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Karen J. Baker, Program Manager
BOEM Office of Renewable Energy Programs
45600 Woodland Road
Sterling, VA 20166

August 22, 2022

RE: Docket No. BOEM-2022-0021

**Notice of Availability of a Draft Environmental Impact Statement for Ocean Wind, LLC's
Proposed Wind Energy Facility Offshore New Jersey**

Dear Ms. Baker,

The New Jersey Department of Environmental Protection (NJDEP) appreciates the opportunity to provide comments on the June 2022 Draft Environmental Impact Statement for Ocean Wind, LLC's Proposed Wind Energy Facility Offshore New Jersey. The Ocean Wind 1 project is within the Renewable Energy Lease Number OCS-A 0498 and is proposed by Ocean Wind, LLC. The proposed project includes new substations at Oyster Creek in Lacey Township, Ocean County, and B.L. England in Upper Township, Cape May County, with electrical transmission cables connecting the offshore wind farm and onshore substation facilities.

NJDEP is a cooperating agency, pursuant to a Memorandum of Understanding with the Bureau of Ocean Energy Management (BOEM), and therefore has had the opportunity to review supporting information and provide feedback to BOEM as the draft EIS was developed and alternatives were considered. NJDEP hereby provides the following comments upon review of the DEIS:

Land Resource Protection

The draft DEIS discusses a series of alternatives, including a "no action" alternative, to the construction, operation, maintenance, and decommissioning of Ocean Wind 1's intended 1,100 megawatts offshore wind farm proposed to be sited 15 miles southeast of Atlantic City. NJDEP strongly encourages BOEM to select a proposal and/or alternative which results in the least impact to regulated areas and/or environmentally sensitive areas and which is consistent with all applicable land use regulations, including but not limited to the Coastal Zone Management Rules at N.J.A.C. 7:7, the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13, and the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. A detailed review of the impacts from the proposed project will be conducted during NJDEP's review of the required state permit applications and the pending Federal Consistency Certification for Ocean Wind 1's Construction and Operations Plan (COP). The NJDEP's resource agencies will comment during the review of both the state permit applications and consistency certification as their expertise is critical to the evaluation of the proposed project's environmental impacts and in determination of the project's compliance and consistency with the state's land use regulations and the Coastal Zone Management Plan's enforceable policies.

Historic Preservation

On May 31, 2002, the Historic Preservation Office (HPO) provided comments to BOEM regarding the identification of historic properties under Section 106 of the National Historic Preservation Act (see attached correspondence, (HPO-E2022-239). Additionally, the HPO has not provided feedback to BOEM regarding the assessment of effects or proposed mitigation measures; however, we expect to do so once the identification of historic resources is complete. As a result, the HPO cannot concur with the findings of the DEIS regarding the project's potential impacts on cultural resources at this time.

Fish & Wildlife

Commercial and Recreational Fisheries

NJDEP applauds BOEM with effective avoidance mitigation in siting this lease and agrees with the overall assessment that existing fishing effort in the Ocean Wind 1 project area is relatively low. However, NJDEP notes that the DEIS seems to minimize project-specific impacts because the No Action Alternative assumes full development of other leases (and the description of impacts of offshore wind on fisheries was mostly in Section 3.9.3.2, the No Action Alternative).

Additionally, NJDEP recommends including a discussion of the menhaden fishery and landings from the lease area. The National Marine Fisheries Service (NMFS) Socioeconomic Impacts of Atlantic Offshore Wind Development website ranks menhaden 1st in total landings and 3rd in total revenue.

Also, the effects and potential impacts of pile-driving noise on fish populations is not well understood and more information is needed before impacts can be considered negligible, particularly considering the scale of development on the Outer Continental Shelf. Recreational and commercial fishing may be affected during construction.

Fisheries Mitigation

NJDEP supports the proposed fisheries mitigation measures outlined in the DEIS, and we encourage BOEM to consider that compensation for economic losses will require extensive, fishery-by-fishery analysis including consultation with fisheries economists and industry.

