

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
MARTHA'S VINEYARD/DUKES COUNTY)
FISHERMEN'S ASSOCIATION)
Dukes County Administration Building)
9 Airport Road)
Edgartown, MA 02539)

JONATHAN E. MAYHEW)
11 Clam Point Cove Road)
Chilmark, MA 02535)

Plaintiffs,

v.

THE HONORABLE KEN SALAZAR,
in his official capacity as the Secretary of Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

BUREAU OF OCEAN ENERGY MANAGEMENT,
REGULATION, AND ENFORCEMENT
(f/k/a MINERALS MANAGEMENT SERVICE)
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

Case: 1:10-cv-01072
Assigned To : Huvelle, Ellen S.
Assign. Date : 6/25/2010
Description: Admn Agency Review

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Dated: June 25, 2010

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I. INTRODUCTION

1. Plaintiffs, Jonathan E. Mayhew and the Martha's Vineyard/Dukes County Fishermen's Association ("MV/DCFA"), bring this action to challenge aspects of the Defendants Secretary of Interior's ("DOI") and Bureau of Ocean Energy Management, Regulation, and Enforcement's¹ ("BOE") decision to approve the Cape Wind Energy Project for development in an area of the Nantucket Sound known as Horseshoe Shoal, and to offer a lease with specified terms to the project developer, Cape Wind Associates, LLC ("CWA"). These decisions are inconsistent with Defendants' statutory authority, lack an adequate record basis, and do not comport with standards of reasoned administrative decisionmaking, all in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. §§ 1331-1356a, as amended by Section 388 of the Energy Policy Act of 2005, P.L. 109-58, 119 Stat. 744 (Aug. 8, 2005), *codified at* 43 U.S.C. § 1337(p).

2. Plaintiff MV/DCFA is an unincorporated association comprised of small-scale commercial fishing operators who primarily fish within the Nantucket Sound and, in particular, on the Horseshoe Shoal. These fishermen include "draggers," that is, fishermen who pull trawl nets along the seabed to harvest species such as squid, winter and summer flounder, and sea bass; pot fishermen targeting scup, sea bass, and conch (also known as whelk) who fish by laying traps or pots upon the seabed; and fishermen who fish for clams on the seabed using dredges. Development of the Cape Wind Energy Project will cause an effective closure of prime, historic

¹ The Minerals Management Service was reorganized and renamed as the Bureau of Ocean Energy Management, Regulation, and Enforcement by Secretarial Order 3302, issued June 18, 2010. See <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35872> (last visited June 22, 2010).

fishing grounds on Horseshoe Shoal to MV/DCFA's participants, particularly for the smallest fishing vessel operations manned by only one person.

3. Plaintiff Jonathan E. Mayhew is a vessel owner and fishermen who largely relies on the squid fishery on Horseshoe Shoal for his livelihood. Plaintiff Mayhew hails from a historic fishing family on Martha's Vineyard. His ancestors came to America on the *Mayflower*, and have been earning a livelihood from the sea since colonial times. Two of the three most productive squid fishing grounds in the Sound are in the area being leased to CWA. The conditions to be imposed on commercial fishing activity within the project area will force Plaintiff Mayhew to adjust his fishing operations and practices in manners that will make trawling in the project area an uneconomic and even fruitless endeavor.

4. More specifically, Defendants have included terms and conditions in the Record of Decision for the Cape Wind Energy Project, Horseshoe Shoal, Nantucket Sound ("ROD") (Apr. 28, 2010),² supporting the lease to CWA, and, upon information and belief, in the lease itself, that will effectively end all commercial fishing in the project area. For instance, operators like Plaintiff Mayhew and other MV/DCFA participants who operate with only one or two people will be required to carry at least one, and perhaps more, additional crewmembers as a result of conditions specified by the U.S. Coast Guard. For his part, Plaintiff Mayhew typically operates his vessel with one crewmember to help with setting and retrieving the net and sorting fish, but conditions that will be applied to commercial vessels as a result of Defendants' actions will require Plaintiff Mayhew to employ a third crewmember to stand watch during fishing operations. This requirement will dilute proceeds and make it unprofitable for many small operators such as Plaintiff Mayhew to continue fishing operations.

