



MAINE

Lobstermen's Association, Inc.

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To: Senator Lawrence, Representative Berry and members of the Energy, Utilities and Technology Committee
Fr: Patrice McCarron, executive director, Maine Lobstermen's Association
Re: LD 101 An Act to Prohibit Offshore Wind Energy Development

May 4, 2021

On behalf of the Maine Lobstermen's Association (MLA) board and members, I offer this testify in favor of *LD 101 An Act to Prohibit Offshore Wind Energy Development*. Offshore wind development in the Gulf of Maine became a highly charged issue when the Mills Administration announced in November 2020 that it would apply for a commercial offshore wind lease with BOEM before it begins the comprehensive offshore wind planning process it announced the previous month. The state was awarded a \$2.2 million federal EDA grant to do this work.

The fishing industry supports Maine's efforts to transition to a clean energy economy. But we don't share the vision that offshore wind will play a prominent role in that portfolio. I am here today to ask you to hit the pause button on offshore wind in Maine until some important baseline work is done to inform how Maine will achieve its renewable energy portfolio, what role offshore wind will play in that mix, and to answer some fundamental questions about what offshore wind development will mean for Maine's fishermen, and the people of Maine. The fishing industry sincerely believes that if we commit to an honest and transparent review of the costs and benefits of offshore wind, you will agree that this not in the best interest of the state of Maine. We deserve the opportunity to have that conversation.

Maine fishermen do not want offshore wind in the Gulf of Maine, and with good reason. More than 500 of us came together on April 28 to let you know that. Protesters expressed their genuine fear that Maine's rush to be the first to deploy floating offshore wind technology in the U.S. could harm the Gulf of Maine's fragile ocean ecosystem, trade Maine's family owned and operated fishing businesses for jobs with foreign energy companies, and risk eroding Maine's fishing heritage, which has sustained our rural coastal communities for generations (excerpts of speaker's comments in Attachment 1). We are genuinely worried about what offshore wind development will mean for Maine's fishing industry, the environment, our heritage and the economic stability of our rural coastal communities.

The MLA was prepared to play a prominent role in developing Maine's Offshore Roadmap. The Maine Climate Council, on which I served as the fishing industry representative, states in its final report that to ensure adequate clean energy supply, the state must "set achievable targets for cost effective deployment of technologies such as offshore wind, distributed generation, and energy storage, and outline the policies, including opportunities for pilot initiatives, necessary to achieve these results."

That has not happened. We were expecting to be part of a process to understand what offshore wind would mean for Maine; we weren't expecting the Governor to announce a commercial offshore wind development with the "what, where, how many and with who" already decided.

The Mills Administration has done a great job of creating a sense of urgency around the need to be the first in the U.S. to build an offshore wind farm. But they have not asked, at what cost? Floating offshore wind technology is taking off around the world. The Biden Administration supports the deployment of 30 GW of offshore wind by 2030.

If a world-wide offshore wind build-out is inevitable, Maine is not at risk of losing its opportunity to include offshore wind in its renewable energy portfolio. The winds of the Gulf of Maine will still be here. And if these winds are indeed world-class, investors will remain interested. The jobs that are being promised will happen whether we start today or in 5 or 10 years. So, let's take a step back, complete Maine's Offshore Roadmap, use BOEM's Gulf of Maine Offshore Wind Task Force to take a holistic look at the region's offshore wind potential, look at the costs and benefits of this energy source for the people of Maine, and then decide how, and if, offshore wind becomes a part of Maine's renewable energy portfolio.

The Gulf of Maine has world-renowned fishery resources that have provided stable, good paying jobs for generations of Mainers and a reason for our kids to stay in Maine to raise their families. If you don't work on the water, you may not fully appreciate just how special the Gulf of Maine is. You may not understand why fishermen are so stubborn in their concerns. The Gulf of Maine is one of the most diverse and productive ecosystems in the world. Its resources are fragile, requiring disciplined stewardship and conservation practices by those who fish there, and due to its extreme wind and weather, it can be a harsh, unpredictable and unforgiving environment.

Maine's political leaders would be wise to listen to those who have gained a deep respect and understanding of the Gulf Maine because they have spent their lives working its waters. Just as you intuitively know not to run through a red light because you are late for work, they know in their guts that the Gulf of Maine is not a place to test the deployment of massive floating wind turbines. Governor Mills is proposing an experiment that will far outlast her political career, and Maine's fishing community will inherit the legacy of this decision for years to come.

To fully understand the fishing industry's concerns about offshore wind, you must grasp the sheer magnitude of both the individual turbines and wind farms at scale. Everything about them is massive. The next generation of turbines will produce 12 to 14 mw, stand taller than the John Hancock tower in Boston (over 800 ft) with each of the three blades longer than a football field (350 ft). Each turbine creates a swept area four times the size of Fenway Park with each rotation (410,000 ft²).¹ Each turbine will sit on top of a 380 ft floating concrete/steel platform, creating a footprint the size of the Prudential building (700-800 ft) when you include the massive anchoring lines made of 9-foot chain links held down by 30-foot anchors (see scale drawing in Attachment 2). And that is just one turbine. These turbines are not built in Maine or in the U.S. They are manufactured overseas in places including France, Germany and Denmark.

¹ <https://www.ge.com/renewableenergy/wind-energy/offshore-wind/haliade-x-offshore-turbine> and <https://www.siemensgamesa.com/en-int/products-and-services>

It is difficult to conceive how building these massive structures and cabling all that electricity to shore will help the Gulf of Maine. From the fishing industry's perspective, the cure is worse than the disease.

In addition to the fundamental concerns we have about whether or not offshore wind belongs in the Gulf of Maine, the development process itself has been extremely frustrating. Poor communication, misinformation and tight control of what information is shared have been its hallmarks. Fishermen and industry association leaders have diligently attended meetings, asked many questions, and received too few answers. Information has been tightly controlled. We have yet to receive a satisfactory answer to many questions, including why the state must apply for a commercial lease site with BOEM before it conducts the Maine Offshore Wind Roadmap.

I'll share an example of how poor communications have made fishermen suspect of what offshore wind will mean for Maine, and the challenges of working with global energy companies who do not understand Maine's people and culture. As you may have read, Diamond Offshore Wind, the developer for the Monhegan offshore wind project and the partner the state has named to fund and build its offshore research array, recently conducted a survey of the cable route from Monhegan to Boothbay. Fishermen were asked to remove gear from an area 15 meters either side of a centerline of coordinates. Several weeks into the survey, they were then told to move gear .25 mile on either side of the centerline.

Following a peaceful protest which took place as a fishing boat parade from Monhegan to Boothbay, a Diamond Offshore Wind representative used the press to publicly accuse Maine lobstermen of purposefully setting lobster gear in the cable route survey area. In response, Maine's Marine Patrol surveyed the area and counted 254 buoys, far fewer than the 453 buoys reported by the developer.² Diamond never mentioned the confusion about the information it communicated to the industry or the fact that fishermen were unable to hail the survey vessels to find out where they were actually operating.

Based on reports from fishermen that the survey vessels were operating outside of the advertised route, the MLA mapped the tracks of the survey work. The data show that the 260-foot M/V Explorer and 150-foot M/V Go Liberty regularly operated outside the advertised survey route. You can view the maps of the vessel tracks and the survey route in Attachment 3.³ Vessels of this size steaming or towing equipment wreak havoc with lobster gear. As a result of this incident, fishermen do not trust the developer.

