



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

401 East State Street

P.O. Box 402, Mail Code 401-07

Trenton, New Jersey 08625-0420

Tel. (609) 292-2885 • Fax (609) 292-7695

[www.nj.gov/dep](http://www.nj.gov/dep)

**PHILIP D. MURPHY**

*Governor*

**TAHESHA L. WAY**

*Lt. Governor*

**SHAWN M. LATOURETTE**

*Commissioner*

### LETTER OF INTENT

between

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

and

**EMPIRE OFFSHORE WIND, LLC**

This Letter of Intent, dated September 11, 2023, confirms the parties' intent to enter a Memorandum of Understanding concerning environmental mitigation measures pertaining to the construction, operation, and decommissioning of the proposed Empire Offshore Wind, LLC wind energy facility.

1. Empire Offshore Wind, LLC ("Empire") is proposing to construct and operate a commercial-scale offshore wind energy facility in two phases, Empire Wind 1 and 2 (the "Project"), off the coast of New Jersey within Lease Area OCS-A 0512 that would generate up to approximately 2,076 megawatts (MW) of electricity.
2. Pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq. ("CZMA"), the State of New Jersey has defined its coastal zone boundaries and developed policies to be utilized to evaluate projects within the designated Coastal Zone, as set forth in New Jersey's Coastal Zone Management Rules, N.J.A.C. 7:7 (last amended Oct. 5, 2021) ("NJ CZM Rules"). These rules provide for the issuance of permits under three federally approved Coastal Zone Management Plan (CZMP) areas, which are subject to state regulation pursuant to New Jersey's Waterfront Development Law (N.J.S.A. 12:5-3), Coastal Wetland Act of 1970 (N.J.S.A. 13:9A), and Coastal Area Facility Review Act (CAFRA; N.J.S.A. 13:19), each of which are administered by the New Jersey Department of Environmental Protection ("NJDEP").
3. The NJ CZM Rules govern the State's review of Federal consistency determinations pursuant to Section 307 of the CZMA, 16 U.S.C. §1456. The NJDEP serves as the lead State agency that implements or coordinates the State's federally approved CZMP, and Federal consistency reviews are the responsibility of the NJDEP Division of Land Resource Protection.

4. In evaluating proposed activities regulated under the NJ CZM Rules, NJDEP expects that all regulated entities, including Empire, pursue development objectives responsibly, including assessing potential environmental impacts and avoiding, minimizing, and mitigating likely adverse effects upon natural resources, including fish, marine mammals, and their respective habitats.
5. Where necessary and appropriate, NJDEP routinely requires regulated entities to utilize means and methods of construction that avoid or minimize impacts upon natural resources and, where it appears that impacts may not be sufficiently minimized, that mitigation activities be undertaken to compensate for adverse impacts to natural resources.
6. In addition to avoidance, minimization, and mitigation measures required by NJDEP, Empire d has agreed to work with other offshore wind developers, federal and state regulators to establish a Compensatory Mitigation Fund to compensate fishers for verifiable claims of negative impacts of a significant nature, including potential economic losses due to the construction, operation, or decommissioning of the Project. This agreement is in accordance with the Empire Offshore Wind Draft Environmental Impact Statement dated November 2022 (DEIS), Section 3.9.9 and Appendix H, in which Empire agreed to assist in establishing a regional Compensatory Mitigation Fund and to contribute to said fund in accordance with the BOEM Fisheries Mitigation Guidance once such guidance is finalized.
7. Since June 2021, NJDEP has led a multi-state compensatory mitigation initiative that includes the States of New Jersey, New York, Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Delaware, Maryland, Virginia, and North Carolina to encourage the Bureau of Ocean Energy Management (BOEM) to develop a standardized fisheries compensation framework, which guidance is near final, and the states have partnered to establish a regional administrator to manage the future mitigation funds.
8. In contributing to the Compensatory Mitigation Fund, Empire agrees to:
  - a. Utilize the regional fund administrator for purposes as outlined under item 4 above that is currently being established by the 11 coastal states initiative as outlined in item 5 above; or utilize another method of administration as directed by the State of New Jersey.
  - b. As outlined in the DEIS, establish a Navigational Safety Adaptation Fund and a Gear Loss and Damage Compensation program to address fisheries mitigation.



9. Additional discussion regarding terms of agreement between NJDEP and Empire may be necessary, depending upon the final provisions of the BOEM Fisheries Mitigation Guidance and the regional Compensatory Mitigation Fund.
10. The NJDEP and Empire hereby agree to enter into a Memorandum of Understanding within (120) days after BOEM's Final Decision/Agency Action, to memorialize the above commitments. This timeframe may be extended by mutual agreement of both parties.
11. The above timeframes may be extended by mutual written agreement of the parties.

By signature below, the NJDEP and Empire mutually express their intent consistent with paragraphs 1 through 11 above.

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**

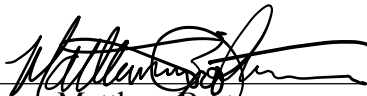


Name: Shawn M. LaTourette  
Title: Commissioner

Sept. 11, 2023

Date

**EMPIRE OFFSHORE WIND, LLC**



Name: Matthew Brotmann  
Title: Senior Counsel

September 11, 2023

Date

