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RE: Shipping Safety Fairways Along the Atlantic Coast

Submitted via Federal eRulemaking portal: www.federalregister.gov

The American Clean Power Association (ACP)[1] appreciates the opportunity to comment on the notice of proposed rulemaking (NPRM), *Shipping Safety Fairways Along the Atlantic Coast,* issued by the United States Coast Guard (USCG) on January 19, 2024.[2]

I. Executive Summary

ACP supports USCG's Fairway codification efforts and believes that formal designation of vessel traffic routes can enable offshore wind and other maritime activities to coexist more harmoniously. But by taking an overly expansive approach to Fairway designation, USCG's proposal unnecessarily takes millions of acres of sea space and hundreds of gigawatts (GW) of potential clean energy generation out of consideration for future development. Thus, the NPRM fails to comport with Ports and Waterways Safety Act's (PWSA), 46 U.S. Code § 70003, directive to reconcile navigational interests with other waterway uses, including offshore wind energy deployment, at great cost to our nation's energy security, clean energy goals, and maritime economy. In these Comments, ACP requests that the USCG withdraw the NPRM and

[1] ACP is the leading voice of today's multi-tech clean energy industry, representing over 800 energy storage, wind, utility-scale solar, clean hydrogen, and transmission companies. ACP is committed to meeting America's national security, economic, and climate goals with fast-growing, low-cost, and reliable domestic power.

[2] United States Coast Guard, *Shipping Safety Fairways Along the Atlantic Coast*, 89 Fed. Reg. 3587, available at: https://www.regulations.gov/document/USCG-2019-0279-0032.

reevaluate its current proposal using a consistent, transparent, and evidence-based methodology for Fairway designation. Specifically, we ask USCG to:

- **Scale back the average width of the Fairways and tailor their sizes to demonstrated needs;**
- **Not adopt prescriptive buffers;**
- **Adopt Fairways that do not obstruct the ability to meet the nation's offshore wind development objectives, in specific consideration of the cumulative state offshore wind energy development goals and mandates;**
- **Consider an illustrative alternative presented by ACP which would allow for more sea space to be considered for future potential offshore wind power development;**
- **Better assess costs incurred by the NPRM; and**
- **Complete a statement of energy effects under EO 13211**

Given the many competing interests on the Outer Continental Shelf, it is critical that USCG take a more holistic, carefully tailored, and data-driven approach to Fairway designation. Even after many years evidence collection (a fairly disjointed, multi-tier process which involved marking out customary navigation routes, analyzing vessel traffic data, incorporating requests from traditional waterway users, and assessing appropriate safety buffers and precautionary areas), the NPRM does not provide sufficient explanation for Fairway widths within and across regions. In an apparent attempt to future-proof, USCG seems to have arbitrarily landed upon a proposed rule with excessively wide Fairways, up to 35 nm wide, to the detriment of other offshore activities. USCG should adopt a well-reasoned methodology for siting Fairways that is based on site-specific information, accounts for technological advancements that improve safety and reduce the need for Fairway space, includes multiple modeling techniques, and better aligns with current and anticipated future needs of navigational safety and port access. Moreover, the models and vessel traffic data upon which USCG relies should be made available for public inspection and comment.

Additionally, though ACP appreciates that USCG has modified the proposed Fairway routes to avoid existing offshore wind leasing areas on the Outer Continental Shelf (OCS), further improvements are necessary to ensure that Fairway designation will not obstruct national and state efforts to decarbonize the power grid through offshore wind energy deployment. The NPRM acknowledges that the Biden Administration aims to bring 110 gigawatts (GW) of offshore wind energy online by 2050. Unfortunately, however, it fails to consider whether its action will sequester the presently unleased sea space that the nation will need in the coming

years to achieve these goals. USCG's forthcoming final rule on Fairway designation must not preclude future offshore wind development by unnecessarily prioritizing one maritime use over another, lest it foreclose a critical opportunity to mitigate the impending climate crisis. Though the USCG should reexamine all Fairways described in the NPRM, below ACP proposes specific potential revisions to Fairway siting in the Central Atlantic to illustrate the impacts that USCG's proposal will have on offshore wind development in the region and exemplify the nature of the alterations that need to be made to all Fairways proposed in the NPRM.

II. ACP's Participation in USCG's Fairway Codification Process

ACP and its predecessor, the American Wind Energy Association (AWEA), have been active participants in USCG's Fairway designation process. We offered comments on the original Atlantic Coast Port Access Route Study (ACPARS), three of the four regional Port Access Route Studies (PARS), USCG's Advanced Notice of Proposed Rulemaking, and the Consolidated PARS. In these comments, we urged USCG to ensure that the Marine Planning Guidelines (MPGs) and designated navigation safety corridors do not unnecessarily impact the development of offshore wind and to better explain the reasoning and methodology underlying USCG's decisions. Additionally, we asked USCG to consider lessons learned from the global maritime community's evolving experience with offshore renewable energy installations as the wind industry has grown, as well as changes in offshore wind related navigation policy, both at home and abroad.

In addition to providing numerous written comments concerning overarching concerns with Fairway methodology and the arbitrary designation of Fairway widths, as the NPRM acknowledges, ACP met with USCG in August 2023 to discuss the impact that the Fairways described in the Consolidated PARS would have on ongoing BOEM leasing activities in the Central Atlantic. In September of 2023, ACP followed up on this conversation by providing USCG with a study proposing to reorient the Fairways so as to expand overall acreage available for leasing for offshore wind power development in the Central Atlantic. The USCG did not adopt ACP's recommended reorientation proposal ahead of BOEM finalizing their leases for the first Central Atlantic lease sale, perhaps because it was offered before the USCG rulemaking was

opened. As described below, ACP has revised its proposal for the orientation of Fairways in the Central Atlantic to account for the new lease area.

III. ACP's Recommended Actions

A. USCG Should Scale Back the Average Width of Fairways & Precautionary Areas and Tailor Their Sizes to Demonstrated Needs

ACP respectfully requests that the USCG give additional consideration to scaling back the widths of the proposed Fairways and Associated Precautionary Areas in order to facilitate the future potential development of offshore wind power installations. In order to comply with the Administrative Procedures Act (APA), USCG must more thoroughly explain variability in Fairway and Associated Precautionary Areas widths within and across regions and utilize a methodology that harmonizes these differences in a transparent manner. Consistent with the ACPARS report,[3] the NPRM indicates that the desired width of the Fairways is at least 9 nm, inclusive of a 5 nm wide navigation safety corridor and 2 nm "buffers" on either side. However, "[t]he proposed fairways vary in width depending on location," and may span up to 35 nm in the Barnegat to Narragansett Fairway. ACP is not aware of any detailed analysis/calculations that explain the widths of the Fairways proposed in this rulemaking. It is incumbent on USCG to, at a minimum, identify a rational basis for its action and explain how the selected widths are supported by evidence in the record. Moreover, as ACP has repeatedly highlighted, USCG's prescriptive buffer designations are inconsistent with international guidance upon which USCG's proposal appears to be founded. A one-size-fits-all, overly broad approach that fails to account for site-specific conditions and data is unjustifiable. Finally, as experiences in other regions, like the Gulf of Mexico, demonstrate, large vessels using Fairways can co-exist safely with numerous nearby large offshore energy structures without overly broad, prescriptive buffer areas.

