

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

MAYOR AND CITY COUNCIL OF OCEAN)
CITY, MARYLAND, *et al.*,)
)
 Plaintiffs,)
 v.)
)
 UNITED STATES DEPARTMENT OF THE)
 INTERIOR, *et al.*,)
)
 Federal Defendants,)
 and)
)
 US WIND, INC.)
)
 Defendant-Intervenor.)
 _____)

Case No.: 1:24-cv-03111-SAG

**JOINT OPPOSED MOTION TO ENTER BRIEFING SCHEDULE FOR FEDERAL
DEFENDANTS’ FORTHCOMING MOTION FOR REMAND AND TO DEFER
FEDERAL DEFENDANTS’ DEADLINE TO ANSWER COMPLAINT**

Federal Defendants and Plaintiffs respectfully request that the Court enter a briefing schedule for Federal Defendants’ forthcoming motion for voluntary remand. Specifically, the Bureau of Ocean Energy Management (“BOEM”) is in the process of reconsidering its prior approval of the Maryland Offshore Wind Project Construction and Operations Plan (“COP”). The operative complaint in this case challenges, among other things, that approval decision. Thus, Federal Defendants are intending to move no later than September 12 to remand and, separately, to vacate BOEM’s COP approval. The present motion seeks entry of briefing schedule for that forthcoming remand motion. And in light of that forthcoming motion, Federal Defendants also request that the Court defer their current deadline to answer Plaintiffs’ Complaint. Instead, Plaintiffs and Federal Defendants suggest the parties file a status report 14 days after the Court

resolves the Motion for Remand and propose what, if any, further proceedings are appropriate. Defendant-Intervenor U.S. Wind opposes the request for entry of a schedule and to defer the answer deadline. In support of this motion, Federal Defendants and Plaintiffs state as follows:

1. Plaintiffs filed this suit alleging violations of the Administrative Procedure Act, National Environmental Policy Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Coastal Zone Management Act, and National Historic Preservation Act on October 25, 2024. ECF No. 1.

2. On January 6, 2025, the Court granted leave for Plaintiffs to file an Amended Complaint, which added one new claim under the Outer Continental Shelf Lands Act and ten new plaintiffs. ECF No. 30.

3. On January 17, 2025, Federal Defendants filed a Partial Motion to Dismiss two counts of Plaintiffs' Amended Complaint. ECF No. 37.

4. On January 29, Defendant-Intervenor filed a Motion to Dismiss Plaintiffs' Amended Complaint in its entirety. ECF No. 39.

5. On July 2, 2025, this Court granted Federal Defendants' Motion to Dismiss Plaintiffs' sixth (Migratory Bird Treaty Act) and seventh (Coastal Zone Management Act) causes of action. The Court also granted Defendant-Intervenor's Motion to Dismiss Plaintiffs' first (Administrative Procedure Act), sixth, and seventh causes of action. The Court denied Defendant-Intervenor's motion as to the remaining causes of action.

6. On July 15, 2025, this Court granted Defendants' motion to extend Defendants' deadline to respond to the remaining claims in Plaintiffs' Amended Complaint until September 5, 2025.

7. Federal Defendants now intend to move for remand and, separately, to vacate

BOEM's decision to approve the COP and, should the Court grant that relief, to dismiss all Plaintiffs' remaining claims as a result. Should the Court grant all (or even some) of Federal Defendants' motion, an answer to the operative complaint would be unnecessary. Thus, to conserve the resources of the parties and the Court, Federal Defendants respectfully request that the Court defer Federal Defendants' current deadline to answer Plaintiffs' Amended Complaint. Instead, Federal Defendants and Plaintiffs suggest that the parties file a status report suggesting what, if any, further proceedings are necessary within 14 days of the Court's ruling on the forthcoming motion for remand. Defendant-Intervenor opposes Federal Defendants' request to defer the deadline to answer Plaintiffs' Amended Complaint.

8. In anticipation of the forthcoming remand motion, Counsel for Federal Defendants also conferred with Counsel for Plaintiffs and Defendant-Intervenors regarding a proposed briefing schedule. That proposal is set forth below. Plaintiffs agree the schedule is reasonable. Defendant-Intervenor opposes the schedule. Our understanding of Defendant-Intervenor's position is that the Court, in order to decide any request to vacate the COP, would need to opine on the merits of Plaintiffs' claim, which (in Defendant-Intervenor's view) should only be done through summary judgment briefing with consideration of the administrative record. Defendant-Intervenor proposed an alternative schedule to this effect. While that may be a reason to argue against vacatur *in response to the remand motion*, it is not a reason to eliminate Federal Defendants' right to seek relief from the Court. And the question of whether the COP approval should be vacated is secondary to whether the Court should remand that approval to Interior given that Interior is reconsidering the decision. *Accord Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 215 (4th Cir.2009) ("When a court reviews an agency action, the agency is entitled to seek remand without confessing error, to reconsider

its previous position.” (citation omitted)); *id.* (“[I]t would be an abuse of discretion to prevent an agency from acting to cure legal defects.” (cleaned up)). Defendant-Intervenor remains free to oppose remand (with or without vacatur) for any reason it sees as appropriate. But it needs to do so in response to the forthcoming motion to remand. And where, as Interior will do here, an agency seeks remand, allowing that remand “is also important for judicial economy because it allows courts to preserve judicial resources.” *Friends of Park v. National Park Service*, No. 2:13-cv-3453-DCN, 2014 WL 6969680, at *2 (D.S.C. Dec. 9, 2014) (citing *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir.1993)). To allow the Court to consider those factors and any countervailing points Defendant-Intervenor of Plaintiffs choose to raise, Plaintiffs and Federal Defendants request that the Court enter the following briefing schedule:

September 12, 2025: Federal Defendants file motion for voluntary remand

October 13, 2025: Parties may file any opposition motions

November 12, 2025: Federal Defendants file reply

For all these reasons, Federal Defendants and Plaintiffs respectfully request that the Court enter the above briefing schedule and defer Federal Defendants’ current deadline to answer Plaintiffs’ Complaint.

Dated: August 25, 2025

Respectfully submitted,

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MAYOR AND CITY COUNCIL OF OCEAN)
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Plaintiffs,)

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UNITED STATES DEPARTMENT OF THE)
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US WIND, INC.)

Defendant-Intervenor.)
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**[PROPOSED] ORDER GRANTING MOTION TO ENTER BRIEFING SCHEDULE FOR
FEDERAL DEFENDANTS' FORTHCOMING MOTION FOR REMAND AND TO
DEFER FEDERAL DEFENDANTS' DEADLINE TO ANSWER COMPLAINT**

Having considered Federal Defendants' and Plaintiffs' Joint Motion to Enter a Briefing Schedule for Federal Defendants' Forthcoming Motion for Voluntary Remand and to Defer Federal Defendants' Deadline to Answer Plaintiffs' Amended Complaint in the above-captioned case, it is hereby ORDERED that the motion is GRANTED. Therefore, the Court enters the following briefing schedule for Federal Defendants' forthcoming motion to remand:

September 12, 2025: Federal Defendants file the motion for voluntary remand

October 13, 2025: Parties may file any opposition motions

November 12, 2025: Federal Defendants file reply

The Court DEFERS Federal Defendants' current deadline to answer Plaintiffs' Amended Complaint. The parties SHALL file a status report suggesting what, if any, further proceedings are necessary within 14 days of the Court's ruling on the forthcoming motion for remand.

Dated: _____

The Honorable Judge Stephanie A. Gallagher