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Environmental Branch for Renewable Energy
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-OREP
Sterling, VA 20166

May 2, 2024

RE: Docket No. BOEM-2024-0008
Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Atlantic Shores North Project on the U.S. Outer Continental Shelf Offshore New Jersey

Dear Ms. Sullivan,

The New Jersey Department of Environmental Protection (NJDEP) appreciates the opportunity to provide comments on the Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Atlantic Shores North Project submitted by Atlantic Shores Offshore Wind, LLC (ASOW). The project is to be located on the U.S. Outer Continental Shelf Offshore New Jersey in Renewable Energy Lease Area OCS-A 0549.

Under the leadership of Governor Phil Murphy, New Jersey's development of offshore wind energy, together with other clean and renewable energy sources, is critical to addressing the challenges associated with climate change and to building a clean energy economy. As a state with one of the most ambitious offshore wind goals in the nation, we are on the path to achieving 11,000 MW of offshore wind power by 2040, and 100% clean energy by 2035. As the State pursues the responsible development of offshore wind, the NJDEP is obligated, pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., and related state laws, to preserve, protect, restore, and enhance the resources of the State's coastal zone.

As a cooperating agency, NJDEP looks forward to continued coordination with BOEM, to ensure that impacts to natural resources are avoided, minimized where avoidance is not possible, and appropriately mitigated for when necessary. Upon review of the Notice of Intent to Prepare an Environmental Impact Statement for the proposed Atlantic Shores North Project, NJDEP offers the following comments:

Permitting

Division of Land Resource Protection

ASOW has voluntarily submitted a request to the Division of Land Resource Protection (DLRP) for a Federal Consistency Certification for the portion of the ASOW North project within Federal waters. DLRP, in coordination with NJDEP's resource subject matter experts, will conduct an extensive review of the Construction and Operations Plan (COP) submitted to BOEM for the ASOW North project as well as the Draft Environmental Impact Statement (DEIS) to be prepared by BOEM to satisfy their requirements under NEPA. This information, along with public comments received during the Federal Consistency Certification review process, will be utilized to determine whether the ASOW North project is consistent with the enforceable policies of the State's approved Coastal Zone Management Program (CZMP). In addition, the NJDEP and ASOW have mutually agreed to stay the NJDEP six-month consistency review period consistent with 15 CFR§ 930.60(b) to provide sufficient time for discussions, meetings, and exchange of materials between ASOW and the Department.

DLRP recommends that ASOW engage early and often on required permits to avoid unnecessary delays in the project. NJDEP's review of the DLRP permit applications can take a minimum of 9 months due to the complexity of the project and the requirement for public hearings and public comment periods. NJDEP encourages ASOW to be open and transparent throughout the environmental review and permitting process.

Office of Transactions and Public Land Administration

The NJDEP Office of Transactions and Public Land Administration (OTPLA), Public Lands Compliance Section is responsible for the stewardship of all State, county, municipal and non-profit owned land and easements that have been purchased with Green Acres bond funds or are otherwise encumbered under Green Acres Program regulations. Any conveyance, disposal or diversion from a recreation or conservation use of Green Acres encumbered lands would require an application to the Public Lands Compliance Section. In addition, under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, the Public Lands Compliance Section processes requests for the release of conservation restrictions that are not directly associated with other NJ DEP permitting programs.

The disposal/diversion application process includes a public need/public benefit analysis, alternatives analysis, and compensation and mitigation requirements. The Green Acres rules require that every effort be made to avoid the disposal or diversion of parkland. In order for a disposal or diversion to be approved, the Public Lands Compliance Section would have to find that there were no feasible non-parkland alternatives for the proposed project, that there is a significant public need or benefit associated with the project, and that the project would not significantly interfere with the public's use of the parkland or adversely impact environmentally sensitive areas or other significant parkland attributes. These applications are thoroughly evaluated by NJDEP and by the public through the requirements for public hearings.

An application for a disposal or diversion can only be submitted by the landowner or with approval from the NJBPU through a petition process pursuant to N.J.S.A. 48:3-87.1(f)(2). If approved by the Commissioner, Green Acres disposal/diversion applications also require the approval of the State House

Commission (a legislative commission that meets on a quarterly basis). Conveyances of State land in an amount greater than one acre, or leases of more than 25 years, are subject to additional procedural requirements under the "Ogden Rooney" statute through the Public Lands Administration Section.