The state of Maine says that it wants to develop offshore wind in a way that "engages the fishing industry's expertise to minimize potential harms" but that has not happened. We need the state to do the work to understand how offshore wind will impact our fishing industry. We cannot expect a global energy company to do that, and BOEM is on record in an April 2021 policy memo stating that meeting the country's renewable energy needs is more important than preserving traditional ocean uses such as fishing (see Attachment 4). We hope this Committee will agree that the fishing industry's concerns should be addressed before commercial wind development is set in motion.

² <https://content.govdelivery.com/accounts/MEDMR/bulletins/2c92d3a>

³ Vessel track data obtained from marinetraffic.com and the survey route coordinates from NEAV.

Maine is rural state with few economic opportunities. Let's make sure that Maine's fisheries and offshore wind can coexist, that we are not trading one for the other, before we start building offshore wind farms.

Below I share some additional questions that the MLA, our members, and many fishermen throughout the state of Maine want to see addressed before Maine moves forward with offshore wind development.

What are the Environmental Impacts?

Given the vast size of the turbines, platforms, chain and anchors, and miles of cable, deployment of offshore wind farms is an industrialization of the ocean. Equipment of this size, deployed at the scale required to be cost-effective, will undoubtedly alter and cause harm the environment. Offshore wind development will impact habitat, marine life, birds, and ocean circulation. We must better understand the significance of these impacts. During the outreach meetings on the state's proposed research array, lobstermen asked what would happen if negative impact on the lobster resource were documented. Fishermen were told that it is a commercial development that would continue for 20 to 30 years and the impacts will be documented, an inadequate answer to a legitimate question.

Fishermen harvest a public resource and are highly regulated to ensure that target species are sustainably harvested and that fishing methods minimize impacts on habitat and bycatch species. The Maine lobster industry will be required to reduce its risk to endangered North Atlantic right whales by 98% over the next 10 years. There is a push to achieve this by removing all of our rope from the water. Yet the state wants to build 12 large turbines in a 16-square-mile area along a right whale migration corridor. How will this impact right whales? How can the state propose to add new threats to right whales when the future of the lobster industry depends on the successful recovery of this species?

What Lessons have Been Learned from Offshore Wind Projects Around the World?

Maine is not the first in floating offshore wind technology. Maine is not the first to design semi-submersible floating platforms. According to an August 2019 U.S. Department of Energy report, there were eight built floating offshore wind projects (1 commercial and 7 demonstration projects) generating 46 MW of floating offshore wind in 2018. Five of these installed projects were in Europe (37 MW) and three in Asia (9 MW). An additional 14 projects representing about 200 MW were under construction or had achieved funding or regulatory approval. In total 38 projects had been announced worldwide.⁴

In 2021, there are at least two commercial offshore wind farms including Hywind in Scotland, which has been operating five 6 mw turbines since 2017⁵, and the Windfloat Atlantic Project in Portugal, which has been operating three 8.4 mw turbines (8.4 mw) 12 miles from shore at 328 feet depth (100 m) since 2020.⁶ A 50 mw offshore floating wind farm, Kincardine, is currently under construction in Scotland.⁷ Notable offshore wind demonstration projects include Fukushima Floating Offshore Wind Farm in Japan,

⁴ <https://www.energy.gov/eere/wind/downloads/2018-offshore-wind-market-report>

⁵ <https://www.equinor.com/en/what-we-do/floating-wind/hywind-scotland.html>

⁶ <https://www.oedigital.com/news/478909-final-windfloat-atlantic-floating-wind-turbine-heads-offshore> and <https://www.oceanwinds.com/projects/pt-projects-windfloat-atlantic-project/>

⁷ <https://www.nsenenergybusiness.com/projects/kincardine-floating-offshore-wind-farm-scotland/>

which deployed three turbines (2 mw, 5 mw and 7mw)⁸; Hibiki, Japan, which deployed a single turbine at a depth of 165 feet⁹; Bilbao, Spain, which deployed a 2 mw wind turbine on “SATH floating platform,” two miles from coast in 280 feet of water in partnership with RWE Renewables.¹⁰

Many of the questions Maine seeks to answer can be learned by studying the experience of these projects. Let’s not use the Gulf of Maine to conduct an experiment when relevant data is being collected elsewhere. Let’s understand what those experiences have been and how fisheries and the environment have been impacted before Maine moves forward with a huge commercial development. If this technology proves not to have significant negative impacts on fisheries and the environment, the strong winds of the Gulf of Maine will still be there, and jobs can still be created.

Who are the State’s Partners in Offshore Wind Development?

The University of Maine announced that it was partnering with New England Aqua Ventus (NEAV), a joint venture between two large international energy companies, Diamond Offshore Wind (a subsidiary of the Mitsubishi Corporation) and RWE Renewables, a division of a large German multinational energy company. The Governor’s Energy Office website states, “The State intends to partner with New England Aqua Ventus... to develop the research array.”¹¹

If Maine moves forward with offshore wind development, working with a partner who understands Maine people and our values is extremely important. Once built, offshore wind farms will operate for many decades. This will begin the transition of trading fishing jobs for those promised by these global energy companies. Who are these companies? Will they have Maine’s best interests in mind as these projects move forward? Is Maine’s policy to work with whoever shows up first willing to finance a development?

The job of a large energy company is to develop energy and earn a profit. Maine’s current partners may not share our values or have the state’s best interests in mind. RWE has been in a protracted conflict in Germany over its clearing of the Hambach Forest, a 12,000-year-old ancient woodland in western Germany owned by RWE, to expand its open-cut lignite mine.¹² The CEO of Diamond Offshore Wind Development is a former VP at Enron who is now working on his sixth offshore wind project. Based on our experience working with Diamond during the Monhegan cable route survey, their approach feels adversarial to the fishing community.

What are the Economic Opportunities and Risks?

We hear lots about the tremendous economic opportunities presented by floating offshore wind development, although no one can answer the question of how many jobs will be created, where the jobs would be located, how much they would pay, whether they are short-term or long-term.

⁸ <https://www.power-technology.com/projects/fukushima-floating-offshore-wind-farm/#:~:text=The%20Fukushima%20floating%20offshore%20wind%20farm%20demonstration%20project%20is%20located,and%20a%2066kV%20floating%20substation>

⁹ <https://www.offshorewind.biz/2019/06/06/japanese-floating-wind-turbine-put-into-operation/> and <https://www.youtube.com/watch?v=KCCi73EwKho>

¹⁰ <https://www.evwind.es/2020/10/28/pilot-project-for-floating-offshore-wind-energy-is-picking-up-speed/77905>

¹¹ <https://www.maine.gov/energy/offshorewind/projects/researcharray/FAQs>

¹² <https://www.dw.com/en/no-chance-of-saving-hambach-forest-says-rwe-boss/a-45698266>

No one talks, however, about the risk of losing fishing jobs. Fishermen will be asked to give up access to traditional fishing bottom. This means less opportunity for fishermen, and far less opportunity for the next generation of fishermen. For offshore wind turbines to be built, Maine's hardworking fishermen must surrender portions of their traditional fishing grounds to these companies. We fear that once fishermen are forced off their traditional bottom, or even bought out, we are at serious risk of selling our fishing heritage to energy companies.

I heard Governor Mills tell the U.S. Climate Alliance on April 21, "When I look at the solar projects and some of the offshore wind development and the prospects for new jobs there, I'm looking at younger people who want to bring their families here, raise their families here, so economically green jobs are great for the economy." I hope she understands that our rural coastal communities would not exist without our fishing industry. If we lose the opportunities to fish, our children growing up in these communities will not be able to stay there to raise the next generation.

