

New Jersey Department of Environmental Protection (“Department”)

Division of Land Resource Protection (“Division”)

Atlantic Shores Offshore Wind Project 1, LLC (“Applicant”) State Permit Applications

**RESPONSE TO COMMENTS**

File No. 0000-21-0022.2 LUP240001 CAFRA IP

0000-21-0022.2 LUP240001 WATERFRONT DEVELOPMENT INDIVIDUAL IN-WATER PERMIT

0000-21-0022.2 LUP240001 FRESHWATER WETLANDS SPECIAL ACTIVITY TRANSITION  
AREA WAIVER FOR LINEAR DEVELOPMENT

0000-21-0022.2 LUP240001 COASTAL WETLANDS PERMIT

Written comments received by the Division during the application review period for the CAFRA Individual Permit, Waterfront Development Individual In-Water Permit, Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development, and Coastal Wetlands Permit applications indicated that there was substantial public interest in the State project, defined below. The Coastal Zone Management Rules, N.J.A.C. 7:7-1.1 et seq. (“CZM Rules”) provide an option for a fact-finding public hearing on a CAFRA Individual Permit application if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding public hearing (N.J.A.C. 7:7-26.5(a)). Additionally, the CZM Rules also provide for an option for a fact-finding meeting on a Waterfront Development Permit and/or a Coastal Wetlands Permit application for the same reasons as stated above (N.J.A.C. 7:7-26.2(h)). Lastly, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A- 1.1 et seq., (“FWW Rules”) and Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-1.1 et seq., (“FHA Rules”), also provide an opportunity for the Department to hold a fact-finding meeting if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding meeting (N.J.A.C. 7:7A-19.1(g) and N.J.A.C. 7:13-21.2(h)).

Due to the expressed public interest in Atlantic Shores Project 1, described below, three (3) public hearings and fact-finding meetings were held. Two (2) of the public hearings and fact-finding meetings were held virtually on May 14<sup>th</sup>, 2024 and May 29<sup>th</sup>, 2024 via Zoom. One of the public hearings and fact-finding meetings was held in-person on May 28<sup>th</sup>, 2024 at Central Regional High School in Bayville, New Jersey. Numerous comments were received from the public during the public hearings and fact-finding meetings as well as during the public comment period, either via email to the Division or through the Department’s Offshore Wind webpage, <https://dep.nj.gov/offshorewind/>. Some comments were pertinent to the pending application for the State project noted above, while others were not subject to the Division’s jurisdiction under the CZM Rules, FHA Rules, and/or FWW Rules (collectively “Rules”). It’s important to note that while the Rules contain a provision for one (1) public hearing and/or fact-finding meeting, the Department chose to hold three (3) public hearings and fact-finding meetings to provide greater opportunities for the public to attend, obtain project information and submit public comments.

For in-person fact-finding meetings or public hearings, it’s the Division’s practice to find a facility that is located in the vicinity of the proposed project and contains ample seating and parking to

accommodate a large public attendance. Typical criteria for facility capacity is 500 seats with 250 parking spaces. Further, scheduling is dependent upon a facility's availability. Since the fact-finding meeting for the Atlantic Shores South Project 2 ("Project 2") State project and the public hearing and fact-finding meeting for the Atlantic Shores South Project 1 ("Project 1") State project, defined below, were held conjointly, a central location between the potential Project 2 landfall in Sea Girt Borough, Monmouth County and the Project 1 landfall in Atlantic City, Atlantic County was selected. The auditorium at Central Regional High School in Bayville, Ocean County met these criteria. Additionally, per the CZM Rules at N.J.A.C. 7:7-26.5(b)1, a public hearing associated with a CAFRA Individual Permit must be held no more than 60 days after the application is declared complete for a public hearing. The CAFRA Individual Permit application associated with the Project 1 State project was declared complete for a public hearing on April 4, 2024. Therefore, the public hearing associated with the Project 1 State project had to be held no later than June 2, 2024. Central Regional High School was able to accommodate the Division to hold the public hearing and fact-finding meeting at the end of May while also meeting the above specified criteria.

It is important to make a distinction between the portion of Project 1 that is subject to the Federal Consistency Certification review and the State permit application review. New Jersey's coastal waters are any tidal waters of the State of New Jersey extending from the mean high-water line ("MHWL") out to the three-geographical-mile limit (3 nautical miles) of the New Jersey territorial sea, and elsewhere to the interstate boundaries of New York, Delaware, and the Commonwealth of Pennsylvania. The components of Project 1 in Federal waters (the "Federal project") consist of an offshore wind farm and associated infrastructure within Atlantic Shores Offshore Wind, LLC's Bureau of Ocean Energy Management ("BOEM") Lease Area OCS-A 0499 ("Lease Area") off the coast of New Jersey. Project 1 is located in a 54,175 acre (21,924 hectares) southwestern portion of the Lease Area with a 16,102 acre overlap area that could be utilized for a portion of the Federal project. The Federal project consists of a minimum of 105 and a maximum of 136 wind turbine generators ("WTGs"), up to five (5) offshore substations ("OSSs"), inter-array and/or inter-link cables, 1 permanent meteorological ("met") tower, and three (3) temporary meteorological and oceanographic ("metocean") buoys. The Federal project also includes the installation of electric transmission export cables extending east from the 3 nautical mile ("nm") New Jersey State jurisdictional limit to the Lease Area. The Federal project was determined to be consistent with the State's enforceable policies as outlined in the Division's April 1, 2024 Federal Consistency Certification (Division File# 0000-21-0022.1 CDT210001) and accompanying decision documents.

The components of Project 1 subject to State permit application review (the "State project") include the installation of four (4) offshore export cables within the Atlantic Export Cable Corridor, described below, located in New Jersey State waters (within 3 nautical miles from shore) to the onshore Atlantic Landfall site located in the paved parking lot between South Belmont Avenue and South California Avenue landward of the Atlantic City Boardwalk. In addition, the State project includes the underground installation of an onshore interconnection cable route for approximately 15 mi (24.1 km), primarily through existing roadways and/or utility rights-of-way in Atlantic City, the City of Pleasantville, and Egg Harbor Township, Atlantic County, New Jersey. A new substation will be constructed on a property located along Fire Road in Egg Harbor Township, Atlantic County. The onshore interconnection cable route will terminate at the existing Cardiff Substation Point of Interconnection ("POI") in Egg Harbor Township, Atlantic County. The Atlantic Export Cable Corridor ranges in width from approximately 3,300 feet to 4,200 feet (1,000 meters to 1,280 meters) and widens to approximately 5,900 feet (1,800 meters). Please note that only the portion of Project 1 within State waters and in CAFRA jurisdiction are subject of the State permit application. The portion of the electric transmission export cables located onshore and outside of CAFRA jurisdiction and within the jurisdiction

of the New Jersey Pinelands Commission is not subject to review under the State permit application. The Applicant has applied separately to the New Jersey Pinelands Commission for the necessary approvals.

To distinguish between the portions of Project 1, the components subject to State jurisdiction and permitting is referred to herein as the State project, and the portion of Project 1 beyond the three-geographical-mile limit of the State of New Jersey, as discussed above, is referred to herein as the Federal project.