Additionally, the state land conveyance and conservation easement release process includes a similar review of alternatives, public need/public benefit analysis and compensation and mitigation requirements. Easements are released through the issuance of a certificate from the NJDEP Commissioner, which is recorded in the same manner as the original easement.
OTPLA advises BOEM that the Environmental Impact Statement to be prepared for the ASOW North project should address potential impacts to and describe mitigation measures required to account for the potential diversion/disposal of Green Acres encumbered parkland. If alternate routes around encumbered parkland are determined to be not feasible or are unavoidable, replacement land will be required pursuant to Table 1 of the Green Acres rules for county, municipal and non-profit owned parklands.

When analyzing impacts to Green Acres encumbered parkland in the EIS, the following issues should be addressed:

- Replacement land and/or monetary compensation will be required to account for impacts to State Parkland, Conservation Easements and Green Acres encumbered county, municipal and non-profit owned parklands.
- The potential for impacts to and fragmentation of habitat for known occurrences of endangered, threatened and species of special concern on parkland must be analyzed by the applicant and will be reviewed for all Green Acres encumbered parkland pursuant to N.J.A.C. 7:36-26.1(e)6.
- The potential for adverse consequences as outlined in N.J.A.C. 7:36-26.1(e).
- Tree replacement will be required pursuant to N.J.A.C. 7:36-26 and will be based on a square inch for square inch basis. Expected impacts to forested areas on parkland parcels should be noted in the EIS including the total number of trees to be removed.
- Alternative construction techniques such as HDD should be utilized to the extent practicable to avoid/reduce parkland impacts.
- Temporary impacts to parkland will need to be restored to preexisting conditions and forest impacts will need to be mitigated for based on the same tree replacement requirements as disposals/diversions.

Stakeholder Engagement

NJDEP would like to emphasize the importance of stakeholdering and communication throughout project development. This stakeholdering is a necessary component of NJDEP's process, and we are committed to being transparent and accessible as offshore wind development in New Jersey proceeds. It is critical that BOEM and ASOW continue stakeholder engagement with local municipalities who may be impacted by the development of the windfarm as well as the commercial and recreational fisheries groups, and environmental justice communities.

Marine Resources

The Marine Resources Administration (MRA) is tasked with maximizing the recreational and commercial use of fish, habitats, shellfish, and fisheries for future generations. These comments are offered to support BOEM's efforts to identify potential impacts and mitigation options and improve the effectiveness of our combined efforts.

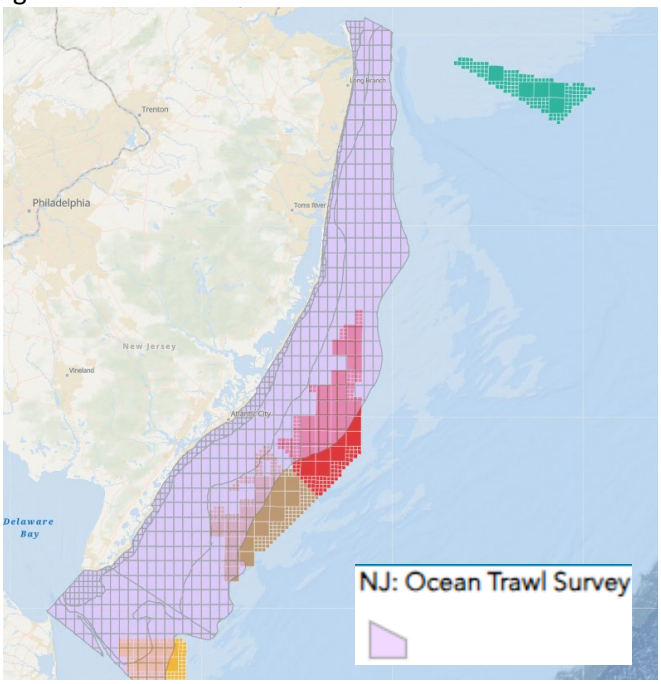
A glossary would be a welcome addition to the Environmental Impact Statement. Terms like effect, impact, best management practice (BMP), mitigation, compensation, and cumulative can have different interpretations. For instance, what are best management practices outside of mitigation and monitoring? The NJ Coastal Zone Management Rules use "mitigation" to mean offsetting impacts when they occur. Compensation is sometimes interpreted as only claims-based funding, but it should always include funding to support the sustainability of fisheries. "Cumulative" may refer to the sum of all offshore wind activities, the sum of all anthropogenic activities, or a combination of environmental and anthropogenic stressors.

