
Program Change
State of New Jersey Coastal Management Program

Request for Concurrence

Statutory amendments enacted April 20, 2018

New Jersey Statutes Annotated Title 13

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Introduction

The New Jersey Coastal Management Program (NJCMP) is requesting approval from NOAA's Office for Coastal Management (OCM) to incorporate a new statute, the Shore Tourism and Ocean Protection from Offshore Oil and Gas Act, into the enforceable policies of New Jersey's Federally-approved Coastal Management Program. The statute was signed by Governor Murphy on April 20, 2018. The statute addresses offshore oil and gas exploration and production and related in-water and upland infrastructure.

Summary of Legislation

The Shore Tourism and Ocean Protection from Offshore Oil and Gas Act (Act) presents the Legislature's findings concerning New Jersey's coastal zone and possible effects of offshore oil and gas activities and directs the Department of Environmental Protection (Department) to act accordingly. See Appendix A for the language of the Act.

The Act summarizes State and Federal jurisdiction in waters offshore of New Jersey. As stated in the statute at Section 2.c., New Jersey has primary jurisdiction over the management of coastal and ocean natural resources within three nautical miles of its coastline. The Federal government has primary jurisdiction from three nautical miles offshore to the seaward boundary of the 200-mile exclusive economic zone.

The Legislature's findings also acknowledge the importance of New Jersey's coastal zone to the economy and the environment. As acknowledged by the Legislature, New Jersey's shoreline serves as a vital component of the State's annual \$38 billion tourism industry by providing a myriad of recreational opportunities. The State's tidal waters are habitat for plants and animal species and support a billion-dollar commercial and recreational fishing industry. Tidal waterways and their shores are also held in trust from the people of New Jersey for uses including bathing, swimming, fishing, and other shore-related activities.

The Act also summarizes the devastating impacts of the 2010 BP Deepwater Horizon disaster on the economy and environment of the Gulf coast region of the country. In 2010, a single rig located in the exclusive economic zone released an estimated 170 million gallons of oil into ocean waters and impacted over 600 miles of shoreline, resulting in beach closings and demonstrable harm to marine mammals, fish, shellfish, marine birds, and other wildlife. This disaster caused an estimated loss of greater than one billion dollars to the commercial fishing industry in the region and an estimate loss of over \$22 billion dollars to the tourism industry. Based on the documented importance of the shore to New Jersey's environment and economy, and the devastating impacts of this recent offshore oil rig disaster on the Gulf coast, the Legislature concluded that oil and natural gas exploration, development, and production, within New Jersey waters, in the exclusive economic zone proximate to New Jersey waters, and within or proximate to the Gulf Stream to the south of New Jersey waters, pose a serious and unacceptable risk to the coastal resources of the State, the water quality of State waters, and the continued viability of the State's shore tourism and commercial fishing industries.

The Act therefore prohibits offshore oil or natural gas exploration, development, and production in New Jersey waters and prohibits the leasing of tidal or submerged lands in State waters for such purposes. The Act also prohibits the Department from issuing any permit or approval pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-3, the Federal Coastal Zone Management Act of 1972, 16 U.S.C. s.1451 et seq., or any other State or Federal law, rule, or regulation, for any development associated with offshore drilling for oil or natural gas, whether proposed in State waters or outside of State waters. The Department is also prohibited from permitting, approving, or otherwise authorizing oil or natural gas exploration, development, or production in State waters, and from developing, adopting, or endorsing any plans for such activities. The Act defines development to include any pipeline or other infrastructure that transports oil or natural gas from production facilities located in Federal waters or other coastal state waters in the Atlantic Ocean through New Jersey State waters, and any land-based support facilities for offshore oil or natural gas production facilities located in the Atlantic Ocean, among other activities.

The Act directs the Department to submit the Act to NOAA for incorporation as an enforceable policy of the NJCMP, which the Department is doing through this program change request for concurrence. The Act then directs the State to review any proposed oil or natural gas lease, license, permit, or plan for exploration, development, or production of oil and natural gas within the Atlantic region of the exclusive economic zone to determine if the proposal can be reasonably expected to affect State waters, particularly in terms of proposed activities' proximity to State waters or the Gulf Stream south of State waters. If so, the Commissioner of the Department shall advise the Governor and take all actions necessary to initiate a consistency review under the Federal Coastal Zone Management Act of 1972.

Discussion of Legislation and Program Approvability Areas

Changes to the NJCMP are evaluated in the context of the five program approvability areas: (1) uses subject to management, (2) special management areas, (3) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest, as discussed in this section.

Uses subject to management, special management areas, boundaries, authorities and organization

The Act does not substantially change the uses subject to management under the NJCMP. Through the existing NJCMP, the State of New Jersey regulates facilities in State waters and in upland areas adjacent to State waters. Through CAFRA, 13:19-1 et seq., the Department has broad authority to review coastal facilities for impacts to coastal resources and communities. Through the Waterfront Development Act, N.J.S.A. 12:5-3, the Department reviews activities in and adjacent to navigable waters of the State. These statutes are implemented by the Coastal

Zone Management (CZM) Rules, N.J.A.C. 7:7. Under these statutes and regulations, the Department evaluates proposed activities and facilities proposed in the coastal zone for their impacts on coastal resources and potential conflicts with other uses in the coastal zone, including oil and natural gas activities, facilities, and supporting infrastructure. Existing Federal Consistency procedures pursuant to the Federal Coastal Zone Management Act allow the State to review Federal leases, licenses, permits, and actions for consistency with the NJCMP enforceable policies where those activities are likely to affect New Jersey's coastal zone, including activities related to oil and natural gas exploration, development, and production. The Act subject to this program change request further refines the existing provisions to better protect New Jersey's economy, environment, and communities.

The Act does not substantially change special management areas regulated under the NJCMP. As discussed above, previously-approved statutes and regulations establish areas regulated by the NJCMP. The CZM Rules, under the authority of CAFRA and the Waterfront Development Act, contain specific requirements for activities in general water areas and in special areas, many of which are likely to be impacted by oil and natural gas exploration, development, and production activities.

The boundaries of the coastal zone governed by the NJCMP are not affected by this program change request. The authorities and organization are requested to be updated to include the Shore Tourism and Ocean Protection from Offshore Oil and Gas Act.

