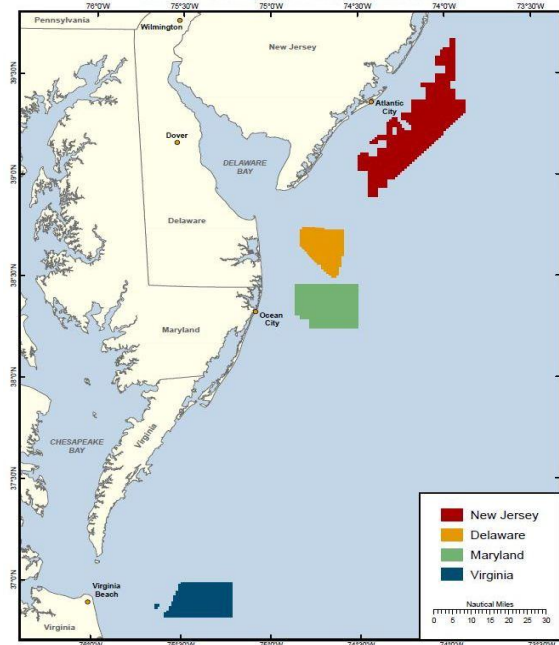
<sup>4</sup> Erin Trager, Bureau of Ocean Energy Management, Regulation, and Enforcement, *MMS Rhode Island Task Force Meeting: Renewable Energy Uses of the Outer Continental Shelf*, November 17, 2009, available at [http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/IntroTaskForce\\_Rhode%20Island.pdf](http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/IntroTaskForce_Rhode%20Island.pdf) [hereinafter *RI Task Force November Meeting*].

<sup>5</sup> Department of the Interior, *Overview: Offshore Wind Energy Development off the Atlantic Coast*, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=186636> [hereinafter *Smart From the Start Overview*].

<sup>6</sup> States with Task Forces include Delaware, Main, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Virginia. Task forces are expected be established in Florida, Oregon, and South Carolina.

## Proposed WEAs

Figure 1



Source: Department of the Interior,  
<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=18663>

In addition, the Smart from the Start initiative seeks to simplify the approval process for individual proposed projects by eliminating unnecessary regulatory requirements. The first step towards alleviating the regulatory burden proposed by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) is to eliminate the requirement of a “duplicative and unnecessary” step when there is no competitive interest in a lease area.<sup>7</sup> Under the current regulations, the process for acquiring a noncompetitive OCS renewable energy lease initiated by BOEMRE is inconsistent with the process for a noncompetitive OCS lease initiated by an unsolicited request for a lease.<sup>8</sup> Currently, after BOEMRE publishes a request for information (RFI) or a Call for Information and Nomination (Call), if there is only one respondent expressing interest, BOEMRE may offer a lease through a noncompetitive process. However, before proceeding with a noncompetitive leasing process, BOEMRE must publish a second RFI to confirm the absence of competition.<sup>9</sup> In contrast, when BOEMRE receives an

<sup>7</sup> 76 Fed. Reg. 8962, February 16, 2011.

<sup>8</sup> Id.

<sup>9</sup> 30 CFR §285.232

unsolicited request for a noncompetitive lease, BOEMRE may award a noncompetitive lease after publishing only a single notice of an RFI.<sup>10</sup> In a rule proposed on February 16, 2011, BOEMRE intends to eliminate the discrepancy by requiring only one RFI notice to be published.<sup>11</sup> BOEMRE stated that the second RFI is “a duplicative and unnecessary step in the noncompetitive leasing process.”<sup>12</sup>

Finally, Smart from the Start will also establish a parallel track to process applications to build offshore transmission lines. The details have to be released on how the process will be streamlined. However, BOEMRE expects that the WEAs will assist in siting and conducting environmental reviews for the offshore transmission lines.

As BOEMRE stated, “The objective [of Smart from the Start Initiative] is to accelerate responsible wind energy development on the Atlantic OCS by using appropriate designated areas, coordinated environmental studies, large-scale planning and expedited approval processes.”<sup>13</sup> Importantly, BOEMRE expects to have identified a WEA for Rhode Island in mid-march. This is of particular significance, because Rhode Island is currently being sited for largest offshore wind farm in the United States. Accordingly, the next section will discuss the Rhode Island wind project

### **III. Background on Rhode Island Wind Project**

#### ***A. Overview of the Project***

The Deepwater Wind Energy Center (DWEC) will be the largest offshore renewable energy project in the United States.<sup>14</sup> The project, initially planned for 350 MW, will now produce 1,000 MW of wind energy to the Eastern seaboard.<sup>15</sup> Deepwater decided to increase the

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<sup>10</sup> 30 CFR §285.231

<sup>11</sup> 76 Fed. Reg. 8962, February 16, 2011.