² Available at <http://www.mms.gov/offshore/RenewableEnergy/PDFs/CapeWindROD.pdf> (last visited June 24, 2010).

5. Furthermore, the Coast Guard will also require, via the terms and conditions of the ROD, the establishment of traffic lanes within the Cape Wind project area that will make it impossible for trawl fishermen to track and catch schools of fish in that area because fish neither know of nor follow traffic lanes.

6. These and other conditions have been determined by the Coast Guard as essential to ensure safe vessel operation among the 130 wind turbines to be placed in the project area due to the “significant” interference with vessels’ radar caused by the power generators. The sum of these conditions will be virtually to close vital fishing grounds to traditional fishermen operating in the area.

7. In fact, the footprint of the project as approved covers a large portion of Horseshoe Shoal, including its most essential fishing grounds for a number of fisheries, including the best grounds for the conch fishery, which is the largest fishery in Martha’s Vineyard in terms of landed tonnage and economic value.

8. For these reasons, and others explained in greater depth below, Plaintiffs MV/DCFA and Mayhew respectfully ask this Court to declare as inconsistent with applicable law and vacate the illegal ROD, permanently enjoin Defendants from issuing a lease based on the present ROD and record more generally (and vacating the lease if one has been offered), remand the issue to DOI and BOE for further review and development consistent with applicable legal standards, declare Plaintiffs’ rights under the law, grant Plaintiffs their attorneys fees and costs, and provide any additional relief as is just and proper.

II. PARTIES

9. Plaintiff MV/DCFA is based in the Town of Edgartown on Martha’s Vineyard, Massachusetts. Established in January of 2009 by act of the Dukes County Commission,

MV/DCFA is a non-profit organization whose participants include approximately 100 full-time and part-time fishermen from Massachusetts and Rhode Island who make their livelihood fishing in the Nantucket Sound generally, and on Horseshoe Shoal more specifically. Many of these participants had acted in concert for years in opposing the Cape Wind Energy Project and participating in related administrative processes. Given the importance of the Horseshoe Shoal fisheries to the County of Duke's County and its citizens, the County Commission formed MV/DCFA by formal action. The objective was to create an organization that could more formally represent the interest of commercial fishermen on Martha's Vineyard and others similarly affected with respect to the Cape Wind Energy Project and more generally. MV/DCFA, and its members, have been involved in public processes leading up to the development of the ROD due to the harm that this project will cause member fishermen.

10. Plaintiff Jonathan E. Mayhew lives on Martha's Vineyard and has been fishing commercially for over thirty years. Currently, his operations are conducted almost exclusively in and around the Horseshoe Shoal, including areas affected by the Cape Wind Energy Project. Plaintiff Mayhew has participated in the public processes leading up to issuance of the ROD at issue virtually since the Cape Wind Energy Project was first proposed in 2001. Plaintiff Mayhew has been and will continue to be harmed if relief is not granted for Defendants' illegal actions.

11. Defendant, the Honorable Ken Salazar, is the Secretary of the U.S. Department of the Interior. Defendant, by and through his designees at BOE, undertook the illegal and unauthorized actions which are challenged in this case. Secretary Salazar is sued solely in his official capacity.

12. Defendant BOE is a federal agency to which the Defendant Secretary of the Interior has delegated the authority pursuant to the OCSLA, *e.g.*, at 43 U.S.C. § 1337(p), to grant leases, easements, and rights-of-way for activities utilizing the outer continental shelf lands to produce energy from sources other than oil and gas, such as the Cape Wind Energy Project.

III. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2201 (the Declaratory Judgment Act); 5 U.S.C. §§ 701-06 (the Administrative Procedure Act's judicial review provisions); and 43 U.S.C. § 1349(a),(b) (jurisdiction for actions arising under the OCSLA citizen suit provision). The relief sought is authorized by 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), 43 U.S.C. § 1349(a)(1) (compelling compliance), and 5 U.S.C. § 701-706.

14. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, which grants the district courts "original jurisdiction of all civil actions arising under the . . . laws . . . of the United States."

15. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e), as the Defendant Secretary of Interior is an officer of the United States and BOE is an agency of the United States.

16. By written notice sent to Defendant Secretary Salazar and his designees, to wit, the then Director, Minerals Management Service, S. Elizabeth Birnbaum,³ on March 16, 2010, Plaintiff MV/DCFA informed Defendant of the violations set forth herein. Plaintiff Mayhew serves on the MV/DCFA Board and participates in the organization. This Complaint has been filed on June 25, 2010, more than sixty days following the aforementioned notice to the agency, as required by the OCSLA. 43 U.S.C. § 1349(a).

³ As noted above, in note 1, the MMS is now known as BOE. Furthermore, Ms. Birnbaum has been replaced by Michael Bromwich on June 21, 2010. See <http://www.mms.gov/index.htm>.

17. An actual, justiciable controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

18. The federal government has waived sovereign immunity in this action pursuant to 43 U.S.C. § 1349(a) and 5 U.S.C. § 702.

19. Plaintiff has exhausted all administrative remedies, the agency action challenged is final and ripe for review, and, as shown herein, MV/DCFA has associational standing to bring these claims because “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977).

IV. FACTUAL ALLEGATIONS

A. THE CAPE WIND ENERGY PROJECT AND DEFENDANTS’ ROD

20. Issued on April 28, 2010, the ROD approving the Cape Wind Energy Project on Horseshoe Shoal, Nantucket Sound, represents the final regulatory hurdle in federal approval for the project. Its issuance was the culmination of a nearly ten-year long process that began with an initial request in November 2001 by CWA to the U.S. Army Corps of Engineers for a permit to develop a wind power generation system on Horseshoe Shoal in Nantucket Sound.

21. The ROD allows for the development of a 130 turbine wind farm on Horseshoe Shoal. These turbines will be spread over a 25 square mile area on Horseshoe Shoal.

22. During the entire permitting and regulatory review period, CWA’s preferred lease location on Horseshoe Shoal was the only area to receive serious consideration by Defendants as a location for the offshore wind farm. In fact, the BOE’s sister agency in the Department of Interior, the U.S. Fish and Wildlife Service (“FWS”), criticized the “purpose and need”

statement developed as part of the National Environmental Policy Act (“NEPA”) review process as being “a virtual prescription for the proposed action,” noting that the qualifiers BOE used “ha[d] a dramatic effect on the range of reasonable alternatives to the proposed action.” Letter to Dr. Rodney E. Cluck, MMS, from Chuck Bartlett, FWS New England Field Office, at 3 (Apr. 21, 2008).

23. Nonetheless, with only minor modifications in the scope of the project, mostly in terms of the number and size of the wind turbine generators, Defendants approved the project largely as CWA originally proposed.

24. The ROD “grants CWA the exclusive right and privilege to conduct activities within the leased area.” Final ROD at 4. Through this action, Defendants are bound to “offer a commercial lease to CWA . . . under the terms and conditions described” in the ROD and lease. *Id.*

25. Although Defendants have granted CWA “the exclusive right and privilege to conduct activities within the leased area,” Defendants have recognized fishing and navigation within the lease area as reasonable uses to be accommodated.

26. Defendants’ decision that fishing and navigation represent reasonable uses within the lease area brings with it Defendants’ official recognition of their and CWA’s duty to minimize impacts on fisheries operating on these traditional fishing grounds. For instance, the ROD requires CWA to “work cooperatively with commercial/recreational fishing entities and interests to ensure that the construction and operation of the project will minimize potential conflicts with commercial and recreational fishing interests.” *Id.* at 28.

27. Yet despite recognizing commercial fishing as a reasonable use and including certain conditions that facially appear to accommodate this use, the ROD also contains

conditions that effectively preclude Plaintiffs' ability to use the lease area for commercial fishing activities.

