

Comments of the National Ocean Industries Association

March 10, 2020

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003

Re: NPRM on NEPA Modernization Under Docket No. CEQ-2019-0003

The National Ocean Industries Association (NOIA) is the only national trade association representing all segments of the offshore energy industry. For over 45 years, NOIA has been committed to ensuring a strong, viable U.S. offshore energy industry capable of meeting the energy needs of our nation in an efficient and environmentally responsible manner. NOIA member companies are engaged in traditional oil and natural gas exploration and production, as well as offshore wind energy development. Our member companies are proud that they contribute to America's energy security, and we want to continue providing that service in a way that protects our environment, rich cultural history, and the interests of communities across the country.

Our members are succeeding in this today. Offshore energy companies responsibly provide roughly one sixth of all oil produced in this country, a key part of our increasing self-reliance and ability to slash imports of oil from less stable parts of the world. At the same time, our members are bringing online the first wind turbines in the waters off the United States, bringing affordable clean energy to the northeast and creating an entire new sector for made-in-America energy. Additionally, offshore resources will play a major role in the energy economy as we confront the challenges of climate-change.

As they do this work though, virtually every step of the process is impacted by The National Environmental Policy Act (NEPA). This is to be expected, as NEPA is the bedrock of modern environmental law and has been for four decades. However, it is also true that the NEPA of 2020 is cumbersome and seemingly tailor-made for delay and red tape.

In general, our members working on the outer continental shelf of America's coasts are working with the Department of Interior (DOI). According to data CEQ released alongside this proposed reform to NEPA, the average time from a Notice of Intent to a Record of Decision at Interior is one of the lengthiest—pushing five years.¹ And remarkably, that five year timeframe does *not* include the time before an NOI, or the time spent grappling with litigation. That means years of delayed investments that could be providing benefits to the American economy and jobs to American workers. However, this is not necessarily the fault of the Department or its employees,

¹ "Summary of the Notice of Proposed Rulemaking: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," 5. Accessed March 10, 2020.
<https://www.whitehouse.gov/wp-content/uploads/2020/01/20200207-NPRM-Overview-PowerPoint.pdf>.

but rather reflects the difficult reality of the current regulatory environment for major infrastructure projects.

The legal battles around offshore oil and gas are well known, and we continue to believe that hampering American energy development will only increase reliance on foreign energy from countries with, at times, wildly differing geopolitical objectives than our own². However, in the case of our members' offshore wind projects, this delay also hampers efforts to bring clean energy to parts of the United States that has lagged other areas of the country in deploying renewable energy.³

We know that there is a \$70 billion market for offshore wind on the horizon in this country⁴, but this will only come to fruition if permits are issued in a timely way and project investors have the certainty they need to put capital on the line. At the same time, experts such as the Brattle Group have warned that New England in particular will need to beat even current ambitious projections for offshore wind if the region is to meet its 2050 emissions goals around climate change⁵. For example, the pioneering Vineyard Wind project off the coast of Massachusetts, which had originally planned to begin *construction* in 2019, was told just this month by BOEM that it may be the end of 2020 before they have a final decision on their ongoing NEPA analysis.⁶

This is why our members are encouraged by the proposed reforms to NEPA—CEQ's proposal would, if successful, help more energy projects of all kinds come to fruition faster. If a project is *unacceptable* or would have such negative impacts that it cannot be approved, this answer would also be delivered in a more timely way, allowing our members to re-adjust their investment plans and move forward elsewhere. Our desire to reform NEPA is not about getting to a "yes" by undercutting environmental law, it is about getting *a final answer* in a way that allows American companies to be competitive.

In general, NOIA has signed onto the U.S. Chamber of Commerce's technical comments and agrees with the points raised by them. However, given the unique nature of our membership we also wanted to highlight a few areas of interest within the broader list of reforms we agree with:

- 1) Examples such as the ongoing supplemental EIS for offshore wind projects in the Atlantic mentioned above highlight the need to address the scoping of environmental

² Kumar, Devika Krishna and Eaton, Collin, "Venezuelan Oil Exports to U.S. Still a Primary Source of Cash", *Reuters* 25, Jan. 2019. <https://www.reuters.com/article/us-venezuela-politics-usa-oil-graphic/venezuelan-oil-exports-to-u-s-still-a-primary-source-of-cash-idUSKCN1PJ2CT> (Accessed 10 March, 2020)

³ ISO New England, *Resource Mix* <https://www.iso-ne.com/about/key-stats/resource-mix/>, (Accessed 10 March, 2020)

⁴ Woods, Bob "US Has Only One Offshore Wind Energy Farm, But a \$70 Billion Market Is On The Way", *CNBC*, 13 Dec. 2019, <https://www.cnn.com/2019/12/13/us-has-only-one-offshore-wind-farm-but-thats-about-to-change.html> (accessed 10 March, 2020)

⁵ The Brattle Group, "Achieving 80% GHG Reductions In New England by 2050", Sept. 2019, https://brattlefiles.blob.core.windows.net/files/17233_achieving_80_percent_ghg_reduction_in_new_england_by_20150_september_2019.pdf (Accessed 10 March, 2020)

⁶ Stromsta, Karl-Erik, "Vineyard Wind's Timeline Slips as Trump Administration Further Delays Permits", *Greentech Media*, 11 Feb., 2020 <https://www.greentechmedia.com/articles/read/vineyard-winds-timeline-slips-as-trump-administration-further-delays-permits> (Accessed 10 March, 2020)

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reviews at the earliest stages possible. We appreciate *any* changes that would require agencies to begin scoping prior to the Notice of Intent because it will help inform the public and allow federal decision-makers to better understand the universe of impacts within the proposed project, such as is proposed in revised Section 1501.9;

- 2) NOIA members are also particularly interested in efforts to address tiering within NEPA in proposed Sections 1501.11 and 1501.12. The vast majority of our members undertake actions which are impacted by NEPA at various stages in their permitting process. For example, starting with a 5 Year Plan a company involved in oil and gas exploration or production will face several rounds of ever-more-specific environmental review before reaching the stage at which a drillbit can touch the sea bed. Given the programmatic nature of offshore energy development, *any* efforts to better incorporate prior scientific work to expedite subsequent review processes and avoid duplication of efforts will be a net-positive for the regulated community.
- 3) The addition of presumptive time limits for completion of either an Environmental Assessment or an Environmental Impact Statement in 1501.10 would be of remarkable importance. While not all projects will fit neatly into that bucket, significantly reducing the wait-times associated with putting steel in the ground and bringing American energy to market is a net positive; and
- 4) NOIA expects significant improvements will come with new ground-rules for considering public and agency comment and intervention in the NEPA process, such as proposed Section 1500.3(b). Many of the actions NOIA members take garner public interest, and we absolutely believe the public and other stakeholders have a right to be actively involved. However, there must be consistent and clear rules for when comments should be submitted, how agencies should handle the raising of legal arguments at the “eleventh-hour”. Again, we do not feel that this in any way undercuts environmental protection but instead sets a level playing field for supporters and opponents of any given action.

We thank CEQ for undertaking this process and re-affirm our belief that NEPA is an important statute worthy of protecting. Should you have any questions or need further information, you may contact NOIA’s Vice President of Government Affairs Richard England at REngland@NOIA.org.

Very respectfully,



Erik Milito

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