The Maine lobster fishery generates more than \$1.5 billion annually in sales and distribution supply chain revenue to the region's economy,¹³ and is made up of a diverse collection of small businesses that are located along more than 3,500 miles of coastline in over 100 rural coastal communities, including 15 year-round islands.¹⁴ Many of our coastal communities lack traditional economic opportunity and instead are highly dependent on self-employment -- 23% overall, and 38% in year-round island localities (compared to 13% nationwide).¹⁵ Maine's commercial fisheries have provided a sustainable source of food and reliably supported our coastal economy for more than a century. With so much at stake, offshore wind must be halted until we understand how it will impact our industry.

In closing, the MLA asks for you to support LD 101. The MLA has not heard any rationale from the state to justify the need to imminently apply for an offshore wind lease before the most basic questions have been answered. We must hit the pause button on offshore wind development in the Gulf of Maine and work together to ask some hard questions, partner with developers who care about Maine's future, and make informed decisions on how Maine can develop a diverse and robust renewable energy portfolio that best serves the people of Maine.

If you choose not to support LD 101, you may very well help solve climate change, but at what cost to our environment, our fishing heritage and the citizens of our state?

Thank you.

¹³ www.colby.edu/economics/lobsters/Lobsters2DollarsFinalReport.pdf.

¹⁴ Island Institute Waypoints, *Community Indicators: Livelihoods on Maine's Coast and Islands*, www.islandinstitute.org/waypoints-livelihoods.

¹⁵ *Id.*

Protect the Gulf of Maine Rally
Excerpts of Quotes from Speakers
April 28, 2021 at the Augusta Civic Center

Attachment 1

Christopher McIntire, Orrs Island Fisherman

Thank you for the opportunity to speak today and finally feel as though my voice and the voices of other fishermen and concerned members of the community will be heard. Far too often in the state's recent planning around offshore wind development, that has not been the case. The state's swift action towards endorsing the overseas corporate takeover of our historical fishing grounds has been disturbing to say the least. Instead of taking the prudent path, conducting non-biased research to better understand the socio-economic and environmental impacts of large-scale industrialization of the Gulf of Maine, the state has taken a 'let's put them out there and see what happens approach'. Every time a critical question is raised about the functionality or impacts of the governor's proposed offshore wind project, we are told, 'we don't know' or 'that's why it's a research project'. The Gulf of Maine and all of the people it supports are not worth being used as a giant test tube. At its core, the governor's proposed project is not a research project. It will be the world's largest floating offshore wind array and the largest wind farm to be built in the US to date. It will be owned and operated for 20 to 30 years by Diamond Offshore Wind, a subsidiary of Mitsubishi Heavy Industries, and RWE, Europe's largest carbon polluter.

Does it really sound like a good idea to start leasing areas of the Gulf of Maine to some of the world's least environmentally friendly companies? The Gulf of Maine is currently being drooled over by overseas investors in global energy companies. In order for them to sell energy at affordable rate they will have to scale up the number of wind turbines in these windfarms to reduce the price per unit. The hundreds of turbines that it will take to produce affordable energy will cover thousands of square miles of some of the most productive fishing grounds in the world, taking opportunities away from US fishermen and handing them to big energy companies.

I could go on and on about all of the reasons offshore wind development in the Gulf of Maine is a bad idea. You've heard many of them today and will continue to. And most of you here today already know why.

I'm here today to ask for help; help from the people of the great state of Maine and their representatives here in Augusta. Every fisherman's small business isn't much different from your average small family farm. The big difference being that we don't own the water from which we harvest seafood. We have always been told that you can't own the water. It's a shared resource. But now apparently overseas energy companies can own the water for 20 years or more per lease. If the fishermen had been extended the same opportunity now given to these energy companies we'd have had the whole thing leased 100 years ago.

So I urge the people of Maine to support Maine's fishing industries by saying no to offshore wind and maintaining the shared resource that has sustained coastal Maine for hundreds of years. Please contact your local senators, representatives and members of local government and let them know that offshore wind is bad for the Gulf of Maine. Let's work together to find better renewable energy opportunities that will benefit the people of Maine instead of global energy companies.

Please don't let our government replace generational careers with short-term construction jobs. This is not another case of people saying 'not in my backyard'. Because if the only two options were literally in the Gulf of Maine or in my backyard, I'd choose my backyard. They don't belong out there in the ocean. So please believe that when we here today say no to offshore wind, it is because we truly believe that it will be bad for the environment, bad for fishermen, and bad for the state of Maine. thank you all very much for being here today.

Andrew Dorr, Town Manager, Vinalhaven

"I'm here today to insist that people that are part of the long heritage and protection of the ocean be given a voice to ensure its future success. The lobster fishery makes up an overwhelming majority of our local economy either directly or indirectly... The state's proposed research array in offshore wind development in the Gulf of Maine needs to be reviewed and pursued with only the best interest of the commercial fishing industry in mind. We ask that you slow down take the time to work with commercial fishermen and other ocean users."

Riley Eaton, Lobsterman and Graduating Senior Deer Isle-Stonington High School

"I'm an avid supporter of sustainability renewable energy and keeping our earth green. However, I do not believe that sticking windmills in the middle of the delicate ocean ecosystem will solve any of our problems. In fact, I think it will cause more disruption and disturbance than the small amount of energy we gain is worth... Why is it OK for there to be many vertical lines holding floating windmills in place but not OK for fishermen to have these lines?"

"The impact on our marine ecosystem will be exponential in ways we don't even know yet... These turbines are threatening our industry, my future... I'm all for the renewable energy effort and hope that someday soon each of us can benefit from this energy. However, I think that potentially sacrificing part of the marine ecosystem is not worth the risk. If we don't fight this now we might not have the opportunity to in the future."

Gerry Cushman, Port Clyde Lobsterman

"You are hardworking fishermen who love your community. You get up extra early, to get in extra early to coach your kids. When something happens to your community, you guys step up to the plate and answer. They don't give two craps about any of that. They care about green money and dividends. Diamond doesn't look at you the way that most of you look at each other: hardworking people. They can't see that. All they see is greed and money... I want us to stay united... please, stay the course, say no to offshore wind. Period!"

Ty Babb, Lobsterman Tenants Harbor

"I measured up what the windmill might look like last night in my shop. This white rope symbolizes the 350' upright tower. Three more ropes up in the parking lot 244 foot wings. The stuff down there that goes across the road is another 150 feet of underwater structure, 110 feet to help support it, and that is without the chain... They say that if want to scale it up to this size, you might be able to make some money. Now its our job to take the other side of the coin and say if we do scale it up to that size, what's is going to effect? What kind of impact is that going to have and who is going to take responsibility for it?... I'm not sure that the people who designed this wind tower that is three time the height of the capitol building, that's 185 feet and this wind turbine is 600 feet, stood down there for 12 months and looked up in the sky and said 'who flies by here?', 'who swims by here?', 'whose spot is this?' I don't believe that's a corporation's spot, I believe that is nature's spot. Everyone of you here, is here because it pulls on a heartstring for some reason, it's your edge. You're worried about your grandkids, worried about the birds, your worried about the butterflies, you're just worried about green energy."

"No matter how hard you push wind power, its' not the option for us. The option for clean, sustainable energy, is something that doesn't go right in the middle of an ecosystem that feeds hundreds of thousands of people in the course of a year... Lets stick together, let's work together and let's look at the facts."

Ginny Olson, Maine Lobstering Union

"Rome wasn't built in a day and we will not stop offshore wind with one rally," said Olson "We are not going to be pushed out of the way."