28. Specifically, the Coast Guard, in fulfilling its duties under Section 414 of the Coast Guard and Marine Transportation Act of 2006, P.L. 109-241, 120 Stat. 540 (July 11, 2006), established what purport to be "reasonable terms and conditions the Commandant determines to be necessary to provide for navigational safety with respect to the proposed lease" for the Cape Wind Energy Project in Nantucket Sound. *Id.* § 414(a). This law requires Defendant Secretary to incorporate the Coast Guard's specified terms and conditions into the CWA lease. *Id.* § 414(b). These terms and conditions, among other things, unreasonably interfere with the use of the lease area for commercial fishing activities.

29. More specifically, the ROD requires, at a minimum, "[s]pecifically marked traffic lanes"; "[r]ecommended vessel routes"; and "[a]doption of applicable navigation rules consistent with Collision Regulations (COLREGS) for vessel operations within the wind farm" by Defendants working in conjunction with CWA and the Coast Guard. Final ROD at 44.

30. The Coast Guard transmitted its final communication with the BOE regarding these terms and conditions on January 13, 2009, that is, after BOE's issuance of the final Environmental Impact Statement ("EIS") upon which the ROD was based. *See* 74 Fed. Reg. 3635, 3636 (Jan. 21 2009) (announcing the availability of the Final EIS and dated "January 5, 2009"). In its final communication, the Coast Guard made clear it interprets COLREGS to require vessels to "maintain[] a proper continuous lookout," among many other things. Letter to Dr. Walter D. Cruickshank, Deputy Director MMS, from Rear Adm. Brian M. Salerno ("Salerno Letter"), at 10 (Jan. 13, 2009). Indeed, the Salerno Letter states that operation of a fishing vessel

by a single person “does not conform to COLREGS” and “a second person would have to be on the vessel and in the pilothouse at all times (in conformance with the COLREGS).” *Id.* at 5.

31. In short, this mandatory term and condition means small fishing vessels can no longer operate with a single crew member as many, if not most, of MV/DCFA’s participants do, because it is impossible to maintain a lookout and tend gear at the same time. Moreover, trawl fishermen like Plaintiff Mayhew and others whose fishing operations require two or more persons to tend gear and sort fish, will be required to hire an additional person to stand watch and man the vessel’s wheelhouse.

B. THE COAST GUARD’S FINDINGS WITH RESPECT TO VESSEL SAFETY WITHIN THE CAPE WIND ENERGY PROJECT AREA

32. MV/DCFA’s participants and others had repeatedly raised concerns, backed by scientific studies, that the wind turbine generators would cause problems for navigational safety. Among other reasons, the generators interfere with marine radar systems on which vessels rely for safe navigation. Radar is particularly important during periods of reduced visibility, such as fog. Fog frequently occurs in Nantucket Sound.

33. While the Coast Guard and Defendants gave inadequate consideration and recognition to other safety concerns, such as the threat to draggers whose nets could get caught on wind turbine pilings and whose maneuverability with the turbine field would be dangerously compromised, the Coast Guard did find merit in the concerns over the impact of the generators on radar.

34. Consequently, the Coast Guard commissioned a study on the radar issue, as well as considering studies submitted by CWA and project opponents, including members of MV/DCFA. The Coast Guard’s own study concluded that the “proposed wind farm would significantly adversely impact the ability of” a vessel operating within the wind farm “to detect,

by radar,” another vessel within the wind farm. Salerno Letter at 11. A similar significant adverse impact was noted for the ability of vessels operating outside the wind farm to detect vessels emerging from the wind farm. *Id.*

35. Notably, this issue was addressed, and the study conducted, primarily in November and December 2008, well after the April 21, 2008, close of the public comment period on the Draft EIS. Indeed, the study was not provided to Defendants until late December 2008, just weeks before the Final EIS issued. Further, as alleged above, the Coast Guard’s evaluation was not issued until after publication of the Final EIS.

