
Defendants make and rely on the following seven materially fraudulent statements to support their (unlawful) decision to approve the project on false grounds and to deceive the public—

FRAUD #1 – PFAS Contamination

The ROD constituted the final agency action that permitted South Fork Wind to excavate over 30,000 tons of material for two miles through the most significant PFAS contamination¹ plume in Suffolk County. Defendants were fully aware of environmental contamination that the New York State Department of Environmental Conservation (“NYSDEC”) classifies as “a significant threat to public health and ... the environment” (see ¶¶ 72-135).² Without regard to human health or the sole source aquifer that provides drinking water for thousands of residents, Defendants fraudulently conclude that— “Overall, existing groundwater quality in the analysis area appears to be good” (FEIS at H-23, PDF p. 655, second paragraph).

In June 2022, the White House announced: new “drinking water lifetime health advisories ... based on new science that indicates that some negative health effects may occur with concentrations of PFOA or PFOS in water that are near zero [emphasis added][.]” The announcement said that PFOA and PFOS are part of a class of chemicals called “per- and polyfluoroalkyl substances (PFAS) ... that can cause cancer and other severe health problems, pose a serious threat ... [and] are considered ‘forever chemicals’ because they are environmentally persistent, bioaccumulative, and remain in human bodies for a long time.”³

¹ PFAS (per- and polyfluoroalkyl substance) contamination.

² <https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf> (at 1, first paragraph).

³ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/15/fact-sheet-biden->

BOEM’s heavily curated environmental analysis ignored hundreds of Suffolk County Department of Health Services (“SCDHS”) laboratory test results, multiple NYSDEC Site Characterization Reports, and reports from the Town of East Hampton (see Exhibit 18- SFW 2022 Monitoring Well Summary),⁴ all showing harmful contamination exceeding 2016 Environmental Protection Agency (“EPA”) Health Advisory Levels. A year *before* the developer submitted its Construction and Operations Plan (“COP”) to BOEM (in 2018), SCDHS found groundwater in the analysis area so toxic that residents could no longer use their private wells for drinking water.⁵

Contrary to BOEM’s fraudulent representations that— the “COP includes all the information required [emphasis added]” in 30 C.F.R. § 585.627 (ROD at D-6, PDF 98, third paragraph)— the plan does not contain *any* of “the information required” regarding PFAS contamination. According to BOEM’s Guidelines,⁶ the developer “must submit with your COP detailed information ... [on] existing water quality conditions ... in the area proximal to your proposed activities. Describe the general state of water quality in the area proposed for your Project by reporting typical metrics for quality including the ... presence ... of contaminants in water [emphasis added].” Under “Impacting Factors” the guide includes “environmental hazards and/or accidental events causing accidental releases of ... hazardous materials and wastes [emphasis added].” New York State classifies PFAS contamination as hazardous waste.

[harris-administration-combatting-pfas-pollution-to-safeguard-clean-drinking-water-for-all-americans/](#) (last accessed October 29, 2022).

⁴ <https://ehamptonny.gov/DocumentCenter/View/11757/SFW-Monitoring-Well-summary-Feb-21-2022> (last accessed October 31, 2022).

⁵ On October 11, 2017, Suffolk County of Health Services issued Water Quality Advisory for Private-Well Owners in Wainscott. A year later (September 4, 2018), then Deepwater Wind South Fork LLC (now South Fork Wind LLC) submitted its Constructions and Operations Plan to Defendant BOEM.

⁶ BOEM’s Guidelines for Information Requirements for a Renewable Energy Construction and Operations Plan published by the Office of Renewable Energy Programs (OREP) (version 3.0, dated April 7, 2016)

BOEM limits its analysis to the “ocean economy” that includes only 3.9% of Suffolk County’s population, ignoring over one million Suffolk County ratepayers who will have to pay for the Project (¶¶ 186-218). BOEM fails to consider South Fork Wind’s exorbitant price of 19 cents¹¹ compared to an average price of 8 cents¹² for the same renewable energy from nearby offshore wind farms (¶¶ 167-173). BOEM violates Executive Order 12898 by failing to acknowledge the Project cost (\$2 billion) and its impact on low-income families. Executive Order 12898 requires each Federal agency to make achieving environmental justice part of its mission. “Review of NEPA compliance [...] must ensure that the lead agency preparing NEPA analyses and documentation has appropriately analyzed environmental effects on minority populations, low-income populations, or Indian tribes, including human health, social, and economic effects.”

See FOURTEENTH CLAIM FOR RELIEF (¶¶ 627 – 647).

FRAUD #3 – Risk to Atlantic Cod Population (Cox Ledge)

BOEM falsely asserts that the Project’s construction and installation would have, at worst, only “moderate impacts” on benthic habitat, Essential Fish Habitat (“EFH”), and finfish (including Atlantic cod) (ROD at 11, PDF 13, Table 2, fourth row, last column). BOEM defines “moderate impacts” to be where “[i]mpacts to species are unavoidable but would not result in population-level effects [emphasis added]. Impacts to habitat may be short term, long term, . . . but would not result in population-level effects to species that rely on them [emphasis added].” (FEIS at 3-12, PDF 64, Table 3.4.2-1.)

On the contrary, the National Oceanic and Atmospheric Administration’s National

¹¹ South Fork Wind price is 18.8 cents per kilowatt-hour (Appendix 4, Tables 2 and 3).

¹² The average price of Vineyard Wind, Revolution Wind, Sunrise Wind, and Mayflower Wind is 7.9 cents per kilowatt-hour (Appendix 4, Tables 2).

Marine Fisheries Service (“NOAA Fisheries”) wrote to BOEM’s Chief of Office of Renewable Energy Programs, James Bennett, on October 25, 2021. The letter was not disclosed on BOEM’s website with other similar correspondence. It reads— “Based on our Northeast Fisheries Science Center’s fisheries science expertise and supporting peer-reviewed publications, this project has a high risk of population-level impacts on Southern New England Atlantic cod [emphasis added]” (see Exhibit 01 – NOAA Fisheries Letter, at 1, second paragraph). The Letter continues— “Given the emerging data on the significance of Cox Ledge for spawning Southern New England cod, it is important we maintain a consistent and common understanding of the potential effects of offshore wind development to this spawning population. This is a high priority given the cumulative and population level impacts this Project and additional proposed development on Cox Ledge could have on this important cod population [emphasis added].” Mr. Bennett ignored scientific experts and their peer-reviewed publications. BOEM has permitted the developer to begin preparing the seafloor construction site, beginning November 1, 2022, while Atlantic cod are spawning. The adverse population-level impacts on cod *are* avoidable by restricting the time of construction to exclude the period from November 1 through April 30. Instead, BOEM allows construction activities to proceed in the developer’s interests and risks the Atlantic cod population. See THIRTEENTH CLAIM FOR RELIEF (¶¶ 604 – 626).

FRAUD #4 – Sunrise/South Fork Alternative

BOEM falsely claimed that— “No other cable landing site alternatives were identified during Project development or scoping ... (see New York Article VII submitted by SFW)” (FEIS at 2-19, PDF 45, final paragraph). On the contrary, the Sunrise Alternative *was* identified and discussed during the Project’s development, scoping, and the “New York Article VII” hearing that mentions the Sunrise Wind in the context of alternatives *eight times*.