<sup>12</sup> *Id.*

<sup>13</sup> Bureau of Ocean Energy Management, Regulation and Enforcement, *Overview: Offshore Wind Energy Development off the Atlantic Coast*, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=186636>.

<sup>14</sup> Eric Lindeman and Jonathan Rickman, *Deepwater Wind Banks On 1,000-MW Offshore Wind Farm To Open New England Market*, *The Energy Daily*, Dec. 9, 2010.

<sup>15</sup> Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, *Providence Journal*, Dec. 8, 2010, available at [http://www.projo.com/news/content/DEEPWATER\\_CHANGES\\_12-08-10\\_GLLB4TV\\_v50.4f9d955.html](http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html).

output of the Smart from the Start initiative<sup>16</sup> and technological developments.<sup>17</sup> The increased production capacity can be attributed to next generation 5 MW turbines that Deepwater Wind plans to use on the project. The larger turbines will bring greater efficiency to the projects and reduce the electricity rate to one third of what has been proposed for other offshore wind projects.<sup>18</sup> DWEC will be located in the Rhode Island Sound, with most turbines more than 20 miles from the coast.<sup>19</sup> Deepwater Wind plans to sell the electricity generated from DWEC to multiple states in the northeast via a transmission system connected to southern New England and Long Island.<sup>20</sup> The underwater transmissions network will cost approximately \$1 billion.<sup>21</sup> DWEC will produce enough electricity to power approximately 350,000 homes and will come at a cost of nearly \$6 billion.<sup>22</sup>

The plan for the Deepwater Energy Center will not actually lie solely in Rhode Island, but rather in Area of Mutual Interest (AMI) established by Rhode Island and Massachusetts. In a signed Memorandum of Understanding, both Massachusetts and Rhode Island seek to “recognize the benefits of collaborating in the evaluation and potential development of this area of common interest and in sharing the increased economic development and renewable energy benefits resulting from a shared wind source...as well as the necessary infrastructure upgrades and environmental review associated developing individual projects and the offshore energy industry as a whole.”<sup>23</sup> As part of the Memorandum of Understanding, both states agreed to incorporate Rhode Island’s Ocean Special Area Management Plan (Ocean SAMP) as the governing planning and assessment document for the development of offshore wind energy in the AMI.

### ***B. Rhode Island Ocean Special Area Management Plan***

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<sup>16</sup> Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at [http://www.projo.com/news/content/DEEPWATER\\_CHANGES\\_12-08-10\\_GLLB4TV\\_v50.4f9d955.html](http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html) (Deepwater Chief Administrative Officer Jeffrey Grybowski stated, “The White House and the Department of the Interior are throwing a lot of resources at the permitting process. We want to take advantage of that federal momentum.”).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.



Rhode Island established the development of offshore wind energy as a priority in 2008 when it began work on the Ocean SAMP. The Ocean SAMP is an ocean zoning project whose primary purpose is to establish offshore wind farms. As described by the Rhode Island Coastal Resources Management Council (CRMC), the Ocean SAMP is a “mechanism to develop a comprehensive management and regulatory tool that would proactively engage the public and provide policies and recommendations for appropriate siting of offshore renewable energy.”<sup>24</sup> Intending to promote wind energy through environmental assessments and coordination between federal and state agencies, the Ocean SAMP provides a “comprehensive understanding of this complex and rich ecosystem as well as describes how the people living in this region have long used and depended on these offshore resources.”<sup>25</sup> The Ocean SAMP was approved on October 19, 2010 by the Rhode Island CRMC.<sup>26</sup> The SAMP is the governing planning assessment document for the area.<sup>27</sup>