Matt Gilley, Harpswell Lobsterman

I'm an inshore fisherman, and these windmills aren't necessarily going to be placed where I fish, but there's still no need for them in the Gulf of Maine... I'm very involved, I've asked many ; most of the questions they don't

have answers for. The conclusion that I've come to after all these meetings is that these mills are bad for Maine, bad for the environment, and bad for fishing. As stewards of the sea and our small owner operator businesses, we operate the most sustainable fishery in the world. We work our butts off to protect the environment and save it for the next generation... All as we are asking for is a plan, some studies to be done, show us the science, show us the data... They are trying to put an untested powerplant in the Gulf of Maine... They're going to have three 2,500 foot chains securing them to the ground, each link will be the size of a full size truck. And as these turbines move up and down, these chains sweep the bottom crushing any sea life underneath them. You'll have the shadows that these turbines will cast that will hamper the growth of plankton that large marine mammals, like the right whales feed on. The research array is being placed almost directly next to the area they want to close to fishing to help protect the endangered right whale... The rate payers, the general public; not just the fishermen are going to feel the pain from this. My biggest concern is the environment. I love to fish, I want to continue fishing, but I also do not want to see my environment destroyed by offshore monstrosities.

Clinton Collamore, Lobsterman Waldoboro

"We've always got through it, made it work. It's our way; the Maine way. But now there are things that are taking away from our industry that are beyond us. We need help... The powers that be need to step up and support our industry... We have to do this one voice, not the 'I and me' attitude. That's how I was brought up and it's not that way anymore. We are all in this together... Our efforts today, I believe, will determine the future of our children and grandchildren who may want to be part of this industry. So we must try."

Billy Bob Faulkingham, Lobsterman and Representative from Winter Harbor

"We fishermen are great stewards of the environment because we depend on it to make a living... These gigantic pieces of garbage.... are a terrible idea for the marine environment... One of the great selling points is that we could be the first in this science project. But why? Why would we do that when we have so much value in the Gulf of Maine would we be a science lab for this experiment?... What does a chain link the size of a Volkswagen car do when it dredges the ocean bottom with every ebb and flow of the tide? Absolute devastation... And they've hired one of the biggest money lobbyists in Augusta to be lobbying our legislators over there. And I can tell you one thing. There is no lobbyist more powerful than these people right here! Make your voice heard. Say no to windmills in the GOM."

Spencer Joyce, Lobsterman Swans Island

"We have to stand together, enough is enough!"

Monique Coombs, Lobstering Family and Maine Coast Fishermen's Association

"Developing the ocean with incredibly large and astronomically expensive structures does not get us closer to achieving any goals to provide solutions to our climate change emergency. Instead it allows some to continue a lifestyle of overconsumption and abundance, it provides even fewer with a large fortune, and it shuttered many family fishing businesses. Businesses like the ones my kids started and are looking forward to working on again this summer. So, I ask of everybody to support Maine fishermen, to choose Maine kids, to eat Maine seafood, and to protect the ocean and our climate by becoming better stewards of the ocean and environment."

Michael Yoe, CEO Lobster 207

"In fishing communities of Maine, there is no backup plan... If you want to grow up here and stay here and live in this beautiful state and build a life for your family, you don't really have many options... Generations of fishermen have invested in the Gulf of Maine... Make no mistake about it, you are in a fight. And the fight is in your backyard... We do all have to have one common goal... to save the industry that you and generations before you have grown and built. Maine lobstermen and their families and our coastal communities are worth fighting for. And I don't think they're leaving."

John Hathaway, CEO, Shucks Maine Lobster

"You are the Maine brand. You are the reason people come to Maine and spend the money that creates our jobs. Not just in the lobster industry, but in every restaurant, every hotel, every clothing store... I travel all over this country and all over the world and everywhere I go I tell people I'm from Maine. And what do they say? Lobster. ... No one's ever said to me "wind turbine". Maine lobster is the brand of our state thanks to you... Without you, there is no Maine, there is no Maine brand."

"Apparently not everyone in our state realizes that you are the Maine brand, at least not yet... I've spend my time... serving in the Legislature. I'll share with you how it works. Money travels the hallways. Money talks quietly but it carries a big stick. And in this case wind turbines are big money... Believe me they want to destroy you and your way of life . It's called the camel's nose under the tent. They pretend it's just one small move that won't hurt anyone. Next thing you know they want to own the whole tent and we have nowhere to sleep. Don't underestimate them. The time to stop them is now. The good news is the only thing that speaks louder than money in politics is the voice of the voters. If we speak loud enough and long enough and have lots of people like we do here today, we can win the day... It's not how many times you get knocked down, it's how many times you get up... We're ready to stand up, to speak up, to rise up, and make our voices heard. And our votes count to those inside those four walls who make our laws. It's our right, it's our duty to our communities and our families. If we speak up politicians will listen. They represent us. It's their duty and it's also their political future. If not the big money wins. So it's all up to us. It's up to all of us to speak up to speak the truth and if we do the politicians will listen and Maine lobster will win the day."

Richard Larabee, Stonington Lobsterman

"Why are we cutting the throats of our coastal communities?... My ask is that Janet Mills and her administration find some common sense and see that these windmills will destroy two industries that are thriving in our state, the lobstering and the tourism."

Jim Hanscomb, Mount Desert Island Lobsterman

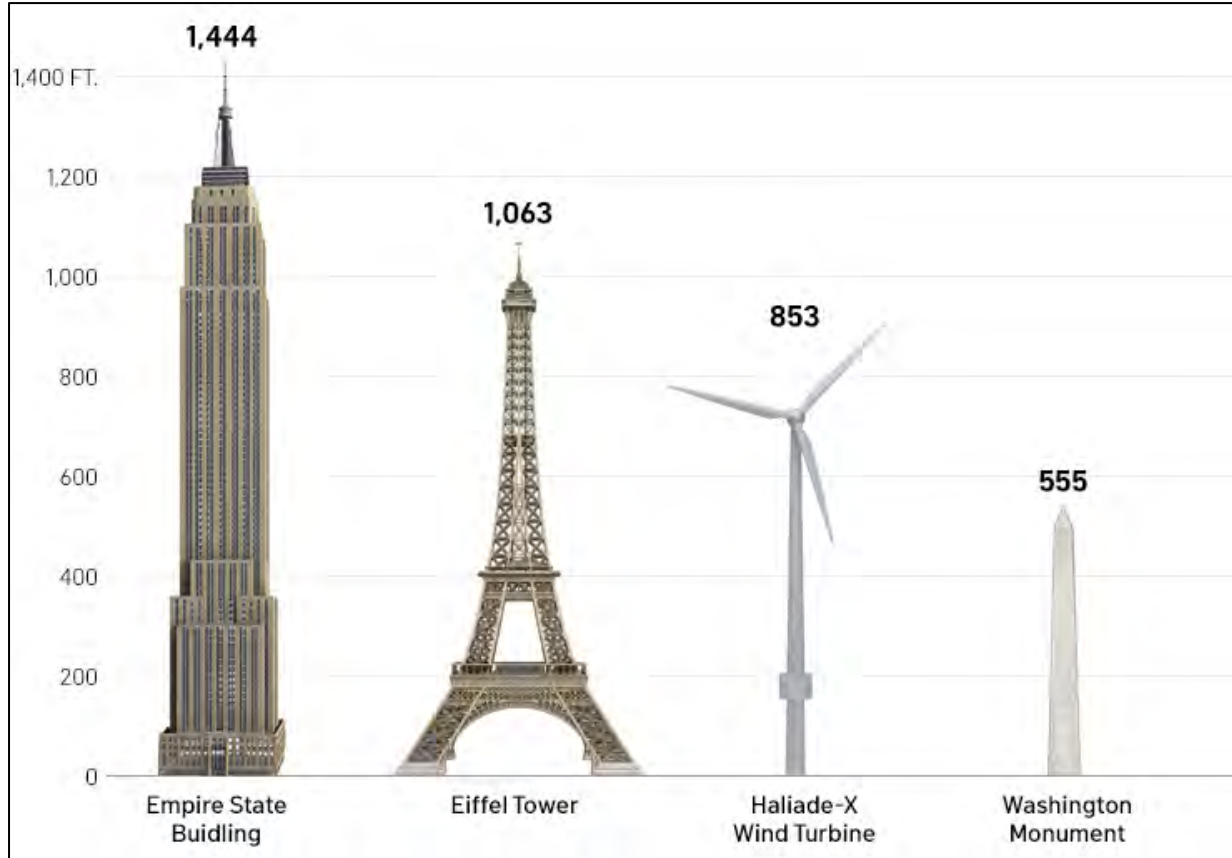
"We are under attack, everywhere you turn, at all angles. There's a lot of people in the state... that don't know as much about us or our industry as we think they do. That makes everything hard. We need to get the people of Maine's attention on the value of our industry to the Maine economy and everything that's at stake.... Be a part of something... I truly believe there's power in numbers... Janet Mills... may be the Governor, but she's not self-employed, she works for us. She works for the people of Maine... If you are not a part of the process, you will definitely won't be part of the solution. And there will be a solution. and it won't be the solution we're looking for. Keep your voices strong!"