BOEM fraudulently asserts that “[t]he final EIS evaluates and discloses the impacts of ... the Beach Lane ... site” as grounds for not carrying forward alternative landing sites and “[e]liminating [the] Beach Lane landing site” (FEIS at 2-20, PDF 46, first paragraph). However, BOEM did *not* acknowledge, evaluate or disclose the impacts of environmental PFAS contamination within the proposed Beach Lane landing site, which would have required BOEM to look at alternative landing sites.

BOEM did *not* acknowledge or consider the Sunrise/South Fork alternative and is not relieved of its statutory obligations, irrespective of a non-cooperating state agency action that also ignored known PFAS contamination. Plaintiff provided BOEM with indisputable evidence of contamination. Still, BOEM refused to “[r]igorously explore and objectively evaluate all reasonable alternatives” in violation of 40 C.F.R. § 1502.14(a) and failed to “[d]evote substantial treatment to each alternative considered” in violation of 40 C.F.R. § 1502.14(b).

See SEVENTEENTH CLAIM FOR RELIEF (¶¶ 689 – 707).

FRAUD #5 –RFP was *not* technology-neutral or competitive

The ROD falsely claims that South Fork Wind’s “power purchase agreement executed in 2017 result[ed] from LIPA’s technology-neutral competitive bidding process [emphasis added]”¹³ contradicting internal LIPA documents showing that proposals were advanced in the procurement process based on their technology. Thus, the South Fork RFP was *not* “neutral” on technology (see ¶¶ 281-358).

Internal documents disclosed by LIPA (in January 2021) prove that the proposed the South Fork Wind Farm did *not* satisfy mandatory criteria or the minimum specifications and requirements of the South Fork RFP. The proposed wind farm was the successful bid in an RFP

¹³ ROD at p. 7, PDF p. 9, seventh paragraph

that precluded resources *not* “located on Long Island [emphasis added]” (see Exhibit P- Notice to Proposers). The South Fork RFP was rigged to preclude competition from other offshore wind developers. The South Fork Wind Project was the *only* bid for offshore wind resources.

On January 11, 2017, then-New York State Governor Andrew M. Cuomo directed the utility’s board of trustees to approve the South Fork Wind Farm proposal in his State of the State address. Fourteen days later, the utility approved the Project (on January 25, 2021). Governor Cuomo assured the success of the South Fork Wind bid by interfering in an active procurement, the South Fork RFP, to advance the interests of a private developer to the detriment of the other bidders. The South Fork RFP permitted favoritism. See SIXTEENTH CLAIM FOR RELIEF (¶¶ 669 – 677).

FRAUD #6 – Project Design Pre-dates 2019 CLCPA (by 3½ years)

BOEM (falsely) alleges that “the Project ... is designed to contribute to New York’s renewable energy ... goal of generating 9,000 megawatts of offshore wind energy by 2030.”¹⁴ The statement refers to the New York State Climate Leadership and Community Protection Act (“2019 CLCPA”). However, New York State enacted the 2019 CLCPA *three-and-a-half years after* the developer submitted the South Fork Wind Farm design for consideration in the South Fork RFP procurement. Even if, *arguendo*, the 2019 CLCPA was applicable (it is not), the Project would have failed to satisfy the statute’s requirements (see ¶¶ 136-179). See SIXTEENTH CLAIM FOR RELIEF (¶¶ 669 – 673, 678).

FRAUD #7 – The Project is *not* economical and *not* commercial-scale

BOEM (falsely) asserts that “[t]he purpose of the Project is to develop a commercial-scale offshore wind energy facility ...[emphasis added],”¹⁵ contradicting the joint and equal

¹⁴ FEIS at i, PDF 5, last paragraph

¹⁵ ROD at 7, PDF 9, seventh paragraph

(indirect) owners of South Fork Wind, Ørsted A/S and Eversource. The same joint and equal owners (under the name of Bay State Wind) agree with NYSERDA¹⁶ that a Project of less than 400 megawatts (“MW”) is “not likely to deliver cost savings ... [d]ue to diseconomies of scale” (see ¶¶ 219-229). The relatively small scale of South Fork Wind (130 MW) requires a 66-mile-long transmission system that is four times longer per megawatt capacity than the average of three nearby wind farms (see Appendix 4, Table 1).

See SIXTEENTH CLAIM FOR RELIEF (¶¶ 669 – 673, 679).

This action seeking declaratory, injunctive, and equitable relief challenges the failures of Defendants to comply with the National Environmental Policy Act, 42. U.S.C. §§ 4321, *et seq.* (regulations of 1978, as amended in 1986 and 2005, prior to the revised regulations issued by the CEQ on July 16, 2020) (“NEPA”); the Outer Continental Shelf Lands Act, 43. U.S.C. §§ 1331, *et seq.* (“OCSLA”); and intentionally engaging in fraud defined under Rule 9(b) of the Federal Rules of Civil Procedure; when assessing, disclosing, and mitigating the environmental effects of its decision to approve an offshore wind facility and necessary submarine and onshore transmission system filed by South Fork Wind LLC (formerly Deepwater Wind South Fork LLC, the “Applicant,” “South Fork Wind,” or “SFW”).

II. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331. This is a civil action pursuant to 42 U.S. Code § 6972(a)(1)(A). The civil action arises from claims under

¹⁶ New York State Energy Research and Development Authority (“NYSERDA”)

599. Defendants DOI and BOEM failed to provide notice of their determination of whether to provide expedited processing of the aforementioned request made on July 6, 2022, in violation of 5 U.S.C. § 552.

600. “Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection [5 U.S.C. § 552 (a)] shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.”

601. “[F]ailure by an agency to respond in a timely manner to such a request shall be subject to judicial review” (5 U.S.C. § 552 (a)(6)(E)(iii)).

602. According to NEPA, Defendants DOI and BOEM must disclose “to the public as provided by [FOIA] section 552 of title 5” information related to “comments and views” of a Federal agency that is “authorized to develop and enforce environmental standards” such as the EPA (NEPA, 42 U.S. Code § 4332(2)(C)).

603. Defendants DOI and BOEM violated NEPA, 42 U.S.C. § 4332(2), and FOIA, 5 U.S.C. § 552.

XXVIII. THIRTEENTH CLAIM FOR RELIEF

Fraudulent and misleading statements regarding adverse population-level impacts on Atlantic cod

(Against defendants listed below pursuant to Fed. R. Civ. P. 9(b))

Defendants

604. I reallege Paragraphs 1–440 (above) as if set forth in full herein.

605. On November 24, 2021, DEFENDANT Bureau of Ocean Energy Management and the defendants herein listed (below) made fraudulent and misleading statements, were involved in events leading up to those statements or failed to correct such statements concerning adverse population-level impacts on Atlantic cod. The defendants’ false representations were part of the

Record of Decision (ROD) approving the final environmental impact statement (FEIS) for the South Fork Wind Project’s construction and operations plan (COP). Defendants acted in their official capacity when making fraudulent and misleading statements, thereby giving those statements the additional weight of authority and creditability, further compounding the fraud against Plaintiff and the public by an institution set up to protect and safeguard the public. The defendants are as follows—