[3] United States Coast Guard, *Port Access Route Study: The Atlantic Coast From Maine to Florida*, 81 Fed. Reg. 13307, available at https://www.federalregister.gov/documents/2016/03/14/2016-05706/port-access-route-study-the-atlantic-coast-from-maine-to-florida

i. The Fairway Widths Have Been Arbitrarily Assigned and Are Not Based on Actual Vessel Traffic Density Data

Fairway designation should be a data-driven process, tied to actual evidence on traffic density and waterway uses, but the Fairways recommended in the NPRM are not reflective of real-world traffic conditions. In some of the individual PARS, the USCG districts used the World Association for Waterborne Transport Infrastructure (PIANC) model to assess appropriate Fairway widths. For the reasons articulated in prior comments and below, the PIANC model's designated inputs lack critical granularity, a methodological flaw that can skew results and lead to overly broad Fairways designations. But even where the PIANC model's conservative methodology has demonstrated that it would be appropriate to adopt Fairways narrower than the 9 nm recommended by the MPGs set forth in the ACPARS, USCG has seemingly disregarded the model's findings and has arbitrarily proposed rigid adherence to the MPGs. Similarly, there are various examples of USCG indiscriminately assigning different fairway widths in locations with similar traffic density and composition within and across regions. ACP addresses each of these inconsistencies in turn and urges USCG to address and correct them, and to allow the public to comment on any updated findings, before issuing a final rule.

The PIANC model is designed with international shipping fairways in mind, and is used to conservatively estimate how much sea space vessels traveling side by side (over-taking or passing on an opposite course) will need to conduct a full turn around within the traffic lane in the event they must take action to avoid a collision, with a generous prescribed margin for error.[4] The model makes a number of assumptions based on its two primary inputs: (1) the length of the largest possible ship in the study area, (2) the average number of total ship transits over the time period analyzed. First, the model assumes that all ships in the study area will be at the maximum possible length. Second, the PIANC model assumes that the number of vessels traveling side by side in the corridor can be derived from annual transit numbers. For example, if there are less than 4,400 vessel transits in the traffic area per year, the PIANC model assumes that the number of vessels traveling side by side will be no more than two; if there are between 4,400 and 18,000

[4] Note that the safety margins built into the PIANC model are not inclusive the additional 2 nm wide safety margin recommended in the ACPARS, MPGS, and NPRM.

vessels per year, the PIANC model assumes that up to three vessels may be traveling side-by-side in the corridor. Using these assumptions, the PIANC model first calculates the "safe" width of the channel by multiplying double the largest possible ship's length by the number of vessels presumed to be traveling side by side. It then calculates the maneuvering space the ship will need for a full round turn (which is approximately equal to six times the ship's length). It adds these two figures together along with a distance of 0.3 nm to account for any deviation a ship may take for evasive maneuvers to avoid a collision and a 500-meter (1,640 feet) safety margin to determine the total "safe transit width."

There are a number of problems with the application of this methodology that render any corresponding results suspect. First, any model that is derived from a blur of annual averages of total transits has limited utility because it fails to assess actual traffic density on a day-to-day basis.[5] For this reason alone, the PIANC model results should not be relied upon as a standalone data set, and it is imperative that USCG also consider more granular daily or weekly vessel traffic composition metrics, and benchmark with Advanced Notice of Arrival (ANOA) data, in assessing appropriate Fairway widths. Second, the PIANC model's assumption regarding the number of vessels traveling side by side in the study area inflates fairway widths, especially when the gap between the average traffic densities included in the model and actual data are large, because actual data could show that density is in fact lower on a day-to-day basis as compared to the calculated average. Third, the model assumes that all ships will be the maximum possible length, whereas, in reality, a significant percentage of corridor traffic will be comprised of much smaller vessels which can maneuver more readily. USCG should consider actual data, which can show just how infrequent a side-by-side encounter of the largest ships transiting the area is, in reality. Finally, the PIANC model's lack of differentiation for ship type has massive ramifications. Recreational boating craft or fishing vessels may have AIS and/or other National Marine Fisheries Service tracking devices which likely included them in PARS traffic studies.

[5] Other countries recognize that it is necessary to look beyond annual vessel density data when determining the appropriate distance from shipping lanes to offshore wind development areas. For example, when developing the U.K's Marine Guidance Notes, the U.K.'s Maritime and Coastguard Agency's considered more than annual traffic levels. In fact, they assessed whether navigation within and/or near the site would be safe by all vessels; by specified vessel types, operations, and/or sizes; in all directions or areas; in specified directions or areas; and in specified tidal, weather, or other conditions.

But given that vessels are allowed to enter U.S. wind farms if prudent, all traffic captured in PARS traffic studies should not be considered to be dependent on the use of Fairways. As an example, recreational craft and fishing vessels traversing or operating within wind farms should be weighted differently, and not equal to large vessel traffic such as 800-foot commercial ships confined to a Fairway when designing Fairway widths.

But even where the conservative PIANC model has shown that Fairways need not be 9 nm wide, USCG has still required strict compliance with the 2016 ACPARS MPGs. For example, in the Chesapeake Bay region, the Fifth Coast Guard District used the PIANC model to "determine the width of connector fairways" on either side of OSC-A 0483.[6] To "allow the greatest margin of error for safe navigation," the Fifth District used a vessel length of 1,300 feet, the greatest projected vessel length in the study area and the average number of total ship transits over the 2017-2019 time period, 10,199 ships, in the calculation. Based on these inputs, the Fifth Coast Guard District determined that 3.1 nm was a "safe transit width" for the connector fairway, and then added an additional safety margin of 2 nm on the "Wind Area" side of the connector corridor, for a total connector Fairway width of 5.0 nm "to accommodate future Ultra Large Container Vessels in the approaches to the Chesapeake Bay."

But in the NPRM, USCG disregarded these findings, instead opting to expand these Fairway widths to 9nm "based on comments received from the AWO and the tug and tow community." As an initial matter, it does not appear that the American Waterways Operators (AWO) is advocating for an overly-abroad, one-size-fits all approach to Fairway designation for all vessels. AWO has simply requested that all Fairways to be used by tug and tow vessels pulling barges, which are typically those Fairways that hug the coast, be at least 9 nm wide.[7] Such a recommendation would not apply to offshore Fairways through which deeper draft vessels will generally pass. More importantly, however, USCG has demonstrated that there is no evidence-based need for the tug and tow community to have 9 nm wide Fairways in every

[6] Chesapeake PARS, available at https://www.navcen.uscg.gov/sites/default/files/pdf/PARS/USCG_2019_0862_PARS__FINAL_REPORT.pdf

[7] AWO Comments, https://downloads.regulations.gov/USCG-2020-0172-0051/attachment_1.pdf ("As noted above, none of the proposed *towing vessel fairways* offshore Delaware Bay are 9 NM." (emphasis added).

instance. For example, the Consolidated PARS determined that a width of 4 nm would be acceptable for the Offshore Delaware Bay to New Jersey Connector Fairway, which is "designed to create safe access for traditional towline tugboats with barges towing astern," because AIS data suggests that two vessels would rarely meet or be abreast of one another in the traffic area.[8] The NPRM accepts this finding. In sum, even if AWO generally considers 9 nm wide Fairways to be optimal, it is unnecessary and without basis for USCG to expand all Fairways to at least this width, even where its own studies have confirmed that there is no data-based need to do so. The PWSA requires that the PARS studies be conducted for a reason: so that USCG will have the information it needs to meaningfully "reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved." To simply ignore the results of these study would be inconsistent with USCG's statutory mandate.