The Division received approximately 400 comments during the review of the permit application for the State project, including comments from individual citizens, municipal officials, attorneys and environmental groups. Overall, the comments discussed similar concerns. Responses to some of the comments presented at the three (3) public hearings and fact-finding meetings were provided by Atlantic Shores Offshore Wind Project 1, LLC (“Applicant”) via email on August 9, 2024 for the Division’s file. The Division has grouped the concerns outlined in the received public comments into the below topics with corresponding responses.

This Comment Response document applies to the permit application for the State project only. As mentioned above, the Division considered all comments in its review of the State permit application. However, only those comments relevant to the State project are addressed in this document. The below comment responses are organized by topic and the actual comment language has been paraphrased for ease of review.

#### **General Objections to offshore wind and/or Atlantic Shores Project 1:**

The Division received approximately 80 comments containing general objections to offshore wind projects and/or for Project 1 specifically. Those comments specifically identifying a topic or identifying a non-compliance issue with the CZM Rules, FHA Rules, and/or FWW Rules have been included in the below discussion under the applicable topic(s).

#### **General Support for offshore wind and/or Atlantic Shores Project 1:**

The Division received approximately 320 comments containing general support for offshore wind projects and/or for Project 1 specifically. Those comments specifically identifying a topic under the CZM Rules, FHA Rules, and/or FWW Rules have been included in the below discussion under the applicable topic(s).

#### **Benefits and Costs of the Project**

##### **Comment**

The benefits and costs of the project, including impacts on the local fishing industry and other socioeconomic factors, should be clearly outlined.

##### **Response**

As mentioned above, only the State project is the subject of this permit application review. The State project only includes the installation of electric transmission export cables within New Jersey State waters and onshore within the CAFRA jurisdictional area as well as the construction of a new electrical substation. There is no requirement with the CZM Rules, FHA Rules, or FWW Rules for an applicant to prepare a cost-benefit analysis. However, the installation of the cables and construction of an electrical substation is similar to other submerged infrastructure within the ocean as well as other utilities onshore

and is not anticipated to have a significant, permanent impact on the local fishing industry as discussed in further detail in the environmental report accompanying the State project permitting decision.

While the installation of the components of the State project are not anticipated to significantly impact the fishing industry, as noted in the decision documents associated with the April 1, 2024 Federal Consistency Certification, measures are being implemented to minimize any potential impacts to the recreational and commercial fishing industry. In regard to the State project, the proposed cable burial depth ranging between 5 feet to 6.6 feet (1.5 to 2 meters) was based upon the completion of a cable burial risk assessment which considered anchor use and commercial fishing practices. Measures being implemented include development of a Gear Loss Avoidance Program to avoid fishing gear loss at all project phases, development of a Fisheries Communication Plan to engage and solicit input from the commercial fishing industry regarding potential project-related effects, and establishment of a compensation/mitigation fund to compensate commercial and for-hire recreational fishermen for loss of income due to unrecovered economic activity resulting from any displacement from fishing grounds due to construction and operations and to the shoreside businesses for losses indirectly related to the Atlantic Shores South projects, which includes the State project associated with Project 1. Furthermore, a Memorandum of Understanding (“MOU”) to be executed by the Department and Atlantic Shores will establish a Compensatory Mitigation Fund to compensate fishermen for verifiable claims of negative impacts of a significant nature, including economic losses, caused by Projects 1 and 2 during their construction, operation, maintenance, and/or decommissioning. The Letter of Intent to execute the MOU was executed by the Department and Atlantic Shores Offshore Wind Project 1, LLC and Atlantic Shores Offshore Wind Project 2, LLC on April 1, 2024.

### **Negative Impact on Coastal Economy**

#### **Comment**

The wind development project will have a negative impact on Atlantic City’s and Atlantic County’s local economy, including casino tourism.

#### **Response**

As mentioned above, the subject of this application is the State project which only includes the installation of below grade electric transmission export cables and an onshore substation located along Fire Road in Egg Harbor Township, Atlantic County. The portion of the Federal project, which consists of the construction of WTGs and offshore substations, was determined for be consistent with the State’s enforceable policies per the April 1, 2024 Federal Consistency Certification. The State project is typical of other utility infrastructure which exists onshore and in New Jersey State waters. The State project is not anticipated to have an impact on the City’s or County’s local economy or casino tourism.

### **Public Not Aware of Public Hearings and Fact-Finding Meetings and Their Purpose**

#### **Comment**

The public was not aware of the public hearings and fact-finding meetings that were held and had little understanding of their purpose.

## Response

In accordance with application review procedures outlined in the CZM Rules at N.J.A.C. 7:7-26.3(i), either a 30 day public comment period or public hearing must be held on an application submitted for a CAFRA Individual Permit. Per N.J.A.C. 7:7-26.5(a) and as mentioned above, a fact-finding public hearing on a CAFRA Individual Permit application can be held if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a public hearing. In addition, in accordance with the CZM Rules at N.J.A.C. 7:7-26.2(h) and the FWW Rules at N.J.A.C. 7:7A-19.1(g), the Department can hold a fact-finding meeting on a Waterfront Development Permit and/or Coastal Wetlands Permit application and/or a Freshwater Wetlands Permit application for the aforementioned reasons. Due to the public's interest in offshore wind projects, the Division made the determination that a CAFRA fact-finding public hearing and fact-finding meetings for the applied for Waterfront Development Individual In-Water Permit, Coastal Wetlands Permit, and Special Activity Transition Area Waiver for Linear Development would be held in relation to the request for a permit for the State project.

Three (3) public hearings and fact-finding meetings were held. Two (2) were held virtually on May 14<sup>th</sup>, 2024 and May 29<sup>th</sup>, 2024, and one (1) was held in person on May 28<sup>th</sup>, 2024 at Central Regional High School in Bayville, New Jersey. It's important to note that while the Rules referenced above contain a provision for one (1) public hearing and /or fact-finding meeting, the Department chose to hold three (3) public hearings and fact-finding meetings to provide greater opportunities for the public to attend, obtain project information and submit public comments.

The appropriate noticing required for a CAFRA public hearing is outlined in the CZM Rules at N.J.A.C. 7:7-24.4(b), (c) and (d). The Applicant provided documentation to the Division to demonstrate that the required noticing was completed. While the CZM Rules and FWW Rules do not outline required noticing for fact-finding meetings, numerous methods were used to make the public aware of the fact-finding meetings. First, the required noticing for a CAFRA public hearing, which included the information for the fact-finding meetings as well, was completed in accordance with the applicable CZM Rules as described above. Second, the Department published notice of the public hearings and fact-finding meetings in the Department's May 1, 2024 Bulletin issue, on the Department's Offshore Wind webpage, as well as on the Division's webpage. In addition, notice of the public hearings and fact-finding meetings was sent individually to Atlantic City, Pleasantville City, and Egg Harbor Township, and the application materials were also sent to these municipalities for the public to review. Furthermore, notice of the public hearings and fact-finding meetings was published in the May 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup>, 2024 paper and virtual issues of the Asbury Park Press and in the paper issues of the Press of Atlantic City on May 11<sup>th</sup>, 14<sup>th</sup>, and 16<sup>th</sup>, 2024 and the virtual issues on May 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>, 2024. The notices included a description of the projects and a link for the public to obtain further detail on the projects and application materials on the Department's Offshore Wind webpage, and instructions for submitting an Open Public Records Act ("OPRA") request to access and review any application materials not contained on the Offshore Wind Webpage ahead of the hearings and meetings.