National interest

The coordination, public involvement, and national interest program approvability area is most affected by this program change request. The Act is intended to address local, regional, and national effects of offshore oil and natural gas exploration, development, and production. While the Act cites several New Jersey-specific facts, the Act's provisions are also of national significance.

Ecological

The New Jersey coast and its offshore waters are home to an ecosystem of global importance. The Delaware Bay shoreline – a critical segment of the Atlantic migratory flyway – is one of the most globally important shorebird migration locations and a critical stopover for endangered and threatened species such as the red knot. The Dr. Carl N. Shuster Jr. Horseshoe Crab Sanctuary at the mouth of Delaware Bay was created to protect the world's largest spawning population of horseshoe crabs whose eggs are so critical to migratory shorebirds and whose blood is critical to medical research.

The waters offshore of New Jersey out to the continental slope break contain spectacular offshore canyons. The slope break and canyons provide important habitat and support essential sectors of New Jersey's economy. The canyons are physically complex with outcrops, steep slopes and diverse sediment with high nutrient flux and biologically important upwellings. These areas are home to unique cold-water corals, with individual colonies likely more than 1,000

years old. These colonies are slow-growing and sensitive to disturbance. In addition, canyon habitats provide refuge for commercially important fish. (See Figure 1) The slope break is known for high concentrations of tuna, billfish, crabs, marine mammals and sea turtles. Data being incorporated into the Mid-Atlantic Data Portal by Duke University's Marine Geospatial Ecology Lab in partnership with the Mid-Atlantic Regional Council on the Ocean and the Mid-Atlantic Regional Planning Body clearly show the importance of this area for protected marine mammals, including sei whales and deep-diving species such as sperm and beaked whales. (See Figure 2) In addition, the uniqueness of this region was confirmed in 2016 when it was withdrawn under Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1341(a).

Offshore oil and gas exploration, development, and production near New Jersey's coast will severely impact ocean and shore ecosystems in and beyond the State. Oil and gas activities directly destroy open water, ocean bottom, and shoreline habitat. Exploration activities are disruptive to fish and other aquatic organisms and can disturb bottom habitat. The construction and operation of facilities and related upland infrastructure threaten water quality, introduce noise disturbance into sensitive habitats, and directly occupy fish and wildlife habitat. As evidenced by the BP Deepwater Horizon disaster in 2010, accidents on offshore oil and gas rigs have a devastating impact on individual organisms and populations, ranging from fish to birds to humans.

New Jersey's marine waters are an essential migration corridor for Federally endangered and threatened species, including marine mammals and sea turtles. The water quality, noise, and loss of habitat impacts inherent in oil and gas operations will hinder the survival of these species of national importance as they pass through New Jersey waters. Atlantic sturgeon, which are Federally endangered, live and spawn in New Jersey waters and are currently experiencing population growth within New Jersey. The continued recovery of vulnerable species, such as Atlantic sturgeon, will be hindered by offshore oil and gas development. Many commercially important fish and shellfish will be impacted by the definite and potential impacts of offshore oil and gas activities, as will be migratory and resident birds.

Oil and gas exploration and development off New Jersey's near shore and outer continental shelf will have a detrimental impact on the robust and vibrant commercial and recreational fishing industries in the New York Bight. Outer continental shelf oil and gas drilling activities would conflict spatially with existing recreational and commercial fishing grounds. Conflicts would also arise with recreational diving, whale watching, and the siting of artificial reefs. Spatial conflicts will also arise with nearshore development of ports, pipelines or other infrastructure associated with oil and gas development. In addition to spatial conflicts, the industries and ecosystem are at risk from oil spill events (as noted on page 1) as well as daily influx of minor oil leaks and the use of chemical drilling fluids. Details of the specific impacts of drilling and spills to fish and their habitats are well-described in the Mid-Atlantic Fishery Management Council's (MAFMC) offshore oil policy, available for review at

<http://www.mafmc.org/actions/offshore-energy> (New Jersey's fisheries are managed, in part, by the MAFMC).

The Act seeks to prevent these impacts, which affect ecological communities of local, regional, and national concern.

Economic

Much of New Jersey's economy depends on a healthy environment. The ecological impacts discussed above translate into enormous economic impacts on state and national scales.

New Jersey's coastal tourism industry is essential to the State's economy and is a vital component of the nation's economy. In addition to the tourism revenue cited by the Act, New Jersey's tourism industry directly and indirectly employed more than 838,000 people, accounting for nearly one in ten jobs in New Jersey. Tourism revenue produced \$4.9 billion in State taxes and \$5.6 billion in Federal taxes. Beyond the revenue, jobs, and taxes generated, New Jersey's tourism industry provides much-needed enjoyment to millions of visitors, many from around the United States. In 2016, visits to New Jersey rose to 98 million, representing a 3.3% increase from the previous year and the seventh consecutive year of growth. However, offshore oil and gas activities, if occurring in and near New Jersey's waters, will obliterate the State's tourism economy. The visual impact of offshore rigs, environmental impacts on water quality from construction and day-to-day operation, and direct loss of offshore and onshore areas to oil and gas platforms and associated infrastructure will severely limit New Jersey's ability to continue to function as a tourist destination. In the event of a spill, the New Jersey's ocean beaches and waters will become unsafe and unusable. The loss of tourism opportunities will have a local and national economic impact, and will have a personal impact on the millions of Americans who visit the shore to enjoy walking along boardwalks and beaches, swimming, sunbathing, fishing, boating, and many other recreational activities. The Act prevents such losses.

New Jersey's fishing industries are also of utmost local and national importance. A 2014 U.S. Department of Commerce report makes clear that New Jersey's seafood industry is an important part of the State's economy and a large part of the total United States' seafood economy. New Jersey ranks fourth in the nation for total sales generated by the seafood industry (\$7.9 billion), fifth in total value-added impacts (\$2.9 billion), and seventh in jobs supported by the seafood industry (50,754 jobs in 2012). New Jersey's seafood industry is an important industry for generating economic growth as well as providing seafood products nationwide.

