



January 31, 2023

Dr. Jeffrey L. Payne,
Director, Office for Coastal Management
National Oceanic and Atmospheric Administration
1305 East West Highway
Silver Spring, MD 20910
Jeff.payne@noaa.gov

Re: New York State Department of State (NYS DOS) Coastal Zone Management Act (CZMA) Program Change Request

Submitted via: <https://coast.noaa.gov/czmprogramchange/#/public/change-view/1286>

Dear Dr. Payne

The American Clean Power Association (ACP)¹ and the New York Offshore Wind Alliance (NYOWA)² appreciate the opportunity to comment on the New York Department of State's (NYS DOS) program change request seeking additional authority under the Coastal Zone Management Act (CZMA). While ACP appreciates states' obligations to protect their respective coastal resources, the NYSDOS proposal is too broad an expansion of state authority to justify the boundary of the requested Geographic Location Description (GLD). NYSDOS has not met the express requirements of the CZMA: to show that the activities identified in the program change request have reasonably foreseeable effects on the values or resources of the state's coastal zone.³

Additionally, while we recognize that the decision before NOAA is to determine whether NYSDOS has demonstrated reasonably foreseeable impacts on its coastal resources from the relevant activities, it is important that NOAA consider the broader context of its decision: what NYSDOS (and other similarly situated states) could or should do with CZMA authority with respect to offshore wind activity in federal waters. ACP is concerned that approving such an

¹ ACP is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind, solar, energy storage, and electric transmission in the United States. The views and opinions expressed in this filing do not necessarily reflect the official position of each individual member of ACP.

² The New York Offshore Wind Alliance (NYOWA) is a diverse coalition of the world's leading developers of offshore wind, environmental NGO's, labor, and other stakeholder interests who have joined together to support the timely development of a robust and responsible offshore wind market in New York State. NYOWA is an initiative of the Alliance for Clean Energy New York.

³ 15 C.F.R. § 923.84(d).

expansive GLD would expand New York’s authority into an area subject exclusively to federal jurisdiction, potentially subjecting offshore wind projects on the Outer Continental Shelf (OCS) to a costly game of tug-of-war between federal and state authorities that could run afoul of federal preemption doctrine. NOAA should consider implementing broad-based policies that harmonize state CZMA prerogatives with the need to create certainty and avoid conflict of laws and duplication of efforts in offshore wind permitting.

I. Background.

On December 21, 2022, NYSDOS submitted a program change request pursuant to the requirements of the CZMA, seeking to expand its authority over areas well beyond New York State Waters.⁴ Specifically, NYSDOS has sought the concurrence of the Office for Coastal Management for a program change of a GLD that would allot NYSDOS CZMA federal consistency review authority for renewable energy activities in federal waters of the OCS. ACP recognizes New York’s nation-leading commitment to develop 9,000 megawatts of offshore wind generation by 2035⁵ as a core component of the state’s statutory mandates enacted in 2019 to combat climate change.⁶ While it is understandable that New York wants to ensure these projects do not impact its coastal zone, NYSDOS has failed to meet its burden to show that the listed activities will have reasonably foreseeable effects on its coastal uses or resources.⁷ As reflected in Figure 1 of the program change request, NYDOS’s proposed GLD spans an area that encompasses the entirety of the New York Wind Energy Area (“WEA”) and the two New York Bight WEAs. It then extends north and east to encapsulate most of the Massachusetts WEA and most of the Rhode Island WEA. At some points, the GLD’s area is more than 100 miles away from the easternmost point of New York State on Long Island and even farther from most of New York State’s Atlantic Ocean coastal areas. The size of the GLD and its substantial distance from the state’s coastal area simply cannot lead to a finding of causal connection between the alleged impacts of the listed activities and reasonably foreseeable effects on the state’s coastal uses or resources.⁸

II. The proposed GLD is too broad an expansion of state authority.

The NYSDOS proposed GLD cannot be justified under the CZMA as it attempts to regulate federal agencies, lands or waters, or areas outside state jurisdiction.⁹ While the CZMA is intended to give states authority over the management of their coastal zone and their coastal zone resources, it simply is not intended to allow states to preempt federal regulations and to exert jurisdiction over a vast expanse of the OCS. Instead, the CZMA requires that a state management program “provide for the management of those land and water uses having a *direct*

⁴ 16 U.S.C. § 1455(e); 15 C.F.R. § 923(H).