At the beginning of each of the public hearings and fact-finding meetings, the Division provided opening remarks consisting of a description of the State project, the reason for the public hearings and fact-finding meetings, and procedures for providing public comment. The opening remarks were accompanied by a PowerPoint presentation which gave a visual depiction of the information conveyed in the opening remarks. Furthermore, a fact sheet containing a description of the State project and the

Division's contacts for the application review was provided as a hand-out at the in-person public hearing and fact-finding meeting.

### **Lack of Information**

#### **Comment**

There was a lack of information presented to the public at the public hearings and fact-finding meetings in order for the public to understand the impact of the State project and relative file numbers.

#### **Response**

As mentioned above, the public notices for the public hearings and fact-finding meetings included a link where the public could obtain detailed information on the State project proposal, including application materials, through the Department's Offshore Wind webpage. Additionally, any application materials not available on the Department's Offshore Wind webpage could be obtained by making an OPRA request, and information about how to submit such a request was included in the public notices. Copies of the complete application submission were also available for viewing by the public at the Atlantic City, Pleasantville City, and Egg Harbor Township municipal clerk offices. At each of the three (3) public hearings and fact-finding meetings, the Division provided opening remarks consisting of a description of Project 1, including the application file number, the reason for the public hearings and fact-finding meetings, and procedures for providing public comment. The opening remarks were accompanied by a PowerPoint presentation which gave a visual depiction of the information conveyed in the opening remarks. Furthermore, a fact sheet containing a description of the State project and the Division's contacts for the application review was provided as a hand-out at the in-person public hearing and fact-finding meeting.

### **Extension of the Public Comment Period**

#### **Comment**

Numerous comments received at the public hearings and fact-finding meetings requested an extension of the public comment period by 60 to 90 days in order to allow additional time for the public to review the large, highly technical documents that are part of the State permit application.

#### **Response**

The CZM Rules at N.J.A.C. 7:7-24.3(d) and 24.5(b) require that public comments on an application for a CAFRA Individual Permit, Waterfront Development Individual In-Water Permit, and Coastal Wetlands Permit be submitted to the Department within 15 days of receipt or publication of the notice of initial application submission. Additionally, there is a second opportunity to submitted public comments on a CAFRA Individual Permit application in which a public hearing is held. These public comments can be submitted within 15 days of the last public hearing. Furthermore, the FWW Rules at N.J.A.C. 7:7A-17.3(e) and 17.4(a) also require that public comments on an application for a Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development be submitted to the Department within 15 days of receipt or publication of the initial application submission. For the State project, the last notice of the initial application submission was published in the newspaper on February 22, 2024. Therefore, public comments on the application were technically due within 15 calendar days of that last notification or by March 7, 2024. For the CAFRA Individual Permit portion of the application,

the last public hearing was held on May 29<sup>th</sup>, 2024. Therefore, public comments could be submitted within 15 days of May 29<sup>th</sup>, 2024 or by June 13<sup>th</sup>, 2024.

The CAFRA Individual Permit, Waterfront Development Individual In-water Permit, Coastal Wetlands Permit, and Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development application proposing the State project was submitted to the Division on February 1, 2024 and determined to be administratively complete on March 7, 2024. The Division posted notice of the receipt of the application in the Department's March 6<sup>th</sup>, 2024 issue of the Bulletin and on the Department's Offshore Wind webpage on February 20, 2024. Accompanying the notice were posted copies of relevant State project information that was submitted in the permit application in an effort to allow sufficient time for the public to review the applicable application materials and submit public comments to the Division. The Division has welcomed and considered all public comments on the submitted permit application for the State project since the application was submitted at the beginning of February and not strictly during the public comment periods discussed above and specified in the CZM Rules and FWW Rules, including all comments submitted within 15 days of the close of the last public hearing held on May 29, 2024, or by June 13, 2024. This has allowed for an approximate six-month time period in which the public could provide comments on the State permit application. Due to the statutory permitting decision deadline of August 26, 2024 on the pending CAFRA Individual Permit portion of the application, the public comment period could not be further extended.

### **Pro-wind Comments**

#### **Comment**

Offshore wind lobbyists who attended the hearings and meetings and provided their pro-wind comments had nothing to do with the purpose of the hearings and meetings and New Jersey Board of Public Utilities ("NJBPU") should strike their comments from the hearings and meetings.

#### **Response**

This submitted public comment indicated that NJBPU should strike pro-wind lobbyists comments from the hearings and meetings. It is assumed that the reference to NJBPU was an error and was intended to say that the Department should strike these comments from the hearings and meetings since it was the Department, not NJBPU, that held the hearings and meetings in response to a submitted application for land use permits. The Division considers all submitted public comments in their review of permit applications regardless of the opinion or commenter. However, it should be noted that only public comments relevant to the State project's compliance with the applicable CZM Rules, FHA Rules, and FWW Rules provide a basis for the Division's decision to approve or deny the application for the proposed State project.

### **Application Summary**

#### **Comment**

A summary of the Atlantic Shores Project 1 proposal should be provided on the Department's website and should include areas under Department and Army Corps of Engineers jurisdiction.

### Response

As mentioned above, detailed information on the State project proposal, including application materials, could be obtained by the public through the Department's Offshore Wind webpage. Additionally, any application materials not available on the Department's Offshore Wind webpage could be obtained by making an OPRA request, and information about how to submit such a request was included in the public notice. Copies of the complete application submission were also available for viewing by the public at the Atlantic City, Pleasantville City, and Egg Harbor Township municipal clerk offices. At each of the three (3) public hearings and fact-finding meetings, the Division provided opening remarks consisting of a description of the State project. The opening remarks were accompanied by a PowerPoint presentation which gave a visual depiction of the State project. Any information necessary to understand the jurisdiction of the Army Corps of Engineers should be directed to that agency. However, the Division notes here that in regard to the State project, portions of the State project are located below the high tide line and, therefore, a permit from the Army Corps of Engineers is required for the State project.

### Jurisdiction

#### Comment

A detailed explanation should be provided of the criteria triggering each Department permit review and the reasons for differing permit requirements between the Cardiff and Larrabee cable projects, despite similar wetland impact area.