The Department performed a cursory data analysis on the commercial harvest of three representative species of finfish (summer flounder, black sea bass, scup) and three representative species of shellfish (sea scallops, ocean quahog, surf clam) landed between 2014 and 2017. Although not exhaustive of all species commercially important to New Jersey, the

assessment demonstrates the significant fisheries resource off of New Jersey waters that play an important role in providing a healthy economy. If this resource were to be impacted, there would be significant economic and ecological effects. Staff examined data of landings only in New Jersey of individuals harvested in National Marine Fisheries Service (NMFS) statistical areas 611, 612, 614, and 621, which are all areas heavily utilized by New Jersey vessels as well as vessels from Massachusetts, Rhode Island, Connecticut, New York, Virginia and North Carolina. During reference years 2014 to 2017, New Jersey accepted an annual average of 1.4 million pounds of summer flounder equating to an ex-vessel value of more than \$4.8 million, 2.4 million pounds of scup equating to an ex-vessel value of more than \$1.3 million, and nearly 600 thousand pounds of black sea bass equating to an ex-vessel value of more than \$2 million. In aggregate, these three species alone are worth approximately \$8.1 million in ex-vessel value annually. A similar cursory analysis of shellfish harvest was conducted. During the reference years of 2014 to 2016, the annual average landing of ocean quahog was more than 17 million pounds equating to an ex-vessel value of more than \$14 million, 8.5 million pounds of sea scallop equating to an ex-vessel value of more than \$102 million, and 18 million pounds of surf clams equating to an ex-vessel value of more than \$10 million. When aggregated, these three shellfish species provided an average annual ex-vessel value of \$126 million to the New Jersey fishery. In addition, while ex-vessel values are useful in understanding the value of the commercial fishery, it does not reflect the full value added to the greater New Jersey economy. Using an economic multiplier of 6 (McCay et al. 1995), the value added to New Jersey's economy on an annual basis from 2014-2017 using the combined average annual landings of scup, summer flounder, and black sea bass was \$48.1 million per year. From 2014-2016, the sea scallop, ocean quahog and surf clam fisheries combined contributed approximately \$756 million annually to the New Jersey economy. Figures 3 and 4 depict the surf clam, ocean quahog and sea scallop fisheries.

In addition to the commercial seafood industry, New Jersey's recreational fishing industry is locally and regionally important. NOAA (2017) reports that among all Atlantic coast states, New Jersey ranks second in direct jobs supported by the recreational fishing industry (16,096), second in annual sales (\$1.8 billion), second in total annual income (\$786 million) and third in number of recreational fishing trips annually (4.3 million). Figures 5, 6, and 7 depict areas used by the dredge, bottom trawl and long line fishing industry. While important to the State and local economy, recreational fishing also provides a quality-of-life benefit for millions of New Jersey residents and out-of-state visitors. Offshore oil and gas operations and upland support facilities threaten the economic contributions of this industry and stand to rob millions of Americans of the opportunity to enjoy the shore's natural beauty and bounty. Figure 8 is a visual depiction of data relating to the gross domestic product of revenue of the business activities in the six economic sectors that are dependent on the resources of the oceans. These include: marine construction, living resources, offshore mineral extraction, ship and boat building, tourism and recreation, and a total of all ocean sectors. This information is harvested from the Economics: National Ocean Watch (ENOW). The ENOW data provides time-series data on the ocean and Great Lakes economy, which includes six economic sectors dependent on the oceans

and Great Lakes, and measures four economic indicators: Establishments, Employment, Wages, and Gross Domestic Product (GDP). The annual time-series data are available for about 400 coastal counties, 30 coastal states, 8 regions, and the nation. The Act ensures that these industries, so essential to State and national economies and to the lifestyles of millions of Americans, remain safe and viable into the future.

Conflicting interests

The conversation surrounding offshore oil and gas development is just one example of the perpetual conflicts between different uses of coastal resources with which the NJCMP grapples every day. New Jersey recognizes that there is a national interest in siting energy facilities. Prohibiting activities related to offshore oil and gas exploration, production, and development does conflict with this interest where energy production is achieved through offshore oil and gas development. However, the Act does not exclude all offshore energy development. Other offshore and coastal energy facilities, with less inherent risk to the environment and economy, such as offshore wind, continue to be allowed under the NJCMP. For example, Governor Murphy recently signed executive orders promoting the development of offshore wind energy. The January 31 executive order directs the New Jersey Board of Public Utilities and Department of Environmental Protection to work together and establish an Offshore Wind Strategic Plan for New Jersey with a goal of producing 3,500 megawatts of offshore wind energy by 2030, enough energy to power more than 1.5 million homes with clean, renewable offshore energy. The strategic plan will focus on job growth, workforce development, data collection, appropriate determination of facilities and ensuring that our natural resources are protected. The incorporation of the Act into the enforceable policies of the NJCMP will therefore not hinder the national interest in energy production, as New Jersey will continue to contribute to energy production through alternate means.

The benefits of New Jersey's coastal resources are experienced nationwide through tourism, fishing, and environmental health. There is also a national interest in healthy oceans and coasts, and the economic prosperity which results. The limited effects on one facet of the energy industry from the Act are justified based on the enormous impacts that oil and gas activities in and near New Jersey waters will have on not only New Jersey, but the Atlantic coast and the nation as a whole.

Additional Program Approvability Criteria

The following sections address additional criteria for approving the program change to the NJCMP.

2A. Changes or additions to the State's federal consistency list or geographic location descriptions

The Department is not requesting approval of any changes or additions to the federal consistency list or geographic location descriptions at this time.

2B. Changes to Necessary Data and Information

The Department is not requesting approval of any changes to Necessary Data and Information.

2C. NOAA's decision criteria

The Department believes that the Act meets NOAA's eight decision criteria for enforceable policies.

2D. Impacts relating to other federal laws

1. Resources or interests of any federally-recognized American Indian or Alaska Native tribal government

The Act does not affect the resources or interests of American Indian tribal government.

2. Threatened or endangered species under the federal Endangered Species Act

The Act does not directly address threatened or endangered species under the Federal Endangered Species Act, but will enhance the protection of these species, as discussed above.

3. Historic properties designated under the National Historic Preservation Act

The Act does not address properties designated under the National Historic Preservation Act

4. Essential fish habitat designated under the Magnuson Stevens Fishery Conservation and Management Act

5. Marine mammals managed under the Marine Mammal Protection Act

The Act does not directly address Essential Fish Habitat or marine mammals, but, as discussed above, will enhance the protection of fish and marine mammals and their habitat.

6. Other resources managed under other federal agencies

The Act does not affect other resources managed under other Federal agencies.

2E. The state shall identify the state's website where the public notices for the notification and submission requests are or will be and where, if applicable, state documents related to the request may be viewed.

