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Chief, BOEM Division of Environmental Assessment
Office of Environmental Programs
45600 Woodland Road
Sterling, VA 20166

March 13, 2024

RE: Docket No. BOEM-2024-0001
Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight

Dear Chief,

The New Jersey Department of Environmental Protection (NJDEP) appreciates the opportunity to provide comments on the Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development (DPEIS) in the New York Bight. Specifically, BOEM's DPEIS will seek to analyze the potential impacts of wind energy development activities in the New York Bight (NY Bight), as well as the change in those impacts that could result from adopting programmatic avoidance, minimization, mitigation, and monitoring (AMMM) measures for the NY Bight.

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

As a cooperating agency, we look forward to continued coordination with BOEM, to ensure that impacts to natural resources are avoided, minimized where avoidance is not possible, and appropriately mitigated for when necessary. Upon review of the Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight, NJDEP offers the following comments:

Marine Resources Administration

Although New Jersey's Marine Resources Administration (MRA) supports the Proposed Action (Alternative C), *The adoption of programmatic avoidance, minimization, mitigation, and monitoring (AMMM)*

measures that the Bureau of Ocean Energy Management (BOEM) may require as conditions of approval for activities proposed by lessees in Construction and Operations Plans (COPs) submitted for the six NY Bight lease areas, BOEM should consider the feasibility and effectiveness of each measure being recommended. MRA understands and supports that if the COP-specific National Environmental Policy Act (NEPA) analysis shows that implementation of such measures is not warranted or effective, that BOEM may require additional or different measures based on the subsequent, site-specific NEPA analysis. The purpose of the Proposed Action is to identify issues, analyze the degree of potential impacts, and adopt, as appropriate, AMMM measures. Two goals of the PEIS are analyzing potential impacts if development is authorized in the six NY Bight lease areas and analyzing programmatic AMMM measures for the six NY Bight lease areas. The MRA agrees that the BOEM-selected AMMM measures would be applicable to more than one NY Bight lease area, are reasonable and enforceable, and allow for flexibility where appropriate. Adoption of programmatic AMMM measures in the first-tier analysis while allowing for additions, removals, and revisions of these measures as appropriate in the individual second tier Environmental Reviews will help to spread out the effort for stakeholders who review these long and complex documents. This approach should also allow for incorporation of novel mitigation measures as they are developed that respond to the site-specific needs of the unique projects and locations. This tiered approach will facilitate consistency in reviews across projects, provide some predictability, reduce impacts to coastal resources, and facilitate cooperation between projects.

As stated in Appendix G of the Draft Programmatic Environmental Impact Statement (PEIS), monitoring is critical to evaluating resources, impacts, and the effectiveness of AMMM measures. The introduction to Appendix G identifies how results may be used, specifically "…to (1) alter how an AMMM measure identified in the ROD is being implemented, (2) revise or develop new mitigation or monitoring measures for which compliance would be required under the COPs for the six NY Bight lease areas…, (3) develop measures for future projects, or (4) contribute to regional efforts for better understanding of the impacts and benefits resulting from offshore wind energy projects in the Atlantic (e.g., potential cumulative impact assessment tool)." This list highlights the importance of adaptive mitigation and is helpful in understanding why monitoring, coordination of monitoring, and accessibility of results is so important. Monitoring can only be used in these applications if monitoring is designed to answer scientific questions, and results are made available and accessible as soon as possible. There should also be a mechanism identified for reviewing monitoring results in the context of each of these uses.

The document might benefit from clarification of the overall goal for mitigation and how individual AMMMs are assessed. One might assume that a goal is to reduce impacts to the level of the no action alternative, but that is not practical for marine fisheries since the no action alternative for fisheries has a major impact. It's also difficult to understand the value of individual mitigation measures on the affected environment. It seems reasonable to employ any practicable mitigation measure that reduces impacts without affecting the viability of the project, not just those that alter the assessment of the impact for the resource with the very broad scale that is used.

Mitigation regarding collection of information needed for understanding fishery impacts is described in COMFIS-5 Fishery Survey Guidelines. MRA recommends that this AMMM measure is broadened to include (1) a recommendation to participate in ongoing efforts to standardize and economize project-specific and regional fisheries monitoring and research and (2) a recommendation that all fishery monitoring results are accessible as soon as practicable to stakeholders. Regional entities (e.g., the Responsible Offshore Science Alliance and the Regional Wildlife Science Consortium) have taken on the task of prioritizing, standardizing, and coordinating monitoring and supporting data governance across projects, and this AMMM should also address the need for participation of lessees in these efforts.

