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**VIA EMAIL AND CERTIFIED MAIL**

October 20, 2025

The Honorable Doug Burgum
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**Re: PETITION UNDER 5 U.S.C. § 553(E) AND § 555(B) TO ABROGATE UNLAWFUL AMENDMENT TO OFFSHORE WIND LEASE LANGUAGE AND ISSUE SUPERSEDING LEASE AMENDMENTS**

**Dear Secretary Burgum:**

I submit this Petition on behalf of Save Long Beach Island, Inc. ("Save LBI") and Green Oceans. It has come to the attention of the undersigned that the Bureau of Ocean Energy Management ("BOEM") amended offshore wind leases in late December and January 2025 with the following

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material alterations in, "Section 8: Violations, Suspensions, Cancellations, and Remedies,"[1] including the new language, "Any cancellations are subject to the limitations and protections contained in subsections 5(a)(2)(B) and (C) of the Act (43 U.S.C. § 1334 (a)(2)(B) and (C))," and the qualifier "of particularized harm" in the subsequent paragraph. A juxtaposition between the "old" and "new" language is below:

**Old Lease Language:** "The Lessor may also cancel this lease for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), or for other reasons provided by the Lessor pursuant to 30 CFR 585.437."

**New Lease Language:** "The Lessor may also cancel this lease for reasons set forth in subsection 5(a)(2) of the Act (43 U.S.C. § 1334(a)(2)), and for reasons provided by the Lessor pursuant to 30 CFR § 585.422. Any cancellations are subject to the limitations and protections contained in subsections 5(a)(2)(B) and (C) of the Act (43 U.S.C. § 1334 (a)(2)(B) and (C)).

Any cancellation or suspension ordered by the Lessor that is predicated on a threat of serious irreparable, or immediate harm or damage, or on an imminent threat of serious or irreparable harm or damage, requires a finding by the Lessor of particularized harm that it determines can only be feasibly averted by suspension of on-lease activities."

These lease language alterations were improperly made for the following reasons.

1. The language, "Any cancellations are subject to the limitations and protections contained in subsections 5(a)(2)(B) and (C) of the Act (43 U.S.C. § 1334 (a)(2)(B) and (C)" imports protections and limitations which Congress intended for the oil and gas section of the Outer Continental Shelf Lands Act ("OCSLA"). In 2005, Congress enacted OCSLA Section 8, 43 U.S.C. § 1337(p) specifically for renewable energy on the Outer Continental Shelf. And the interpretive regulations at 30 C.F.R. 585 et seq. implement those corresponding statutory provisions. Notably, the Part 585 renewable energy regulations explicitly **do not** contain a 5-year suspension prerequisite for cancellation, as the oil and gas provisions do at 43 U.S.C. § 1334 (a)(2)(B). Rather, the renewable energy regulations have two separate and distinct standards for suspension and cancellation; the suspension standard is delineated at 30 C.F.R. 585.417 et seq., and the renewable energy cancellation standard is set forth at 30 C.F.R. 585.422 et seq. The renewable energy cancellation standard **does not** provide for any 5-year suspension prerequisite like the oil and gas provisions do.

2. Additionally, the incorporation of the oil and gas verbiage of 43 U.S.C. § 1334 (a)(2)(C) in the amended leases introduces the new requirement of compensation attendant cancellation. However, Congress intentionally omitted the compensation requirement from

[1] https://www.boem.gov/sites/default/files/documents/newsroom/BOEM-0008-January17-2025.pdf

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the renewable energy regulations 30 C.F.R. § 585.437 and statutory language § 1337(p)(5)(C). If Congress intended to include these limitations and protections in the renewable energy portion of OCSLA, such language would have been incorporated into the statute and regulations, but it was not. In its promulgation of the renewable energy regulations at 30 C.F.R. § 585.437 (now 30 C.F.R. § 585.422), BOEM was consistent with that omission.