The Department will post the public notice for notification and submission requests on the NJCMP webpage at <http://nj.gov/dep/cmp/>.

The legislative history and text of the statute is available online at <http://www.njleg.state.nj.us/bills/bills0001.asp>, as bill A839.

2F. Any substantive correspondence between the state and federal agencies (not including NOAA's Office for Coastal Management) concerning the development of the changes that are the subject of the program change request

N/A.

2G. Indicate if the program change was developed pursuant to section 309 of the Act and, if so, shall state the strategy title and years the strategy was carried out

This program change was not developed pursuant to a Section 309 strategy.

2H. Indicate if the program change was developed as a necessary action pursuant to section 312 of the Act and, if so, shall briefly describe the necessary action.

This program change was not developed as a necessary action pursuant to Section 312.

Appendix A

Shore Tourism and Ocean Protection from Offshore Oil and Gas Act

N.J.S.A. 13:19-47. Short Title

This act shall be known and may be cited as the “Shore Tourism and Ocean Protection from Offshore Oil and Gas Act” or “STOP Offshore Oil and Gas Act.”

N.J.S.A. 13:19-48. Findings, declarations relative to offshore oil and natural gas exploration, development, and production

The Legislature finds and declares that:

- a. The New Jersey Shore is a vital component of New Jersey’s annual The Jersey Shore is a vital component of New Jersey’s annual \$38 billion tourism industry; its 127-mile shoreline provides endless opportunities for recreation; and its tidal waters are home to countless animal and plant species and support a billion dollar commercial and recreational fishing industry;
- b. The State holds in trust for the people of the State those lands flowed by tidal waters to the mean high water mark so that its residents can use and enjoy the State’s tidal waters and adjacent shorelines for recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities;
- c. The State has primary jurisdiction over the management of coastal and ocean natural resources within three nautical miles of its coastline, and from three nautical miles seaward to the boundary of the 200-mile exclusive economic zone, the federal government has primary jurisdiction. Since protection, conservation, and development of the natural resources in the exclusive economic zone directly affect New Jersey’s economy and environment, the State has an inherent interest in how these resources are managed;
- d. In 2010, a single rig located in the exclusive economic zone, BP’s Deepwater Horizon, released an estimated 170 million gallons of oil into ocean waters, severely impacting more than 600 miles of shoreline, resulting in numerous beach closings, harming countless numbers of marine mammals, fish, shellfish, marine birds, and other wildlife, and causing an estimated loss of more than a billion dollars to the commercial fishing industry and an estimated loss of more than \$22 billion dollars to the tourism industry in Gulf States; and
- e. Therefore, oil and natural gas exploration, development, and production both in New Jersey waters and in the exclusive economic zone proximate to New Jersey waters or

the Gulf Stream to the south of New Jersey waters, poses a serious and unacceptable risk to the coastal resources of the State, the water quality of State waters, and the continued viability of the State's shore tourism and commercial fishing industries.

N.J.S.A. 13:19-50. Implementation of policies

- a. The Department of Environmental Protection shall implement the provisions of section 3 of this act through the enforceable policies of the State, including, but not limited to, any rules and regulations adopted pursuant to R.S. 12:5-3.
- b. Within 30 days after the effective date of this act, the Commissioner of Environmental Protection shall submit this act to the National Oceanic and Atmospheric Administration under the provisions of the federal "Coastal Zone Management Act of 1972," as amended, 16 U.S.C. §1451 et seq., for incorporation into the enforceable policies of the approved State coastal management program.

N.J.S.A. 13:19-51. Review of proposed activity

The Department of environmental Protection shall review any proposed oil or natural gas lease, license, permit, or plan for exploration, development, or production of oil and natural gas in the Atlantic region of the exclusive economic zone of the United States to determine if the proposal can reasonably be expected to affect State waters, particularly in terms of proximity to State waters or to the Gulf Stream south of State waters. Whenever a review pursuant to this section results in an affirmative finding, the commissioner shall advise the Governor thereof and take all actions necessary to initiate a consistency review under the federal "Coastal Zone Management Act of 1972," as amended, 16 U.S.C. §1451 et seq.