Regarding specific resource-monitoring recommendations, MRA recommends that Lessees develop an Atlantic surfclam monitoring plan. AMMM COMFIS-3 recommends that Lessees coordinate with NMFS and potentially impacted scallop fishermen to develop a Scallop Monitoring Plan. New Jersey's highly valuable surfclam industry could lose 15% of revenues to offshore wind, and the Atlantic City, NJ fleet could lose upwards of 25%[1,2]. Losses of these magnitudes and localized overfishing could have cascading impacts on secondary industries. Additionally, a complicating factor is the shifting of the surfclam population north and east, so using only existing data to evaluate the surfclam resources within the lease areas may severely underestimate the value of the stock. Surveys directed towards a broad age class of surfclam and ocean quahog will inform mitigation.

The AMMM measures for Commercial Fisheries include other specific recommendations for mitigating impacts, including reducing the risk of cable interactions, reducing alteration to the seabed, avoiding sensitive habitats, use of nature-inclusive design, charting obstructions, AIS marking, navigation training, and reducing the size of the area of impact. For example, AMMM measures COMFIS-2 and AMMM COMFIS-4 recommend scour protection that reduces the risk of creating new hangs to mitigate impacts to the use of mobile bottom gear. As new information and technologies become available, MRA looks forward to the availability and utility of additional mitigation measures for individual COPs. The recommendation to use shared cable corridors when possible in AMMM COMFIS-4 recognizes the importance of reducing the area of impacts and supports minimizing impacts to the abundant prime fishing areas identified by our state.

AMMM COMFIS-4 sets a minimum cable burial depth of 3 feet. It should be noted that shallower depths would be inconsistent with New Jerseys enforceable policies as the policies are likely to require 6 feet of burial depth in the near future. Projects installing cables within New Jersey state waters will have to comply with burial depths outlined in our rules and regulations at the time of permitting.

MRA notes that a burial depth of 2m minimizes the risk of an anchor from a commercial fishing vessel contacting a cable[3], reduces the risk of a hydraulic clam dredge interacting with the cable[4], and provides more reduction in EMF between the cable and the seafloor. NJ's Third Offshore Wind Solicitation required HVDC-based cable and converter technology, and future solicitations for Projects that will utilize NJ's Prebuild Infrastructure will also require HVDC technology. Deeper burial can reduce the higher risk of EMF effects[3] of HVDC compared to HVAC.

The MRA supports the measures described in COMFIS-6 regarding fisheries mitigation and the requirement for projects to establish a fund to compensate commercial and for-hire recreational

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[1] Munroe, D.M., Powell, E.N., Klinck, J.M., Scheld, A.M., Borsetti, S., Beckensteiner, J. and Hofmann, E.E., 2022. The Atlantic surfclam fishery and offshore wind energy development: 1. Model development and verification. ICES J. Mar. Sci., 79(6), 1787-1800.

[2] Scheld, A. M., Beckensteiner, J., Munroe, D. M., Powell, E. N., Borsetti, S., Hofmann, E. E., and Klinck, J. M. 2022a. The Atlantic Surfclam Fishery and Offshore Wind Energy Development: 2. Assessing Economic Impacts. ICES Journal of Marine Science 79 (6): 1801–14.

[3] Sharples, M. 2011. Offshore Electrical Cable Burial for Wind Farms: State of the Art, Standards and Guidance & Acceptable Burial Depths, Separation Distances and Sand Wave Effect Bureau of Ocean Energy Management, Regulation and Enforcement Offshore Electrical Cable Burial for Offshore Wind Farms on the OCS. https://www.bsee.gov/sites/bsee.gov/files/tap-technical-assessment-program//final-report-offshore-electrical-cable-burial-for-wind-farms.pdf

fishermen for loss of income resulting from displacement from fishing grounds due to project construction and operations. It should be a requirement, not just a recommendation, that the fund is sufficient to allow compensation to shoreside businesses for losses indirectly related to project development. Recognizing the importance of sustaining fisheries and the fishing industry, eleven east coast states have developed a detailed description of the need, design and development of a trusted Regional Fund Administrator (RFA) for managing and distributing fisheries compensatory mitigation funds for offshore wind in a transparent and equitable manner. BOEM should recommend that lessees utilize and contribute to the Regional Compensation Fund once it is established.