- a. In her official capacity, DEFENDANT DEB HAALAND, Secretary of the Interior, U.S. DEPARTMENT OF THE INTERIOR, who is ultimately responsible for the actions of the Department of the Interior;
- b. In her official capacity, DEFENDANT LAURA DANIELS-DAVIS, Principal Deputy Assistant Secretary, Land and Mineral Management who signed the record of decision on November 24, 2021, on behalf of the U.S. Department of the Interior;
- c. DEFENDANT AMANDA LEFTON, in her official capacity as Director, Bureau of Ocean Energy Management, who is responsible for overseeing and managing BOEM;
- d. DEFENDANT JAMES F. BENNETT, in his official capacity working for the Bureau of Ocean Energy Management, who, by his own admission, “was actively involved in the work leading to the approval of the South Fork Wind COP” (ECF No. 25-1, at 1, ¶ 2, last sentence). Mr. Bennett corresponded with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) regarding Atlantic cod on October 7 and 25, 2021;
- e. DEFENDANT MARY C. BOATMAN, in her official capacity as Environmental Studies Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management who, according to the FEIS, was the “National Environmental Policy Act (NEPA)

Coordinator” for the Project’s review and approval and is a Contributor responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);

- f. DEFENDANT MICHELLE MORIN, in her official capacity as Chief, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor in the Project’s review and approval process and responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1). Ms. Morin received correspondence from the NOAA NMFS regarding Atlantic cod on June 7 and October 25, 2021, and is listed as the “contact” in a letter from BOEM (James F. Bennett) to NOAA NMFS on October 7, 2021; and
- g. DEFENDANT BRIAN HOOKER, in his official capacity as Lead Biologist, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “Benthic, finfish, invertebrates, and essential fish habitat; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1). Mr. Hooker was copied on correspondence between BOEM and the NOAA NMFS regarding Atlantic cod on June 7 and October 25, 2021;

606. Upon information and belief, said defendants knowingly and intentionally made fraudulent and misleading statements, were involved in events leading up to those statements or failed to correct such statements concerning adverse population-level impacts on Atlantic cod to deceive the Plaintiff and the public.

607. In approval of the South Fork Wind Project, said defendants relied on their fraudulent and misleading statements.

Atlantic Cod Population-Level Impacts: Fraudulent and misleading statements

608. BOEM asserts that the Project’s construction and installation would have “[n]egligible to

moderate impacts” on benthic habitat, Essential Fish Habitat (“EFH”), and finfish (including Atlantic cod); and that “[o]verall cumulative impacts ... would be moderate” (ROD at 11, PDF 13, Table 2, fourth row, last column).

609. BOEM defines “negligible” as having “[n]o measurable impacts to species or habitat[,]” and “moderate” to be a situation where –

Impacts to species are unavoidable but would not result in population-level effects [emphasis added]. Impacts to habitat may be short term, long term, or permanent and may include impacts to sensitive habitats but would not result in population-level effects to species that rely on them [emphasis added]. (FEIS at 3-12, PDF 64, Table 3.4.2-1.)

610. BOEM’s ROD contradicts scientific evidence it received a month before approving the Project’s FEIS (on November 24, 2021). On October 25, 2021, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (“NOAA Fisheries”) wrote to BOEM’s Chief of Office of Renewable Energy Programs, James Bennett (“NOAA Fisheries Letter”). That letter reads as follows—

Based on our Northeast Fisheries Science Center’s fisheries science expertise and supporting peer-reviewed publications, this project has a high risk of population-level impacts on Southern New England Atlantic cod [emphasis added] [Exhibit 01 – NOAA Fisheries Letter, at 1, second paragraph].

611. The NOAA Fisheries Letter continues –

Given the emerging data on the significance of Cox Ledge for spawning Southern New England cod, it is important we maintain a consistent and common understanding of the potential effects of offshore wind development to this spawning population. This is a high priority given the cumulative and population level impacts this project and additional proposed development on Cox Ledge could have on this important cod population [emphasis added].”

612. BOEM restricts pile driving only from January 1 through April 30 and permits pile driving during November when cod are spawning despite the “high risk of population-level impacts on Southern New England Atlantic cod” (Exhibit 01 – NOAA Fisheries Letter, at 1, second paragraph).

613. The developer must obtain prior authorization from BOEM (before September 1, 2022) before BOEM will permit pile driving during December. BOEM will only grant approval where “unanticipated delays due to weather or technical problems arise that necessitate extending pile driving through December” (ROD at A-23, PDF 47, ¶ 1.7.1).

614. The Plaintiff does *not* know whether BOEM has granted the developer authorization to perform piling driving in December (2022). If BOEM has granted such approval, it has *not* disclosed to the public the letter granting the developer permission to pile drive in December.

615. BOEM requires the developer to consider only “the risk of exposure of NARWs [North Atlantic Right Whales] to pile-driving noise” when it submits an “enhanced survey plan” with its letter seeking approval for pile driving during December.

616. BOEM does *not* consider Atlantic cod spawning aggregations when deciding whether to permit the developer to pile drive during December (2022).

617. BOEM could avoid disturbing the benthic habitat and harming EFH by prohibiting construction preparation and installation (such as scouring the seafloor, clearing boulders, pile driving, etc.) from November 1 to December 31 (in addition to keeping the agreed restrictions in place from January 1 through April 30). Instead, BOEM decided against such conditions. The potential absence of any construction preparation and installation prohibitions from November 1 through December 31 may adversely impact cod spawning and risk the Atlantic cod population.

618. According to NOAA Fisheries, BOEM’s assertion that adverse impacts on cod are

“unavoidable” and will not result in “population-level effects” is contrary to fact.

619. On October 25, 2021, NOAA Fisheries Assistant Regional Administrator for Habitat and Ecosystem Services Louis A. Chiarella wrote to BOEM’s Chief of Office of Renewable Energy Programs, James Bennett (copied to BOEM’s Lead Biologist, Mr. Brian Hooker, and BOEM’s Lead Environmental Protection Specialist, Mr. Brian Krevor). Mr. Chiarella repeated NOAA Fisheries’ concerns regarding “the southern New England region cod population that relies on Cox Ledge for spawning[,] ... [and that] pile driving and cable laying activities were identified as the most impactful project activities, with pile driving identified as the most detrimental for population level effects” (at 2, second paragraph). However, BOEM ignored NOAA Fisheries’ warnings, and a month later (on November 24, 2021), BOEM issued its Record of Decision approving the Project based on the following fraudulent and misleading representations—

- a. The Project’s construction and installation would have “unavoidable” impacts on species, including Atlantic cod (see ¶¶ 605-606) when in fact, BOEM can avoid such adverse effects;
- b. The Project’s construction and installation would “not result in population-level effects” (see ¶¶ 605-606), contradicting NOAA Fisheries’ scientific experts who maintain the “project has a high risk of population-level impacts on Southern New England Atlantic cod” (see ¶ 607).
- c. The Project’s construction and installation “may include impacts to sensitive habitats but would not result in population-level effects to species that rely on them” (see ¶ 605-606), contradicting NOAA Fisheries’ scientists who maintain that “[g]iven ... the significance of Cox Ledge for spawning Southern New England cod, ... [t]his is a high priority given the cumulative and population level

impacts this project and additional proposed development on Cox Ledge could have on this important cod population.”

620. Plaintiff seeks equitable relief for himself and the public and the Court’s intervention to correct the particular injustices resulting from the Defendants’ fraudulent and misleading representations not limited to making Plaintiff and the public whole by providing fair compensation for all expenses, time, opportunity cost, and non-pecuniary damages including emotional pain, suffering, inconvenience, anxiety, frustration, mental anguish, loss of reputation and loss of quality and enjoyment of life, with pre-judgment and post-judgment interest as applicable.

621. Defendants risk the Southern New England Atlantic cod population on Cox Ledge by relying on fraudulent and misleading representations.

622. According to Fed. R. Civ. P. 99(b), Plaintiff claims Defendants intentionally committed fraud against Plaintiff and the public.