⁵ NYSEDA, “About Offshore Wind.” Available at: <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/About-Offshore-Wind#:~:text=New%20York's%20Commitment%20to%20Clean%20Energy&text=The%20law%20mandates%20that%20at,offshore%20wind%20energy%20by%202035>.

⁶ See Climate Leadership and Community Protection Act, codified as L. 2019, ch.106 (2019) (hereinafter, “CLCPA”).

⁷ 15 CFR § 923.84.

⁸ 15 C.F.R. § 923.84 (d)(6).

⁹ 82 Fed. Reg. 38113, 38119 (August 6, 2019).

and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise.”¹⁰ Here, NYSDOS’s proposed expansion of the GLD is so broad that it does not meet either the intent or the requirements of the CZMA. The proposal goes beyond seeking to properly manage federal activities that directly and significantly impact their coastal resources, and effectively (and impermissibly) would regulate federal agencies, land, and waters.¹¹

NYSDOS almost exclusively cites potential impacts to commercial, for-hire, and recreational fishing as its rationale for its proposed GLD expansion. While New York has authority to review projects that will impact its coastal fisheries, as described in more detail in Section III, NYSDOS must be able to show that these projects will reasonably foreseeably impact *state* coastal resources. In this case, NYSDOS has crafted such an expansive GLD that a unique state connection to resources in many of areas incorporated in the outline cannot be definitively drawn. Instead, many of the resources in the boundary must be considered in federal waters that are appropriately protected through federal measures.

The impacts described would affect not only New York and New York fishermen, but fishermen from any state relying on these resources. The simple reliance on certain fisheries by New York-based fishermen is not sufficient to establish a reasonably foreseeable impact to coastal resources, as the relevant areas are highly likely to also be accessed by ported New Jersey and New England fishermen, particularly as the GLD’s scope extends to the south and upward to run along Massachusetts and Rhode Island, respectively. Taken to its logical extreme, if such reasoning were applied, New York could lay claim to Gulf of Mexico fisheries if New York based fishermen intended to fish in those areas-- and any state could follow suit. Such a precedent-setting measure has the potential to create a mosaic of state jurisdiction throughout federal waters for the purpose of managing renewable energy. This outcome would result in an incredibly inefficient and potentially unworkable processes that could lead to intractable delays in the expansion of renewable energy on the outer continental shelf, vital to achieving both New York’s and the Administration’s offshore wind and climate goals. Federal regulations are in place to address and mitigate impacts to fisheries.¹² Finally, nine states are working collaboratively with the fishing and offshore wind industries to create a regional fund and administrator to manage and standardize compensatory mitigation.¹³ New York was one of the states spearheading this effort. Creating a mosaic of state jurisdiction undermines the efforts to standardize fisheries impact mitigation across the nine-state region. For all these reasons, the program change request should be denied.

¹⁰ 15 C.F.R. § 923.3(b)(emphasis added).

¹¹ 15 C.F.R. § 923.84(b).

¹² In the event that NOAA overrides our objection, ACP requests that NOAA clearly state in its response to NYSDOS that the GLD change is purely proactive and any offshore wind area that is the subject of a submitted application for a Construction and Operations Plan (COP) can proceed through the full COP process, including CZMA review, and ultimately to operation without any impact from the change that NYDOS has proposed. This clear statement of the law and process, consistent with what NOAA has presented to the industry, is essential to provide a clear understanding of the scope of any GLD change to all outside observers and parties.

¹³ Special Initiative on Offshore Wind, *Fisheries Mitigation Project*. Available at: <https://offshorewindpower.org/fisheries-mitigation-project>.

III. NYDOS has failed to meet its burden of demonstrating the coastal effects it has alleged are “reasonably foreseeable.”