On the topic of cumulative impacts, there still exists a risk of catastrophic impacts to fisheries as fishing grounds become inaccessible over time, particularly for mobile bottom gear fisheries that have high socio-economic value and are active in multiple lease areas. As MRA has noted on other projects, landings may be a fraction of the value a fishery represents to New Jersey and our ports. Losses incurred by the fishery will also affect supporting industries like processing houses and marinas and impacts to fishery infrastructure could have cascading impacts. One way to mitigate likely impacts is to invest in more economic studies to understand what those impacts might be and how they can be detected, and supporting those fisheries, like surfclam, sea scallop, squid, etc., through fishery enhancement research and programs. The surfclam industry in New Jersey has been highly effective in looking for opportunities for sustainability, but they need support that is not tied to a single project or a single funding agency. The sea scallop industry is highly motivated and informed and can provide options for supporting the sustainability of their fishery. Avoiding fishery losses is preferable to compensating them.

Mitigation will be required for impacts to the NJ Ocean Trawl (NJOT) by development of the ASOW North lease area. The NJOT has been operating since 1989 and surveys the waters of the outer continental shelf from Sandy Hook to Cape May, including much of the ASOW North lease area. See colocation of NJOT and ASOW North in Figure 1. Five times a year, MRA staff aboard the R/V Sea Wolf collect fish and invertebrates via a 30-meter bottom otter trawl. Fish are weighed, measured, and sampled for age and diet to inform fishery stock assessments and provide scientists with long-term population trend data. This survey is a critical tool in marine fish and fisheries management, and the data inform multiple coastwide stock assessments, including tautog, horseshoe crab, weakfish, bluefish, summer flounder, black sea bass, scup, butterfish, lobster, winter flounder, and striped bass. The survey is also leveraged to collect samples and data for 8-10 other research studies every year, including pioneering work in using environmental DNA for fisheries surveys. The NJOT's frequency and resolution of sampling is unique on the east coast; while the federal bottom trawl has some overlap with the NJOT, that survey is less frequent and has lower geographic resolution. The NJOT also provides environmental and ecological data that have been collected consistently for 35 years, data which might prove critical to distinguishing impacts from offshore wind and climate change.

The need for survey mitigation is detailed in the NOAA Fisheries and BOEM Federal Survey Mitigation Strategy – Northeast U.S. Region[1]. If a survey is not conducted the way it was designed, or if the environmental conditions that the design was based on significantly change, then the power of the survey to detect change is affected. As uncertainty in stock assessments rises, fishery managers must control the risk of overfishing by reducing harvest, which has a direct effect on the recreational and commercial fishing industries.

Figure 1. Colocation of Atlantic Shores North and NJ Ocean Trawl survey strata.



The study design of the NJOT includes survey strata that are defined by habitat type. Post construction, turbine foundations and scour protection will be a new type of habitat that requires additional survey stratification. This is the minimum mitigation for the NJOT as the ASOW North project is developed; if the survey vessel is precluded from the lease area because of safety or insurance issues, the impact will be more significant and require additional mitigation.

NJDEP recommends a requirement that ASOW work with the NJ MRA to determine appropriate mitigation for the NJOT. It is also recommended that the Lessee is named the responsible party for funding the cost of mitigation for the life of the Project, and that mitigation includes any changes in survey design and sampling methodology that assure the continued utility of the survey data.