#### Response

The application for the State project requests a CAFRA Individual Permit, Waterfront Development Individual In-Water Permit, Coastal Wetlands Permit, and Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development. A discussion on jurisdiction and the need for the applicable State permits is described in detail in the environmental report accompanying the State permit application decision. However, they will be discussed in this document as well. In regard to the State project proposed under the submitted application for a CAFRA Individual Permit, Project 1, which includes the State project, consisting of an offshore wind farm and associated offshore and onshore infrastructure is an industrial development per N.J.A.C. 7:7-1.5, which defines industrial development as a development that involves a manufacturing or industrial process, and includes, among other things, electric power production. A portion of the State project proposes the construction of a new substation as well as the installation of electric transmission cables upland of the mean high water line ("MHWL") beneath beaches and dunes in the CAFRA area, so it requires a CAFRA permit in accordance with N.J.A.C. 7:7-2.2(a)1, 2 and/or 5iii. In regard to the State project proposed under the submitted application for a Waterfront Development Individual In-water Permit, the proposed installation of electric transmission export cables below the MHWL within New Jersey State waters is a regulated development in the waterfront area in accordance with the CZM Rules at N.J.A.C. 7:7-2.4(a)3i. While the State project does not propose any disturbance to mapped coastal wetlands as discussed in detail in the environmental report accompanying the State permit decision, the proposal to install electric transmission export cables via horizontal directional drill ("HDD") beneath areas of mapped coastal wetlands requires a Coastal Wetlands Permit in accordance with the CZM Rules at N.J.A.C. 7:7-2.3(a)5. Lastly, the State project proposes temporary disturbances to wetlands transition areas for the installation of the electric



transmission export cables. The proposed temporary disturbances to wetlands transition areas are regulated activities in accordance with the FWW Rules at N.J.A.C. 7:7A-2.3(a).

### **Environmental Justice**

#### **Comment**

The Department did not take into consideration environmental justice impacts in Atlantic City.

#### **Response**

In 2018, New Jersey's Governor Murphy issued Executive Order 23 which directed all state executive branch agencies to begin incorporating the principles of environmental justice into their policies and decision-making procedures. To further this initiative, in September of 2020, Governor Murphy signed New Jersey's Environmental Justice Law (N.J.S.A. 13:1D-157 et seq.). The Environmental Justice Law recognizes that existing environmental standards are often formulated based on the effect that pollution has upon general populations spread over wide geographic areas, which may fail to fully consider localized impacts and impact a community's right to live, work, learn, and recreate in a clean and healthy environment. The Department now must consider how certain facilities seeking permits to construct and/or operate in overburdened communities ("OBCs") will contribute to environmental or public health stressors in that community in a manner that is disproportionate compared to its neighbors.

Following the enactment of the Environmental Justice Law, the NJDEP adopted the Environmental Justice Rules, N.J.A.C. 7:1C which were published in the New Jersey Register on April 17, 2023. The Environmental Justice Rules establish the specific requirements and procedures that applicants must follow when seeking permits for certain pollution-generating facilities located, or proposed to be located, in OBCs. This includes identification of relevant environmental and public health stressors, the requirements for the preparation of an environmental justice impact statement to assess a facility's impacts to existing stressors, the procedures to ensure meaningful public participation by members of the host community and the standard of Department review and form of decision.

The Environmental Justice Rules apply where three specific criteria are present: 1) the proposed new or existing facility is one of eight specific facility types identified in the Rules, 2) the applicant seeks an individual permit under applicable Department statutes (see N.J.S.A. 13:1D-158), and 3) the facility is located or proposed to be located, in whole, in part in (or, in certain limited circumstances, immediately adjacent to) an OBC.

In regard to the applicability of the requirements of the Environmental Justice Rules to the State project, the State project does not meet all three of the criteria referenced above. While the State project is seeking an individual permit under applicable Department statutes and a portion of the State project (underground electric transmission cables) is located within Atlantic City, which is an overburdened community, the State project is not one of the eight specific facility types identified in the Environmental Justice Rules (N.J.A.C. 7:1C-5). Therefore, the requirements of the Environmental Justice Law and implementing Environmental Justice Rules are not applicable to the State project.

**Local Ordinances****Comment**

There are several Statutes in the Atlantic City Code which must be adhered to for the Atlantic Shores Project 1 project and the Department and the Applicant have failed to demonstrate that they have complied with these City ordinances.

**Response**

The State's permitting jurisdiction as it relates to the State project is discussed previously in this document as well as the environmental report accompanying the State permit application decision. The Department does not have any authority to enforce local ordinances. A condition will be included in the State permit requiring the Applicant to obtain any additional and necessary Federal, State, and local approvals prior to the commencement of any regulated activities. It is the responsibility of the Applicant and the City of Atlantic City as well as the other municipalities in which the State project is proposed to ensure compliance with all local ordinances.

**Consideration of Cumulative Impacts****Comment**

The Department should consider not only the immediate impacts of the proposal but also the cumulative impact of other foreseeable offshore wind projects. This consideration should include areas under both Department and Army Corps of Engineers jurisdiction.

**Response**

As mentioned above, only the State project is the subject of this permit application review. The State project only includes the installation of electric transmission export cables onshore within the CAFRA jurisdictional area and within New Jersey State waters as well as the construction of an onshore electric substation. The components of Project 1 proposed within the Applicant's Lease Area, including the WTGs and offshore substations, are not subject to review under this permit application. The components of Project 1 within Federal waters was determined to be consistent with the State's enforceable policies as outlined in the issued April 1, 2024 Federal Consistency Certification. There is no provision in the CZM Rules which requires the Division to consider potential future projects when determining a proposed project's compliance with the applicable regulations unless the subject development would likely cause a future development. In the case of offshore wind, BOEM has awarded each lease area through a competitive bidding process, with each lease area being a separate and distinct offshore wind farm. The installation of electric transmission export cables onshore within the CAFRA jurisdictional area and within New Jersey State waters and construction of an onshore electrical substation necessary to transmit the generated wind power to shore for Project 1 is electrically distinct and not dependent on any other wind lease area being developed other than the Applicant's Lease Area nor will it induce future development of any other lease area as it will only serve Project 1. Furthermore, each developer of a proposed offshore wind farm will need to obtain the appropriate State approvals prior to any construction activities. Each project will be subject to compliance with all applicable State regulations, including the CZM Rules, FHA Rules, and FWW Rules.

However, the Department utilized its own subject matter experts who considered scientifically available information and generally accepted scientific methodologies to evaluate impacts on resources under the Division's purview. As discussed in detail in the environmental report accompanying the permitting decision on the State project, the Division determined that the State project meets all applicable requirements of the CZM Rules, FHA Rules and FWW Rules.

The components of the State project within the jurisdiction of the Army Corps of Engineers will require the appropriate Federal permit. As mentioned above, a condition is included in the permit for the State project requiring the permittee to obtain all necessary local, State and Federal approvals prior to the commencement of any regulated activities.

### **Alternate Cable Routes**

#### **Comment**

A discussion on evaluated alternate routes should be provided, specifically those that would minimize impacts to wetlands and other environmental resources.

#### **Response**

An alternatives analysis, dated January 2024, was provided in the State project permit application submission in Appendix B. The submitted alternatives analysis analyzed numerous electric transmission export cable route options, both in-water and onshore, to determine the most suitable and least environmentally impactful cable route.

The selected offshore electric transmission export cable route was selected based on the route's minimization of impacts to environmental resources, such as artificial reefs, shipwrecks, navigation channels, prime fishing areas, and critical habitat for fish and other marine life. Additionally, the selection of the cable route also considered the characteristics of the seabed for constructability and avoidance of installation hazards such as existing cables and pipelines, munitions and explosives of concern ("MECs"), and dredge material disposal sites. The transition of the offshore cables to onshore will utilize trenchless installation methods, specifically HDD, to avoid impacts to sensitive beach and dune habitats. Additionally, the selected cable landing site will be upland of any environmentally sensitive habitats and within an existing paved parking area in a substantially developed and utilized part of Atlantic City. The selected and proposed route was determined to be the best option for minimizing impacts to environmental resources and avoiding installation hazards.

