

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FISHERIES SURVIVAL FUND, <i>et al.</i>))	
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Plaintiffs,))	
))	
v.))	Civ. No. 1:16-cv-02409 TSC
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RYAN ZINKE, <i>et al.</i>))	
))	
Defendants))	
))	
and))	
))	
STATOIL WIND US LLC,))	
))	
Defendant-Intervenor))	
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PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

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Plaintiffs Fisheries Survival Fund (“FSF”), the Borough of Barnegat Light, NJ , The Town Dock, Seafreeze Shoreside (“Seafreeze”), Sea Fresh USA, Rhode Island Fishermen’s Alliance (“RIFA”), Garden State Seafood Association (“GSSA”), Long Island Commercial Fishing Association (“LICFA”), the Town of Narragansett, Rhode Island, the Narragansett Chamber of Commerce (“NCC”), the City of New Bedford, Massachusetts, and the Fishermen’s Dock Co-Operative of Point Pleasant (NJ) (“Point Pleasant Co-Op”) (collectively, “Plaintiffs”), by and through their undersigned attorneys, hereby submit this Motion for Summary Judgment.

As set forth more fully in the accompanying Memorandum in support of this Motion, Defendants violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, by (1) improperly segmenting their NEPA analysis and failing to consider the foreseeable impacts of a wind farm in the New York Wind Energy Area (“NY WEA”) site on fisheries, ocean and benthic fish habitat, protected species, navigation, and others prior to issuing the Final Sale Notice; (2) failing to consider any alternative locations, other than the NY WEA, for construction of the offshore New York wind farm; and (3) failing to prepare an Environmental Impact Statement for the NY WEA site. Defendants also violated their obligations under the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. §§ 1331-1356, by failing, both at the time of site selection for the NY WEA and at lease issuance, to provide for or consider risks to fisheries, safety, conservation of natural resources, and navigation. Finally, Plaintiffs bring a facial challenge against BOEM’s regulations, which exceed the authority of the OCSLA by permitting private parties to submit an unsolicited bid proposing to lease any area of the ocean they choose for a wind energy facility, without any consideration of the OCSLA-required factors. Accordingly, Plaintiffs request declaratory relief holding that Defendants violated NEPA and the OCSLA and acted arbitrarily, capriciously, and

contrary to law in violation of the APA. Plaintiffs further ask the Court to grant injunctive relief, setting aside Lease OCS–A 0512 between Defendants and Defendant-Intervenor Statoil Wind LLC for the development of a 26-mile long wind farm project in the “exclusive economic zone,” running southeast from approximately 13 miles off the coast of New York state, and requiring that the Defendants comply with applicable federal law.

Dated: September 12, 2017

Respectfully submitted,

/s/ David E. Frulla

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CERTIFICATE OF SERVICE

I hereby certify that, on the 12th day of September, 2017, I caused the foregoing Motion for Summary Judgment, Memorandum in Support, and all attachments thereto, to be filed on the Court's CM/ECF system, which will electronically serve counsel for Defendants and Defendant-Intervenor in this case:

/s/ David E. Frulla

David E. Frulla

Attorney for Plaintiffs