

New Jersey Department of Environmental Protection (“Department”)

Division of Land Resource Protection (“Division”)

Atlantic Shores Offshore Wind Project 2, LLC (“Applicant”) State Permit Application

**RESPONSE TO COMMENTS**

File No. 0000-21-0022.3 LUP240001 WATERFRONT DEVELOPMENT INDIVIDUAL IN-WATER PERMIT

Written comments received by the Division during the initial application review period for the Waterfront Development Individual In-Water Permit Application indicated that there was substantial public interest in this project. The Coastal Zone Management Rules, N.J.A.C. 7:7-1.1 et seq. (“CZM Rules”) provide for an option for a fact-finding meeting on a Waterfront Development 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 meeting (N.J.A.C. 7:7-26.2(h)).

Due to the expressed public interest in Atlantic Shores Project 2, three (3) fact-finding meetings were held. Two (2) of the fact-finding meetings were held virtually on May 14<sup>th</sup> and May 29<sup>th</sup>, 2024 via Zoom. One of the 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 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 noted above, while others were not subject to the Division’s jurisdiction under the CZM Rules, N.J.A.C. 7:7-1.1 et seq.

It is important to make a distinction between the portion of the project 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 out to the three-geographical-mile limit of the New Jersey territorial sea, and elsewhere to the interstate boundaries of New York, Delaware, and the Commonwealth of Pennsylvania. The components of the Atlantic Shores Project 2 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 2 is located in a 31,847 acre (128.9 kilometer) southeastern portion of the Lease Area and consists of a minimum of 64 and a maximum of 95 wind turbine generators (“WTGs”), up to five (5) offshore substations (“OSSs”), inter-array and/or inter-link cables, and one (1) temporary metocean buoy. 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 the Atlantic Shores Project 2 subject to State permit application review (the “State project”) include the installation of electric transmission export cables extending west from New Jersey State’s 3 nautical miles (“nm”) jurisdictional limit to the point of the intended horizontal directional drill (“HDD”) location associated with the proposed Pre-Build Infrastructure (“PBI”) off the coast of the Borough of Sea Girt in Monmouth County. The PBI consists of the installation of conduits, duct banks and associated infrastructure to bring electric transmission export cables from the offshore

HDD to the landfall location at the Sea Girt National Guard Training Center (“NGTC”) and then to a point near the Larabee Collector Station. The PBI will be constructed by an entity other than the Applicant and is the subject of the New Jersey Board of Public Utilities’ (“NJBPU”) pending PBI solicitation. Therefore, no landfall of electric transmission export cables is associated with the State project proposed under this application. A separate State permit application will be submitted by the entity constructing the PBI for the work proposed as part of the PBI, which is described above. The proposed approximately 4.9 miles of electric transmission export cables within New Jersey State waters will consist of a cable bundle, approximately 13.5 inches in diameter, made up of two (2) HVDC cables and one (1) fiber optic cable and will be located within the Monmouth export cable corridor (“ECC”). The Monmouth ECC ranges in width between 3,300 to 4,200 feet (1,000 to 1,280 meters). The electric transmission export cables will be installed to a target burial depth between 5 feet and 6.6 feet (1.5 to 2 meters) below the seabed.

To distinguish between the portions of the Atlantic Shores Project 2, the components subject to State jurisdiction and permitting is referred to herein as the State project, and the portion of the project 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, attorneys and environmental groups. Overall, the comments discussed similar concerns. Responses to some of the comments presented at the three (3) fact-finding meetings were provided by Atlantic Shores Offshore Wind Project 2, LLC (“Applicant”) on June 14, 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 2:**

The Division received approximately 80 comments containing general objections to offshore wind projects and/or for the proposed Atlantic Shores Project 2 specifically. Those comments specifically identifying a topic or identifying a non-compliance issue with the CZM Rules have been included in the below discussion under the applicable topic(s).

### **General Support for offshore wind and/or Atlantic Shores Project 2:**

The Division received approximately 320 comments containing general support for offshore wind projects and/or for the proposed Atlantic Shores Project 2 specifically. Those comments specifically identifying a topic under the CZM 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. There is no requirement with the CZM Rules for an applicant to prepare a cost-benefit analysis. However, the installation of the cables is similar to other submerged infrastructure within the ocean 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 regards 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 Projects. 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.

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

#### Comment

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

#### Response

As mentioned above and in accordance with the CZM Rules at N.J.A.C. 7:7-26.2(h), the Department can hold fact-finding meetings on a Waterfront Development 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 fact-finding meetings. Due to the public’s interest in offshore wind projects, the Division made the determination that fact-finding meetings would be held in relation to this application requesting a permit for the State project.