Regarding the siting of the onshore cable route, the selected route was determined to be the optimal route to limit potential impacts to regulated resources, including wetlands. The onshore cable route, while temporarily impacting wetlands transition areas as described below, has been sited to avoid all impacts to existing areas of wetlands. Additionally, the selected onshore cable route utilizes cleared or disturbed areas or existing paved and/or maintained rights-of-way to the maximum extent practicable. The Applicant has also committed to restoring any areas temporarily disturbed during construction activities. The construction of the Fire Road substation as well as some of the onshore cable routing will result in impacts to woody vegetation, which serve as critical habitat for migratory songbirds. However, the Applicant will be required as a condition of the State permit to mitigate those impacts at a 2:1 ratio, result in a net gain of habitat created and/or preserved. Furthermore, the onshore cable route will also

utilize trenchless cable installation methods, specifically HDD, beneath all waterways to prevent any disturbance to species habitat within these waterways.

As noted previously and discussed in detail in the environmental report accompanying the permitting decision on the State project, the State project will result in temporary disturbances to wetlands transition areas for the installation of portions of the onshore electric transmission export cables. The Applicant has submitted a request for a Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development for the proposed disturbances. Based upon review of this portion of the State project by the Division and as discussed in the environmental report accompanying the permit decision, it has been determined that the proposed disturbances to wetlands transition areas meet the requirements specified in the FWW Rules at N.J.A.C. 7:7A-8.3(e) for issuance of a Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development.

### **Electromagnetic Fields and the Marine Environment**

#### **Comment**

An assessment should be provided on the impact of electromagnetic fields (“EMF”) from the cables on marine life and ecosystems, as well as the effects on primary food sources for humpback and North Atlantic Right Whales.

#### **Response**

While EMF is not subject to the Department’s jurisdiction under the CZM Rules, general information regarding EMF is found in the Final Environmental Impact Statement (“FEIS”) prepared by BOEM, which reports that impacts from EMF and heat from the ongoing construction and operation of offshore wind projects have been previously analyzed and were anticipated to be negligible for mysticetes (including the NARW), odontocetes, and pinnipeds, due to estimated low EMF levels, the localized nature of EMF along the cables near the seafloor, and appropriate shielding and burial depth (BOEM 2021a, 2021b, 2023b, 2023e). Cables are also expected to be separated by a minimum distance of 330 feet (100 meters), which avoids additive EMF effects from adjacent cables.

In addition, the Department’s Division of Science and Research published a report entitled “Review of the Impacts to Marine Fauna from Electromagnetic Frequencies (EMF) Generated by Energy Transmitted through Undersea Electric Transmission Cables”, authored by Joseph Bilinski (March 2021). The report reviewed the scientific literature summarizing the observed, in situ effects of EMF on marine fauna from interactions with and proximity to undersea transmission cables. The report found that based on empirical evidence and laboratory investigations, the observed impacts to marine biota and ecosystems are considered to be minor or short-term, with more EMF sensitive species showing minor responses such as lingering near cabled areas.

Further, in a publication entitled “ENVIRONMENTAL STUDIES Electromagnetic Fields (EMF) from Offshore Wind Facilities” prepared by BOEM and dated December 2023, BOEM notes that EMF from undersea power cables decrease rapidly with distance from the cable, and burying the cables substantially reduces the levels of magnetic and induced electric fields in seawater. Increasing the burial depth from 3 feet to 6 feet reduces the magnetic field at the seafloor approximately four-fold. (BOEM 2023). For Project 1, the electric transmission export cables target burial depth ranges between 5 feet and 6.6 feet.

**Electromagnetic fields and the terrestrial environment****Comment**

Commenter questioned if there are health effects from electromagnetic frequencies (EMF) generated by the underground cables, if studies have been done and if not, suggested that projects should be halted until more data is available.

**Response**

While EMF evaluation is not subject to the Department's jurisdiction under the CZM Rules, Atlantic Shores provided the Department with an Electromagnetic Frequency Report dated May 2024. The EMF report states that, with the exception of one location within the onshore substation (not subject to access by the general public), the project components are within allowable limits for EMF set by the International Commission on Non-Ionizing Radiation Protection. At the onshore substation, the EMF Report states the allowable limits will be met with implementation of mitigation measures.

**Undisclosed project information****Comment**

Commenter indicated that the Department is hiding the full details of the project by requiring the public to make a trip to Trenton to view the complete applications or filing an OPRA request.

**Response**

Information from the permit application for the State project, which includes detailed information on the State project proposal, could be obtained by the public through the Department's Offshore Wind webpage since February 20, 2024. Copies of the complete application submission were also available for viewing by the public at the Atlantic City, Pleasantville City, and Egg Harbor Township municipal clerk offices. Additionally, any application materials not available on the Department's Offshore Wind webpage could be obtained by making an OPRA request at any time after the State permit application was submitted. While a member of the public can request to make an appointment at the Department's offices in Trenton to review application materials in person, it is not required in order to obtain the project and application information. At the time of the OPRA request, any individual wishing to review the application materials can request the information to be provided electronically to avoid making a visit to the Department's Trenton offices.

**Request for a Second Public Hearing****Comment**

In response to the June 21, 2024 notice sent out for the resubmission of the Waterfront Development Individual In-Water portion of the State project permit application, a request for a second public hearing to be held in Atlantic County was submitted to the Department.

Response

In response to this comment, the Division provided a response letter dated July 22, 2024, to the commenter. The response letter from the Division explained that the June 21, 2024 notice letter from the Applicant requesting public comments and/or a public hearing on the Project 1 State permit application was not intended to be a notification for all of the components of the State permit application for Project 1 currently under review by the Division. The June 21, 2024 notice letter was intended to provide notification of the resubmission of the Waterfront Development Individual In-Water Permit portion of the Project 1 State permit application. A corrected notice letter, dated July 15, 2024, was sent out by the Applicant to all of those who received the June 21, 2024 notice letter. A corrected advertisement in the Atlantic City Press will also be published in the July 20<sup>th</sup>, July 23<sup>rd</sup>, and July 25<sup>th</sup>, 2024 issues of the newspaper.

The Division's July 22, 2024 response letter indicated that the Applicant sent the June 21, 2024 notice letter in furtherance of its June 26, 2024 resubmittal of the Waterfront Development Individual In-Water Permit portion of the State permit application. The originally submitted Waterfront Development Individual In-Water Permit application was accompanied by the submission of the permit application for a CAFRA Individual Permit, Coastal Wetlands Permit, and Freshwater Wetlands Special Activity Transition Area Waiver for Linear Development. However, the originally submitted Waterfront Development Individual In-Water Permit application was withdrawn on June 20, 2024. The June 20, 2024 withdrawal of the originally submitted Waterfront Development Individual In-Water Permit portion of the application was necessary to align the statutory decision deadlines with all other portions of the pending State permit application, referenced above. The resubmittal of the Waterfront Development Individual In-Water Permit application did not result in any changes to the originally proposed State project.