### ***C. Leasing Process for the AMI***

The plans for developing the AMI for wind energy are at the initial stage of the leasing process. BOEMRE has received two unsolicited lease applications from Deepwater Wind LLC and Neptune Wind, LLC to construct commercial wind energy projects.<sup>28</sup> BOEMRE has deemed both applicants as “legally qualified” to hold an OCS lease, and is currently reviewing the two applications for “technical” and “financial” capability.<sup>29</sup> Figure 2 below illustrates the next steps in leasing process as outline by BOEMRE in December 2010. Although BOEMRE is already behind in concluding their review of the leasing applications, BOEMRE is still expected to identify the WEA for Rhode Island sometime in March. The WEA identified in Rhode Island will largely be guided by Rhode Island’s Ocean SAMP. As the leasing process quickly moves

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<sup>24</sup> Ocean Special Area Management Plan, Executive Summary, page 2, October 19, 2011, available at [http://seagrant.gso.uri.edu/oceansamp/pdf/samp\\_approved/000\\_ExecSum\\_APPROVED.pdf](http://seagrant.gso.uri.edu/oceansamp/pdf/samp_approved/000_ExecSum_APPROVED.pdf) [hereinafter Ocean SAMP].

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *See Id.*

<sup>27</sup> Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.

<sup>28</sup> Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 7, Dec. 10, 2010, available at [http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL\\_RIMA\\_JointTskFrc\\_Dec2010.pdf](http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf).

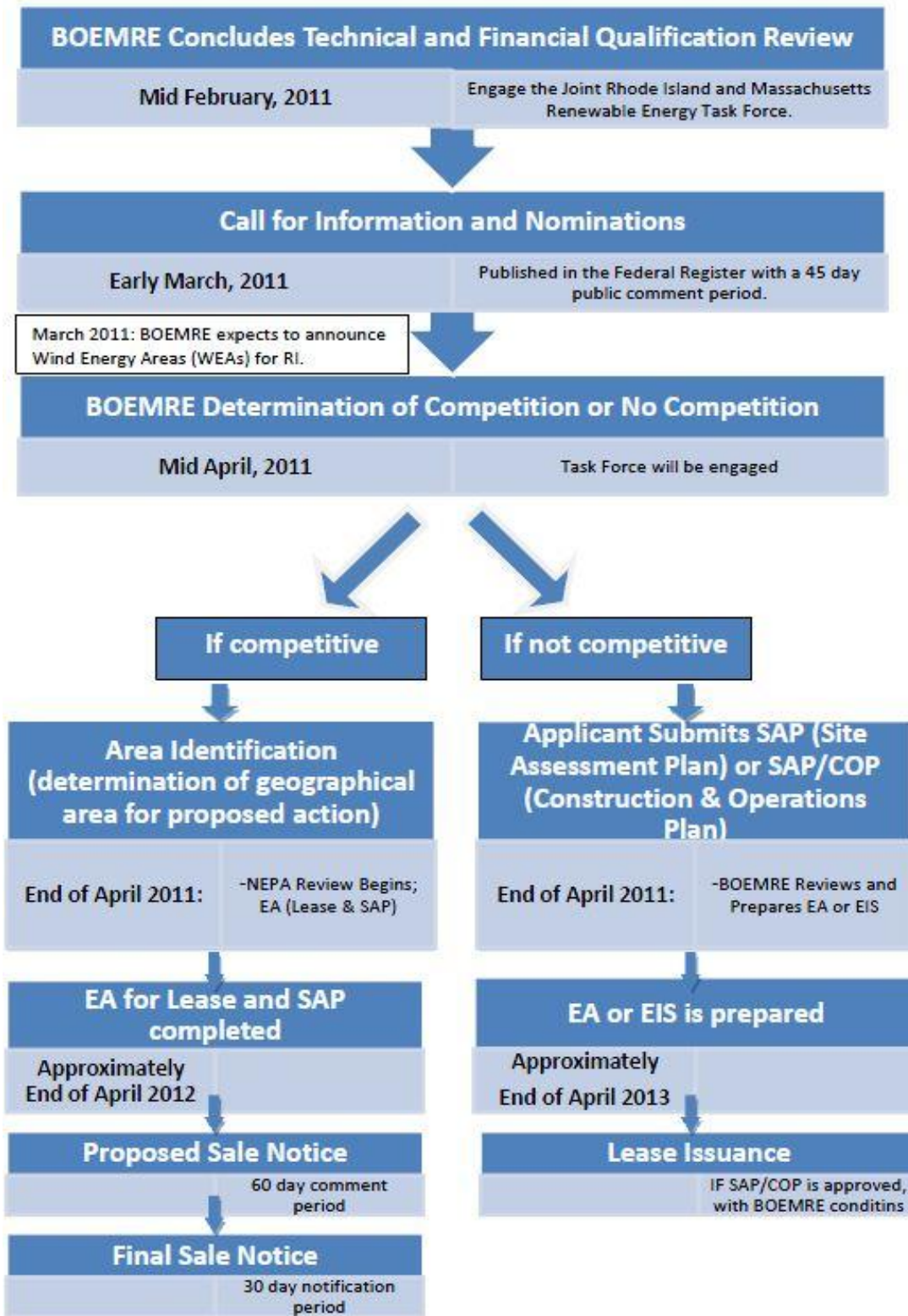
<sup>29</sup> *Id.* at 10.