623. Plaintiff and the public are entitled to equitable relief, and this Court has the authority to grant such relief as it sees fit.

624. Plaintiff and the public are entitled to a judgment, so holding and setting aside.

625. Plaintiff and the public are entitled to an emergency temporary restraining order (TRO) and preliminary and permanent injunctions against any further work permitted pursuant to such unlawful final agency action.

626. Plaintiff and the public are entitled to seek an order compelling South Fork Wind to dismantle, remove, and remediate any damage and return the SFWF and SFEC corridor to its original condition, including but not limited to removing all concrete duct banks and vaults and all and any other infrastructure and equipment related to the Project, replacing boulders, and restoring the benthic environment on Cox Ledge.

XXIX. FOURTEENTH CLAIM FOR RELIEF

Fraudulent and misleading statements regarding
social and economic resources: a lop-sided economic analysis

(Against defendants listed below pursuant to Fed. R. Civ. P. 9(b))

Defendants

627. I reallege Paragraphs 1–440 (above) as if set forth in full herein.

628. On November 24, 2021, DEFENDANT Bureau of Ocean Energy Management and the defendants herein listed (below) made fraudulent and misleading statements, were involved in events leading up to those statements or failed to correct such statements concerning the Project’s impact on social and economic resources. Instead, the defendants relied on a lop-sided economic analysis that fraudulently misrepresented the nature of the Project’s impact on social and economic resources. The defendants’ false representations were part of the Record of Decision (ROD) approving the final environmental impact statement (FEIS) for the South Fork Wind Project’s construction and operations plan (COP). Defendants acted in their official capacity when making fraudulent and misleading statements, thereby giving those statements the additional weight of authority and creditability, further compounding the fraud against Plaintiff and the public by an institution set up to protect and safeguard the public. The defendants are as follows—

- a. In her official capacity, DEFENDANT DEB HAALAND, Secretary of the Interior, U.S. DEPARTMENT OF THE INTERIOR, who is ultimately responsible for the actions of the Department of the Interior;
- b. In her official capacity, DEFENDANT LAURA DANIELS-DAVIS, Principal Deputy Assistant Secretary, Land and Mineral Management who signed the record of decision on November 24, 2021, on behalf of the U.S. Department of the Interior;

- c. DEFENDANT AMANDA LEFTON, in her official capacity as Director, Bureau of Ocean Energy Management, who is responsible for overseeing and managing BOEM;
- d. DEFENDANT JAMES F. BENNETT, in his official capacity working for the Bureau of Ocean Energy Management, who, by his own admission, “was actively involved in the work leading to the approval of the South Fork Wind COP” (ECF No. 25-1, at 1, ¶ 2, last sentence). Mr. Bennett corresponded with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) regarding Atlantic cod on October 7 and 25, 2021;
- e. DEFENDANT MARY C. BOATMAN, in her official capacity as Environmental Studies Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management who, according to the FEIS, was the “National Environmental Policy Act (NEPA) Coordinator” for the Project’s review and approval and is a Contributor responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
- f. DEFENDANT MICHELLE MORIN, in her official capacity as Chief, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor in the Project’s review and approval process and responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
- g. DEFENDANT EMMA CHAIKEN, in her official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1);
- h. DEFENDANT MARK JENSEN, in his official capacity as an economist for the Bureau of

Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project's review and approval and responsible for "[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing" (FEIS, at B-1, PDF 297, Table B-1); and

- i. DEFENDANT JENNIFER DRAHER, in her official capacity working for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project's review and approval and responsible for "water quality" (FEIS, at B-1, PDF 297, Table B-1).

629. Upon information and belief, said defendants knowingly and intentionally made fraudulent and misleading statements, were involved in events leading up to those statements or failed to correct such statements concerning the Project's impact on social and economic resources to deceive the Plaintiff and the public.

630. In approval of the South Fork Wind Project, said defendants relied on a lop-sided economic analysis that fraudulently misrepresented the nature of the Project's impact on social and economic resources.

Lop-sided Economic Analysis

631. BOEM fraudulently asserts that its "OREP [Office of Renewable Energy Programs] has determined that the COP includes all the information required" in 30 C.F.R. § 585.627 for the Proposed Project [emphasis added] (ROD at D-6, PDF 98, third paragraph).

632. According to 30 C.F.R. § 585.627(a)(7) –

(a) You must submit with your COP detailed information to assist BOEM in complying with NEPA and other relevant laws [emphasis added]. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP [emphasis added], including:

Type of information:

Including:

(7) Social and economic resources Employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, ... minority and lower income groups, coastal zone management programs, ... [emphasis added].”

633. BOEM’s Guidelines for Information Requirements for a Renewable Energy Construction and Operations Plan (version 3.0, dated April 7, 2016) reads as follows (in relevant part)—

	CONSTRUCTION AND OPERATIONS PLAN (COP) 30 CFR 585.627(a)(7) Social and Economic Resources		
	Construction Phase	Operation Phase	Conceptual Decommissioning Phase
Focus	<ul style="list-style-type: none"> Describe the onshore economic baseline of the coastal areas that <u>may</u> be affected by your project [emphasis added]. 		
Scope	<ul style="list-style-type: none"> Describe what socioeconomic activity and resources in the onshore and coastal environment are affected by your project phases. 		
Information Needs for COP Submittal	<ul style="list-style-type: none"> Identify the major coastal industries (onshore and offshore) of the affected area 		
	<ul style="list-style-type: none"> Describe any economic modeling (e.g., job creation) 		
	<ul style="list-style-type: none"> Describe ... <u>employment and demographic patterns</u> (particularly those related to <u>environmental justice</u> considerations) ... that would be affected by your construction and operations activities [emphasis added]. 		
Presentation of Results	<ul style="list-style-type: none"> Narrative of each topic that includes data/information. 		
	<ul style="list-style-type: none"> Summarize in tables and maps where appropriate. 		

634. “There should be enough detail to support the environmental analyses required by NEPA and other relevant environmental laws.”⁵¹

635. Contrary to BOEM's false assertion that “the COP includes all the information required [emphasis added,]” BOEM does *not* acknowledge, discuss, or consider the Project’s cost,

⁵¹ BOEM, Office of Renewable Energy Program, Guidelines for Information Requirements for a Renewable Energy Construction and Operations Plan, Version 3.0, April 7, 2016 (at 36)

initially valued at \$1.6 billion⁵² but now exceeds \$2 billion.⁵³ The multi-billion-dollar price tag represents money that will take out of the Suffolk County economy monthly or every quarter in the form of additional charges on residents' electricity bills for twenty years. BOEM ignores the Project's cost, which is two to three times more expensive for the same renewable energy from the other offshore wind farms in the area (see ¶¶ 168 – 173).

636. BOEM's economic analysis considers *beneficial* economic impacts such as spending in the local economy on capital expenditures (\$185 – 247 million)⁵⁴ and operational costs (\$6 – \$12 million per year).⁵⁵ The total *beneficial* economic impact is estimated at \$307 – 493 million (over the twenty-year contract term).⁵⁶

637. BOEM's biased economic analysis accounts for *beneficial* impacts but ignores *adverse* effects that exceed the benefits by four to six and a half times.

638. The prejudicial financial analysis fails to recognize the net adverse economic impact estimated to be from \$1.5 to \$1.7 billion.