For NOAA to approve proposed changes to a GLD in response to a program change request, it must find that the state has demonstrated that the listed activity “would have reasonably foreseeable effects on the uses or resources of the state’s coastal zone.”¹⁴ To make this showing, the state’s analysis must not simply point to evidence that an activity will generally have an impact in federal waters, but the analysis “must show that the impact from an activity will have a reasonably foreseeable effect on the coastal uses or resources of the state.”¹⁵ As such, the state must establish a causal connection between the impacts of projects outside the coastal zone and its effects on its coastal areas by addressing the following eight factors:

- (1) The affected uses (e.g., commercial and recreational fishing, boating, tourism, shipping, energy facilities) and resources (e.g., fish, marine mammals, reptiles, birds, landmarks).
- (2) Where and in what densities the uses and resources are found.
- (3) How the state has a specific interest in the resource or use. States should be specific in showing the connection to the coastal zone of the state (e.g., economic values, harvest amounts, vulnerabilities, seasonal information relevant to the proposed activity).
- (4) Where the proposed activity overlaps with these resources, uses and values.
- (5) Impacts to the resources or uses from the proposed activity.
- (6) A reasonable showing of a causal connection to the proposed activity, including how the impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.
- (7) Why any required mitigation may be inadequate.
- (8) Empirical data and information that supports the effects analysis and can be shown to be reliable; visualizes the affected area, resources and uses with maps; and shows values, trends and vulnerabilities.¹⁶

The analysis provided with its program change request is not sufficient for NOAA to find that the proposed activity would have a reasonably foreseeable impact.

a. NYSDOS has not shown a specific connection to the coastal zone of New York State.

The first and third elements in NOAA’s regulations require NYSDOS to identify “affected uses,” and to explain “how the state has a specific interest in the resource or uses.”¹⁷ In doing so, NYSDOS must be specific in showing the connection of the resources to the coastal zone of the state. NYSDOS lists commercial, for-hire, and recreational fishing as well as other recreational activities as affected uses and explains that these uses could be harmed by impacts to coastal

¹⁴ 15 CFR § 923.84(d).

¹⁵ 84 Fed. Reg. 38,118, 381, 127 (August 6, 2019).

¹⁶ 15 C.F.R. § 923.84(d).

¹⁷ 15 CFR § 923 (d)(3).

wildlife, and to species targeted by commercial, for-hire and recreational fishing.¹⁸ However, NYSDOS has not sufficiently elucidated why such impacts are specific to New York and New York's coastal zone. This is especially true given the size of the proposed GLD and the resulting distance of many of these resources from New York's coastal zone. For example, NYSDOS points to impacts to NYS scallop dredge activities. However, not only do the identified New York-based scallop dredging activities not significantly overlap with the leases,¹⁹ but the underlying data related to scallop dredging spans beyond New York State. Indeed, much of the underlying data highlighting impacts to certain fisheries is not unique to New York.²⁰ More broadly speaking, the use of certain fisheries by New York recreational or commercial fishermen cannot be considered sufficient to show a causal connection to New York coastal resources; instead, New York must demonstrate a connection between that resource and New York's coastal zone. For example, New York points to impacts to migratory species such Atlantic sailfish, bluefin tuna, blue marlin, sharks and, swordfish, all of which are pursued by New York-based recreational fishermen. However, NYSDOS does not explain how these species are directly connected to New York's coastal zone. Ultimately, NYSDOS must be able to identify state specific interest in the resources within the entire GLD. Given the proposed size of the GLD it is unable to do so and as such does not satisfy these elements.

b. NYSDOS has not made a reasonable showing of a causal connection to the proposed activity.

The fifth and sixth element in NOAA's regulations requires NYSDOS to analyze impacts to proposed resources and to make a reasonable showing of a causal connection to the proposed activity, including how the impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.²¹ To meet these requirements, NYDOS must show that the impacts it identifies are reasonably foreseeable *throughout the entire GLD* (and that those impacts that are reasonably foreseeable are impacts to resources that are specific to the coastal zone of New York). In other words, NYSDOS must justify the entire scope of its proposed GLD. It did not.

For many of the resources NYSDOS has listed however, the analysis does not provide "empirical data and information that supports the effects analysis."²² As stated above, this is especially true given the size of the proposed GLD. For example, NYSDOS states that "the reasonably foreseeable coastal effects are that NY-based fishermen could see reduced access and accessibility to fishing grounds."²³ However, the data provided by NYSDOS do not adequately support this conclusion. First, as NYSDOS concedes, it has not been demonstrated that offshore wind farms displace fishing activity, except during the short-term construction phase.²⁴ Once

¹⁸ New York Coastal Management Program, *Renewable Energy Geographic Location Description*, 6-8. (November 2022). Available at: <https://coast.noaa.gov/czmprogramchange/#/public/change-view/1286>.

¹⁹ See New York Coastal Management Program, *Renewable Energy Geographic Location Description*, Figure 4.