Julie Rabinowitz, Maine People Before Politics

"We know that there are environmental impacts we don't know exactly what those environmental impacts are... You are the true environmental stewards, you are out there every day, you understand the oceans, you understand the real environment, you're fighting for your livelihood and the state needs to slow down and make sure we're not going to do long term damage to the iconic heritage industries of Maine."

Attachment 2

Offshore Wind Turbine Scale Drawing



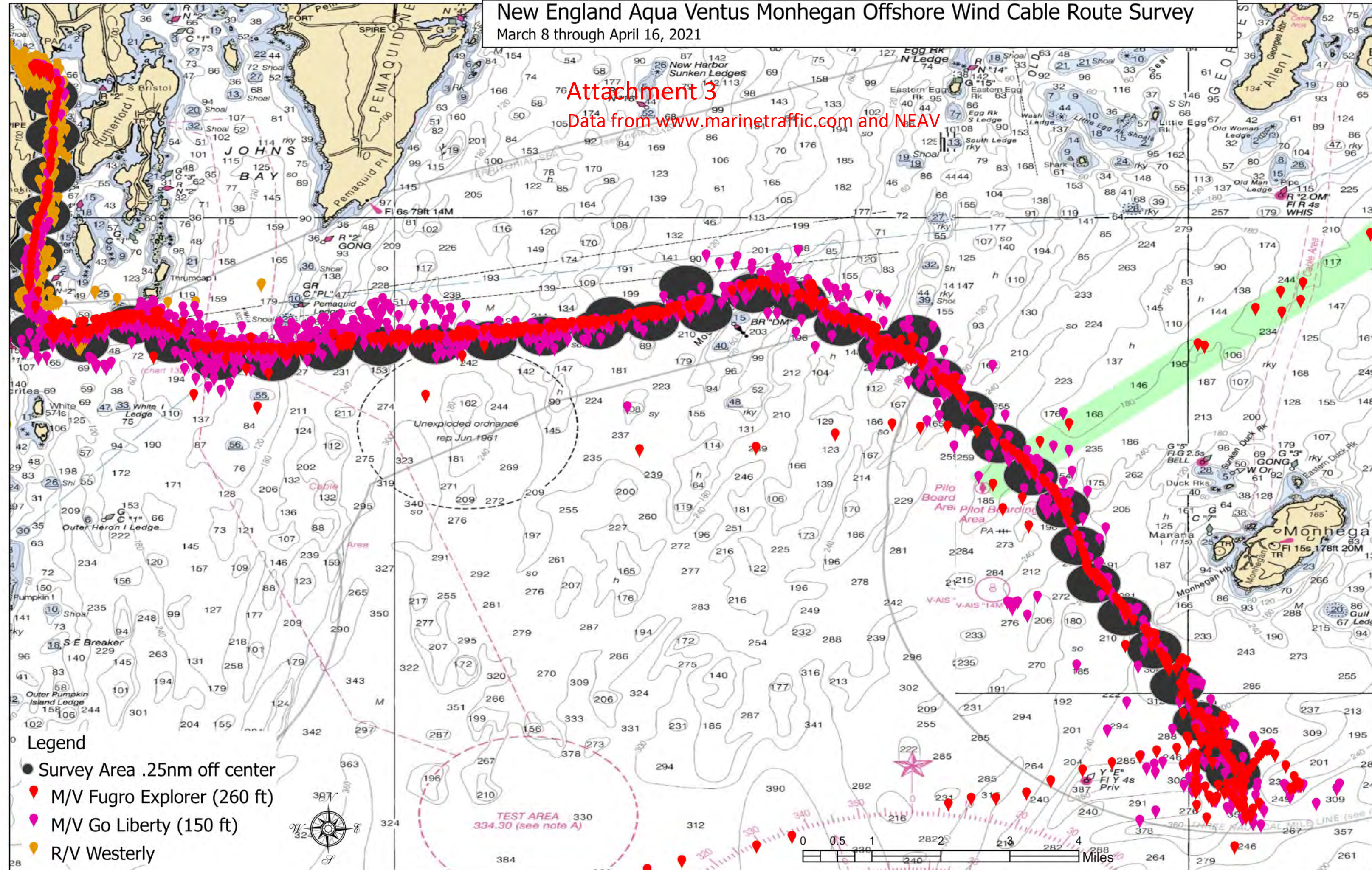
Credit: Nelson Hsu/NBC at <https://www.nbcphiladelphia.com/news/national-international/changing-climate/offshore-wind-turbines-renewable-energy-atlantic-ocean-new-jersey-united-states-climate-change/2723432/>