Three (3) 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.

While the CZM rules do not outline required noticing for fact-finding meetings, numerous methods were used to make the public aware of the fact-finding meetings. The Department published notice of the 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 fact-finding meetings was sent individually to both the Borough of Sea Girt and the Borough of Manasquan, and the application materials were also sent to both Boroughs for the public to review. Furthermore, notice of the 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 OPRA request to access and review any application materials not contained on the Offshore Wind Webpage ahead of the meeting.

At the beginning of each of the fact-finding meetings, the Division provided opening remarks consisting of a description of the State project, the reason for the 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 the project description and the Division's contacts for the application review was provided as a hand-out at the in-person fact-finding meeting.

### **Lack of Information**

#### **Comment**

There was a lack of information presented to the public at the 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 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 Borough of Sea Girt and Borough of Manasquan municipal clerk offices. At each of the three (3) fact-finding meetings, the Division provided opening remarks consisting of a description of the State project, including the application file number, the reason for the 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 the project description and the Division's contacts for the application review was provided as a hand-out at the in-person fact-finding meeting. Information from the permit application for the State project 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 Open Public Records Act ("OPRA") request.

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

#### **Comment**

Numerous comments received at the 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 be submitted to the Department within 15 days of receipt or publication of the notice of initial application submission. For the State project, the last notice of the initial application submission was published in the newspaper on February 11, 2024. Therefore, public comments on the application were technically due within 15 calendar days of that last notification or by February 25, 2024.

The Waterfront Development Individual In-water Permit application proposing the State project was submitted to the Division on January 31, 2024 and determined to be administratively complete on February 26, 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 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 end of January and not strictly during the public comment period discussed above and specified in the CZM rules for Waterfront Development Individual In-water Permit applications, 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 five-month time period in which the public could provide comments on the State permit application. Due to the statutory permitting decision deadline of June 24, 2024, the public comment period could not be further extended.

### **Pro-wind Comments**

#### **Comment**

Offshore wind lobbyists who attended the meeting and provided their pro-wind comments had nothing to do with the purpose of the meeting and NJBPU should strike their comments from the meeting.

#### **Response**

This submitted public comment indicated that NJBPU should strike pro-wind lobbyists comments from the meeting. 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 meeting since it was the Department, not NJBPU, that held the 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 provide a basis for the Division's decision to approve or deny the proposed State project.

### **Application Summary**

#### **Comment**

A summary of the Atlantic Shores Project 2 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 Borough of Sea Girt and Borough of Manasquan municipal clerk offices. At each of the three (3) 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 regards to the State project, the entirety of the work is 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**

In regards to the State project proposed under the submitted Waterfront Development Individual In-water Permit application and as indicated in the environmental report accompanying the permitting decision on the State project, the proposed installation of electric transmission export cables below the mean high water line 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. The State project does not propose any work onshore or in wetlands and, therefore, will not require any additional permits from the Division other than the applied for Waterfront Development Individual In-water Permit.

## **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 within New Jersey State waters. There is no provision in the CZM Rules which require 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 within New Jersey State waters to transmit the generated wind power to shore for Project 2 is electrically distinct and not dependent on any other wind lease area being developed other than ASOW's nor will it induce future development of any other lease area as it will only serve Project 2. 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.

However, the Department also 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.

The components of the State project within the jurisdiction of the Army Corps of Engineers will require the appropriate federal permit. A condition is included in the State's 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 was provided as part of the additional information submitted to accompany the application for the State project. The proposed 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. Based on the review of the potential routes for the electric transmission export cables, the selected and proposed route was determined to be the best option for minimizing impacts to environmental resources and avoiding installation hazards.

As noted previously, the State project subject of this application only proposes the installation of electric transmission export cables within New Jersey State waters and no impacts to wetlands will occur.

### **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**

As noted in the response to comments document accompanying the April 1, 2024 Federal Consistency Certification, the electric transmission export and inter-array cables, once installed and operational, would generate EMF in the surrounding waters for the duration of the Atlantic Shores Project 2 operational period. The Final Environmental Impact Statement (“FEIS”) prepared by BOEM 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), avoiding additive EMF effects from adjacent cables.

In further regards to EMF, in March of 2021, the Department’s Division of Science and Research published a white paper 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. This white paper was a result, at the time, of Governor Murphy’s Executive Order No. 92 which announced the State’s plan to produce 7,500 MW of electricity from offshore wind by 2035 (subsequently increased to 11,000 MW by 2040 by Executive Order 307). This publication reviewed the current scientific literature summarizing the observed, *in situ* effects of EMF on marine fauna from interactions with and proximity to undersea transmission cables.