Similarly, a comparison of the line passage analyses from the New York, New Jersey, and North Carolina PARS demonstrates that USCG has not been adopting consistent Fairway widths based on comparable traffic density data. Some of the narrowest Fairways are in areas with the highest vessel traffic density, and some of the broadest Fairways are in locations with the lowest vessel traffic density. For example, according to the passage line analysis included in the North Carolina PARS, the traffic volumes entering the Beaufort Inlet Connector Fairway are some of the highest in the nation, with 10,391 passages in 2018 and 7,267 passages in 2019.[9] However, the Beaufort Inlet Connector Fairway ranges from 5 to 10 nm wide. Similarly, the New York PARS found that the New York to New Jersey Connector Fairway hosted 5,398 vessels in 2018 and 5,076 vessels in 2019,[10] but, as proposed, is 4 nm wide. In comparison, the Hudson Canyon to Ambrose Southeastern Fairway is 15 nm wide, but appears to have only hosted 2,721 vessels in 2018 and 2,747 vessels in 2019.[11] The proposed Barnegat to Narragansett

[8] Consolidated PARS, available at https://www.navcen.uscg.gov/sites/default/files/pdf/PARS/Consolidated_Port_Approaches_PARS_Updated_Mar2023.pdf

[9] North Carolina PARS, available at https://www.navcen.uscg.gov/sites/default/files/pdf/PARS/North_Carolina_Port_Access_Route_Study.pdf

[10] NY PARS, available at https://www.navcen.uscg.gov/sites/default/files/pdf/PARS/FINAL_REPORT_Northern_NY_Bight_PARS_12_27_2021_APPENDIX_E1.pdf

[11] *Id.* (providing that 2018, there were 1,206 crossings of the Hudson Canyon to Ambrose passage line and 1,515 crossings of the Ambrose to Hudson Canyon passage line, for a total of 2,721 crossings; in 2019, there were 1,246

Fairway is between 9 and a remarkable 35 nm wide, even though this geographic area did not have sufficient vessel transit volumes to warrant conducting a passage line analysis in the NY PARS.[12]

It appears that the dramatic variation in Fairway widths may be attributed to USCG's attempt to future-proof against any prospective changes in traffic density, above and beyond any reasonable safety margin used to accommodate future increases in traffic. But projections of future changes in vessel density are purely speculative in nature. Linear extrapolations of current vessel transit data do not indicate that vessel traffic will increase in the coming years. Additionally, it is critical to note that technological improvements have and will continue to improve maritime safety. Estimated future volume of traffic should be only what can be reasonably anticipated and should be rigorously calculated alongside anticipated technologies that enhance safety by improving spatial awareness of vessels.

More than that, the very concept of future-proofing disregards that USCG has other options in the event that vessel traffic increases more than expected at the time of Fairway designation. The US Coast Guard has the authority to regulate and enhance safety through the use of Regulated Navigation Areas, Safety and Security Zones, as well as Vessel Traffic Systems, Vessel Traffic Information Systems, and public/private Marine Exchanges. These navigation safety management mechanisms are available as needed, should future maritime traffic data portend the unforeseen use of such measures in specific areas. As such, there is no reason for USCG to adopt excessively broad Fairways now in an attempt to ensure that there is no possibility of a future conflict between offshore wind development and navigation.

In sum, given the flaws in methodology identified above, we urge USCG to use current data and additional modeling, to create Fairways widths and arrangements that would be more proportionate to the data and would better implement the PWSA's balancing mandate.

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crossings of the Hudson Canyon to Ambrose passage line and 1,501 crossings of the Ambrose to Hudson Canyon passage line, for a total of 2,747 crossings).

[12] Passage lines are generally "placed in areas that appeared to have a high traffic volume or because of their special geographic interest." North Carolina PARS, available at https://www.navcen.uscg.gov/sites/default/files/pdf/PARS/North_Carolina_Port_Access_Route_Study.pdf

ii. USCG Should Not Adopt Prescriptive Buffers

Buffer widths should be determined on a case-by-case basis given that risk will vary depending on a variety of factors, including the location of the routing measure, proximity of turbines to a route boundary, prevailing metocean conditions, and existing and future vessel traffic profiles. ACP urges USCG not to prescriptively impose large buffers when smaller distances could equally provide for navigational safety while posing a lesser impact on the GW potential for the offshore wind industry.

In comments on the original ACPARS and corresponding MPGs, AWEA and ACP expressed concern that USCG's recommendation against siting fixed structures within 2 nm from the parallel outer or seaward boundary of a traffic lane and 5 nm of the entry or exit of a TSS would lead to unnecessarily large Fairways and Precautionary Areas in many locations. In response, USCG assured commenters that the MPGS "are not standards, regulations or requirements of any type, but rather are guidance for developers to consider at the outset of a proposal" and that USCG "will evaluate each proposed project based upon the actual risks identified in the Navigation Safety Risk Assessment, and not by rigidly applying recommended distances from the MP Guidelines or any other similar guidance."[13] These assurances have now proven to ring hollow. In an apparent attempt to future-proof, the NPRM proposes to codify the previously recommended buffers, without regard for whether such buffers will actually prove to be appropriate and needed in light of site-specific conditions.[14] This proposal is not supported by current international guidance.

The ACPARS's proposed buffers, which have been incorporated into the NPRM, appear to have been based, in significant part, on guidance from the United Kingdom. At the time the MPGs and the ACPARS were being developed, the United Kingdom's Maritime and Coastguard Agency (MCA) guidance document pertaining to offshore renewable energy installations and vessel routing measures, entitled MGN 371, was in effect. The UK MGN-371 listed 5 nm as the

[13] 82 Fed. Reg. 16510.

[14] 89 Fed. Reg. 3587 ("[T]he Coast Guard is relying on that study as expanded in the Consolidated Port Approaches Port Access Route Studies (CPAPARS) to propose these fairways as directed under 46 U.S.C. 70003(c)(l)").

minimum distance from the entrance/exit of a TSS and also stated that risk to navigation becomes low beyond 2 nm from the parallel boundary of a route, except near a TSS. MGN 371 was superseded by MGN 543, which eliminated MGN 371's recommended minimum distance (5 nm) between a wind project and a TSS entry/exit and indicates that buffers between ½ nm and 3.5 nm wide may be acceptable anywhere if additional risk assessments and proposed mitigation measures are required. MGN 543 was then superseded by MGN 654, which generally contains the same guidance as MGN 543 regarding tolerable setback distances, with additional information regarding the respective risk level associated with the various setback ranges identified and factors to be considered in determining whether the setbacks are appropriate in any given location. With all the lessons that have been gleaned from decades of experience with this industry in Europe, it would be arbitrary for USCG to prescribe Fairway widths based on superseded guidance. USCG should refer to United Kingdom's most recent guidelines, MGN 654, and take a fresh look at appropriate Fairway widths across the East Coast.