Figures

Figure 1

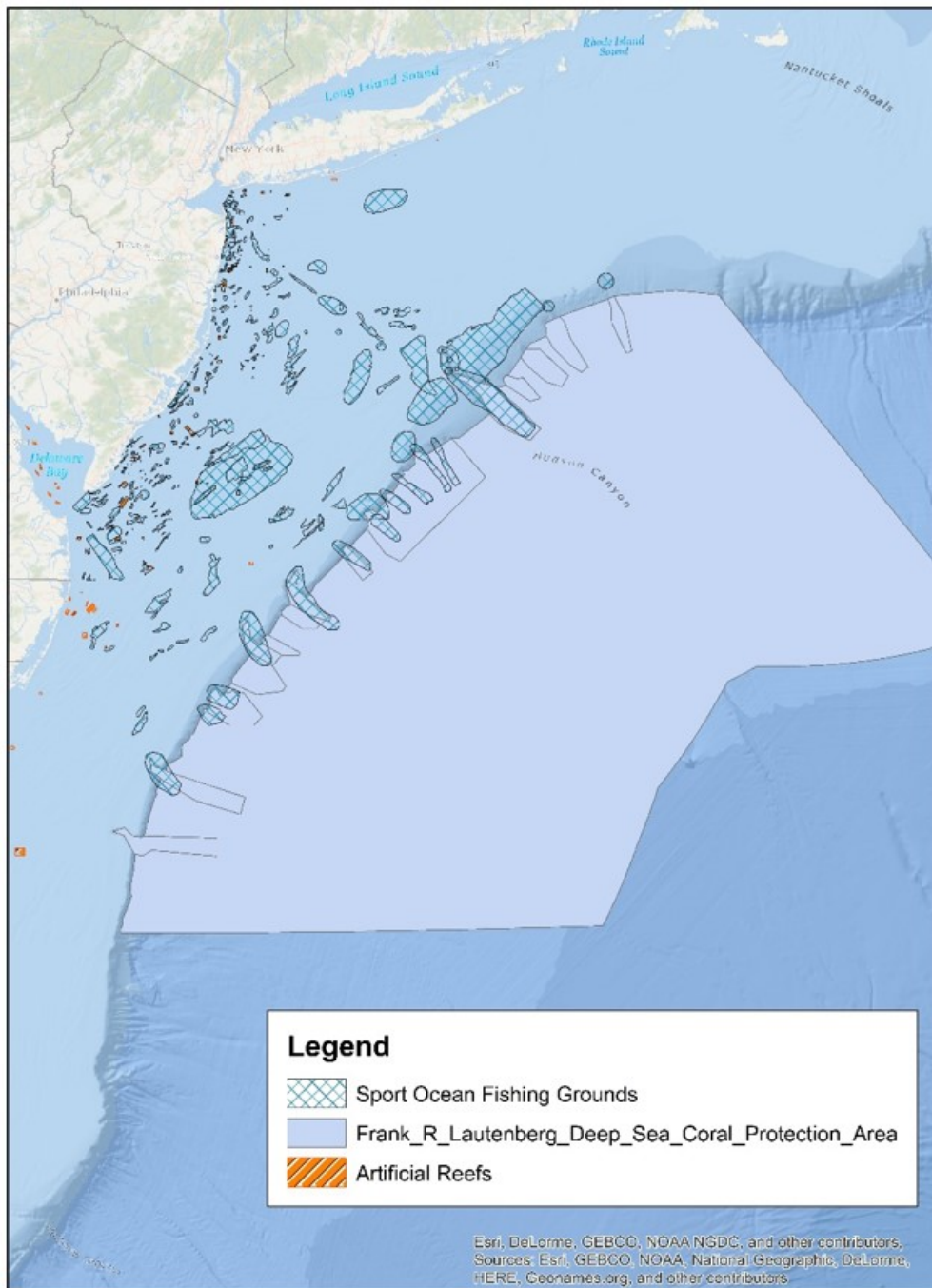


Figure 2

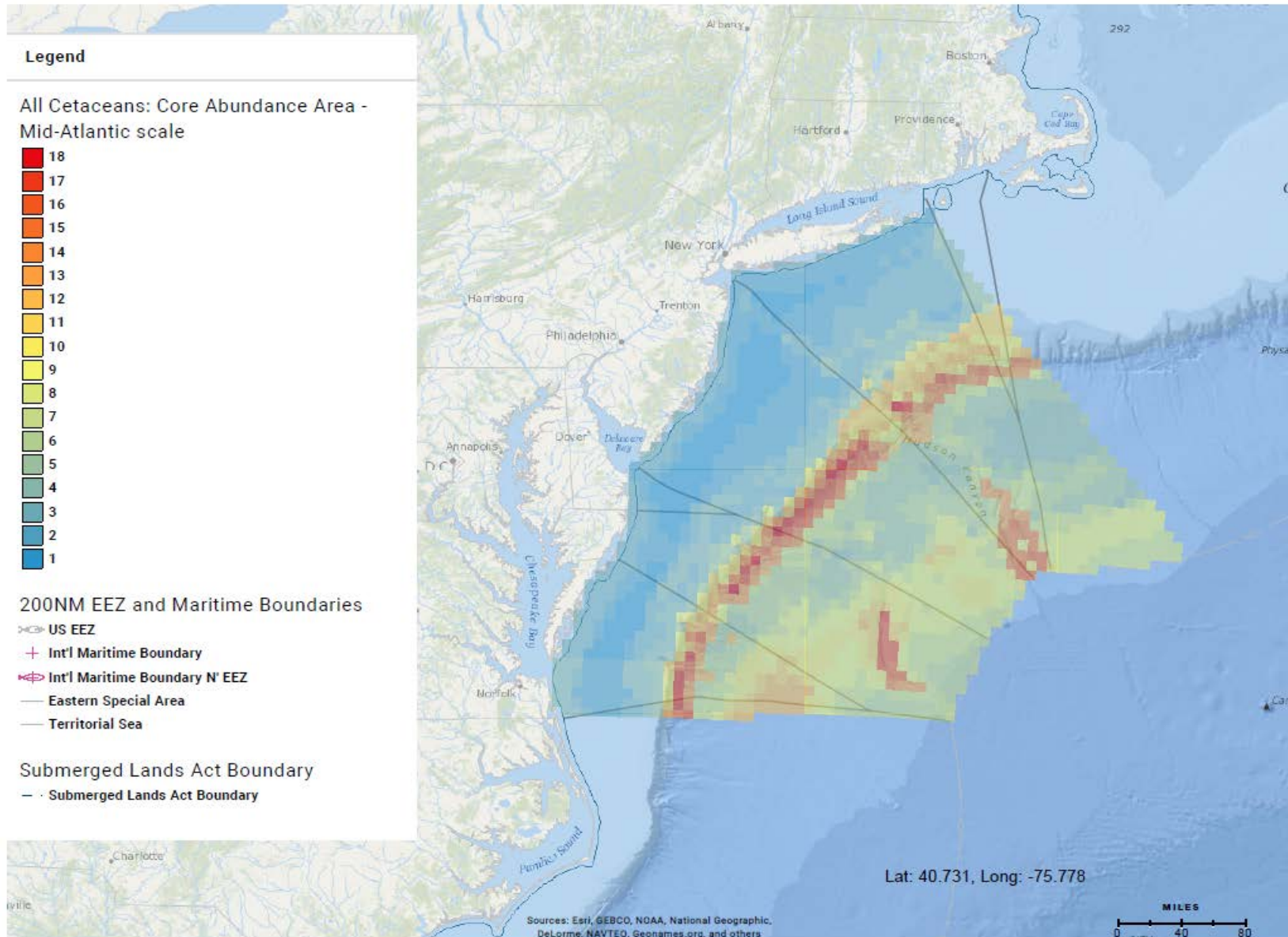