36. As a result, Defendants inadequately considered the impacts of the Coast Guard’s findings on the viability of the Cape Wind Energy Project. This failure was not rectified in either subsequent NEPA documentation or the ROD.

37. In fact, no analytical document produced by Defendants, including the Final EIS and ROD, discusses the impacts of the extra crew or traffic lanes on commercial fishermen operating within the project area.

38. In terms of these findings, the Coast Guard decided that the only way to mitigate the adverse safety impacts was to require the conditions specified above, and perhaps additional measures.

39. The Coast Guard recognized that the requirement to carry an additional crewmember on small, single-man fishing vessels “may render commercial fishing in Horseshoe Shoal unprofitable,” *id.* at 5, even as it conceded that “due to economic reasons commercial fishing on Horseshoe Shoal . . . is frequently conducted by a single vessel operator who both navigates the vessel from the pilothouse and operates fishing gear from the stern.” *Id.* at 4.

Nonetheless, the Coast Guard curtly noted, “Economic impacts are outside the purview of [its] review of the proposal.” *Id.* at 5.

40. Neither the Coast Guard nor Defendants appear to apprehend the similar crippling economic impacts of the imposition of traffic lanes within the project area on commercial fishermen. Nor is there recognition that the Coast Guard’s interpretation of the COLREGS will impact vessels that operate with more than one person, like Plaintiff Mayhew, who nonetheless may be forced to hire additional crew to keep lookout while the normal crew is busy with fishing operations.

C. DEFENDANTS’ DUTIES UNDER THE LAW AND THE IMPACTS OF THEIR ILLEGAL ACTIONS ON PLAINTIFFS

41. While the economic impacts of these measures on commercial fishermen may be beyond the “purview” of the Coast Guard, they are squarely within Defendants’ purview. The OCSLA states that the “Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for ... (A) safety [and] (I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and territorial sea.” 43 U.S.C. § 1337(p)(4)(A),(I). The law also requires the Secretary to consider the use of alternative areas for the energy project and use of the of project area “for a fishery.” *Id.* § 1337(p)(4)(J)(ii).

42. The Cape Wind Energy Project, authorized by the ROD and conducted within the terms and conditions set forth in the ROD, will interfere with Plaintiffs’ reasonable use of the impacted fishing grounds on Horseshoe Shoal, as well as the right of fishery under Massachusetts law, made applicable to the project area by both 16 U.S.C. § 1856(a)(2)(B) and 43 U.S.C. § 1333(2)(A).

43. Moreover, this legal defect cannot be cured simply by vacating the terms and conditions imposed by the Coast Guard, because this would lead to an unsafe navigational situation in contravention of 43 U.S.C. § 1337(p)(4)(A).

44. The project also will have myriad other adverse impacts on safety, the ability to conduct fishing operations, and navigation within the wind farm in ways raised in detailed comments by MV/DCFA, its members, and Plaintiff Mayhew that were not adequately considered or reasonably accounted for by Defendants.

45. MV/DCFA, its members, and Plaintiff Mayhew are harmed by this action and will continue to suffer injury unless this Court grants the requested relief.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (OCSLA and APA)

46. Plaintiffs reallege paragraphs 1 through 45 as if set forth in full herein.

47. The OCSLA provides a right of action for “any person having a legal interest which is or may be adversely affected” against “any government instrumentality or agency . . . for any alleged violation of any provision of this subchapter.” 43 U.S.C. § 1349(a)(1).

48. The OCLSA further requires the Defendant Secretary of Interior to “ensure that any activity under the subsection is carried out in a manner that provides for – safety [and] prevention of interference with reasonable uses . . . of the exclusive economic zone, the high seas, and the territorial seas.” *Id.* § 1337(p)(4)(A), (I). He must also consider “the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and any other use of the sea or seabed, including use for a fishery . . .” *Id.* § (p)(4)(J).