Indeed, it appears that USCG has already carefully examined MGN 654. In the most recent version of the MPGs, published in NVIC 02-23 in October of 2023, USCG replicated, with minor alterations, a large portion of the MGN 654's offshore wind development risk-factor chart. Critically, however, the NVIC omits the column explaining that high to medium risk may be deemed tolerable if a site-specific analysis confirms that risk has been mitigated to levels that are "as low as is reasonably practicable." Given that USCG is choosing to rely so heavily on international guidance, ACP urges USCG to take a holistic view of the recommendations that guidance offers. As MGN 654 makes clear, adopting prescriptive buffer distances that cannot be reduced, even if mitigated, is not a best practice. Additionally, NVIC 2-23 itself acknowledged that "this guidance should be used on a case-by-case basis in consultation with CG-NAV, Districts, Sectors, and relevant stakeholders" and "is not prescriptive." Thus, even USCG's own current guidance does not support the prescriptive approach taken in the NPRM.

Given that maritime safety concerns must be addressed by the developers on a project-specific basis once an offshore wind project has been proposed on a lease, USCG should refrain from including unnecessarily large buffer distances in the Fairways. The more appropriate place to review local navigation safety needs is within the design envelope of a particular project's

Construction and Operations Plan and Navigational Safety Risk Assessment. This will ensure that wind development areas that may eventually be determined to be productive and a low risk to mariners are not prematurely eliminated from consideration. These site-specific analyses account for navigational risks to all types of vessels in the area and allow developers to work with local stakeholders to ensure mitigation measures are well-tailored to the unique characteristics of the project area. Some site-specific factors that will be taken into consideration during individual permitting and risk assessment processes include:

- Turbine spacing
- Turbine layout (pattern, orientation)
- Communications plans - frequent notices to mariners, utilization of fisheries liaisons and local fisheries representatives based in regional ports to facilitate communication etc.
- Utilization by developers of marine coordination and operations centers to manage project vessel traffic and to provide situational awareness for non-project vessels.
- Presence of offshore wind project vessels, including service operation vessels and crew transfer vessels, and their ability to inform nearby mariners of current project activities in or near the wind farm

• Transit speeds
• Deployment of automatic identification technologies (AIS) technologies
• Marine navigation lighting and marking
• Establishment of safety zones during construction
• Adherence to COLREGs and general safe navigation operational practices
• Cable burial depth and shielding
• Proper marking of turbines and cable routes on NOAA nautical charts
• Remote monitoring and control of project operations
• Prevailing fishing vessel transit routes

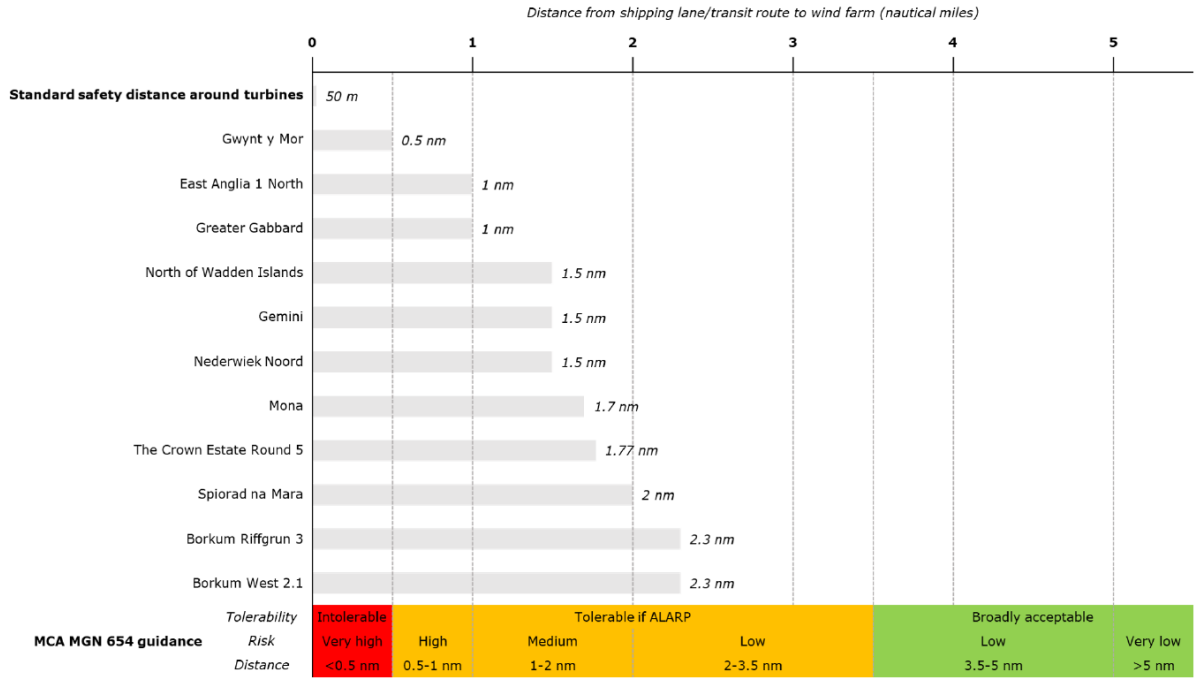
Additionally, project-specific analyses can account for emerging technologies, mitigation measures, and evolving best practices, leading to better decisions that more appropriately balance the many uses of the Outer Continental Shelf. As such, it would be unreasonable for USCG to include large buffer areas that remove areas from consideration for future offshore wind development at this juncture.

iii. Experiences in the Gulf of Mexico & Europe Demonstrate That Fairway Widths Proposed in the NPRM Are Overly Broad

Real world experiences in Europe and the Gulf of Mexico demonstrate that the width of the NPRM's proposed Fairways can be significantly reduced without compromising navigational safety for large commercial vessels. Per Coast Guard regulations, the Fairways in the Gulf of

Mexico, many of which have been in place for up to four decades, have an approximate width of 2.4 nm.[15] USCG should use mariner experiences navigating around offshore oil and gas installations in the Gulf of Mexico as a benchmark and baseline from which to examine and analyze new Fairways in the Atlantic, comparing all available accident, traffic density, and traffic composition data. Likewise, the graphic below, prepared by the Environmental Resources Management for ACP (Figure 1), affirms that there are operational projects, advanced development projects, and lease sites in the UK and the Netherlands with shipping lane buffers less than 2 nm wide, where site specific and case-by-case assessments deemed the buffer distances to be within safety tolerances.

FIGURE 1: DISTANCE CHART (SOURCE: ERM)



[15] 33 C.F.R. §166.100 – 200; *see also* William L. Griffin, *Ocean Navigation Fairways Through Gulf of Mexico*, available at https://journals.lib.unb.ca/index.php/ihr/article/download/24035/27820/36382 (historical document circa 1962-1963 detailing chronology of how and why fairways were created in the U.S. Gulf of Mexico).