forward under Smart from the Start, several groups feel they have had not had ample time to provide input on how offshore wind energy will affect them.

---- See Graphic Below---

Figure 2

**Regulatory Timeline for Rhode Island Wind Offshore Wind Project and the Issuance of Leases**



#### **IV. Why is Offshore Wind Energy now the “Smart” Solution**

Although comprehensive ocean zoning has been a priority of the Administration, offshore wind energy has taken precedent over other ocean uses. This section discusses why wind energy has moved ahead of other ocean uses.

##### **A. Energy Policy Act of 2005**

The Energy Policy Act of 2005 established the authority in the Department of the Interior to license offshore wind projects. Specifically, the 2005 Energy Act requires the Secretary of the Interior to grant leases, easements, or ROWs on the OCS for activities that "produce or support production, transportation, or transmission of energy from sources other than oil and gas."<sup>30</sup> Despite the Energy Policy Act of 2005, “offshore wind development remained stagnant as questions lingered about jurisdictional issues and the regulatory process that the Department would develop for offshore renewable energy projects.”<sup>31</sup> Thus, the Smart from the Start Initiative has been DOI’s attempt to jumpstart the development of offshore wind pursuant to their authorization under the Energy Policy Act of 2005.

##### **B. Renewable Energy Production is a Priority of the Administration and Rhode Island**

Offshore wind development has been moving forward so quickly because renewable energy production has been a priority of the Obama Administration and the State of Rhode Island. In implementing Smart from the Start, DOI stated, “A top priority of this Administration is developing renewable domestic energy resources to strengthen the nation’s security, generate new jobs for American workers and reduce carbon emissions.”<sup>32</sup> In addition, Former Rhode Island Governor, Donald Carcieri, set a goal of having 20% of Rhode Island’s Energy come from Renewable Energy and 15% from wind. Rhode Island has taken steps to meet their renewable

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<sup>30</sup> See Energy Policy Act of 2005 § 388; Pub. L. No. 109-58, § 388(a) (amending the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq., which generally governs the federal government’s administration of the submerged lands, subsoil, and seabed, lying between the seaward extent of the states’ jurisdiction and the seaward extent of the Federal jurisdiction).

<sup>31</sup> Department of the Interior, *Frequently Asked Questions: ‘Smart From the Start’ Atlantic OCS Offshore Wind Initiative*, page 1, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=73317>.

<sup>32</sup> *Id.*

energy goal of 20% by creating the Ocean SAMP and coordinating offshore wind development with Deepwater LLC.

### ***C. Job Growth***

Finally, the push towards offshore wind energy has been viewed as an effort to spur job growth. Job creation is very clearly laid out as a goal of offshore wind development by the Memorandum of Understanding between Mass and Rhode Island, which provides that the two states will coordinate economic development to maximize job creation in the region.<sup>33</sup> The Rhode Island project alone is expected to create 800 jobs.<sup>34</sup> Furthermore, Deepwater Wind's plans to increase the facility to 1,000 MWs will not increase the number of jobs, but will extend the expected two year construction cycle to four years, "guaranteeing construction and assembly jobs for a longer period."<sup>35</sup> Moreover, at 1,000 MWs, the project may cause suppliers to establish manufacturing, assembly, and support services in the region, having a multiplying effect for job creation.