New England Aqua Ventus Monhegan Offshore Wind Cable Route Survey

March 8 through April 16, 2021

Attachment 3

Data from www.marinetraffic.com and NEAV

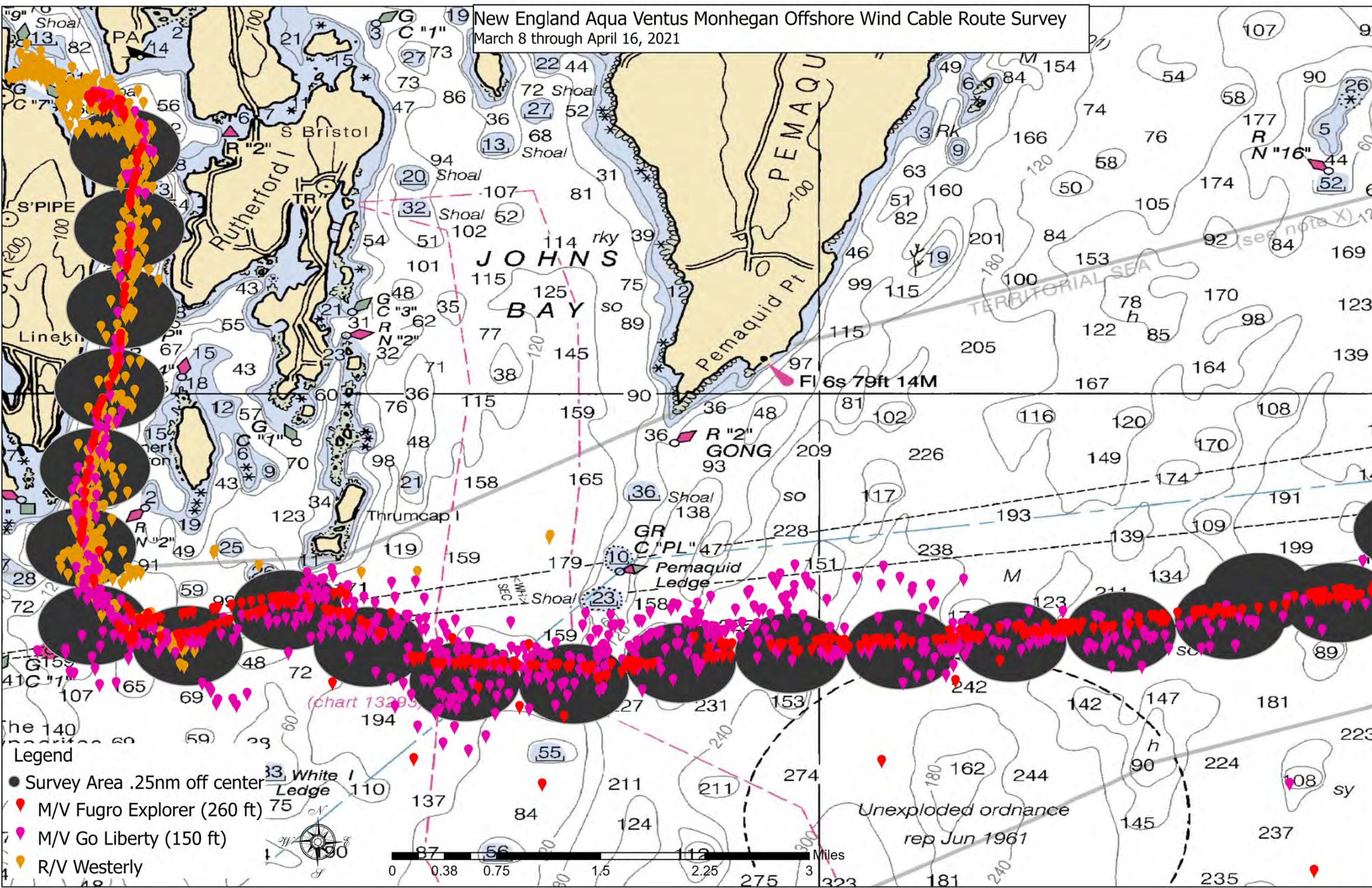


- Legend**
- Survey Area .25nm off center
 - 📍 M/V Fugro Explorer (260 ft)
 - 📍 M/V Go Liberty (150 ft)
 - 📍 R/V Westerly

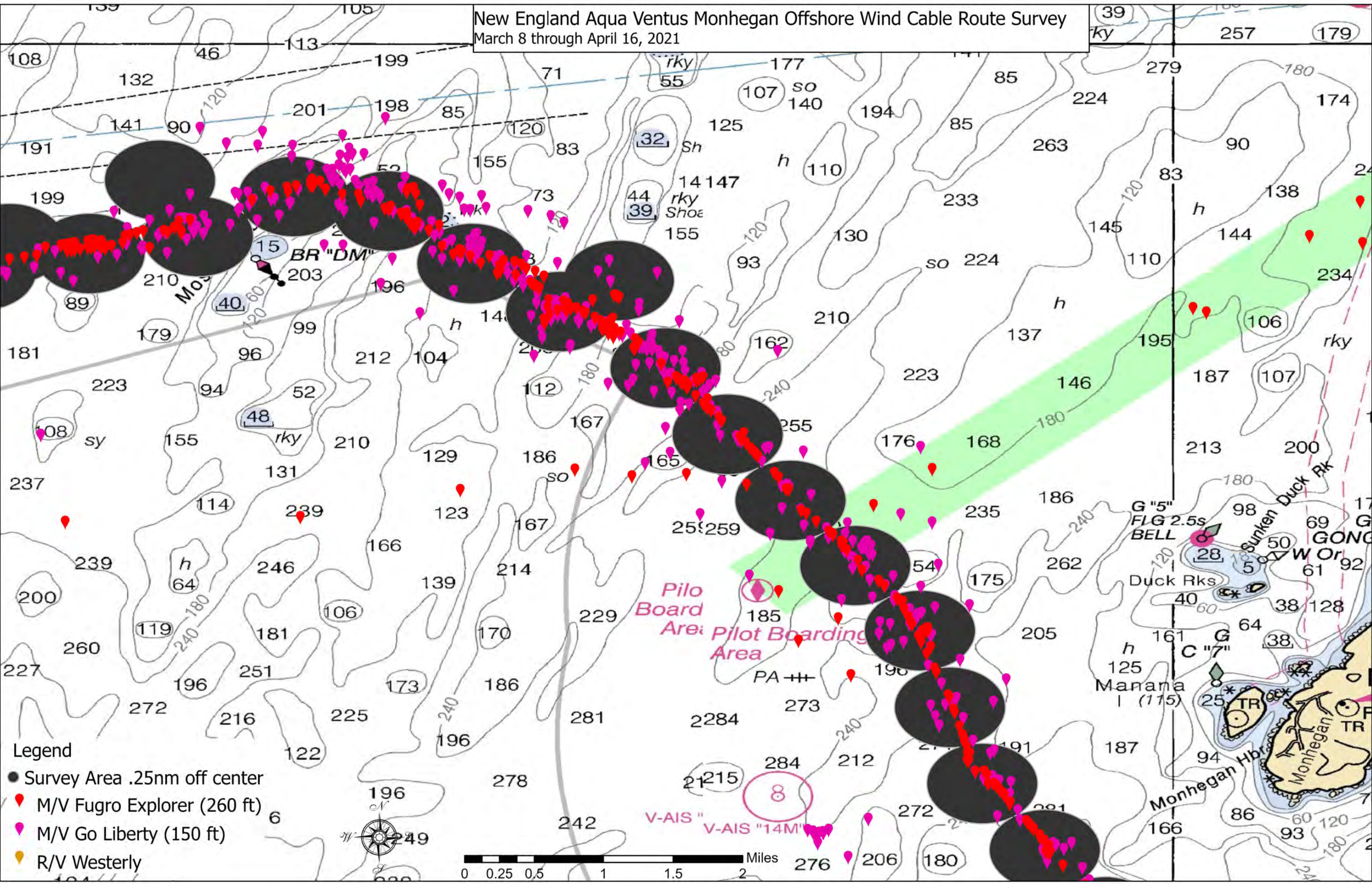


0 0.5 1 2 3 4 Miles

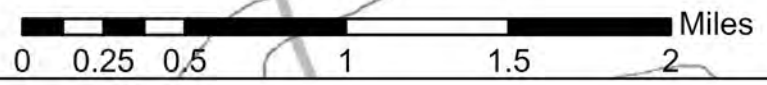
New England Aqua Ventus Monhegan Offshore Wind Cable Route Survey
March 8 through April 16, 2021