Figure 1[16] above illustrates that, in Europe, countries have determined that 2 nm buffers are excessive and unnecessary in many instances. The fact that European countries have approved smaller buffer areas than those proposed in the NPRM is significant because there are more restrictions that could funnel traffic into the European Fairways. For example, most European countries do not permit fishing between the turbines, but the U.S. will allow fishing between turbines within a wind project. As such, it is possible that even smaller buffers may prove to be appropriate for many prospective offshore wind installations in the U.S.

In sum, experiences both in the Gulf of Mexico and Europe demonstrate that relatively narrow fairways utilized by large vessels can safely co-exist with numerous large offshore energy structures nearby. As such, USCG should not automatically incorporate 2 nm buffers in all Fairways, but rather should defer making such a buffer determination until a project proposal has been submitted and a project-specific analysis can be conducted.

B. USCG Should Adopt Fairways That Do Not Unreasonably Interfere with Other Activities on the OCS and Obstruct the Nation's Ability to Meet Offshore Wind Goals

Offshore wind deployment is a priority both for the federal government and many of the states along the Atlantic coast. The Biden Administration's recently published Offshore Wind Liftoff Report provides that "[o]ffshore wind is a central pillar of decarbonizing coastal population centers" and that it also holds the promise to "revitalize maritime infrastructure and domestic manufacturing."[17] The Administration is working hand in hand with state partners nationwide to foster a robust American offshore wind industry that will cut energy costs for families, improve energy security by diversifying US energy production, and create thousands of

[16] These eleven projects were selected as a representative sample of projects in different development stages in a variety of European countries with mature offshore wind markets and substantial cumulative operational capacity. To select these projects, a GIS database was established that contains information on all offshore wind project locations in Europe, along with International Maritime Organization (IMO) designated shipping lanes. The GIS data was then reviewed in a workshop environment in order to identify projects that are located in close proximity to shipping lanes. This analysis used the WGS 1984 datum, with appropriate projections applied to ensure accuracy of measurements.

[17] DOE, Biden-Harris Administration Releases Offshore Wind Liftoff Report and $48 Million in New Funding to Accelerate Technology and Manufacturing (April 24, 2024), available at https://www.energy.gov/articles/biden-harris-administration-releases-offshore-wind-liftoff-report-and-48-million-new.

good-paying jobs. But, by removing 24.4 million acres of sea space from consideration for future offshore wind development, the NPRM jeopardizes the nation's ability to achieve these public policy goals and critical decarbonization targets, such as attaining a 100% clean power sector by 2035 and a net-zero emissions economy by 2050, or simply to meet growing demand for electricity with a robust and reliable grid. Consequently, USCG must consider how its proposed Fairways will impact each of the Atlantic state's ability to achieve their individual offshore wind deployment targets, as well as the potential to disrupt national strategies for mitigating the impending climate crisis.

Below ACP provides data on the sea space that all Atlantic states impacted by this proposed rulemaking will need to achieve their offshore wind energy deployment goals for USCG's consideration. Next, ACP details the specific ways in which USCG's proposal would create conflicts between various stakeholders by restricting access to sea space in the Central Atlantic, to illustrate the unintended consequences that USCG's overly-expansive approach to Fairway designation would have across the eastern seaboard, if implemented.

i. The Coast Guard Should Take State Offshore Wind Goals & Other Uses of the OCS into Account When Planning Fairways, TSSs, and Precautionary Areas

ACP appreciates that the USCG has ensured that the proposed Fairways will not overlap with existing offshore wind lease areas, as is required by the PWSA.[18] But contrary to what USCG asserts in the NPRM, this does not come close to addressing the "potential economic impacts" that USCG's proposed will have on the offshore wind industry, nor the impact its action will have on the Eastern United States' long-term energy future. The NPRM should account for the effect USCG's proposed action will have on the East Coast states' ability to achieve their collective offshore wind energy goals; it is wholly insufficient for USCG to only consider impacts to existing leases given the significant demand for offshore wind power development engendered by the states' goals and legislative mandates.

[18] 33 U.S.C. § 1223(c) (providing that the Secretary should "not deprive any person of the effective exercise of a right granted by a lease or permit.")

As the NPRM describes in Table 35, there are 29 current offshore wind leases in the Atlantic. These current leases allow for 2.35 million acres of offshore wind development, and this acreage is expected to support approximately 43-61 GW of power generation once fully operational.[19] But eight east coast states (NY, NJ, MA, CT, RI, MD, VA, NC) have initial cumulative goals of generating 79.13 GW by 2040. That number is likely to increase, even in the short term, as the Delaware legislature is likely to pass a bill with an offshore wind goal of 800-1,200 MW. Thus, the 29 existing leases will only be able to generate a little more than half of the energy needed to satisfy existing state wind energy deployment goals. To make up for the 19.5 - 32.6 GW deficit and achieve their decarbonization goals, these states will require an additional 855,000 – 1.8 million acres of sea space.

Figure 1: State Offshore Wind Goals

State	State Goal (MW)	Goal Year	Acres needed for state goal 5.64MW/km^2	Acres needed for state goal 4.42MW/km^2	MW in Auctioned Leases & CATL PSN 5.64MW/km^2	MW in Auctioned Leases & CATL PSN 4.42MW/km^2	MW of State Goal not yet Auctioned/PSN 5.64MW/km^2	MW of State Goal not yet Auctioned/PSN 4.42MW/km^2	Acres not yet auctioned 5.64MW/km^2	Acres not yet auctioned 4.42MW/km^2
Massachusetts	23000	2050	1007699	1285842	14018	10986	8982	12014	393532	671675
Rhode Island	1430	2030	62653	79946	0	0	1430	1430	62653	79946
Connecticut	2000	2030	87626	111812	2225	1744	-225	256	-9872	14314
New York	20000	2050	876260	1118124	14988	11746	5012	8254	219573	461437
New Jersey	11000	2040	481943	614968	9838	7710	1162	3290	50931	183956
Maryland	8500	2031	372411	475203	8026	4965	474	3535	20750	197621
Virginia	5200	2034	227828	290712	6652	5213	0	0	0	0
North Carolina	8000	2040	350504	447250	5309	4160	2691	3840	117908	214654
TOTALS	**79,130**		**3,466,924**	**4,423,857**	**61,056**	**46,524**	**19,526**	**32,619**	**855,475**	**1,823,604**

On behalf of the members of ACP, we strongly recommend that USCG work with BOEM to re-evaluate and determine where its Fairway proposal does and does not leave sufficient sea space, approximately 855,000 - 1.8 million acres, located in the correct areas for required future offshore wind development. The NPRM states that it only encompasses 12.5 % of the EEZ, but this statistic implies that offshore wind could be easily developed in any part of the remaining 87.5% of the EEZ. This is not the case. In fact, most of the shallow areas of the East Coast EEZ that are suitable for lower cost fixed-bottom offshore wind projects and do not