Figure 3

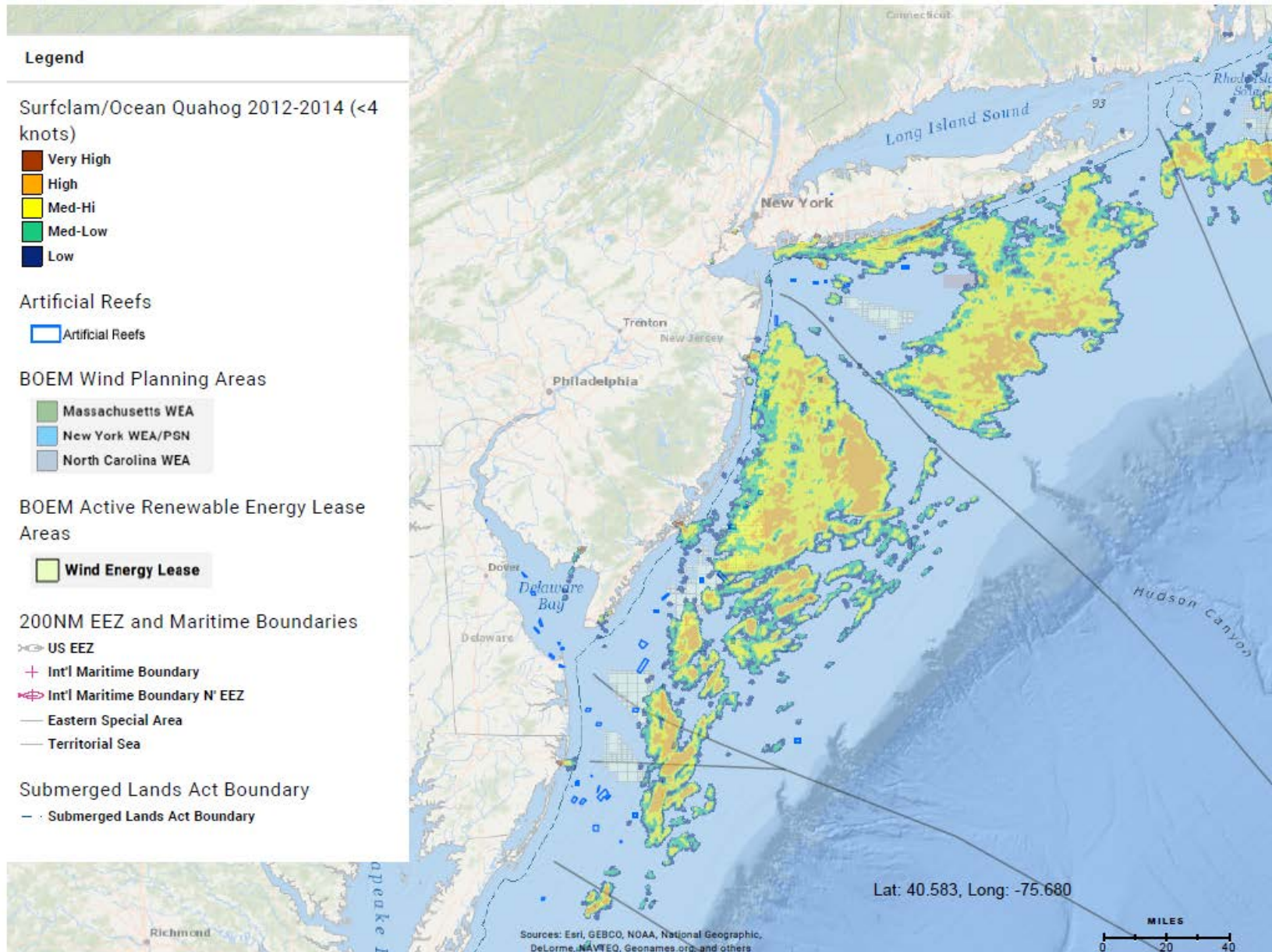


Figure 4