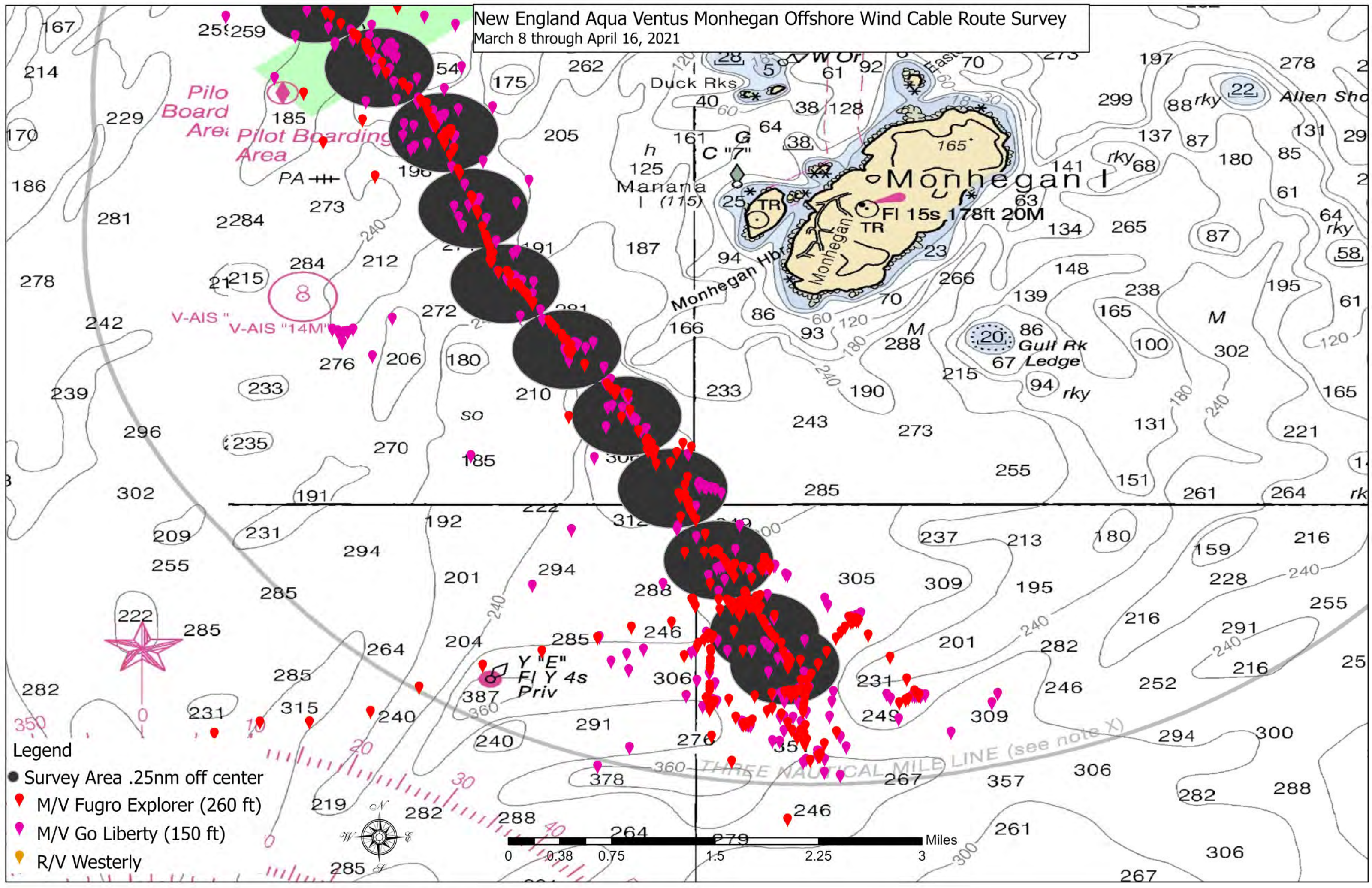
New England Aqua Ventus Monhegan Offshore Wind Cable Route Survey
 March 8 through April 16, 2021



- Legend
- Survey Area .25nm off center
 - ◆ M/V Fugro Explorer (260 ft)
 - ◆ M/V Go Liberty (150 ft)
 - ◆ R/V Westerly



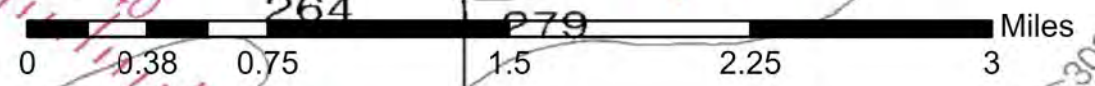
New England Aqua Ventus Monhegan Offshore Wind Cable Route Survey
 March 8 through April 16, 2021



Pilo Board Area
 Pilot Boarding Area

V-AIS "8"
 V-AIS "14M"

- Legend
- Survey Area .25nm off center
 - ▲ M/V Fugro Explorer (260 ft)
 - ▲ M/V Go Liberty (150 ft)
 - ▲ R/V Westerly



THREE NAUTICAL MILE LINE (see note X)



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

April 9, 2021

M-37067

Memorandum

To: Secretary

From: Principal Deputy Solicitor

Subject: Secretary's Duties under Subsection 8(p)(4) of the Outer Continental Shelf Lands Act When Authorizing Activities on the Outer Continental Shelf

I. Introduction

On December 14, 2020, former Solicitor Daniel H. Jorjani issued M-Opinion 37059.¹ That Opinion interpreted subsection 8(p)(4)(I) of the Outer Continental Shelf Lands Act (“OCSLA”), which requires the Secretary of the Interior to “ensure that any activity under this subsection is carried out in a manner that provides for the prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas[.]” 43 U.S.C. § 1337(p)(4)(I). The focus of the opinion was on the relationship between offshore wind power generation and commercial fishing on the outer Continental Shelf.

M-37059 concluded that subsection 8(p)(4)(I) of OCSLA “requires the Secretary . . . to prevent interference with reasonable uses in a way that errs on the side of less interference rather than more interference,” including by “preventing *all* interference, if the proposed activity would lead to unreasonable interference.” M-37059 at 2 (emphasis added). In so concluding, the Opinion interpreted the statutory phrase “prevention of interference” in isolation, and did not acknowledge the prefatory language of subsection 8(p)(4), i.e., the command that the Secretary “carr[y] out” action in a general “manner that provides for” twelve enumerated goals. Nor did the Opinion acknowledge that “prevention of interference with reasonable uses (as determined by the Secretary)” is only one of the objectives the Secretary must consider when implementing subsection 8(p)(4) of OCSLA. In addition, the Opinion failed to note that the parenthetical modifies the entire preceding clause, such that the Secretary has discretion to determine what constitutes “interference with reasonable uses.”

A well-established body of law recognizes that this type of statute—a general requirement that an agency accomplish one or more broadly defined goals—does not provide the narrow directive

¹ M-Opinion 37059 is entitled, “Secretary’s Duty to Prevent Interference with Reasonable Uses of the Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), *Alternate Energy-related Uses on the Outer Continental Shelf*.”

that M-37059 identified in subsection 8(p)(4)(I). Instead, subsection 8(p)(4) of OCSLA and similar statutes require only that the Secretary strike a rational balance between Congress's enumerated goals, i.e., a variety of uses. In making this determination, the Secretary retains wide discretion to weigh those goals as an application of her technical expertise and policy judgment.

Because M-37059 did not acknowledge this body of law nor read OCSLA subsection 8(p)(4) as a whole, its conclusions are in error. Pursuant to delegated authority, I hereby withdraw the Opinion and advise the Secretary that, for purposes of subsection 8(p)(4) of OCSLA, her actions must strike a rational balance between the subsection's enumerated goals.

II. Statutory Background

The Outer Continental Shelf Lands Act defines the Outer Continental Shelf ("OCS") as all submerged lands lying seaward of state coastal waters (*i.e.*, generally 3 miles offshore) that are under United States jurisdiction. 43 U.S.C. § 1331(a). Subsection 8(p) of OCSLA authorizes the Secretary to "grant a lease, easement, or right-of-way on the [OCS]" for certain activities, including those to "produce or support production, transportation, or transmission of energy from sources other than oil and gas." 43 U.S.C. § 1337(p)(1)(C).