[19] The range is dependent on a turbine density of 4.4 - 5.64 MW/km^2. For more on choosing different turbine densities see: https://www.nrel.gov/docs/fy24osti/87947.pdf.

have substantial waterway user conflicts have already been auctioned off. [20] USCG must work with BOEM to accurately assess what areas of the EEZ remain suitable for offshore wind development and determine how many acres of sea space in these areas are required to sustain the activities of other maritime stakeholders. USCG should not use this rulemaking to overly prioritize one stakeholder, in this case, marine shipping,[21] over all others, and should ensure that BOEM has the flexibility needed to effectively lead the pluralistic offshore wind deconfliction and planning process.

ii. ACP's Proposed Reorientation of Fairways in the Central Atlantic

An examination of the impact that USCG's proposal will have in the Central Atlantic region exemplifies how the above-discussed deficiencies of the NPRM will unnecessarily exacerbate the challenges associated with siting offshore wind farms. The cases of Maryland and New Jersey are instructive. Based on this NPRM, it would be very difficult for these states to meet their offshore wind energy goals. Maryland has a goal of 8.5 GW by 2031 and neighboring New Jersey has a goal of 11 GW by 2040, for a total of 19.5 GW. The NPRM Fairways only allow for a total of approximately 6.8 GW to 8.7 GW in potential Call Areas. Because these areas have yet to be deconflicted, the development capacity would, in actuality, be much less. For example, the Department of Defense and the National Aeronautics and Space Administration (NASA) have some important concerns in this area, there is a scallop rotational area, and tribal nations or other stakeholders may bring up additional conflicts to be considered. Therefore, the future capacity for offshore wind development in the Central Atlantic is demonstratively less than the NPRM suggests.

To illustrate how this discrepancy could be addressed, even if USCG maintains its untenable position that all Fairways must be at least 9nm wide,[22] ACP proposes alternative

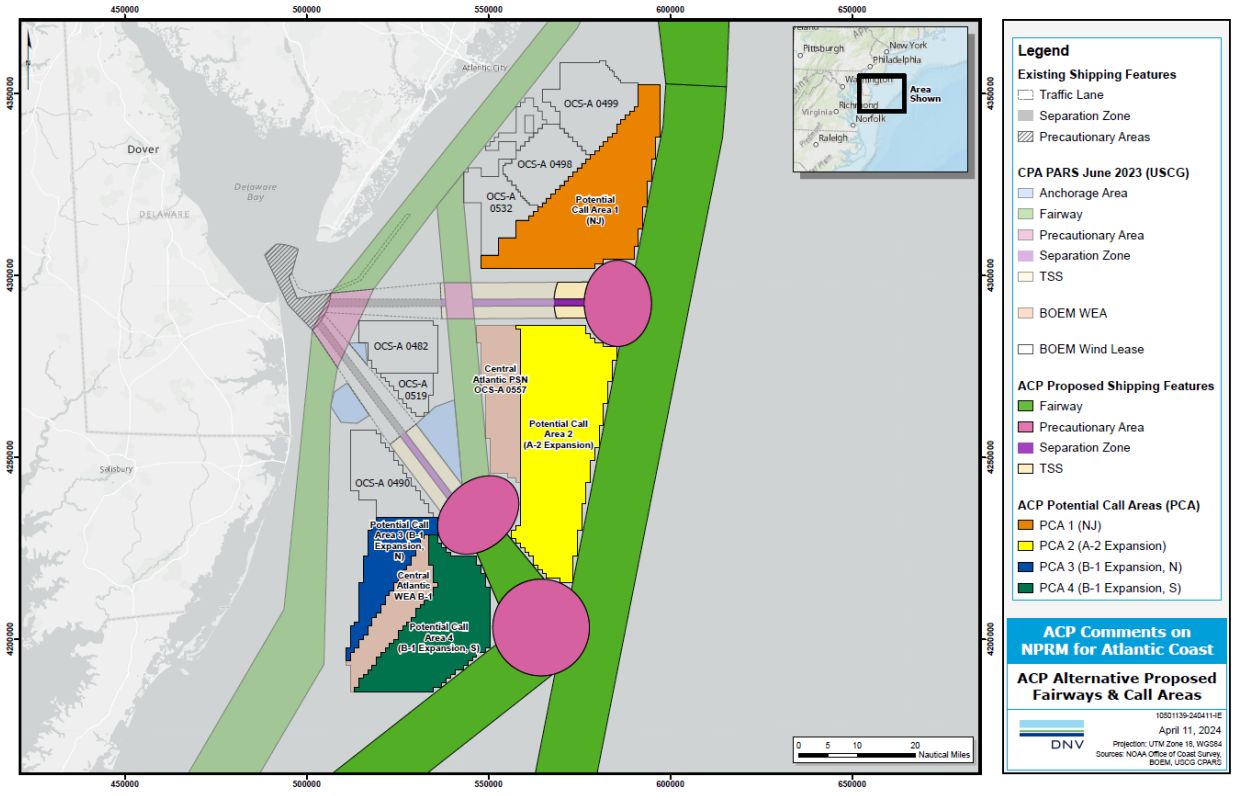
[20] The entire EEZ is not suitable for offshore wind development. Most offshore wind development occurs near the Coast where a majority of the proposed Fairways are sited.

[21] The only cost the USCG outlines in the NPRM is the Average Value of Goods per Day Flowing through Atlantic Ports in Table 34.

[22] For the reasons outlined above in Section III.A, ACP reiterates that USCG needs to reevaluate whether there is an evidence-based justification for 9 nm wide Fairways in the Central Atlantic region.

Fairways that provide enough space for BOEM to consider a future Call Area that could host 16.5-17.5 GW[23] (Figure 2). Note that the yellow areas in Figures 3 and 4 are potential Call Areas, not potential lease areas, and BOEM would reduce the sizes of the potential Call Areas as they would need to be deconflicted with other users. For example, Figure 4 demonstrates that potential DOD conflicts exist along the western diagonal edge of the New Jersey leases and a few areas off the coast of Maryland.

Figure 2: ACP Proposed Reorientation of Fairways in the Central Atlantic



ACP's proposed Fairways in Figure 2 create more flexibility for BOEM during the leasing process to pick the most deconflicted areas to site offshore wind. Figure 2 shows four new potential Call Areas (orange, dark blue, dark green, and yellow), brings back the Central Atlantic

[23] The range is dependent on a turbine density of 4.42 - 5.64 MW/km^2. For more on choosing different turbine densities see: https://www.nrel.gov/docs/fy24osti/87947.pdf.

Wind Energy Area (CATL WEA) B-1,[24] and displays the lease area OCS-A 0557.[25] It also shows six existing, already-auctioned lease areas outlined in black.