The MRA recognizes NOAA Fisheries as the lead agency for the protection of marine mammals and turtles and supports any recommendations provided by that agency regarding potential impacts and mitigation measures. MRA appreciates the strides that BOEM and NOAA have made towards coordinating passive acoustic monitoring in the Mid-Atlantic Region and coordination will continue to advance for these and other resources. Additionally, the NJ Research and Monitoring Initiative supports these efforts and has plans to fund the deployment of PAM receivers off our coast that complement the work of other agencies and developers. Regional coordination should be expanded to include aerial surveys.

Land Resource Protection

The Division of Land Resource Protection commends BOEM for including references to state specific jurisdictions. The NJDEP will continue to review and permit projects that are within the boundaries of New Jersey State waters and lands.

The document outlines that WTGs and OSSs would be mounted on one or a combination of the following foundation types: monopile, piled jacket, suction bucket (could be mono-bucket, suction-bucket jacket, or tri-suction pile caissons), or gravity-based foundations (Figure 2-3 through Figure 2-6). Monopile and piled jacket are anticipated to be the most likely foundation types to be used for the NY Bight projects. The possible use of "floating foundations" as a mounting method was not discussed and should be further considered by BOEM. This method may reduce the impact to many of the biological resources outlined in chapter 3.5.

Endangered Nongame Species Program

According to the DPEIS, a study indicated that abandoned or lost fishing nests may get tangled in foundations therefore reducing abandoned gear in the OCS environment. The Endangered Nongame Species Program (ENSP) would like to see more data to support this assertion, as there is not a valid benefit to birds without further data to indicate this is a regular occurrence.

In reference to the Vattenfall 2023 study about bird movements within an offshore wind farm, ENSP would be interested to see how nocturnal movements of birds through offshore wind farms could be studied once more wind farms are developed.

In addition to the AMMM measures listed in table 3.5-3.6, ENSP would like BOEM to consider motion smear minimization using data from the 2020 study by Nygard - Efficacy of increased wind turbine visibility to reduce avian fatalities as well as the use of video cameras and radar to detect the rate of strikes, avoidance behavior, and possible attraction within the OSW farms (or best available technologies).

Office of Environmental Justice

As outlined in Section 3.4.1 Air Quality, the document states that most of the emissions would occur during construction. Due to multiple offshore wind projects occurring simultaneously throughout the east coast, construction related emissions could cause adverse air quality impacts in the localized areas surrounding the ports and facilities. Many of the ports and supporting facilities associated with offshore wind development are in or adjacent to NJ overburdened communities, such as the Paulsboro Marine Terminal, the Repauno Port and Rail Terminal, and the New Jersey Wind Port. There is no consideration in this section or section 3.6.4 about possible adverse air quality effects in hyperlocal areas during the construction period. OEJ recommends that hyperlocal air quality impacts be investigated. If adverse impacts are found to occur, it is recommended to implement air monitoring programs during construction as a strategy to justify mitigation methods in Overburdened Communities (OBCs) from the impacts of increasing commercial vessel traffic, air traffic, truck and worker vehicle traffic, onshore facility operations, etc. The need for monitoring is further highlighted by the DPEIS acknowledgement that conditions will vary.

Transmission/NJ Prebuild Infrastructure

The NJ Board of Public Utilities is pursuing an approach to coordinate the construction of offshore wind transmission cables by developing common infrastructure that will house these power cables in shared underground transmission corridors consisting of duct banks and cable vaults for four transmission lines called the Prebuild Infrastructure. NJDEP encourages BOEM to incorporate the review of the coordinated transmission solutions into the New York Bight Final PEIS to the extent practicable.

Thank you for providing the New Jersey Department of Environmental Protection with the opportunity to comment on the Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight. If you have any questions or would like to discuss any of these comments, please contact Elizabeth Lange at Elizabeth.Lange@dep.nj.gov.

Sincerely,

Megan Brunatti
Deputy Chief of Staff