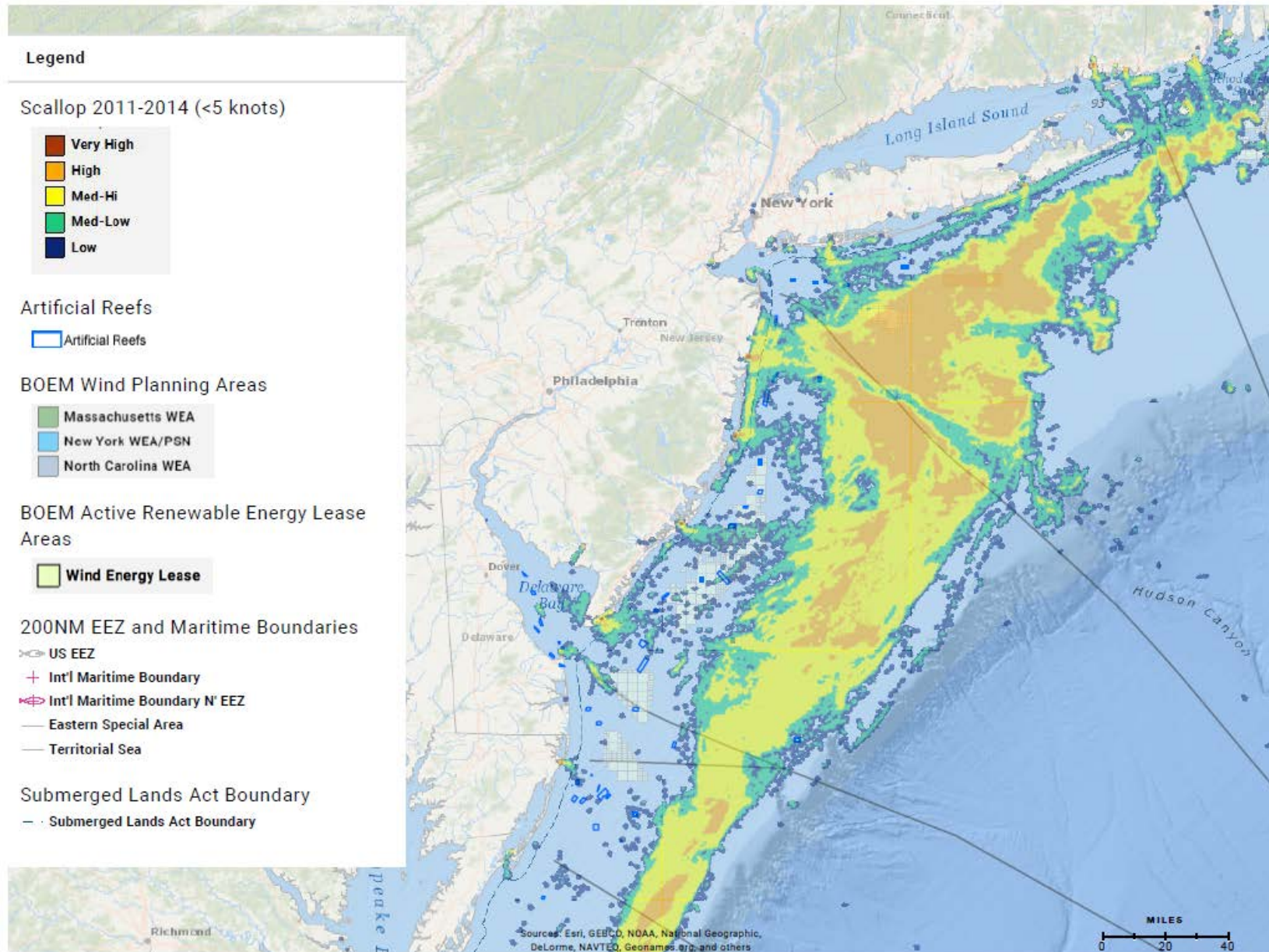


Figure 5

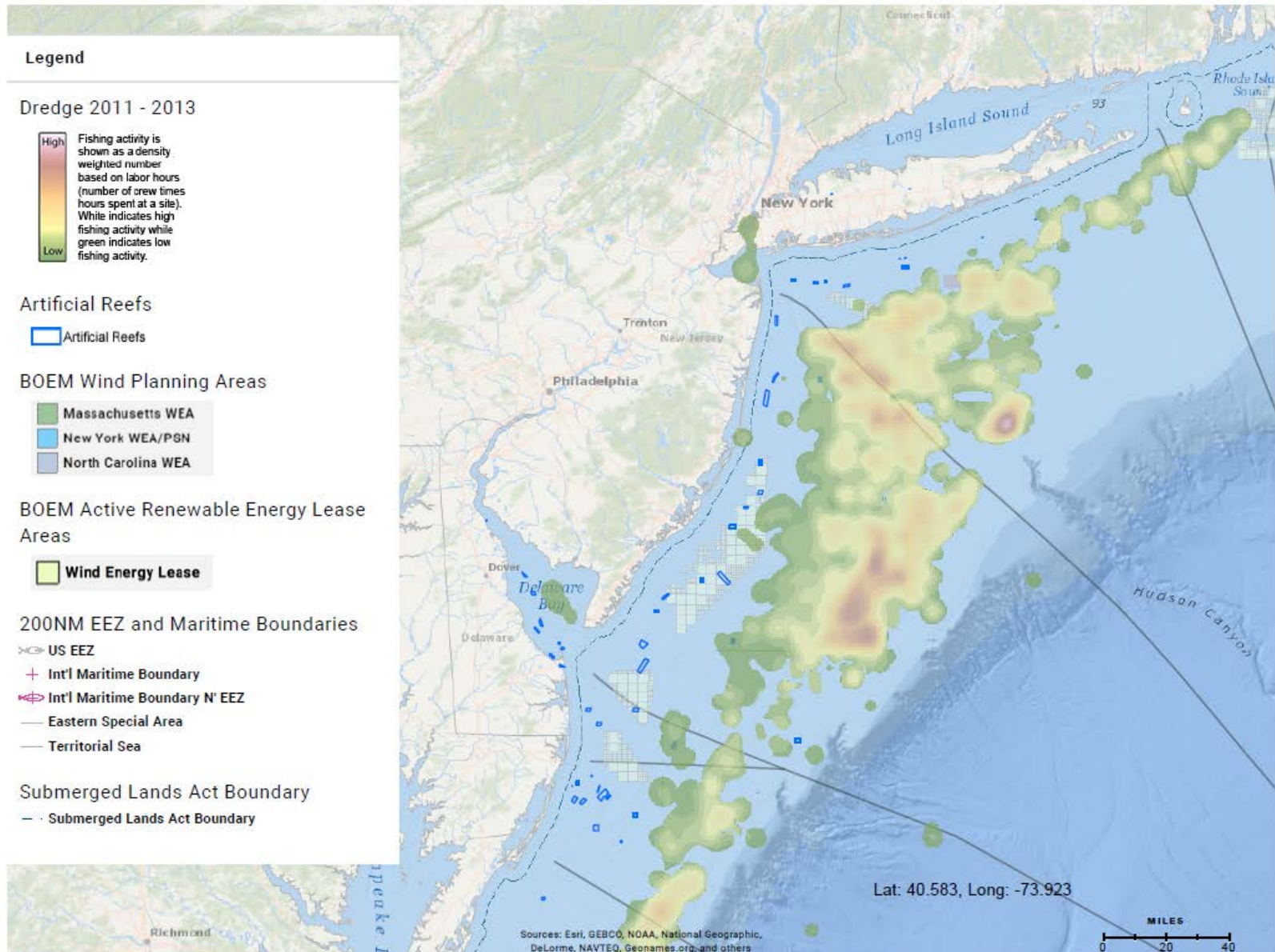


Figure 6