3. Pursuant to the statutory canon of construction, "Inclusio unius est exclusio alterius," (the inclusion of one is the exclusion of another), when a statute or contract mentions one thing but omits another, the omission is presumed intentional, and the omitted category is excluded from coverage. Thus, the renewable energy OCSLA statutory provisions at 43 U.S.C. § 1337(p), and the old lease language which cites 43 U.S.C. § 1334(a)(2) **but not** § 1334 (a)(2)(B) and (C), comport with the Congressional intent to exclude the oil and gas limitations and protections from the renewable energy section of OCSLA.[2]

4. The January 2025 lease language amendment heralded a significant policy level deviation by BOEM inconsistent with the current Part 585 regulatory scheme (30 CFR 585 et seq.), which necessitated a rulemaking. However, no proposed rule was published, nor was any public comment solicited on this alteration of lease language which demonstrably violates OCSLA and puts the public at greater risk from ongoing project activities by increasing the difficulty of lease cancellation. Furthermore, these lease amendments are not even publicly available on the current BOEM website under each particular project's "leasing history" tab.

[2] Note that the old lease language (prior to the unlawful January 2025 amendments) did cite both 43 U.S.C. § 1334(a)(2) and 30 CFR 585.437 (now 30 CFR 585.422) as cancellation authority for renewable energy leases. Given the leases for the offshore wind projects along the Northeast/Mid-Atlantic coastlines were generally all executed on or well before 2016-17, and the implementing regulation for the renewable energy cancellation standard was not fully operational until late 2016 (see "date" here: https://www.govinfo.gov/app/details/CFR-2016-title30-vol2/CFR-2016-title30-vol2-sec585-437), the old leases' citation to 43 U.S.C. § 1334(a)(2) was defensible as backdrop cancellation authority. However, now that the renewable energy cancellation regulations of 585.437 (now -.422) have been operational since 2017, the undersigned also recommends that BOEM eliminate the reference to 43 U.S.C. § 1334(a)(2) as cancellation authority for the offshore wind leases, as the renewable energy cancellation authority is sufficient and explicit in § 1337(p)(5)(C) and 30 CFR 585.422 (formerly 30 CFR 585.437). The undersigned believes this will further clarify and streamline the lease language as the renewable energy authority is derived from § 1337 of OCSLA.

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5. Finally, the inclusion of the phraseology, "particularized harm" as a requisite finding for any cancellation or suspension is ultra vires and contravenes OCSLA. This is an undefined term in the OCSLA statute and cognate regulations, appearing nowhere in 30 CFR 585.422 or 43 U.S.C. § 1337(p). Simply put, a showing of "particularized harm" is not required as a precondition for suspension or cancellation of a renewable energy lease.

6. We would also direct your attention to the language in the 2nd paragraph of Section 8 of the new lease language immediately preceding the insertion of "particularized harm," that: "any cancellation or suspension ordered by the lessor that is predicated on a threat of serious, irreparable or immediate harm or damage or on an imminent threat of serious or irreparable harm or damage requires a finding by the lessor . . ." Such stringent criteria are derived from the §1334 provision for oil and gas leases, and even there apply only to lease suspension, not to lease cancellation (requires a lesser showing of probable serious harm), and therefore are not applicable here for offshore wind leases.

**Conclusion and Action Request**

The undersigned recognizes that this new January 2025 amended lease language was updated prior to the initiation of the current administration. Nonetheless, it is critically important that BOEM rescind this language forthwith as the new language violates OCSLA and will destructively interfere with this administration's ability to properly suspend or cancel existing offshore wind leases.

**Therefore, the undersigned respectively requested, an immediate:**

- Rescission of the aforesaid new language which violates Congress' intent and OCLSA.
- Revision of the old (pre-January 2025 language) to harmonize with 30 CFR 585.422.
- Revision of the 2nd paragraph of Section 8 of the leases to accord with the criteria in the renewable energy cancellation regulation, 30 CFR 585.422.
- Prompt reissuance of superseding lease amendments (containing the language which complies with OCLSA) for all implicated offshore wind leases

The undersigned requests a prompt response to this petition (5 U.S. Code § 555(e)) and reserves the right to pursue relief under the Administrative Procedure Act, including 5 U.S.C. § 555(b) and § 706(1), should BOEM fail to act on this petition within a reasonable time.

**Thank you very much for your dedicated and tenacious efforts to address the offshore wind situation to date.**

*/s/ Thomas Stavola Jr. Esq.*

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