²⁰ For example, figures 3 and 4 rely on "Vessel Monitoring System Data" from NYMFS. This underlying dataset is not state-specific and is publicly available from the Mid-Atlantic and Northeast Ocean Data Portals.

²¹ 15 C.F.R. § 923.84(d)(6).

²² 15 C.F.R. § 923.84(d)(8).

²³ As stated in section III(b) NYSDOS must not just show a causal connection to this activity, but that this activity is specific to New York. In many instances NYSDOS has met neither showing.

²⁴ See New York Coastal Management Program, *Renewable Energy Geographic Location Description*, 43.

constructed, fishers will have access to wind farms to fish and most types of fishing would not be significantly impeded. Second, as seen in Figures 4, 5, and 6, much of the New York-based fishing and trawling activity does not appear to occur within the BOEM lease areas that will be used for offshore wind generation development. For example, data collected by the National Marine Fisheries Service show that while fishing is a significant contributor to New York's economy, the commercial fishing revenues to New York from at least three offshore wind lease areas within the eastern part of the GLD comprise a small portion of the total revenues: namely, average annual revenues of only about \$5,000-\$65,000 per year based on the lease.²⁵ By comparison, New York's request cites that commercial fishing brought in over \$39 million in 2019 alone, down from \$50 million in 2011. ACP does not dispute the importance of commercial fishing *within the GLD*, but a "state's effects analysis shall not be based on...the mere existence of coastal uses or resources within a geographic location."²⁶ The same is true for for-hi and wildlife sightings; Figure 6 and Figure 11 indicate that the vast majority of for-hire fishing trips and wildlife sightings occur much closer to, and in fact within New York's coastal zone. The OCS is located well beyond those areas. While Figures 4 and 5 indicate activity farther into the OCS, much of this activity does not appear to occur within the areas designated for the BOEM leases. For example, figure 5 suggests that many activities occur closer to shore, or beyond the GLD. While admittedly trawling and other types of fishing can be impacted by offshore wind activities, such as vessel transit and underground cables, as stated above NYSDOS must be able to show that these impacts are reasonably foreseeable within the entire GLD (and that those impacts that are reasonably foreseeable are impacts to resources that are specific to the coastal zone of New York). In other words, NYSDOS must justify the entire scope of the GLD. The data presented do not do so and as such, NYSDOS does not satisfy these elements. Therefore, NYSDOS has not demonstrated a causal connection between the offshore wind project development in the OCS and effects on NY-based fishermen in its coastal areas.

c. NYSDOS has not sufficiently explained why required mitigation may be inadequate.

The seventh element of NOAA's regulations require NYSDOS to explain why mitigation may be inadequate. NYSDOS has failed to sufficiently address this element. In its analysis, NYSDOS admits that BOEM has published numerous guidelines and analysis for renewable energy that typically include recommended best management practices."²⁷ NYSDOS further states that "BOEM's cumulative impact analysis for offshore wind also identified best practices."²⁸ However, NYSDOS then concludes that "program level mitigation measures would not fully offset effects to New York's coastal uses and resources, given the cumulative scope of offshore development anticipated in the GLD."²⁹ It fails to provide any further meaningful clarification

²⁵ National Marine Fisheries, *Descriptions of Selected Fishery Landings and Estimates of Vessel Revenue from Areas: A planning-level Assessment*, (November 28, 2022). Available at: https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/WIND/WIND_AREA_REPORTS/com/OCS_A_0520_Beacon_Wind_com.html (\$64,000); https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/WIND/WIND_AREA_REPORTS/com/OCS_A_0517_South_Fork_Wind_com.html#Landings_and_Revenue_by_State (\$4,850).

²⁶ 15 C.F.R. § 923.84(d).

²⁷ New York Coastal Management Program, *Renewable Energy Geographic Location Description* at 58.

²⁸ *Id.*

²⁹ *Id.*

as to its basis for such a conclusion, nor does it explain why insufficient program-level mitigation measures would not be adequately addressed at the construction and operations (COP) approval stage. Indeed, NYSDOS acknowledges that it does not have authority under the CZMA to require compensatory mitigation, but states that “review is necessary given that standard practices for mitigation cannot currently address all site-specific variation in fishing and recreational uses.”³⁰ However, site-specific analysis is exactly what occurs at COP review under the extensive National Environmental Policy Act review process, which specifically will address fishing activities and mitigation, and NYSDOS fails to explain what state-level input and analysis will add to existing federal requirements (instead, NYSDOS simply states that it is working with a variety of groups to identify best practices to address use or resource specific concerns).