639. Moreover, BOEM does *not* acknowledge that the *negative* economic effects are fixed under a power purchase agreement, whereas the *positive* economic impacts are merely *estimates* with little substantive support, given that the project's major components (i.e., the wind turbine

⁵² New York Office of the State Comptroller valuation of the South Fork PPA is \$1,624,738,893 (<https://wwe2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=0000000000000000024767>),

⁵³ New York Office of the State Comptroller valuation of the South Fork PPA is \$2,013,198,056 (<https://wwe2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=0000000000000000085553>)

⁵⁴ Final Environmental Impact Statement (FEIS), at p. F-17, PDF p. 587, Table F-10

⁵⁵ *Ibid.*

⁵⁶ Local Operating Expenses (with taxes) ranging from \$6.16 to \$12.32 million per year, or from \$123.20 to \$246.40 million over twenty years. These Local Operating Expenses in addition to Local Capital Expenses (with taxes) of \$184.24 to \$246.81 million, is equal to total beneficial economic impacts of \$307.44 – 493.21 million (over 20 years).

generators, submarine cables, etc.) are manufactured overseas.

640. In November 2018 – three years *before* BOEM issued its approval – BOEM received notice of the Project’s high price of power (22 ¢/kWh) compared to Vineyard Wind (6.5 ¢/kWh). Furthermore, the letter notified BOEM of the developer’s failure to comply with 30 CFR 585.627(a)(7) regarding adverse impacts on employment, the economy, and environmental justice.⁵⁷ BOEM ignored that letter and a subsequent reminder in February 2021.⁵⁸ BOEM did *not* require the Applicant to comply with 30 CFR 585.627(a)(7) or its guidelines regarding the Project’s impact on the energy industry, energy prices, employment, demographics, or environmental justice considerations (see ¶¶ 180-218).

641. Plaintiff seeks equitable relief for himself and the public and the Court’s intervention to correct the particular injustices resulting from the Defendants’ fraudulent and misleading representations not limited to making Plaintiff and the public whole by providing fair compensation for all expenses, time, opportunity cost, and non-pecuniary damages including emotional pain, suffering, inconvenience, anxiety, frustration, mental anguish, loss of reputation and loss of quality and enjoyment of life, with pre-judgment and post-judgment interest as applicable.

642. Defendants fraudulently misrepresented the economic and socioeconomic impact of the South Fork Wind Project by failing to consider the Project’s cost of \$2 billion, thereby making it impossible to compare the actual economic impact to alternatives with any accuracy.

643. According to Fed. R. Civ. P. 99(b), Plaintiff claims Defendants intentionally committed fraud against Plaintiff and the public.

644. Plaintiff and the public are entitled to equitable relief, and this Court has the authority to

⁵⁷ <https://www.regulations.gov/comment/BOEM-2018-0010-0074> (at pp. 4-5)

⁵⁸ <https://www.regulations.gov/comment/BOEM-2020-0066-0343> (at pp. 4-5)

grant such relief as it sees fit.

645. Plaintiff and the public are entitled to a judgment, so holding and setting aside.

646. Plaintiff and the public are entitled to an emergency temporary restraining order (TRO) and preliminary and permanent injunctions against any further work permitted pursuant to such unlawful final agency action.

647. Plaintiff and the public are entitled to seek an order compelling South Fork Wind to dismantle, remove, and remediate any damage and return the SFWF and SFEC corridor to its original condition, including but not limited to removing all concrete duct banks and vaults and all and any other infrastructure and equipment related to the Project, replacing boulders, and restoring the benthic environment on Cox Ledge.

XXX. FIFTEENTH CLAIM FOR RELIEF

Fraudulent and misleading
statements regarding water quality

(Against defendants listed below pursuant to Fed. R. Civ. P. 9(b))

Defendants

648. I reallege Paragraphs 1–440 (above) as if set forth in full herein.

649. On November 24, 2021, DEFENDANT Bureau of Ocean Energy Management and the defendants herein listed (below) made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such statements concerning harmful contamination of the drinking water supply.

650. The defendants' false representations were part of the Record of Decision (ROD) approving the final environmental impact statement (FEIS) for the South Fork Wind Project's construction and operations plan (COP). Defendants acted in their official capacity when making fraudulent and misleading statements, thereby giving those statements the additional weight of authority and credibility, further compounding the fraud against Plaintiff and the public by an

institution set up to protect and safeguard the public. The defendants are as follows—

- a. In her official capacity, DEFENDANT DEB HAALAND, Secretary of the Interior, U.S. DEPARTMENT OF THE INTERIOR, who is ultimately responsible for the actions of the Department of the Interior;
- b. In her official capacity, DEFENDANT LAURA DANIELS-DAVIS, Principal Deputy Assistant Secretary, Land and Mineral Management who signed the record of decision on November 24, 2021, on behalf of the U.S. Department of the Interior;
- c. DEFENDANT AMANDA LEFTON, in her official capacity as Director, Bureau of Ocean Energy Management, who is responsible for overseeing and managing BOEM;
- d. DEFENDANT JAMES F. BENNETT, in his official capacity working for the Bureau of Ocean Energy Management, who, by his own admission, “was actively involved in the work leading to the approval of the South Fork Wind COP” (ECF No. 25-1, at 1, ¶ 2, last sentence). Mr. Bennett corresponded with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) regarding Atlantic cod on October 7 and 25, 2021;
- e. DEFENDANT MARY C. BOATMAN, in her official capacity as Environmental Studies Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management who, according to the FEIS, was the “National Environmental Policy Act (NEPA) Coordinator” for the Project’s review and approval and is a Contributor responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
- f. DEFENDANT MICHELLE MORIN, in her official capacity as Chief, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor in the Project’s review and approval process and responsible

for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);

- g. DEFENDANT EMMA CHAIKEN, in her official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1);
- h. DEFENDANT MARK JENSEN, in his official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1); and
- i. DEFENDANT JENNIFER DRAHER, in her official capacity working for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “water quality” (FEIS, at B-1, PDF 297, Table B-1).

651. Upon information and belief, said defendants knowingly made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such statements concerning harmful PFAS contamination of the drinking water supply to deceive Plaintiff and the public.

652. In approval of the South Fork Wind Project, said defendants relied on their fraudulent and misleading statements.

Water Quality: Harmful PFAS Contamination

653. BOEM fraudulently asserts that its “OREP [Office of Renewable Energy Programs] has

determined that the COP includes all the information required” in 30 C.F.R. § 585.627 for the Proposed Project [emphasis added] (ROD at D-6, PDF 98, third paragraph).

654. According to 30 C.F.R. § 585.627(a)(2) —

(a) You must submit with your COP detailed information to assist BOEM in complying with NEPA and other relevant laws [emphasis added]. Your COP must describe those resources, conditions, and activities listed in the following table that could be affected by your proposed activities, or that could affect the activities proposed in your COP, including [emphasis added]:

Type of information:	Including:
(2) Water quality	Turbidity and total suspended solids from construction.