The installation and operation of submarine transmission cables can affect marine benthic organisms and habitats in a variety of ways, some of which can include sediment disturbance, reef effects, thermal emission, and notably the distortion of the natural geomagnetic field via emission of electromagnetic frequencies. Electromagnetic Frequencies, or EMFs are generated by electric current flowing through undersea transmission cables that can be associated with onshore or offshore renewable energy projects (wind or hydrokinetic resources) or other power-generating sources (traditional power plants). Based on empirical evidence and laboratory investigations, the observed impacts to marine biota and ecosystems are considered to be minor or short-term. Electrosensitive species such as elasmobranchs and benthic species have been shown to sense EMFs more acutely than marine mammals and pelagic fishes, although only minor responses such as lingering near or attraction to cabled areas have been noted.



However, uncertainties do remain as to whether physiological impacts occur and what life stage is most affected, and or if any long-term impacts will develop (Bilinski, NJDEP 2021).

In a publication entitled “ENVIRONMENTAL STUDIES Electromagnetic Fields (EMF) from Offshore Wind Facilities” prepared by BOEM and dated December 2023, it’s noted that naturally occurring EMF are present everywhere in the oceans. For offshore wind energy projects, the primary sources of EMF are inter-array cables that carry electricity from each wind turbine to the export cables, which carry that electricity to shore. The power cables do not produce an electric field on the seafloor or within the ocean because the voltage on the copper conductors within the cable is blocked by a grounded metallic covering on the cable. However, the magnetic field from the undersea power cable is shielded far less by this metallic covering; therefore, a 60-Hz AC magnetic field would surround each cable. The 60-Hz AC magnetic field induces a weak electric field in the surrounding ocean that is unrelated to the voltage of the cable but instead is related to the amount of current flow through the cable. This means that when the current flow on the undersea power cable increases or decreases, both the magnetic and the induced electric fields increase or decrease (BOEM 2023).

In addition to the metallic covering around the cable, undersea power cables are typically buried under the seafloor for their protection. As EMF from undersea power cables decrease rapidly with distance from the cable, 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. Where hardbottom seafloor conditions or existing infrastructure is encountered, the power cables are often covered with 6- to 12-inch thick concrete mattresses, rock berms, or other measures to protect the cable. While this covering does not achieve the same level of EMF reduction as burial and distance, beyond about 10 feet from the cable, the field levels for buried and mattress-covered cables are quite similar (BOEM 2023).

### **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 Borough of Sea Girt and Borough of Manasquan 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.

## **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 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, 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 2 and will also be considered in the review for Project 1, which remains ongoing.

## **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 Atlantic Shores Project 2, 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 indicate that the Memorandum of Agreement was signed by the HPO on June 14, 2024, but will not be fully executed until BOEM signs the Agreement.

A condition will be included in the permit for the State project requiring the execution of the Atlantic Shores Offshore Wind South Project Memorandum of Agreement among the Section 106 consulting parties, which includes the Applicant, to avoid, minimize and mitigate the Atlantic Shores South offshore wind project's adverse effects on historic properties, pursuant to Section 106 of the National Historic Preservation Act. This must be executed prior to any construction of the State project.

### **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. Additionally, any future construction activities necessary to bring the electric transmission export cables onshore will require the necessary permits. The issuance of these permits by the Division is based upon the proposal's compliance with all applicable land use regulations, including the CZM Rules.

Additionally, 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 project will be minor in nature.

### **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 provides suitable habitat for North Atlantic Right Whale (“NARW”), Humpback Whale, Fin Whale, Atlantic Leatherback, Atlantic Loggerhead, Osprey, and Least Tern. The Department’s subject matter experts, which include the 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.

It should be noted that all marine mammals, which include the referenced whale species above, 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.

### Cables and Surf Clam

The cables as sited in New Jersey State waters will affect a number of surf clam areas.

### Response

As mentioned previously, only the portion of the electric transmission export cables within New Jersey State waters are the subject of this permit application. As noted in the environmental report accompanying the permitting decision on the application, the Department’s Marine Resources Administration (“MRA”) 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 this 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. Therefore, 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.

### **Proximity of Cables to Artificial Reefs**

#### **Comment**

Artificial reefs will be directly impacted by the installation of the electric transmission export cables. Every registered saltwater fishermen should be notified directly considering the proximity of the cables to artificial reefs.