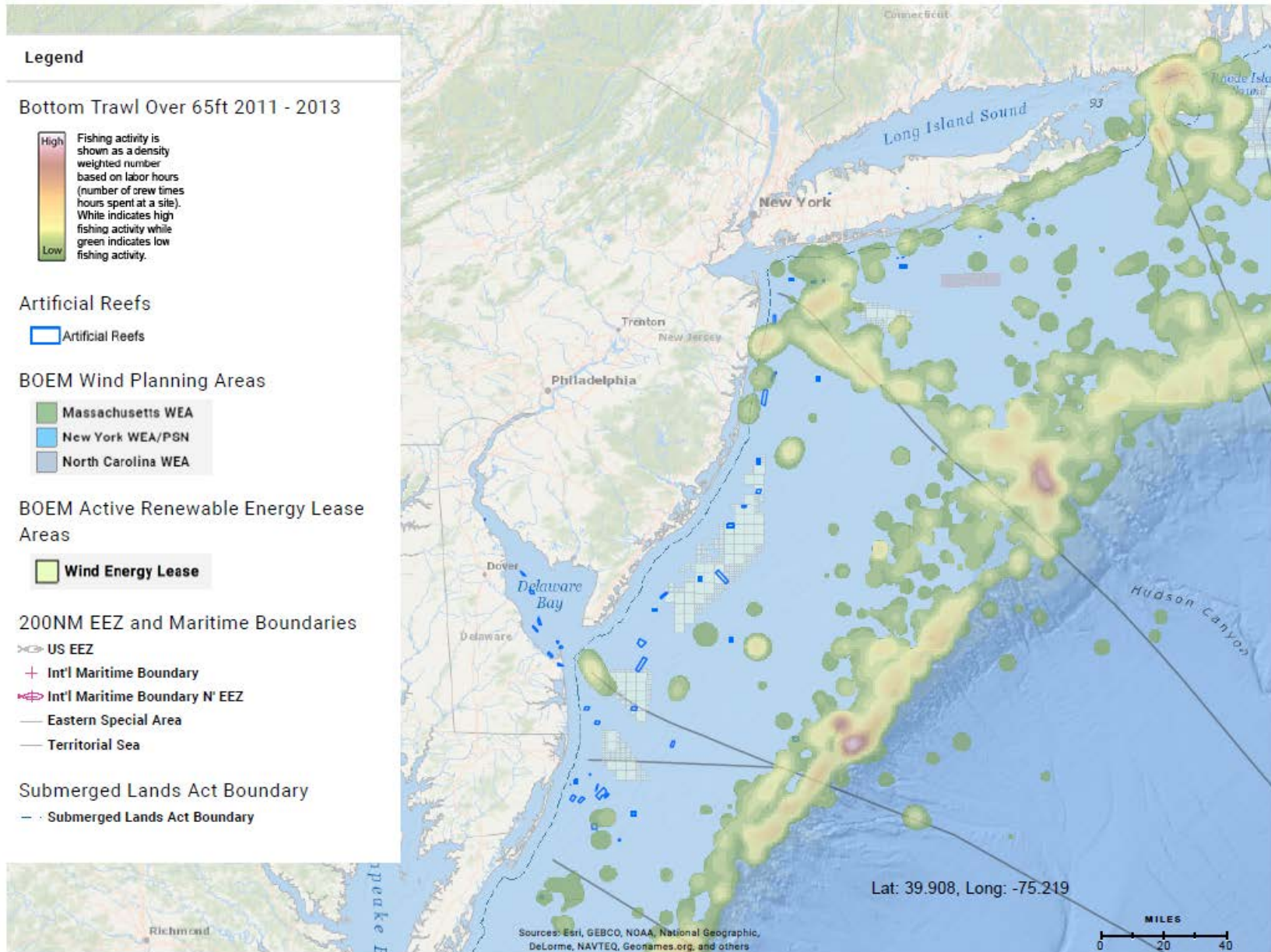


Figure 7

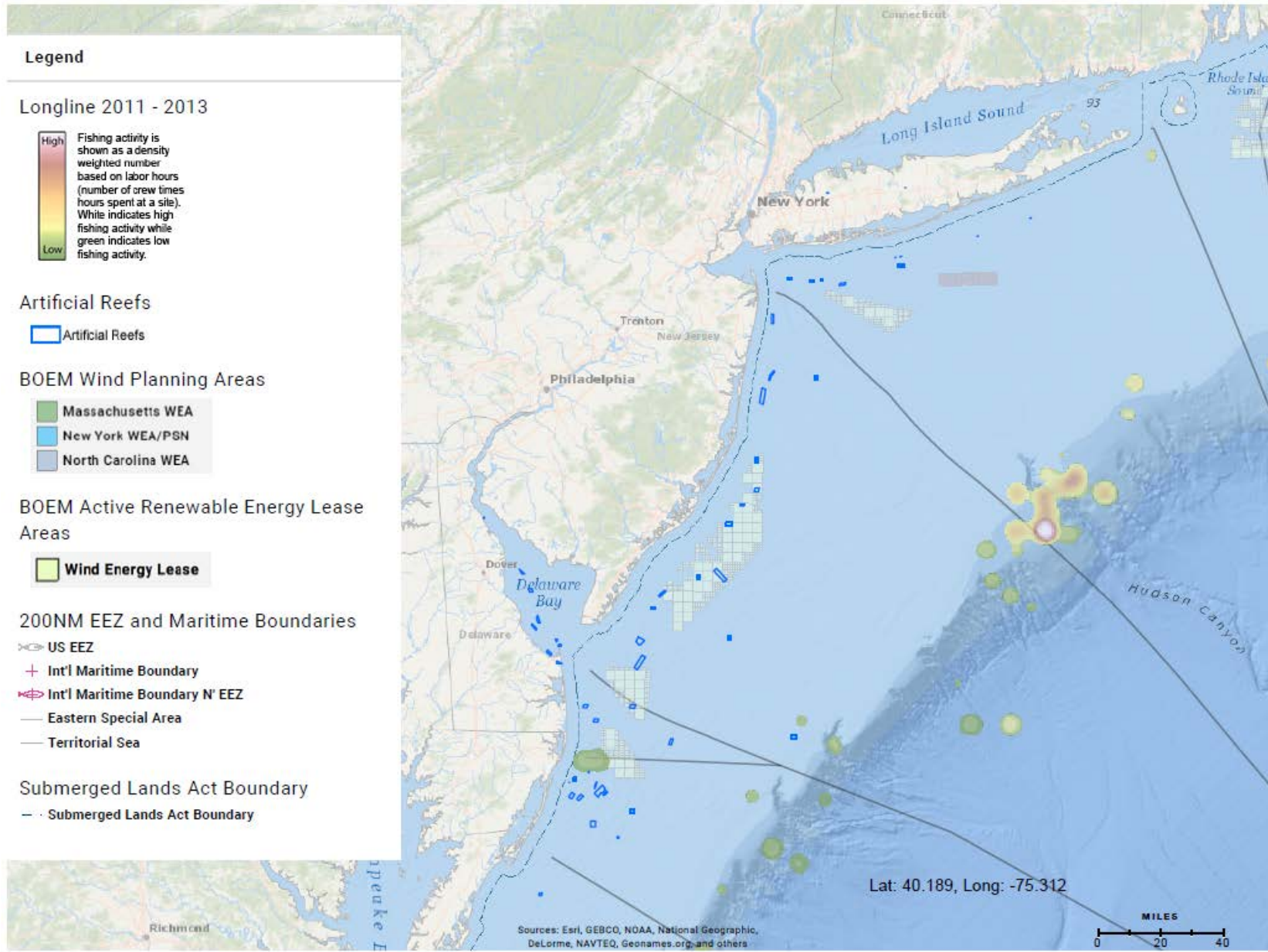


Figure 8