49. For its part, the APA, at section 706(2), proscribes “agency action” that is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law [or which is] in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

50. By establishing terms and conditions that, among other things, interfere with the reasonable and safe use of the Cape Wind Energy Project area by Plaintiffs, Defendants have violated 43 U.S.C. § 1337(p)(4)(A),(I) and the APA. By, among other things, unreasonably failing: (i) to consider other locations for the proposed Cape Wind Energy Project; (ii) to consider the use of the Horseshoe Shoal location primarily for its traditional use a fishing ground; and/or (iii) to apprehend the impacts of the project on the use of this area for a fishery, Defendants have violated 43 U.S.C. § 1337(p)(4)(J) and the APA.

SECOND CLAIM FOR RELIEF (APA)

51. Plaintiffs reallege paragraphs 1 through 50 as if set forth in full herein.

52. The APA, at section 706(2), proscribes agency action that is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law [or] without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

53. Defendants acted in violation of APA decision-making standards by, among other things, imposing the terms and conditions as alleged herein without full and reasoned consideration of the impacts these measures on the Cape Wind project area’s use for commercial fishing. Nor did Defendants adequately consider the impacts of the wind farm on vessel navigation and safety because, among other things, the final communication from the Coast Guard describing these impacts did not arrive until after the Final EIS was already complete and came far too late in the analytical and public input process to be meaningfully and rationally

considered in the NEPA documentation. Also, Defendants did not adequately account for or reasonably consider other impacts on Plaintiffs' legitimate, licensed, and historic fishing operations Plaintiffs raised during the rulemaking process.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment Act and OCSLA)

54. Plaintiffs reallege paragraphs 1 through 53 as if set forth in full herein.

55. The OCSLA provides that “any person having a valid legal interest which is or maybe adversely affected may commence a civil action on his own behalf against . . . any governmental instrumentality or agency . . . for any alleged violation of any provision of this subchapter.” 43 U.S.C. § 1349(a).

56. The OCSLA further requires the Defendant Secretary of Interior to “ensure that any activity under the subsection is carried out in a manner that provides for – safety [and] prevention of interference with reasonable uses . . . of the exclusive economic zone, the high seas, and the territorial seas.” *Id.* § 1337(p)(4)(A), (I).

57. The Declaratory Judgment Act authorizes this Court to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

58. At all times and all junctures during the development of the record ultimately supporting the ROD at issue, Defendants have claimed that fishing will be allowed and reasonably accommodated within the lease area for the Cape Wind Energy Project. However, without a sufficient rational record basis, Defendants have included terms and conditions in the ROD that will materially interfere with this reasonable use of the project area within the meaning of applicable law. Based on the record before this Court, Plaintiffs are entitled to a declaration that commercial fishing is a “reasonable use” within the meaning of 43 U.S.C. § 1337(p)(4)(I),

and that their reasonable use of the Cape Wind Project area for fishing has been interfered with, as that term is used in OCSLA, 43 U.S.C. § 1337(p)(4)(I).

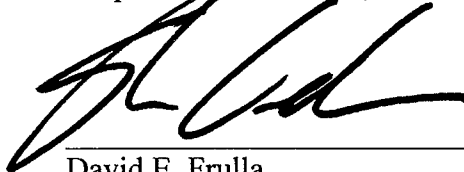
PRAYERS FOR RELIEF

WHEREFORE, Plaintiff respectfully seek an Order of this Court:

- 1) Finding the ROD to be arbitrary and capricious, an abuse of discretion in excess of authority, and not in accordance with law, and therefore unlawfully adopted,
- 2) Permanently enjoining Defendants from issuing a lease based on the present ROD and current record more generally;
- 3) Declaring, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Plaintiffs' commercial fishing operations are a "reasonable use" and that that use has been "interfere[d] with," each within the meaning of the OCSLA;
- 4) Vacating and remanding the ROD, and any lease awarded pursuant to it, to the BOE and the Secretary for further consideration and process consistent with law;
- 5) Awarding Plaintiffs their costs and attorneys' fees as appropriate;
- 6) Granting such other relief as is just and proper.

Dated: June 25, 2010

Respectfully submitted,



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