655. BOEM’s Guidelines for Information Requirements for a Renewable Energy Construction and Operations Plan published by the Office of Renewable Energy Programs (OREP) (version 3.0, dated April 7, 2016) reads as follows –

	CONSTRUCTION AND OPERATIONS PLAN (COP)		
	30 CFR 585.627(a)(2) Water Quality		
	Construction Phase	Operation Phase	Conceptual Decommissioning Phase
Focus	<ul style="list-style-type: none"> Describe the existing water quality conditions and your project activities that could affect water quality [emphasis added]. 		
Scope	<ul style="list-style-type: none"> Describe the water quality <u>in the area proximal to your proposed activities</u> and the incremental changes to the parameters that define water quality that may be caused by your proposed activities [emphasis added]. 		
Information Needs for COP Submittal	<ul style="list-style-type: none"> Describe the general state of water quality in the area proposed for your project by reporting typical metrics for quality including the following: dissolved oxygen; chlorophyll; nutrient content; seasonal variations in algae or bacterial content; upwelling conditions; <u>presence or absence of contaminants in water</u> or sediment; turbidity or water visibility states and variation [emphasis added]. 		
Impacting Factors	<ul style="list-style-type: none"> Activities that disturb the sea bottom—the nature, intensity, and duration of disturbances to the sea bottom that may increase turbidity or affect other water quality conditions. Natural hazards—the <u>environmental hazards and/or accidental events causing accidental releases of non-hazardous or hazardous materials and wastes</u> [emphasis added]. 		

	<ul style="list-style-type: none"> Accidental events—routine and accident releases from construction equipment, vessels, and installed facilities [emphasis added].
Other Potential Needs for COP Approval	<ul style="list-style-type: none"> <u>Additional information may be needed to support the evaluation of water quality impacts, including but not limited to:</u> <ul style="list-style-type: none"> Modeling of turbidity during foundation installation, <u>cable jetting/burial, and cable landfall</u> [emphasis added]; Oil or other fluid spill probability and spill trajectory modeling; and Any Operation, Service and Maintenance Plan, Oil Spill Response Plan, Storm water Pollution Prevention Plan, and <u>any other pollution control plan prepared to avoid and minimize impacts to water quality</u> [emphasis added]. If additional information requirements apply to the proposed project, provide any draft plans or quantitative assessments undertaken and/or describe any that are planned.
Monitoring (That You Propose)	<ul style="list-style-type: none"> <u>Describe any monitoring activities you propose to undertake for construction and/or operations, as part of your COP proposal</u> [emphasis added].
Environmental Protection Measures (That You Propose)	<ul style="list-style-type: none"> <u>Describe any part of your project that is designed to minimize adverse effects on water quality</u> [emphasis added]. If an NPDES permit is required by the EPA or if Water Quality Certification is required by the state(s) or ACOE, include a summary of the anticipated reporting and monitoring requirements.
Presentation of Results	<ul style="list-style-type: none"> <u>Provide succinct narratives by topic, at a level of detail appropriate to the scale of the impacts that each category of proposed activities may cause</u> [emphasis added]. Provide report(s) that present the methods used, results of, and conclusions reached by any numerical modeling performed. <u>Include data/information in tables</u> where appropriate [emphasis added]. <u>Include maps or tables</u> where appropriate [emphasis added].

656. Contrary to BOEM’s fraudulent representations that— the “COP includes all the information required” in 30 C.F.R. § 585.627 (ROD at D-6, PDF 98, third paragraph)— the plan does not contain *any* of “the information required” on PFAS contamination whatsoever.

657. Moreover, BOEM’s FEIS acknowledges only the *indicative presence* of perfluorinated compounds (an outdated term for PFAS contamination) “at the fourth site, NYSDEC #152250.” BOEM does *not* say where that “fourth site” is relative to the construction corridor (it is adjacent

and upgraded from the construction corridor) and does not discuss the exceedingly high levels of contamination or the impacts of such contamination on the sole-source aquifer that supplies drinking water to over twenty thousand residents in the Town of East Hampton.

658. BOEM’s FEIS does *not* acknowledge *any* PFAS contamination *within* the construction, whereas such contamination *within* the construction site exceeds 2016 EPA regulatory standards.

659. In the FEIS, BOEM identifies “a gas storage facility ... upgradient of the onshore SFEC route from the Hither Hills landing site ... and ... a former gasoline refinery facility that predates the 1930s.” It concludes that the sites are “not a concern for the onshore SFEC route” (FEIS, at H-23, PDF 655, second paragraph).

660. In stark contrast, BOEM ignores harmful contamination upgradient within 500 of the SFEC route that the New York State Department of Environmental Conservation classifies “as a Class 2 site that presents a significant threat to public health and/or the environment” (<https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf>, also see ¶¶ 72-135).

661. BOEM falsely states that— “Overall, existing groundwater quality in the analysis area appears to be good and meets NYSDEC (2018) groundwater quality[,]” contradicting substantive evidence to the contrary (see ¶¶ 72-108). For example, in June 2018, the majority of private drinking water wells (159) in Wainscott (303) showed detectible levels of PFOS and PFOA contamination (see ¶¶ 36-39). Wainscott had more contaminated drinking water well than anywhere else in Suffolk County (see ¶ 399). BOEM received indisputable evidence of existing PFAS contamination of groundwater (see ¶¶ 48-50) but turned a blind eye to extensive environmental contamination of a public health concern in the interests of the private developer.

662. Plaintiff seeks equitable relief for himself and the public and the Court’s intervention to

correct the particular injustices resulting from the Defendants' fraudulent and misleading representations not limited to making Plaintiff and the public whole by providing fair compensation for all expenses, time, opportunity cost, and non-pecuniary damages including emotional pain, suffering, inconvenience, anxiety, frustration, mental anguish, loss of reputation and loss of quality and enjoyment of life, with pre-judgment and post-judgment interest as applicable.

663. Defendants fraudulently misrepresented groundwater quality and intentionally concealed existing PFAS contamination within the proposed onshore construction corridor, making it impossible to compare the approved onshore cable corridor to alternatives accurately.

664. According to Fed. R. Civ. P. 99(b), Plaintiff claims Defendants intentionally committed fraud against Plaintiff and the public.

665. Plaintiff and the public are entitled to equitable relief, and this Court has the authority to grant such relief as it sees fit.

666. Plaintiff and the public are entitled to a judgment, so holding and setting aside.

667. Plaintiff and the public are entitled to an emergency temporary restraining order (TRO) and preliminary and permanent injunctions against any further work permitted pursuant to such unlawful final agency action.

668. Plaintiff and the public are entitled to seek an order compelling South Fork Wind to dismantle, remove, and remediate any damage and return the SFEC corridor to its original condition, including but not limited to removing all concrete duct banks and vaults and all and any other infrastructure and equipment related to the Project.

XXXI. SIXTEENTH CLAIM FOR RELIEF

Fraudulent purpose and needs statements

(Against defendants listed below pursuant to Fed. R. Civ. P. 9(b))

Defendants

669. I reallege Paragraphs 1–440 (above) as if set forth in full herein.

670. On November 24, 2021, DEFENDANT Bureau of Ocean Energy Management and the defendants herein listed (below) made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such statements concerning the Project’s purpose and needs.