The response letter indicated that additional public hearings and fact-finding meetings will not be held on the resubmitted Waterfront Development Individual In-Water Permit application as public hearings and fact-finding meetings were held previously in response to all of the State permit applications listed above, virtually on May 14<sup>th</sup>, 2024 and May 29<sup>th</sup>, 2024 and in-person on May 28<sup>th</sup>, 2024. For in-person fact-finding meetings or public hearings, it is the Division's practice to find a facility that is located in the vicinity of the proposed project and contains ample seating and parking to accommodate a large public attendance. Since the fact-finding meeting for Project 2 in the proximity of Sea Girt Borough, Monmouth County and the public hearing and fact-finding meeting for Project 1, which includes the State project subject of this permit application, were held conjointly, a central location between the potential Project 2 landfall in Sea Girt Borough, Monmouth County and the Project 1 landfall in Atlantic City, Atlantic County was selected. Therefore, the in-person hearing was held at Central Regional High School in Berkeley Township, Ocean County. While the in-person public hearing and fact-finding meeting was not held in Atlantic County, the three (3) public hearings and fact-finding meetings provided an opportunity for all Atlantic County residents to participate. Furthermore, the Division has accepted written comments on the State permit application since its initial submission in February of this year. The response letter further indicated that the Division continues to accept written comments on the resubmitted Waterfront Development Individual In-Water Permit application and the State permit application as a whole.

## **Project Segmentation**

### **Comment**

The various components of the Atlantic Shores South project, which includes both Project 1 and Project 2, are all being permitted separately even though Projects 1 and 2 were combined for the purposes of the public hearing and fact-finding meetings.

### **Response**

Atlantic Shores Projects 1 and 2 (“Projects”) are electrically distinct, consisting of separate electric transmission export cable routes, and do not share a common proposed landfall location. Further, Project 1 has been awarded an OREC from NJBPU while Project 2 has submitted bids into several NJBPU solicitations as its own separate project and is awaiting an award. Pursuant to the CZM Rules, FHA Rules and FWW Rules, Projects 1 and 2 are eligible to apply separately for the appropriate permits from the Division.

However, due to the overall complexity of the Projects, the Department determined that holding one combined set of public hearings and fact-finding meetings would assist the public in understanding the overall components of the Projects within the Atlantic Shores South Lease area. Where applicable, the Department has separated the public comments received specific to either Project 1 or Project 2 and any comments received that pertain generically to both Projects have been considered in this review for Project 1 and was also considered in the review of the State permit application for Project 2, in which a permit was issued on June 24, 2024.

## **Cultural Resources**

### **Comment**

Detailed evaluations of the project’s impacts on cultural resources should be undertaken.

### **Response**

As indicated in the environmental report accompanying the permitting decision on the State project, the State’s Historic Preservation Office (“HPO”) is reviewing the Atlantic Shores South offshore wind project, which includes both Project 1 and Project 2, as a whole under Section 106 of the National Historic Preservation Act of 1966. Section 106 requires federal agencies to consider the effects of historic properties of projects they carry out, assist, fund, permit, license, or approve.

Initial comments received from the HPO via email on March 22, 2024 indicated that in consultation between the HPO and BOEM, it has been determined that the Atlantic Shores South offshore wind project as a whole will adversely affect historic properties. The HPO’s initial March 22, 2024 comments indicated that Section 106 consultation was ongoing. At the time of the initial comments, BOEM was currently in the process of evaluating ways to avoid, minimize, and mitigate project adverse effects in accordance with 36 CFR § 800.6. To resolve the adverse effects of the Atlantic Shores South offshore wind project, which includes Project 1, BOEM is proposing the development and execution of a Memorandum of Agreement in accordance with 36 CFR § 800.6(c) to memorialize the steps BOEM will take to avoid, minimize, and mitigate the project’s adverse effects. Execution of the Memorandum of Agreement will demonstrate BOEM’s compliance with Section 106 of the National Historic Preservation

Act. As a result, the Applicant is consistent with New Jersey's Coastal Management Program through the completion of Section 106 consultation and the execution of the Memorandum of Agreement among the Section 106 consulting parties for the Atlantic Shores South offshore wind project. Final comments received from the HPO via email on June 27, 2024 confirms that the Memorandum of Agreement was fully executed. With implementation of the measures outlined in the Memorandum of Agreement, Project 1, which includes the State project, will avoid, minimize, and/or mitigate adverse effects on historic properties, consistent with the requirements of the CZM Rules.

### **Secondary Impacts**

#### **Comment**

The Atlantic Shores South project, which includes Project 1 and Project 2, will induce further development of offshore wind impacts resulting in secondary impacts.

#### **Response**

The Secondary Impacts rule at N.J.A.C. 7:7-14.3(b) requires that "coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy this chapter". As indicated in the environmental report accompanying the permitting decision on the State project, the construction of the State project will not result in the future construction of additional unregulated development. The components of the Federal project were reviewed by the Division and determined to be consistent with the State's enforceable policies as detailed in the decision documents accompanying the April 1, 2024 Federal Consistency Certification.

The State project is not a transportation project or development of any wastewater treatment systems, which would require a secondary impact analysis per N.J.A.C. 7:7-14.3(b). The nature of the work within New Jersey State jurisdiction is similar to that seen with other utility installation projects. The proposed project is in compliance with the Critical Wildlife Habitats rule at N.J.A.C. 7:7-9.37, the Air Quality rule at N.J.A.C. 7:7-16.8, and the Traffic rule at N.J.A.C. 7:7-16.12 as discussed in detail in the environmental report accompanying the permitting decision. Furthermore, any temporary impacts as a result of construction of the State project will be minor in nature. Restoration of temporarily disturbed areas is proposed by the Applicant and is a requirement of the State permit.

### **Endangered Species Analysis**

#### **Comment**

The permit application cannot be approved until the Applicant provides an endangered species analysis for every protected species identified in the project area in accordance with N.J.A.C. 7:7-9.36 and 7:7-11.4.

#### **Response**

As indicated in the environmental report accompanying the permitting decision on the State project, the State project area, which includes State waters and areas onshore, provides suitable habitat for numerous threatened and/or endangered species. The Department's subject matter experts, which include the Marine Resources Administration ("MRA"), the New Jersey Division of Fish and Wildlife's Office of



Environmental Review, and the Department's Watershed and Land Management Program's reviewing biologist, reviewed and provided comment on the State project. Based upon their review and comments provided to the Division, the construction of the State project is not anticipated to adversely impact threatened and/or endangered species habitat with implementation of the Applicant proposed best management practices ("BMPs") and adherence to necessary timing restrictions, which are outlined in the environmental report accompanying the State permit decision. Any necessary measures and/or timing restriction to prevent adverse impacts to endangered and/or threatened species habitats will be included as conditions of the State permit.

It should be noted that all marine mammals, which include the referenced whale species such as North Atlantic Right Whale ("NARW"), Humpback Whale, and Fin Whale occurring with the State project area offshore, are protected under the Marine Mammals Protection Act ("MMPA"). Some of the whale species, such as the Fin Whale and NARW, are also protected under the Endangered Species Act ("ESA"). Pursuant to Section 109 of the MMPA, 16 U.S.C. 1379, states are not permitted to enforce any state laws or regulations relating to the taking of any species of marine mammal unless the Federal government has transferred authority to the state for the conservation and management of a particular species. In other words, the MMPA preempts state laws related to marine mammals. Thus, the Endangered or Threatened Wildlife or Plant Species Habitats Rule as it relates to marine mammals is non-enforceable by the State of New Jersey. Therefore, the Watershed and Land Management Program's reviewing biologist defers to guidance from the NMFS and the USFWS with respect to marine mammals.