While we recognize that GLD requests are primarily focused on causal connections between the coastal resource and the anticipated activities, the seventh element necessarily requires consideration of whether the state’s intervention in a federal permitting process as a result of the GLD expansion is necessary or appropriate. The federal government is legally obligated to analyze every effect of offshore wind development cited by NYSDOS and has accordingly required mitigations in every project approval to date.³¹ Indeed, many of the effects described in the GLD request are *solely* within federal jurisdiction to address. For instance, determination of the effects of offshore wind on vessel navigation in federal waters—and mitigation of such effects—is a task arrogated to BOEM in consultation with the US Coast Guard.³² Yet NYSDOS’s justification for the GLD expansion is couched largely in concerns that offshore wind will affect the ability of its home-ported fishermen to transit to and from fishing grounds. Unless NYSDOS seeks to substitute its judgment for that of BOEM and the USCG with respect to issues of navigation in federal waters (which would result in federal preemption as discussed in Section IV below), there is no evidence that current anticipated mitigations are inadequate.

Because NYSDOS’s analysis does not explain why Federal mitigation measures are insufficient, nor does it explain specific state level mitigation measures that will be additive, NYSDOS fails to satisfy this element.

IV. The proposed GLD raises serious federal preemption concerns.

While ACP appreciates that NOAA will be focusing its decision on the reasonably foreseeable affects analysis discussed above, we urge the agency to look beyond the narrow regulatory

³⁰ *Id.*

³¹ See e.g. Bureau of Ocean Energy Management, *Record of Decision, Vineyard Wind Energy Project Construction and Operations Plan*, (May 10, 2021). Available at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Final-Record-of-Decision-Vineyard-Wind-1.pdf>; See e.g. Bureau of Ocean Energy Management, *Record of Decision, South Fork Wind Farm and Sout Fork Export Cable Project Construction and Operations Plan*, (November 24, 2021). Available at: https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Record%20of%20Decision%20South%20Fork_0.pdf.

³² See 43 U.S.C. § 1337(p)(4)(J), requiring BOEM to “ensure that any activity under this subsection is carried out in a manner that provides for ... consideration of... any other use of the sea or seabed, including use for a fishery, a sea lane, a potential site of a deepwater port, or navigation[.]”

question that NYSDOS has put before it and consider the broader implications of approving the program change request. Approval of a GLD of this size and scope will lead to *de facto* substantive changes to New York’s coastal management program. As such, when reviewing this application and others like it, we urge NOAA to also consider what the requesting state may and may not *do* with an expanded geographic scope. This analysis must involve an analysis of NOAA’s implementing CZMA regulations, including those applicable to the approval of substantive program changes, and not just those pertaining to changes to geographic location descriptions.³³ Here, the next step NYSDOS would take after a GLD expansion is almost certain to involve activity preempted by federal law.

First, the CZMA regulations specifically state that a state policy is deficient if it is preempted by federal law.³⁴ Through the GLD program change request, NYDOS *de facto* seeks to regulate federal agencies, lands or waters, or areas well outside state jurisdiction, and thus, is preempted under the CZMA.³⁵ As the notice of this program change request establishes, if approved, the scope of federal authorizations subject to New York State review would be far-ranging.³⁶ While the CZMA does include narrow provisions expressly limited to giving States authority over their management of their coastal zone and their coastal zone resources, that authority cannot – and does not -- extend to allowing States to exert their jurisdiction over a vast expanse of the OCS.³⁷ For example, the request lists a number of areas of federal agency oversight that would be subject to NYSDOS review, including “research, siting, construction, operations and maintenance, and decommissioning of offshore renewable energy generation infrastructure, and transmission infrastructure.”³⁸ These activities fall squarely within federal jurisdiction. Ultimately, the boundary of a State's coastal zone must “exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents.”³⁹ While federal agencies may need to address consistency requirements in the limited instances when there are proven, specific “spillover impacts” to coastal areas, the CZMA is not intended to grant states broad oversight over federal law.⁴⁰

Furthermore, before approving a management program, the Secretary of Commerce must find that “[t]he management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance.”⁴¹ In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.”⁴² To make such a finding the State must have “indicate how and where the consideration of the national interest is reflected in the substance of the

³³ See e.g. 15 C.F.R. § 923.8; 923.84 (a)-(c).