#### **Response**

As noted in the environmental report accompanying the permitting decision on the State project, the proposed electric transmission export cables and their associated corridor will be located between two artificial reef habitats, specifically the Manasquan Inlet artificial reef and the Axel Carlson artificial reef. However, the cables themselves will not be located within the footprint of the reefs. Additionally, the proposed cable corridor will maintain a 50 meter or approximately 164 foot buffer from both artificial reefs. Comments obtain from the Department's subject matter experts within MRA confirms that the maintenance of the 50 meter buffer from the artificial reefs is sufficient to not significantly affect the usefulness of the reefs as a fish habitat. Therefore, the cables and associated corridor as sited is not prohibited per the requirements of the Shipwreck and Artificial Reef Habitats rule at N.J.A.C. 7:7-9.13.

As detailed in the permit application, in order for the fishing community to be aware of the proposed cable installation activities, the Applicant is proposing measures to communicate with the local fishing community and other members of the public. The Applicant will appoint a Marine Affairs Coordinator who will be responsible for managing vessel movements for all offshore construction activities and will be the Applicant's primary point of contact with the USCG, port authorities, state and local enforcement, marine patrol, port operators, and commercial operators (ferry, tourist, and fishing boat). Communication of the State project activities will also be provided by Local Notice to Mariners in coordination with the USCG. There will also be communication to the public through the Projects' website, the Marine Affairs Coordinator, and the Fisheries Liaison Officer.

### **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. Additionally, 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.

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. Furthermore and as 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.

## **Navigation**

### **Comment**

The project will block three inlets and commercial fishing ports. Additionally, displacement of cable installations may result in shoaling in the Manasquan Inlet, resulting in navigation hazards.

### **Response**

As indicated in the submitted permit application and discussed in detail in the environmental report accompanying the permitting decision on the State project, the installation of the electric transmission export cables within the proposed cable corridor will not cross any established navigation channels within New Jersey State waters. The submitted application materials note that short-term construction activities associated with the installation of the electric transmission export cables may require temporary restrictions on vessel navigation within the immediate vicinity of the construction activities for the purpose of protecting the health and safety of the construction workers and vessels. However, no permanent impacts to navigation will occur from the construction of the State project.

The Applicant has committed to implementing measures to prevent any hazards to navigation during construction activities. First, the Applicant intends to request from the USCG a 500 meter temporary safety zone around the cable installation vessel. The cable installation process is a relatively quick process, only take a few weeks, and the safety zone will shift along the cable route with the installation vessel preventing restrictions along the cable route for an extended period of time. This safety zone will be established prior to installation activities and will be coordinated by the Applicant's Marine Affairs Coordinator. The Marine Affairs Coordinator will manage vessel movements for all offshore construction activities and will be the Applicant's primary point of contact with the USCG, port authorities, state and local enforcement, marine patrol, port operators, and commercial operators (ferry, tourist, and fishing boat). Any temporary safety zones will be communicated by Local Notice to Mariners in coordination with the USCG. There will also be communication to the public through the Projects' website, the Marine Affairs Coordinator, and the Fisheries Liaison Officer. Additionally, installation activities of the nearshore portion of the cables will occur outside the Memorial Day to Labor Day tourist season.

## **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 2 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.

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 a future determined onshore location 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 two prime fishing grounds, referred to in GIS mapping as the Manasquan Inlet Buoy and the Ringe Bouy Hills. This was confirmed in the initial comments received via email from the MRA on April 10, 2024 and in their final comments, dated April 25, 2024.

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.

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.

The initial comments from MRA recommended that best management practices (“BMPs”) be employed to ensure that the surrounding areas continue to function as prime fishing areas once the construction of the project is complete. MRA’s final comments confirm that the measures proposed by the Applicant to minimize impacts on commercial fisheries and in-hire recreational fishing, such as the development of a Fisheries Communication Plan and working with the appropriate fishing entities to ensure the State project will minimize potential conflicts, are appropriate. Additional mitigation measures which will be carried out by the Applicant are listed in Appendix G of BOEM’s Final Environmental Impact Statement (“FEIS”).

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. The State project meets the requirements of this rule.

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

#### **Comment**

The in-person 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) fact-finding meetings, one (1) in-person meeting and two (2) virtual meetings through Zoom. Each of the 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 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 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 meeting was held in the early afternoon starting at 1pm and scheduled for a maximum end time of 4pm.

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 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. As the fact-finding meeting was held conjointly with the public hearing for the Project



1 State project, the Project 2 was also subject to this timeframe. 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 the CZM Rules and Subchapter 17. However, 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.



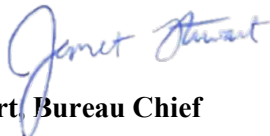
Prepared by:

Date: June 24, 2024

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

**Division of Land Resource Protection**

Reviewed by:



Date: June 24, 2024

**Janet L. Stewart, Bureau Chief**

**Division of Land Resource Protection**

Approved by:



Date: June 24, 2024

**Jennifer Moriarty, Director**

**Division of Land Resource Protection**