671. The defendants’ false representations were part of the Record of Decision (ROD) approving the final environmental impact statement (FEIS) for the South Fork Wind Project’s construction and operations plan (COP). Defendants acted in their official capacity when making fraudulent and misleading statements, thereby giving those statements the additional weight of authority and creditability, further compounding the fraud against Plaintiff and the public by an institution set up to protect and safeguard the public. The defendants are as follows—

- a. In her official capacity, DEFENDANT DEB HAALAND, Secretary of the Interior, U.S. DEPARTMENT OF THE INTERIOR, who is ultimately responsible for the actions of the Department of the Interior;
- b. In her official capacity, DEFENDANT LAURA DANIELS-DAVIS, Principal Deputy Assistant Secretary, Land and Mineral Management who signed the record of decision on November 24, 2021, on behalf of the U.S. Department of the Interior;
- c. DEFENDANT AMANDA LEFTON, in her official capacity as Director, Bureau of Ocean Energy Management, who is responsible for overseeing and managing BOEM;
- d. DEFENDANT JAMES F. BENNETT, in his official capacity working for the Bureau of Ocean Energy Management, who, by his own admission, “was actively involved in the

work leading to the approval of the South Fork Wind COP” (ECF No. 25-1, at 1, ¶ 2, last sentence);

- e. DEFENDANT MARY C. BOATMAN, in her official capacity as Environmental Studies Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management who, according to the FEIS, was the “National Environmental Policy Act (NEPA) Coordinator” for the Project’s review and approval and is a Contributor responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
 - f. DEFENDANT MICHELLE MORIN, in her official capacity as Chief, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor in the Project’s review and approval process and responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
 - g. DEFENDANT EMMA CHAIKEN, in her official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1); and
 - h. DEFENDANT MARK JENSEN, in his official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1);
672. Upon information and belief, said defendants knowingly made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such

statements concerning the Project’s purpose and needs with intent to deceive Plaintiff and the public.

673. In approval of the South Fork Wind Project, said defendants relied on their fraudulent and misleading statements.

Fraudulent purposes and needs statements

674. In approving the Project, BOEM relied on three demonstrably false claims in its Record of Decision as follows—

The procurement was *not* a “technology-neutral competitive bidding process.”

675. The ROD falsely claims that South Fork Wind’s “power purchase agreement executed in 2017 result[ed] from LIPA’s technology-neutral competitive bidding process [emphasis added],”⁵⁹ contradicting internal LIPA documents showing that proposals were advanced in the procurement process based on their technology. Thus, the South Fork RFP was *not* “neutral” on technology (see ¶¶ 281-358).

676. The South Fork Wind Project did *not* satisfy mandatory criteria or the minimum specifications and requirements of the South Fork RFP. The proposed South Fork Wind Farm was the successful bid in an RFP that precluded resources that were *not* “located on Long Island [emphasis added]” (see Exhibit P- Notice to Proposers). The South Fork Wind project was the *only* bid using offshore wind technology. The South Fork RFP was rigged to preclude competition from other offshore wind developers.

677. The New York State Governor, Andrew M. Cuomo, assured the success of the South Fork Wind proposal by interfering in an active procurement by advancing the interests of the bid to the detriment of the other bidders. On January 11, 2017, Governor Cuomo directed the utility’s board of trustees to approve the South Fork Wind Farm proposal in his State of the State

⁵⁹ ROD (at p. 7, PDF p. 9, ¶ 7)

address. Fourteen days later, the utility approved the Project (on January 25, 2021).

The Project was *not* designed for and did *not* satisfy the 2019 CLCPA

678. “[T]he Project ... is designed to contribute to New York’s renewable energy ... goal of generating 9,000 megawatts of offshore wind energy by 2030”⁶⁰ in reference to the New York State’s Climate Leadership and Community Protection Act that was enacted *three-and-a-half years after* the Project was designed; and even if assuming *arguendo* the Act was applicable (it is not), the Project would have failed to satisfy the statute’s requirements (see ¶¶ 136-179).

According to the Project’s owners, the Project is *not* commercial-scale.

679. “The purpose of the Project is to develop a commercial-scale offshore wind energy facility [...][emphasis added]”⁶¹ contradicting the joint and equal (indirect) owners of South Fork Wind, Ørsted and Eversource, that agree with NYSERDA⁶² insofar as its Project would “not likely to deliver cost savings ... [d]ue to diseconomies of scale” (see ¶¶ 219-229). The relatively small scale of the wind farm (only 130 megawatts) compared to the length of the transmission (66 miles) requires four times the transmission per megawatt capacity than the average of the other three offshore wind farms in the same area (see Appendix 4, Table 1).

680. An agency’s decision-making should be “based on reasons and supported by facts.”⁶³ “Although we are dealing with the question whether agency action is arbitrary or capricious, ‘in their application to the requirement of factual support the substantial evidence test and the arbitrary or capricious test are one and the same.’”⁶⁴

⁶⁰ FEIS (at p. I, PDF p. 5, last paragraph)

⁶¹ ROD (at p. 7, PDF p. 9, ¶ 7)

⁶² New York State Energy Research and Development Authority (“NYSERDA”)

⁶³ Paul R. Verkuil, *Judicial Review of Informal Rulemaking*, 60 VA. L. REV. 185, 234 (1974).

⁶⁴ *Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010), citing *Ass’n of Data, Processing Serv. Orgs., Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 745 F.2d 677, 683 (D.C. Cir. 1984); accord *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 243 (D.C. Cir. 2008)

681. The defendants identified in this claim for relief relied on their fraudulent representations: to conceal the role technology played and the non-competitive nature of the procurement; to back-date by three and a half years a state-legislated “renewable energy” mandate (the 2019 CLCPA); and to gloss over an expensive and uneconomic design that required a dedicated sixty-six-miles-long transmission system for a small 130-megawatt wind farm.

682. Plaintiff seeks equitable relief for himself and the public and the Court’s intervention to correct the particular injustices resulting from the defendants’ fraudulent and misleading representations not limited to making Plaintiff and the public whole by providing fair compensation for all expenses, time, opportunity cost, and non-pecuniary damages including emotional pain, suffering, inconvenience, anxiety, frustration, mental anguish, loss of reputation and loss of quality and enjoyment of life, with pre-judgment and post-judgment interest as applicable.

683. Defendants fraudulently claimed the Project satisfied the purposes and needs (mentioned above) contrary to clear substantive evidence provided by Plaintiff to Defendant BOAM rebutting the claims. By intentionally falsifying the Project’s qualifications, Defendants fatally undermined the environmental and economic review by failing to compare the Project to alternatives accurately.

684. According to Fed. R. Civ. P. 99(b), Plaintiff claims Defendants intentionally committed fraud against Plaintiff and the public.

685. Plaintiff and the public are entitled to equitable relief, and this Court has the authority to grant such relief as it sees fit.

686. Plaintiff and the public are entitled to a judgment, so holding and setting aside.

687. Plaintiff and the public are entitled to an emergency temporary restraining order (TRO) and preliminary and permanent injunctions against any further work permitted pursuant to such

unlawful final agency action.

688. Plaintiff and the public are entitled to seek an order compelling South Fork Wind to dismantle, remove, and remediate any damage and return the SFWF and SFEC corridor to its original condition, including but not limited to removing all concrete duct banks and vaults and all and any other infrastructure and equipment related to the Project, replacing boulders, and restoring the benthic environment on Cox Ledge.

XXXII. SEVENTEENTH CLAIM FOR RELIEF
Fraudulent statement regarding the Sunrise Alternative
(Against defendants listed below pursuant to Fed. R. Civ. P. 9(b))

Defendants

689. I reallege Paragraphs 1–440 (above) as if set forth in full herein.

690. On November 24, 2021, DEFENDANT Bureau of Ocean Energy Management and the defendants herein listed (below) made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such statements concerning an economically, environmentally, and technically superior alternative to the Project as proposed.