The Secretary of the Interior must consider certain factors before acting under subsection 8(p). Specifically:

[t]he Secretary shall ensure that any activity under [subsection 8(p)] is carried out in a manner that provides for—

- (A) safety;
- (B) protection of the environment;
- (C) prevention of waste;
- (D) conservation of the natural resources of the outer Continental Shelf;
- (E) coordination with relevant Federal agencies;
- (F) protection of national security interests of the United States;
- (G) protection of correlative rights in the outer Continental Shelf;
- (H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;
- (I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;
- (J) consideration of—
 - (i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

- (ii) any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;
- (K) public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and
- (L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.

43 U.S.C. § 1337(p)(4).

III. Analysis

Subsection 8(p)(4) requires the Secretary to “carr[y] out” action in a “manner” that “provides for” twelve different goals. *Id.* This type of command—an instruction that the agency act in pursuit of certain goals or in a specific “manner”—is “mandatory as to the object to be achieved, but . . . leaves [the agency] a great deal of discretion in deciding how to achieve it.” *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 66 (2004) (“*SUWA*”). In *SUWA*, for example, the Supreme Court interpreted 43 U.S.C. § 1782(c), which requires the Bureau of Land Management to manage certain land “in a manner so as not to impair the suitability of such areas for preservation as wilderness.” The Court explained that this “broad statutory mandate” imposes no discrete duties on the Secretary, and instead reserves for her a series of “day-to-day” decisions, in which she may exercise her “discretion” to resolve “policy disagreements.” *Id.* at 65-66. The Court observed that 43 U.S.C. § 1782 is not unique, identifying several statutes that require action in certain “manners” or for certain “benefits,” and that therefore do not impose discrete obligations on the Secretary. *Id.* at 66 (citing 16 U.S.C. §§ 1333(a), 410bbb-2(a)(1), 460nnn-12(b)).

Congress also provides agencies with discretion when it commands them to act for the benefit of several goals (rather than only one goal, as in *SUWA* itself). Indeed, these statutes “require[] balancing by the agency and the exercise of discretion and judgment” because various congressional goals “can be in tension with one another.” *Lovgren v. Locke*, 701 F.3d 5, 32 (1st Cir. 2012) (addressing standard of review for agency compliance with ten “National Standards” in the Magnuson-Stevens Act). In *Watt v. Energy Action Education Foundation*, for example, the Supreme Court considered a challenge to the Secretary’s alleged failure to implement new bidding regimes for oil and gas leasing under OCSLA. 454 U.S. 151 (1981). Plaintiffs alleged that the reforms were necessary under section 18 of OCSLA, which requires the Secretary to maintain an oil as gas leasing program “in a manner consistent with” several principles, including the “receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.” 43 U.S.C. § 1344(a)(4). The Court rejected the argument that any particular method must be adopted by the Secretary because the “[t]he receipt of fair market value . . . is only one of many general considerations commended to the Secretary’s attention,” and therefore did not, by itself, impose an “express statutory check” on the Secretary. *Watt*, 454 U.S. at 164. To the contrary, the Court explained that OCSLA “requires experimentation with at least some . . . new bidding systems, but leaves the details to the Secretary’s discretion.” *Id.* See also *Commonwealth of Mass. v. Andrus*, 594 F.2d 872, 889 (1st Cir. 1979) (reading list of general policy priorities in former section 3 of OCSLA to mean that “where . . . sets of interests conflict . . . , the Secretary must determine which interests must give way, and to what degree, in

order to achieve a proper balance,” a task that “rules out a policy based on sacrificing one interest to the other”).

As in *Watt*, subsection 8(p)(4) of OCSLA commands the Secretary to act in a “manner that provides for” many separate—and potentially competing—considerations. Thus, the Secretary’s obligations to provide for the “protection of the environment,” the “prevention of waste,” the “protection of national security interests of the United States,” and the “fair return to the United States” may weigh in favor of Secretarial actions to maximize low-emission and renewable electrical generation from offshore wind facilities, but, in some circumstances, the siting and operation of those facilities may not optimally provide for other “reasonable uses” of the exclusive economic zone. 43 U.S.C. § 1337(p)(4)(B), (C), (F), (H), (I). *Accord Watt*, 454 U.S. at 164 & n.16 (recognizing that Secretary must weigh “the receipt of fair market value” against, e.g., any competing interests in the “economic, social, and environmental values of the renewable and nonrenewable resources contained in the [OCS]”); *Andrus*, 594 F.2d at 889 (same, for “policies that will result in the extraction of oil and gas” on one hand, and, on the other, “unreasonable risks and damage to renewable resources”). OCSLA subsection 8(p)(4) therefore requires discretionary balancing among its several factors, and the subsection’s text plainly leaves “striking the proper balance . . . up to the Secretary of the Interior,” *Watt*, 454 U.S. at 164 n.16, so long as that balance is rational. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Andrus*, 594 F.2d at 889. Conversely, subsection 8(p)(4) does not provide any “discrete” commands to the Secretary, *SUWA*, 542 U.S. at 65-66, or “express statutory check[s]” on her discretion, *Watt*, 454 U.S. at 164, since those provisions would foreclose the very balancing on which the statute depends.²

In reaching a contrary conclusion, M-Opinion 37059 did not read OCSLA subsection 8(p)(4) as a whole, but instead applied tools of statutory construction to “interpret” the phrase “prevention of interference with reasonable uses” in subsection 8(p)(4)(I).³ Because the Opinion did not acknowledge the subsection’s remaining text—requiring the Secretary to act “in a manner providing for” several goals—the Opinion failed to situate subsection 8(p)(4) within a familiar category of statutes imposing only general obligations on federal agencies. The Opinion’s analysis was therefore superfluous: because subsection 8(p)(4) commands only that the Secretary rationally balance the subsection’s various goals, the subsection may not be read to impose

² By regulation, the Secretary may establish uniform processes for balancing the subsection 8(p)(4) factors or define ambiguous language in those factors. In their current form, the implementing regulations largely reiterate the requirements of subsection 8(p) itself, and therefore do not add to the analysis of what the subsection does and does not require of the Secretary. *Compare, e.g.*, 30 C.F.R. § 585.621(c) (requiring proponents of a Construction and Operations Plan for offshore projects under OCSLA to demonstrate that the Plan “[d]oes not unreasonably interfere with other uses of the OCS”) with 30 C.F.R. § 585.638(f) (providing that the Secretary, in her discretion, “may approve, disapprove, or approve with modifications [the Plan]”) (emphasis added).

³ Among these tools was a lengthy examination of OCSLA’s legislative history, including a comparison of that history to the text of disparate and largely unrelated statutes such as the Deep Seabed Hard Mineral Resources Act and 46 U.S.C. § 3715, which governs aspects of lightering (the practice of transferring oil or similarly hazardous material from one ship to another). M-37059 at 6-10. In the words of M-Opinion 37059, “[t]he legislative history for the amendment of OCSLA that added subsection 8(p) is very limited and does not appear to shed light on the meaning of the terms used in [that] subsection[] . . . in any detail.” *Id.* at 2. For this reason—and because the plain text of OCSLA section 8(p)(4) itself governs the issues described herein—we do not rely on OCSLA’s legislative history to construe the Secretary’s obligations.

additional requirements in its individual paragraphs, such as the requirement that the Secretary “prevent[] all interference, if the proposed activity would lead to unreasonable interference.” M-Opinion 37059 at 2. The Opinion, including its extra-statutory policy advice, is therefore in error.

IV. Conclusion

As set forth above, I conclude that subsection 8(p)(4) of OCSLA imposes a general duty on the Secretary to act in a manner providing for the subsection’s enumerated goals. The subsection does not require the Secretary to ensure that the goals are achieved to a particular degree, and she retains wide discretion to determine the appropriate balance between two or more goals that conflict or are otherwise in tension.

This opinion supersedes and replaces M-37059, which will have no further force or effect.

Robert T. Anderson