As the Environmental Review for the ASOW North project is planned, BOEM should look for opportunities to facilitate interagency coordination of the Fisheries Monitoring Plan (FMP) for ASOW . Effective collaboration between BOEM, NOAA, ROSA, states, regional research funding initiatives, and developers on FMPs can save time, money, and improve the utility of the information produced. As more states include a requirement for regional research funding in their power purchase agreements, regulators must

[1] Hare JA, Blyth BJ, Ford KH, Hooker BR, Jensen BM, Lipsky A, Nachman C, Pfieffer L, Rasser M, Renshaw K. 2022. NOAA Fisheries and BOEM Federal Survey Mitigation Implementation Strategy -Northeast U.S. Region. NOAA Technical Memorandum 292. Woods Hole, MA. 33 pp.

consider whether information needs are better met with a regional-scale assessment or individual project monitoring. Regional studies offer the potential to improve cumulative effects assessment through the establishment of thresholds and land use plans.[2] A regional approach may also be more effective at mitigating survey impacts and detecting changes in resources. Other possible advantages of planning regionally rather than project-by-project include avoiding data-rich information-poor surveys, reducing the burden of protected species permitting, and reducing survey-induced impacts on living resources. Coordination could begin with considering what the information needs are for decision making and aligning the requirements of all the regulators and the timelines of project development and state and federal permitting.

Since lessons from the ASOW South project should inform the ASOW North project, it would be useful to review the decision-making regarding siting of structures. There were concerns about avoiding the peaks and troughs of sand waves, and MRA supported the micrositing of turbines away from those features. That seemed reasonable and logical, however there is evidence that the sides of sand waves may be the more productive habitat (pers. com. from Thomas Grothues, Rutgers University). There were concerns about possible impacts to artificial reefs, and whether avoiding the reefs might affect project feasibility. Avoidance of specific high-value habitats, including artificial reefs, clam beds, and bathymetric features like sand waves that create prime fishing areas can only be effective if those habitats are identified early enough in project development to avoid them. Maps need to identify sensitive benthic habitats, and when information gaps exist (e.g., the surfclam stock that exists in lease areas), they should be identified. Additionally, surfclam surveys in the lease area are essential.

Cable installation depth is another example of a need for more preconstruction data and impact analysis. With the volume of research that is being published and conducted, it is important to make every attempt to provide evidence that supports the selection of mitigation measures, and monitoring during and post construction should evaluate their success in reducing impacts.

The regulatory requirements for an environmental analysis for onshore and offshore transmission cables are similarly uncertain. Projects plan their cable corridors very early in development, and changing those routes may be prohibitively expensive. A detailed cable impact assessment should be completed before the route is finalized, with input from the NJDEP and NOAA. The update of New Jersey's Strategic Plan that is currently underway includes a cable constraints analysis that is expected to be available Q4 2024 and should be used to inform the impact analysis for the export cable.

On the topic of fisheries compensatory mitigation, the MRA acknowledges the evolution of the requirements for fisheries compensation over the last several approved offshore wind projects, which supports the sustainability of New Jersey's valuable commercial fisheries and the delicate economic conditions of many of our ports. However, engagement with the fishing industry and coastal communities has been inadequate. A higher level of economic analysis early in the environmental review process is essential so that compensation discussions are not rushed, and stakeholders can be effectively engaged. A detailed economic analysis in the EIS will allow stakeholders, including NOAA Fisheries, to be more effective in providing comments and recommendations.

[2] Connelly, R.B., 2011. Canadian and international EIA frameworks as they apply to cumulative effects. Environmental Impact Assessment Review, 31(5), pp.453-456.

Transmission

The NJ Board of Public Utilities (NJBPU) has pursued an approach to coordinate the construction of offshore wind transmission cables by developing common infrastructure that will house power cables in shared underground transmission corridors. During NJBPU's third solicitation, there was a requirement to make landfall at a pre-designated location in Sea Girt, New Jersey, and to connect the power to the Larrabee substation in Howell, New Jersey. It is possible that future NJBPU solicitations may have similar requirements and pre-designated interconnection points. Should ASOW choose to participate in a future NJBPU solicitation, there may be a requirement to use a shared transmission cable corridor and interconnection point. This may have an effect on the development of ASOW's cable corridors. NJDEP encourages BOEM to incorporate the review of the coordinated transmission solutions into the NEPA review and project timeline to the extent practicable.

Thank you for providing the New Jersey Department of Environmental Protection with the opportunity to comment on the Notice of Intent to Prepare an Environmental Impact Statement for the Atlantic Shores North project. We look forward to continuing to work with BOEM throughout the environmental review process, as well as with ASOW throughout the state's regulatory process. If you have any questions please free to contact Katie Nolan at Katherine.Nolan@dep.nj.gov.

Sincerely,

Megan Brunatti
Chief of Staff