## **V. Opposition to the Project**

### ***A. Fishermen***

Fishermen will be adversely affected by the proposed wind farms in the Atlantic OCS. The AMI is an area that is heavily fished and navigated by fishermen. Accordingly, the offshore wind farm proposed has great potential to displace fishermen from their managed grounds. In figure 3 below, the area shown in yellow is the AMI. The area contained inside the purple line is commercial fisheries, which encompasses the entire AMI. The green area depicts the recreational fisheries. As illustrated below in figure 3, the AMI is located at the heart of the recreational fisheries, and is located entirely within the commercial fisheries. The development of wind farms will interfere with the ability of fishermen to fish in their managed grounds.

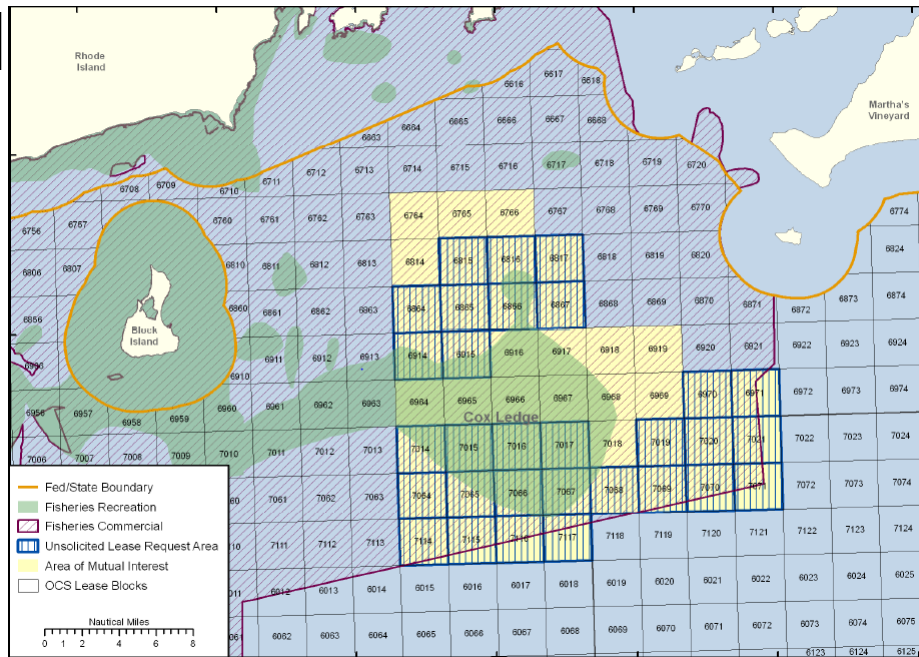
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<sup>33</sup> Memorandum of Understanding between Rhode Island and Massachusetts, available at <http://www.governor.ri.gov/documents/RI%20MA%20MOU.pdf>.

<sup>34</sup> Alex Kuffner, *Size doubled of proposed wind farm in R.I. Sound*, Providence Journal, Dec. 8, 2010, available at [http://www.projo.com/news/content/DEEPWATER\\_CHANGES\\_12-08-10\\_GLLB4TV\\_v50.4f9d955.html](http://www.projo.com/news/content/DEEPWATER_CHANGES_12-08-10_GLLB4TV_v50.4f9d955.html).

<sup>35</sup> *Id.*

Figure 3



Source: Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 20, Dec. 10, 2010, available at [http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL\\_RIMA\\_JointTskFrc\\_Dec2010.pdf](http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf)

Moreover, Fishermen have been shut out of the process in the siting of WEAs and leasing sites. In developing WEAs, formal consultations have not occurred with Regional Fishery Management Councils. For example, DOI recently published a RFI for potential leases in 3,000 square miles of ocean in the Nantucket Sound.<sup>36</sup> Fishermen and the public only became aware of the proposal after DOI held a hearing in New Bedford, with the comment period ending only 12 days later.<sup>37</sup> Massachusetts lawmakers were outraged by the lack of transparency and the speed with which DOI was moving ahead with the leasing process. In a letter signed by Senator Scott Brown, Senator John Kerry, and Representatives Barney Frank and John Tierney, the lawmakers proclaimed, “We feel that amount of time is insufficient for affected stakeholder to analyze and submit comments on an energy development proposal that could have lasting impacts in the region.”<sup>38</sup> Representative Frank commented, “I am deeply disappointed by this decision by DOI

<sup>36</sup> 75 Fed. Reg. 82055, December 29, 2010.