³⁴ 15 C.F.R. § 923.84(c).

³⁵ 82 Fed. Reg. 38113, 38119 (August 6, 2019); 15 C.F.R. § 923.84(b)

³⁶ See e.g. New York Coastal Management Program, *Renewable Energy Geographic Location Description* at 58-59 (NYSDOS requests review over numerous Federal laws and regulations including the OCSLA, Magnusen Stevens Fishery Act, and NEPA).

³⁷ State oversight of the OCS is clearly preempted by federal law and regulation, including the Outer Continental Shelf Lands Act and other federal laws that apply to the permitting of federal offshore wind projects.

³⁸ New York Coastal Management Program, *Renewable Energy Geographic Location Description* at 5.

³⁹ 15 C.F.R. 923.33(a).

⁴⁰ *Id.* at 923.33(b).

⁴¹ 16 U.S.C. § 1455.

⁴² 16 U.S.C. § 1455(d)(8).

management program.”⁴³ NOAA must balance, among other things “the primacy of state decisions under the CZMA...with adequate consideration of national interest in CZMA objectives.”⁴⁴ In this proposal NYSDOS has failed to address how its program change request furthers the national interest in transitioning to a renewable energy portfolio.⁴⁵ Instead, the program will likely cause undue delays and duplicative environmental reviews that are already provided by, and have long been adequately addressed under, the federal umbrella National Environmental Policy Act review process and will undercut the FAST-41 permitting process. Equally the State must assure that “local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.”⁴⁶ New York has not shown how this expansion of state authority will not unreasonably restrict land or water uses of regional benefit, namely renewable energy development.

Finally, and more broadly, NYSDOS’s GLD expansion request opens the door for other states to act in a similar fashion, ostensibly to maximize their ability to seek conditions of offshore wind project approval that benefit their home-ported fisheries. This domino phenomenon will only compound the potential for multiple and duplicative layers of project review involving the same effects and resources. These knock-on effects are further amplified by the sheer number of offshore wind generation and transmission projects under review or in gestation, both within the proposed GLD and to the north and south along the Atlantic Seaboard, that could be impacted by the knock-on effects of this decision.⁴⁷ What seems at first glance like a narrow determination of the existence of a causal effect on New York-based fishermen could rapidly spiral into a battle among multiple states’ parochial (albeit important) equities. It is surely the role of NOAA’s Office of Coastal Management to consider the national interest in the efficient and responsible deployment of offshore wind at every decision point.

Given these concerns, we strongly urge NOAA to consider all its implementing regulations in considering NYSDOS’s request.

V. Conclusion.

Thank you very much for considering the comments on NYSDOS proposed GLD. While we agree that states have the right to ensure protection of their coastal resources, this proposal is too broad an expansion of state authority and extends far beyond the reach of state-specific coastal resources. As such, NYSDOS has not met its burden to show that the listed activities will have a reasonably foreseeable impact to state coastal uses and resources. More broadly, NOAA should

⁴³ 15 CFR § 923.52 (c)(3).

⁴⁴ 82 Fed. Reg. 38113, 38119 (August 6, 2019).

⁴⁵ The Biden Administration has made clear the importance of scaling up clean energy and to deliver “affordable, carbon pollution-free electricity across the country” in order to achieve net-zero emissions economy wide by 2050. To achieve this goal and to combat the worst effects of climate change, the country must commit to the rapid deployment of renewable energy, including offshore renewable energy.

⁴⁶ 15 C.F.R. § 923.12.

⁴⁷ See Permitting Dashboard: Federal Infrastructure Projects. Available at: https://www.permits.performance.gov/projects?title=&term_node_tid_depth=All&term_node_tid_depth_1=2406&field_permitting_project_adpoint_administrative_area=All&field_project_status_target_id=All&field_project_category_target_id=All.

carefully consider NYSDOS's request in the context of the very high likelihood that an expanded GLD will result in actions preempted by federal laws.

Sincerely,

Fred Zalcman
Director
New York Offshore Wind Alliance
fzalcman@aceny.org

Josh Kaplowitz
Vice President, Offshore Wind
American Clean Power Association
jkaplowitz@cleanpower.org

Mary Greene
Senior Counsel
American Clean Power Association
mgreene@cleanpower.org