Figure 3: ACP Proposed Reorientation of Fairways in the Central Atlantic Overlain on USCG NPRM Atlantic Fairways Map

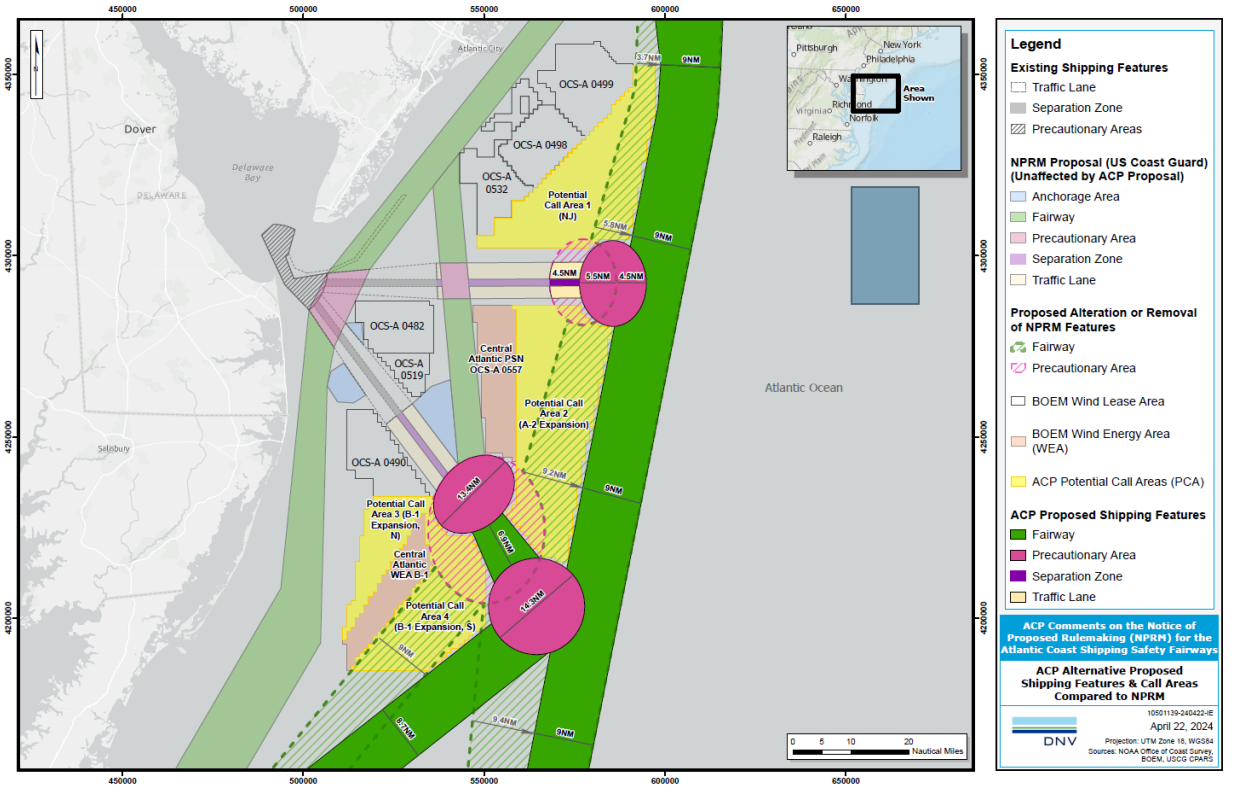


Figure 3 demonstrates the adjustments ACP made to the Central Atlantic Fairways proposed in the NPRM. The NPRM Fairways are in both solid green and green hash marks. The solid green demonstrates ACP's proposal. The pink hash marks are the precautionary areas USCG proposed in the NPRM and the solid pink circles demonstrate ACP's proposal. All new proposed Call Areas are in yellow.

[24] This area did not move forward to the Central Atlantic Proposed Sale Notice due to DOD conflicts. Department of the Interior Memorandum (July 28, 2023), available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Central%20Atlantic%20Memorandum%20for%20Area%20ID.pdf.

[25] OCS-A 0577 has been proposed in the BOEM Central Atlantic Proposed Sale Notice but the auction has not yet happened before the time of writing. This area could change before the Final Sale Notice.

Figure 4: ACP Proposed Reorientation of Fairways in the Central Atlantic Overlain on USCG NPRM Atlantic Fairways Map With Department of Defense Considerations

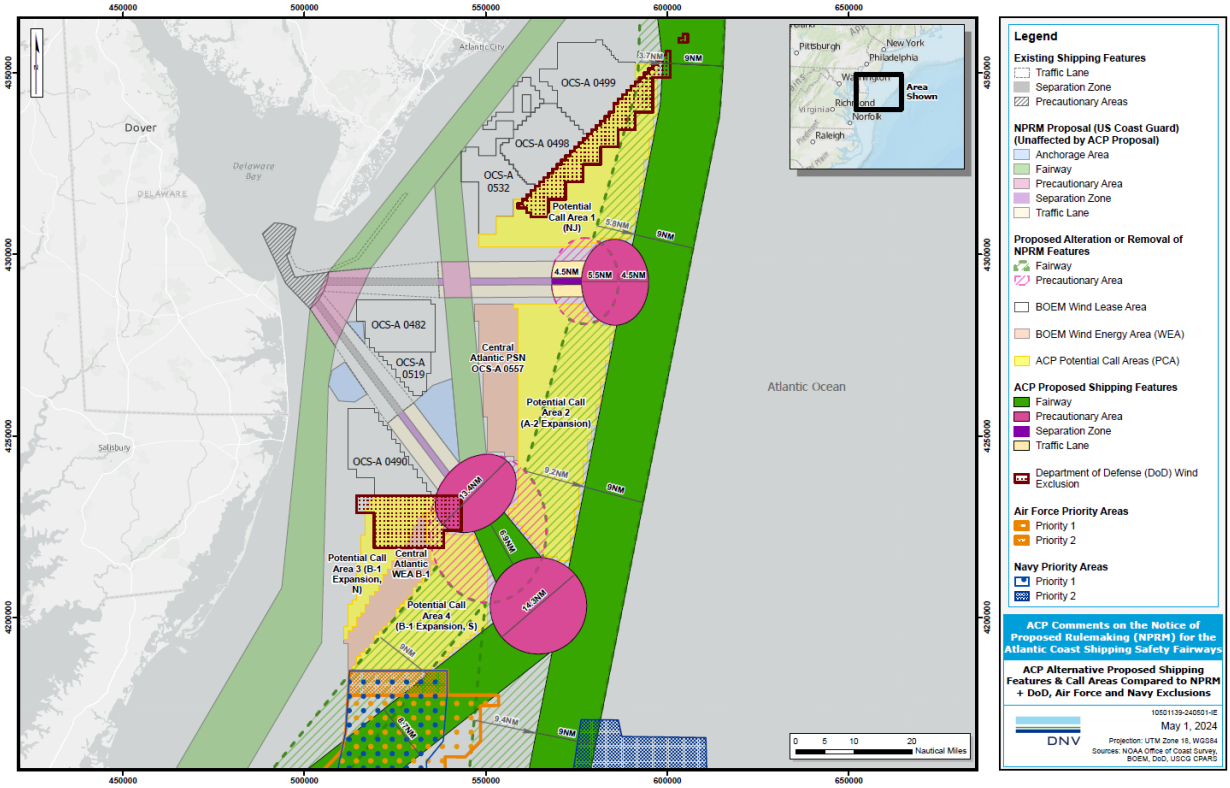


Figure 4 is the same as Figure 3 with the additions of legacy DOD priority areas. These DOD areas are from a July 2023 Department of Interior memo[26] which was used to inform BOEM's first Central Atlantic lease sale in 2024 and legacy priority areas that were taken into account by BOEM to inform existing leases closer to shore near NJ and Maryland that were leased in 2022 and earlier. The Department of Defense is currently undertaking study of some of the areas in the memo and could revise their levels of concern with certain areas.