<sup>37</sup> Patrick Cassidy, *Wind Energy Leasing Plan Under Fire by Mass. Lawmakers*, Cape Code Times, February 23, 2011, available at <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110223/NEWS/102230324/-1/rss02>.

<sup>38</sup> *Id.*

and upset that neither Congress, the fishing industry, nor fishing regulators were notified before the decision was made.”<sup>39</sup>

Fishermen also claim that the proposed wind farms violate the Outer Continental Shelf Lands Act (OCSLA). OCSLA requires “the character of the water above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall by not be affected.”<sup>40</sup> The wind farms will interfere with Fishermen’s ability to fish and navigate, thus, violating OCSLA. In addition, the wind farms will affect the navigation of fishermen by interfering with their navigational equipment. This will create safety concerns, inefficiencies in the fisheries, and increase fuel consumption. Finally, fishermen are concerned about the legal liability for damage caused by draggers that become entangled with transmission cables and also the need for additional crewmembers to monitor the location of the turbines.<sup>41</sup>

### ***B. Shipping***

The proposed wind farm in the AMI will also substantially interfere with shipping routes. As currently planned, nine lease blocks<sup>42</sup> will interfere with established shipping routes. In figure 4 below, the area in red shows the marine traffic routes in the Rhode Island Sound, the area in yellows shows the AMI, and the blue boxes depicts the unsolicited lease request areas. As shown in figure 4, the AMI and the unsolicited lease request area interfere directly with the established marine traffic route.

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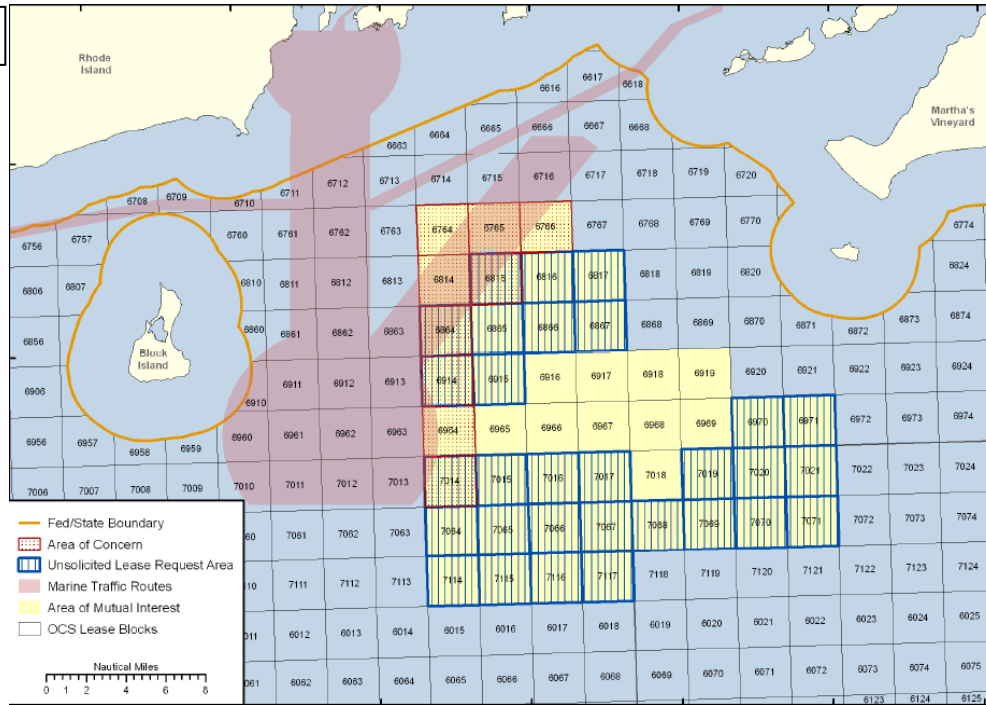
<sup>39</sup> *Lawmakers Demand More Public Input on US Offshore Wind Plan*, Recharge News, February 23, 2011.

<sup>40</sup> Outer Continental Shelf Lands Act, 43 USC § 2332(2).