### **Surf Clam**

The project will affect surf clam areas.

### **Response**

As mentioned previously, only the work in State waters and onshore within the CAFRA area is the subject of this State permit application. The work in the Atlantic Ocean in State waters, which extends from the MHWL of the Atlantic Ocean east to a line 3 nautical miles ("nm") of the coast of New Jersey, consists of only installation of electric transmission export cables. As noted in the environmental report accompanying the permitting decision on the application, the Department's MRA, in their final April 25, 2024 State project review comments, notes that the State project area does not currently support significantly harvestable quantities of surf clam. Additionally, MRA notes that data from the New Jersey Surf Clam Survey and anecdotal data from the surf clam industry suggests that, at this time, there are no fishable quantities of market sized surf clam in New Jersey State waters within the State project area. Furthermore, the results of the most recent Inventory of New Jersey's Surf Clam (*Spisula solidissima*) Resource, 2015-2021, confirm the continued rapid downward trend of the estimated standing stocks of surf clams in New Jersey territorial waters. The stock has continued to shift to deeper, cooler waters outside of the State's 3 nm jurisdictional limit because of the effect of rising water temperatures on surf clam populations. Based on the above, the proposed installation of electric transmission export cables within New Jersey State waters will not result in the destruction, condemnation, or contamination of any surf clam areas.

**Shifting Sediment and Sinkholes****Comment**

Commenter is concerned that the installation of the terrestrial portions of the electric transmission export cables may result in sediment shifting or formation of sinkholes, which could damage existing infrastructure.

**Response**

The Division consulted with the New Jersey Geological and Water Survey (“NJGWS”) to evaluate this comment. In general, the shallow water-table aquifers along the Atlantic coast barrier islands and on the near-bay mainland are typically salty and not utilized for water supply. While there may be a few shallow domestic wells, even these are deeper than the typical HDD and trenching operations and are not likely to be impacted by new saltwater intrusion.

Specifically, Atlantic City where this project is occurring is served by public water from wells in the very deep and well confined 800-ft sand and Rio Grande water bearing zone aquifers. The Cohansey formation above these units is known to be salty for most of its depth.

True sinkholes do not occur in sand formations, but inadvertent releases (IR) during HDD operations can cause soil collapses. This is why NJGWS recommends robust IR monitoring and response plans, which the Applicant provided in its State permit application. The initial application submission included an HDD Inadvertent Release Contingency Plan (“Plan”), dated November 29, 2023. This Plan is located in Appendix L of the permit application submission. During the review of the permit application, updates to the Plan were made. The latest version of the Plan, contained in the Division’s file, is dated July 25, 2024. A condition will be included in the State permit requiring the permittee to adhere to all provisions and measures outlined in the Plan.

Contamination can be spread along conduits while drilling if not properly constructed or after completion if not properly grouted at the entry and exit points. Again, these pathways are typically shallow and not located in potable aquifers. Salt water approved grouting materials should always be used in these locations. The Division has included conditions in the permit which require compliance with these applicable measures as determined by NJGWS.

NJGWS also recommends use of NSF 60/61 certified materials (approved for use in drinking water systems) in the HDD drilling process, including the bentonite drilling muds, additives and any lost circulation materials, grouts, etc. Again, the Division has incorporated applicable conditions in the permit which require compliance with these recommended standards.

**Increases in Turbidity****Comment**

The installation of the electric transmission export cables will lead to increased turbidity and seabed disturbance which can disrupt benthic organisms and habitats. Sediment displacement can smother benthic species and alter substrate composition.

### Response

As indicated in the submitted application, the installation of the electric transmission export cables within State waters may temporarily disrupt benthic sediment which would increase sediment suspension and turbidity in the water column. These impacts during construction only would be temporary and limited spatially. As indicated in the Applicant's submitted permit application, this increase in turbidity is anticipated to remediate itself via natural processes, such as sediment movement from tides and wind, and subsequent currents, which will disperse and drop suspended sediments from the water column. Furthermore, BMPs are proposed in order to reduce the temporary impacts to sediment suspension and turbidity. Some of the proposed BMPs include utilizing anchored midline buoys on construction vessels, where feasible, to minimize disturbance to the seafloor and sediments and dynamically positioning vessels and jet plow embedment to the maximum extent practicable to minimize sediment disturbance and alteration during the cable-laying process.

The Applicant also notes in its response to comments provided to the Division via email on August 9, 2024, for the Division's file that they conducted a Sediment Dispersion Modeling study to assess potential effects from sediment suspension during cable installation activities. This study can be found in the Atlantic Shores South COP in Appendix II-J3. The study concluded that total suspended sediments will remain relatively close the cable route centerline, were constrained to the bottom of the water column, and were short-lived. The Applicant intends to implement a benthic monitoring plan, outlined in the Atlantic Shores South COP in Appendix II-H, to measure and assess the disturbance and recovery of marine benthic habitats and communities as a result of construction and operation of both Projects.

In order to reduce the potential for undue disturbance to critical migrations for anadromous fish species, a timing restriction will be implemented between March 1<sup>st</sup> and June 30<sup>th</sup> of each calendar year for all work within New Jersey State waters. As already mentioned above, BMPs will be implemented during project construction to limit turbidity and impacts to water quality in order to avoid adverse impacts to marine fish and their habitats.

### Noise

#### Comment

Noise generated during cable installation can disturb and impact marine mammals and fish, potentially causing stress and behavioral changes.

#### Response

BOEM's Final Environmental Impact Statement ("FEIS") for the Atlantic Shores South Projects, which includes the Project 1 State project, indicates noise generated during cable laying activities and other activities associated with the Projects have the potential to temporarily affect fish and shellfish. Activities associated with the cable laying that would produce noise include jet plowing and installation of cable protection measures. The FEIS notes that fish exposed to cable laying noise may experience temporary stress and behavioral changes. However, because the cable laying vessel and equipment would be continually moving and the ensonified area would move with it, a given area would not be ensonified for more than a few hours. Therefore, any behavioral responses to cable laying noise are expected to be temporary and localized and are not expected to result in fishery-level impacts. This is echoed in this permit application submitted for the State project. Noise generated from electric transmission export cables installations are expected to be short-term and localized and are not anticipated to pose a risk to Essential Fish Habitat ("EFH")-designated finfish or pelagic invertebrates.

As noted in the environmental report that accompanied the April 1, 2024 Federal Consistency Certification determination, during all phases of the Projects, the Applicant will implement a suite of marine mammal monitoring and mitigation measures to decrease the risk of exposures to marine mammals occurring in proximity to noise-inducing activities during construction. These include monitoring throughout construction activity to detect marine mammals before being exposed to potentially injurious or disruptive sounds, deployment of passive acoustic monitors, maintenance of marine mammal protection zones to halt harmful activities when marine mammals are detected, implementation of equipment operating procedures to control noise, prohibition of significant noise generating activities during low visibility conditions when marine mammals cannot be detected, and use of night vision devices during periods of inclement weather and/or nighttime activities.