In sum, USCG should only designate 9 nm wide Fairways when there is an evidence-based justification for doing so. However, to the extent that USCG maintains that all Fairways must be at least 9 nm, ACP urges USCG to, at a minimum, adjust the placement of the Fairways in the Central Atlantic in a manner similar to that proposed above to create additional space for offshore wind development. To fulfill its own statutory obligations, BOEM will have to consider

[26] Department of the Interior Memorandum (July 28, 2023), available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Central%20Atlantic%20Memorandum%20for%20Area%20ID.pdf.

the needs of many stakeholders, including marine shipping, during the deconfliction process. USCG should likewise weigh other stakeholder interests before carving out space for commercial vessels, as is required by the "balancing" provision of the PWSA. ACP submits that an approach that is substantially similar to Figure 2 above could help better balance the needs of navigational safety and all other stakeholders in the Central Atlantic, and urges USCG to consider whether Fairways in other regions can be reoriented to create additional space for other stakeholders as well.

C. The NPRM Would Incur Costs on Future Leases and the Regulatory Analysis Should Explore this Impact

The NPRM's section *Regulatory Analysis: Costs* should better evaluate the costs this NPRM would have on future offshore wind leases. This section of the NPRM states: "Given the consultation process must occur before issuing new leases, the proposed fairways, TSSs, and precautionary areas do not cause future potential lease sites to incur any additional costs because consideration of commercial vessel traffic is already an existing baseline requirement under current regulations (section 585.102(a)(9))." This conclusion is inaccurate and unsupported.

30 C.F.R. Section 585.102(a)(9) states that when doing offshore wind leasing: "BOEM will ensure that any activities authorized in the part are carried out in a manner that provides for . . . prevention of interference with reasonable uses (as determined by the Secretary or Director) of the exclusive economic zone, the high seas, and the territorial seas." As this provision makes clear, currently, the Department of the Interior has the authority to determine what are reasonable uses of the EEZ, and avoids already designated fairways, TSSs, and precautionary areas. Designating *additional* fairways, TSSs, and precautionary areas would effectively take areas out of consideration for offshore wind leasing before the leasing process starts. In other words, the NPRM would create a different baseline than the requirement under current regulations, and this change in the baseline comes at great cost to the U.S. offshore wind industry and thereby the states and ratepayers that are supporting this renewable energy development.

In addition to reducing potential lease areas, costs are incurred by these fairway designations because the proposed fairways, TSSs, and precautionary areas effectively push future leases further offshore, increasing vessel trips and limiting the opportunities to install

fixed bottom wind turbines. Leases that are further offshore require longer voyages by vessels during construction, operations, and maintenance. Fixed-bottom wind turbines are a much more mature and cheaper technology than floating offshore wind. Forcing leases to only be in deeper water and therefore have floating foundations would increase costs to the offshore wind industry.

Finally, limiting development potential via these fairway designations also incurs costs due to impacts on state and federal efforts to develop a domestic offshore wind supply chain. While many have been announced, there are only two U.S. factories currently producing components in the offshore wind supply chain. Factories and offshore wind vessels need certainty that they will be used and will only bring those announcements to completion if there is enough demand for their products and services. Overly wide fairways would have the effect of limiting that demand, especially in the Central Atlantic. ACP's predecessor organization AWEA commented about the capital investment that would be lost if there were overly wide fairways in some of the earlier PARS. For example, the removal of 359-1,745 MW of capacity offshore New York would equate to a loss of capital investment of $1,402,039,000 - $4,646,342,000.[27] In the NPRM, the Coast Guard took into account the average value of goods per day flowing through Atlantic ports in Table 34, but it does not take into account another part of burgeoning maritime commerce: offshore wind. The NPRM should acknowledge that it will incur costs to future offshore wind leases and their domestic supply chains.

D. The NPRM is a Significant Energy Action and USCG Should Complete a Statement of Energy Effects under EO 13211

Executive Order (EO) 13211 requires a Statement of Energy Effects (SEE) to be prepared by a federal agency making a rulemaking on "significant energy actions." Per OMB Memorandum 01-27, "significant energy actions" are "significant regulatory action under Executive Order 12866 or any successor order" that are "likely to have a significant adverse effect on the supply, distribution, or use of energy." EO 12866 and OMB Memorandum 01-27 define a significant adverse effect as "any federal action that results in reduction in electricity production in excess of…500 megawatts of installed capacity may be considered an adverse

[27] NYOWA-AWEA Comments on Northern New York Bight Port Access Route Study, Docket USCG-2020-0278, (August 2020), available at https://www.regulations.gov/comment/USCG-2020-0278-0020.

energy affect within the meaning of EO 13211." USCG acknowledges that the NPRM is "a significant regulatory action" under Executive Order 12866, as amended by Executive Order 14094, but contends that the proposed Fairways will not have a significant adverse effect on the supply, distribution, or use of energy, without any justification. This conclusion is wholly unsupported.

The proposed rule would have a significant adverse effect on the supply, distribution or use of energy and therefore would be a significant energy action. The NPRM's proposed Fairways remove acreage that could have otherwise hosted offshore wind generating infrastructure with a potential capacity of 433,000-533,000 MW[28] from consideration, much more than the 500 MW threshold identified above. This will greatly impact ongoing efforts by states to decarbonize their electricity grids and BOEM's work to consider a second lease sale offshore the Central Atlantic. For these reasons, an EO 13211 analysis should be conducted. Historically, this process has helped strike "a reasonable effective balance between environmental conservation and energy development" and it could do the same between navigational safety and energy development.

IV. Conclusion

ACP urges USCG to withdraw the NPRM and reevaluate its proposed Fairways. Recent experiences in Europe and other parts of the United States reaffirm that offshore wind energy installations can safely co-exist in close proximity to other waterway users, including the commercial shipping sector. USCG should take heed of lessons learned in other regions, as well as updated international and domestic navigational safety guidance, when addressing the NPRM's above-described deficiencies. Specifically, USCG should employ more refined and transparent methodologies for Fairway width designation, refrain from imposing "buffers" between Fairways and offshore wind structures until project-specific conditions can be assessed, and better consider the impact that its proposed action will have on the offshore wind industry, energy security, as well as the nation's ability to achieve its decarbonization goals. Ensuring that

[28] The NPRM states that it removes 24.24 million acres of sea space. The range is dependent on a turbine density of 4.42 - 5.64 MW/km^2. For more on choosing different turbine densities see: https://www.nrel.gov/docs/fy24osti/87947.pdf.

the Fairway designation process is grounded in evidence will better-enable USCG to effectively balance waterway uses. Thank you for your consideration of the issues raised in these comments, and please let ACP know if we can provide any additional information or clarifications on the points above.

Sincerely,

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