<sup>41</sup> Patrick Cassidy, *Wind Energy Leasing Plan Under Fire by Mass. Lawmakers*, Cape Code Times, February 23, 2011, available at <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110223/NEWS/102230324/-1/rss02>.

<sup>42</sup> The following lease blocks will interfere with established shipping routes: 6764, 6765, 6766, 6814, 6815, 6664, 6914, 6964, 7014.

Figure 4



Source: Poojan B. Tripathi, *Unsolicited Lease Request Areas Within the Area of Mutual Interest: Joint Rhode Island & Massachusetts Renewable Energy Task Force Meeting*, Bureau of Ocean Energy Management, Regulation, and Enforcement, page 21, Dec. 10, 2010, available at [http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL\\_RIMA\\_JointTskFrc\\_Dec2010.pdf](http://www.boemre.gov/offshore/RenewableEnergy/PDFs/stateactivities/RI/FINAL_RIMA_JointTskFrc_Dec2010.pdf)

Shipping routes must be considered in the beginning stages of the siting and leasing process, because offshore wind farms have the potential to increase shipping time and costs, interfere with port access, and cause safety concerns. Although the risk of a collision is not great, the environmental costs and damages of a single collision between a ship and wind turbine would exceed any benefits to be gained by offshore wind energy.

### C. *Incompatible with the National Ocean Policy*

Similar to all resources, valuable ocean resources are heavily sought after for many uses. Because of this, the Obama Administration created the National Ocean Policy, which directs all executive department and agencies to participate in Coastal and Marine Spatial Planning (CMSP). CMSP is the “comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning, based on sound science, for analyzing current and anticipated uses of ocean.”<sup>43</sup> Under the CMSP framework, the U.S. coastal waters will be divided into nine regional planning

<sup>43</sup> Executive Order, *Stewardship of the Ocean, Our Coasts, and the Great Lakes*, July 19, 2010, available at <http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>



zones.<sup>44</sup> Each region will have a corresponding regional planning body consisting of Federal, State, and Tribal representatives to develop regional goals, objectives, and ultimately regional Coastal Marine Spatial plans (Ocean Zoning Plans).<sup>45</sup> In addition, the regional planning bodies will provide a formal mechanism for consultation with their respective Regional Fishery Management Councils (RFMCs) on fishery related issues.<sup>46</sup>

The WEAs currently being established by BOEMRE contradict the CMSP by failing to account for the current uses of the ocean that are incompatible with the placement of the wind farms. CMSP is intended to consider all potential ocean uses, and based on sound science, develop a comprehensive plan to efficiently use the ocean resources. The WEAs are being established ahead of the CMSP and only focus on the best locations for the development of offshore wind. Furthermore, there is no indication how the Wind Energy Areas will be integrated in the coastal and marine spatial planning. Prioritizing offshore wind energy ahead of all other ocean uses undermines the holistic approach take with CMSP.

## **VI. Conclusion**

Smart from the Start was developed as an initiative to streamline the regulatory process to facilitate the leasing and construction of wind projects located in the Atlantic OCS. However, by streamlining the process, Smart from the Start attributes to reduced transparency in the leasing process and shuts out public input on the impact of the wind farms. DOI must allow for open deliberation as it establishes Wind Energy Areas and include the voices of all interested parties.

Moreover, the Smart from the Start initiative is in direct conflict with President Obama's National Ocean Policy that calls for CMSP. CMSP requires a comprehensive, transparent plan that considers current and anticipated uses of the United State's Oceans. The WEAs do not adequately integrate the current uses of the ocean areas, such as for fishing and shipping.

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<sup>44</sup> *White House Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force*, at 51(July 19, 2010) available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>45</sup> *Id.* at 52.

<sup>46</sup> *Id.* at 53.

Smart from the Start will do more harm than good by moving ahead before the CMSP is in place. The CMSP is designed to use a comprehensive approach in allocating the best way to utilize the United States' ocean resources. The scale of the CMSP is great, but so will its long-term benefits. However, zoning WEAs under the Smart from the Start Initiative in the Atlantic ahead of the comprehensive spatial planning in the CMSP, undermines the purpose and effectiveness of the CMSP. While leasing for wind energy does need to be streamlined, it does not need to be streamlined ahead of all other ocean uses. Establishing WEAs before CMSP is implemented is not comprehensive ocean planning and is not the "smart" solution for stewardship over the United States Oceans.