### **Submerged Cables**

#### **Comment**

The electric transmission export cables are submerged cables and are subject to the requirements of the Submerged Cables rule at N.J.A.C. 7:7-12.21, specifically the requirements at (c).

#### **Response**

As discussed in the environmental report accompanying the permitting decision on the State project, the CZM Rules define submerged cables at N.J.A.C. 7:7-12.21(a) as “underwater telecommunication cables, and shall include all associated structures in the water, such as repeaters”. The proposed electric transmission export cables to convey electricity from an offshore wind farm located within the Applicant’s Lease Area off the coast of New Jersey to the Cardiff Substation located in Egg Harbor Township, Atlantic County do not meet the definition of submerged cables per this rule since the cables are not telecommunication cables nor are they structures associated with telecommunication cables. Therefore, the requirements of this rule, specifically the requirements specified at N.J.A.C. 7:7-12.21(c), do not apply to the State project.

### **Prime Fishing Areas**

#### **Comment**

The cables within prime fishing areas do not meet the requirements of the Prime Fishing Areas rule at N.J.A.C. 7:7-9.4.

#### **Response**

As discussed in the environmental report accompanying the permitting decision on the State project, portions of the proposed electric transmission export cables within the Atlantic Ocean in New Jersey State waters run through the Absecon Inlet prime fishing area. Final comments received from the MRA and provided to the Division via email on April 25, 2024 confirms that this portion of the State project will impact the 1 nm buffer area associated with this identified prime fishing area.

The rule at N.J.A.C. 7:7-9.4(b)2 prohibits sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Impacts within this prime fishing area would be limited to the narrow corridor necessary for the electric transmission cables installation. The proposed installation of electric transmission export cables in the above referenced prime fishing areas is not a prohibited activity per the rule at N.J.A.C. 7:7-9.4(b)2. The installation of the electric transmission export cables will not permanently impact any of the permissible uses of prime fishing areas which include recreational and commercial finfishing and shellfishing, scuba diving, and other water related activities per N.J.A.C. 7:7-9.4(b)1. Additionally, the use of jetting

installation methodologies in this area will allow the area to infill and not result in any long-term impacts to existing bathymetry.

Furthermore, the comments received from the MRA indicate that while access for fishing to the prime fishing areas may be temporarily restricted during the construction and decommissioning phases of the State project, the proximity of other prime fishing areas should allow adequate access to fishing grounds during the construction and decommissioning of the State project.

Based on the information presented in the application and the comments received on the State project from the MRA, it can be concluded that the activities are not anticipated to significantly alter bathymetry during construction of the State project and will not result in adverse impacts to the Absecon Inlet prime fishing area. Therefore, the State project meets the requirements of the Prime Fishing Areas rule.

### **Location of In-Person Hearing and Meeting**

#### **Comment**

The in-person public hearing and fact-finding meeting was held at a high school in the Pine Barrens, not close to Atlantic City or Sea Girt. Additionally, the meeting was held at 5:00 pm. How is the public supposed to attend a meeting held at this time and location?

#### **Response**

In order to allow for sufficient public comment on the State project, the Division held three (3) public hearings and fact-finding meetings, one (1) in-person hearing and meeting and two (2) virtual hearings and meetings through Zoom. Each of the public hearings and fact-finding meetings were held at different times during the day to accommodate as many schedules as possible. The virtual May 14<sup>th</sup>, 2024 hearing and meeting was held in the evening starting at 6pm and scheduled for a maximum end time of 9pm. The in-person May 28<sup>th</sup>, 2024 hearing and meeting was held in the late afternoon/early evening starting at 5pm and scheduled for a maximum end time of 8pm. The final virtual May 29<sup>th</sup>, 2024 hearing and meeting was held in the early afternoon starting at 1pm and scheduled for a maximum end time of 4pm. It's important to note that while the Rules referenced herein contain a provision for one (1) public hearing and /or fact-finding meeting, the Department chose to hold three (3) public hearings and fact-finding meetings to provide greater opportunities for the public to attend, obtain project information and submit public comments.

As mentioned above, for in-person meetings or public hearings, it's the Division's practice to find a facility that is located in the vicinity of the proposed project and contains ample seating and parking to accommodate a large public attendance. Typical criteria for facility capacity is 500 seats with 250 parking spaces. Further, scheduling is dependent upon a facility's availability. Since the fact-finding meeting for the Project 2 State project and the public hearing and fact-finding meeting for the Project 1 State project were held conjointly, a central location between the potential Project 2 landfall in Sea Girt Borough, Monmouth County and the Project 1 landfall in Atlantic City, Atlantic County was selected. The auditorium at Central Regional High School in Bayville, Ocean County met these criteria. Additionally, per the CZM Rules at N.J.A.C. 7:7-26.5(b)1, a public hearing associated with a CAFRA Individual Permit must be held no more than 60 days after the application is declared complete for a public hearing. The CAFRA Individual Permit application associated with the Project 1 State project was declared complete for a public hearing on April 4, 2024. Therefore, the public hearing associated with the Project 1 State project had to be held no later than June 2, 2024. Central Regional High School was able

to accommodate the Division to hold the public hearing and fact-finding meeting at the end of May while also meeting the above specified criteria.

### **Mitigation**

#### **Comment**

If the Department's approval depends on the adoption of mitigation measures, then such approval must come with a detailed plan for the Department to monitor and enforce compliance with said mitigation measures.

#### **Response**

In accordance with Subchapter 17 of the CZM Rules, any authorized impacts to regulated resources will be required to mitigate for those impacts as conditions of the appropriate authorization. As discussed in detail in the environmental report accompanying the permitting decision on the State project, there are no environmental resources being impacted that require mitigation in accordance with Subchapter 17. Specifically, the State project will not result in any impacts to shellfish habitat, submerged aquatic vegetation habitat, intertidal and subtidal shallows, or wetlands. While the State project will result in temporary impacts to wetlands transition areas and riparian zone vegetation, mitigation for those temporary impacts is not required in accordance with the applicable FWW Rules and FHA Rules.

As noted in the environmental report accompanying the permitting decision on the State project, the construction of the State project will result in impact to areas of woody vegetation which meet the definition of critical wildlife habitat per N.J.A.C. 7:7-9.37(a). The Applicant will be required to mitigate for the proposed disturbances to critical wildlife habitat. A condition will be added to the permit requiring the Applicant to submit to the Department for review and approval a mitigation proposal to mitigate the State project's impacts to critical wildlife habitat. The proposal must be submitted prior to any construction of the State project and within 90 days of permit issuance. Additionally, the approved mitigation proposal must be implemented and a conservation restriction placed over the mitigation area prior to any construction activities associated with the State project.

Furthermore, it's important to note that measures are being proposed by the Applicant to avoid, minimize, and mitigate impacts to environmentally sensitive resources as outlined in the submitted permit application for the State project.

Prepared by: 

Date: August 26, 2024

**Lindsey J. Davis, Environmental Scientist 3**

**Division of Land Resource Protection**

Reviewed by: 

Date: August 26, 2024

**Janet L. Stewart, Bureau Chief**

**Division of Land Resource Protection**



Approved by:

Date: August 26, 2024

**Jennifer Moriarty, Assistant Commissioner**

**Watershed & Land Management Program**