691. The Defendants’ false representations were part of the Final Environmental Impact Statement (FEIS) that Defendants approved on November 24, 2021. Defendants acted in their official capacity when making fraudulent and misleading statements, thereby giving those statements the additional weight of authority and credibility, further compounding the fraud against Plaintiff and the public by an institution set up to represent the public interest. The defendants are as follows—

- a. In her official capacity, DEFENDANT DEB HAALAND, Secretary of the Interior, U.S. DEPARTMENT OF THE INTERIOR, who is ultimately responsible for the actions of the Department of the Interior;

- b. In her official capacity, DEFENDANT LAURA DANIELS-DAVIS, Principal Deputy Assistant Secretary, Land and Mineral Management who signed the record of decision on November 24, 2021, on behalf of the U.S. Department of the Interior;
- c. DEFENDANT AMANDA LEFTON, in her official capacity as Director, Bureau of Ocean Energy Management, who is responsible for overseeing and managing BOEM;
- d. DEFENDANT JAMES F. BENNETT, in his official capacity working for the Bureau of Ocean Energy Management, who, by his own admission, “was actively involved in the work leading to the approval of the South Fork Wind COP” (ECF No. 25-1, at 1, ¶ 2, last sentence);
- e. DEFENDANT MARY C. BOATMAN, in her official capacity as Environmental Studies Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management who, according to the FEIS, was the “National Environmental Policy Act (NEPA) Coordinator” for the Project’s review and approval and is a Contributor responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
- f. DEFENDANT MICHELLE MORIN, in her official capacity as Chief, Environment Branch for Renewable Energy, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor in the Project’s review and approval process and responsible for “NEPA Compliance” (FEIS, at B-1, PDF 297, Table B-1);
- g. DEFENDANT EMMA CHAIKEN, in her official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project’s review and approval and responsible for “[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing” (FEIS, at B-1, PDF 297, Table B-1); and

- h. DEFENDANT MARK JENSEN, in his official capacity as an economist for the Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project's review and approval and responsible for "[d]emographics, employment, and economics; recreation and tourism; land use and coastal infrastructure; commercial fisheries and for-hire recreational fishing" (FEIS, at B-1, PDF 297, Table B-1);
- i. DEFENDANT BRIAN HOOKER, in his official capacity as Lead Biologist, Bureau of Ocean Energy Management, who, according to the FEIS, was a Contributor to the Project's review and approval and responsible for "Benthic, finfish, invertebrates, and essential fish habitat; commercial fisheries and for-hire recreational fishing" (FEIS, at B-1, PDF 297, Table B-1). Mr. Hooker was copied on correspondence between BOEM and the NOAA NMFS regarding Atlantic cod on June 7 and October 25, 2021;
- j. DEFENDANTS, U.S. Environmental Protection Agency and the Hon. Michael S. Regan, in his official capacity as Administrator of the U.S. Environmental Protection Agency.

692. Upon information and belief, said defendants knowingly made fraudulent and misleading statements, were involved in events leading up to those statements, and failed to correct such statements concerning the Project's purpose and needs with intent to deceive Plaintiff and the public.

Fraudulent misrepresentation about the Sunrise/South Fork alternative

693. When approving the Project's FEIS on November 24, 2021, Defendants fraudulently represented that— "No other cable landing site alternatives were identified during Project development or scoping ... (see New York Article VII submitted by SFW)" (see FEIS at 2-19, PDF 45, final paragraph).

694. Defendants relied on their fraudulent misrepresentation to eliminate and thereby avoid considering an economically, environmentally, and technically superior alternative to the Project

as proposed.

695. Contrary to BOEM’s fraudulent claim, the Sunrise/South Fork alternative *was* identified and discussed during the project’s development and scoping, including during the “New York Article VII,” referring to the New York State Public Service Commission hearing (18-T-0604).

696. The Commission’s final ruling, Order Adopting Joint Proposal, issued March 18, 2021, discusses the Sunrise/South Fork alternative. The Order refers to “Sunrise Wind” *eight times* and discusses the proposition “that the Sunrise Wind project and the South Fork Wind project should be combined, concluding that two nearby, but separate, projects make little economic sense” (Case 18-T-0604, Order Adopting Joint Proposal issued March 18, 2021, at 88, ¶ 3).

697. Defendants fraudulently assert that “[t]he final EIS evaluates and discloses the impacts of ... the Beach Lane ... site” as grounds for not carrying forward alternative landing sites “[e]liminating [the] Beach Lane landing site” (FEIS at 2-20, PDF 46, first paragraph). On the contrary, Defendants neither evaluated nor disclosed the environmental PFAS contamination of soil and groundwater within the proposed Beach Lane landing site that Defendants concealed.

698. Defendants fraudulently maintained that assessing other land sites was unnecessary by concealing the PFAS contamination within the proposed Beach Lane construction corridor.

699. An agency’s decision-making should be “based on reasons and supported by facts.”⁶⁵ “Although we are dealing with the question whether agency action is arbitrary or capricious, ‘in their application to the requirement of factual support the substantial evidence test and the arbitrary or capricious test are one and the same.’”⁶⁶ (see ¶¶ 252-280).

⁶⁵ Paul R. Verkuil, *Judicial Review of Informal Rulemaking*, 60 VA. L. REV. 185, 234 (1974).

⁶⁶ *Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010), citing *Ass’n of Data, Processing Serv. Orgs., Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 745 F.2d 677, 683 (D.C. Cir. 1984); accord *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 243 (D.C. Cir. 2008)

700. Plaintiff seeks equitable relief for himself and the public and the Court's intervention to correct the particular injustices resulting from the defendants' fraudulent and misleading representations not limited to making Plaintiff and the public whole by providing fair compensation for all expenses, time, opportunity cost, and non-pecuniary damages including emotional pain, suffering, inconvenience, anxiety, frustration, mental anguish, loss of reputation and loss of quality and enjoyment of life, with pre-judgment and post-judgment interest as applicable.

701. Defendants fraudulently claimed to have evaluated and disclosed the environmental impacts regarding the proposed Beach Lane landing corridor, thereby concealing onsite PFAS contamination of soil and groundwater, contrary to clear substantive evidence provided by Plaintiff to Defendant BOAM rebutting the claims. Defendants fatally undermined the environmental review by intentionally falsifying the Project's qualifications and could not have possibly accurately compared the Project's landing corridor to alternatives.

702. According to Fed. R. Civ. P. 99(b), Plaintiff claims Defendants intentionally committed fraud against Plaintiff and the public.

703. Plaintiff and the public are entitled to equitable relief, and this Court has the authority to grant such relief as it sees fit.

704. Plaintiff and the public are entitled to a judgment, so holding and setting aside.

705. Plaintiff and the public are entitled to an emergency temporary restraining order (TRO) and preliminary and permanent injunctions against any further work permitted pursuant to such unlawful final agency action.

706. Plaintiff and the public are entitled to seek an order compelling South Fork Wind to dismantle, remove, and remediate any damage and return and SFEC corridor to its original condition, including but not limited to removing all concrete duct banks and vaults and all and

any other infrastructure and equipment related to the Project.

XXXIII. NO PRIOR APPLICATIONS

707. No prior application for this or any similar relief has been made in this Court.

XXXIV. PRAYER FOR RELIEF

708. Wherefore, Plaintiffs pray for relief as follows:

- a. an emergency temporary restraining order and preliminary injunction against such work;
- b. a permanent injunction against such work;
- c. a declaratory judgment holding that the final agency action approving the Final Environmental Impact Statement for the Project Construction and Operations Plan was unlawful and set aside in relevant part the final agency action challenged herein;
- d. restoration to the site's original condition, remediation of any damage, and dismantling of the facility under the oversight of Federal authorities;
- e. equitable relief for himself and the public and the Court's intervention to correct the injustices resulting from Defendants' actions.
- f. costs of suit herein; and
- g. such other relief as the Court deems just and proper.