NJDEP further encourages a robust, transparent, and manageable process for engagement with the fishing industry on compensation. The commercial fishing industry should be involved at all stages of compensation, beginning early in the process. The industry can provide unique insight into planning effective engagement, valuation, and distribution that includes secondary industries that will also have economic losses. Additionally, the Responsible Offshore Development Alliance (RODA) December 2021 Report, *Impact Fees for Commercial Fishing from Offshore Wind Development: Considerations for National Framework* should be leveraged by BOEM to the greatest extent possible as the compensation guidance is developed. Also, recreational fisheries have expressed concern about potential economic losses and should be engaged in compensation development.

Additionally, the DEIS should include a detailed description of secondary economic impacts that could result from reduced landings. Landings revenue is a starting point in evaluating loss, however, economic impacts to processors, fuel suppliers, and distributors, must also be considered.

Navigational Safety

The DEIS Alternative C is favorable in terms of navigational safety because it creates a buffer zone between Ocean Wind and Atlantic Shores. In 2020, the NJDEP facilitated stakeholder meetings regarding transit through the two lease areas, and there was a clear and consistent request for undeveloped space between the leases. The industry has consistently expressed concerns regarding safe transit through the array and



fishing within the array. In addition, Alternative C is consistent with the new lease stipulation in the NY Bight that requires a setback between projects that don't have consistent turbine alignments.

Protected Species

Timing restrictions for sturgeon should be included in the DEIS, and Endangered Species Act-listed fish should be included in the *Injured/Protected Species* reporting section. Moreover, all injuries to ESA-fish (sturgeon) should be reported.

Freshwater Fisheries

In section 3.8.1, *Description of the Affected Environment and Environmental Consequences of the No Action Alternative for Coastal Habitat and Fauna*, under "Coastal Fauna Special-Status Species,"

The last paragraph discusses other state special concern species that could potentially occur in the geographic analysis areas and should include "Diamond-backed Terrapin".

In section 3.8.3, *Impacts of the Proposed Action on Coastal Habitat and Fauna*, under "Land disturbance:", in the second paragraph, "Ocean Wind proposes to restore disturbance areas in the Onshore Project area to pre-existing contours (maintaining natural surface drainage patterns) and allow vegetation to become reestablished once construction activities are completed, to the extent practicable" (APM GEN-13; see Table 1.1-2 of the COP Volume II, Section 1.1; Ocean Wind 2021). NJDEP notes that only **native** vegetation should be allowed to become re-established.

Migratory Shorebirds

Upon review of the DEIS, NJDEP requests additional details on the Ocean City landfall in order to evaluate potential impacts to state and federally listed species; as well as additional information on the trenchless technology (HDD) to be used in proximity to nesting birds on Island Beach State Park. Additionally, timing restrictions for breeding birds should be adhered to for onshore construction noise, including installation of the cable via trenchless technology (HDD).

Further, NJDEP encourages Ocean Wind to consider the use of meteorological radar to detect bird movement and migration through the wind farm on wave buoys set to be deployed. Migration forecast maps can be found here: <https://birdcast.info/migration-tools/migration-forecast-maps/>, however, limitations of forecast maps may include radar's ability to detect offshore movements as most radar stations are onshore. Therefore, consideration could be given to placing radar stations on structures, like wave buoys, within the lease area to improve accuracy and develop guidelines for triggering lighting alterations when peak migratory movements are detected.

State and Federal Surveys in Project Area

The list of notification recipients for surveys within the project area should include agencies responsible for research survey activities, such as NOAA, VIMS (NEAMAP survey), and NJDEP. Further, mitigation for research surveys should include NJDEP's Ocean Trawl Survey. This 30+ year old survey supplies data for stock assessment for many of the species managed by ASMFC and regional management councils such as the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council. The loss of survey sampling areas will have a direct impact on the precision and accuracy of future stock assessments.

Submerged Aquatic Vegetation (SAV)

SAV functions as a blue carbon sink and is a highly productive estuarine habitat for ecologically, commercially, and recreationally important species. Physical damage, removal, increased turbidity, scarring, and bed fragmentation should be minimized. Therefore, DEIS Alternative E is recommended to reduce impacts to submerged aquatic vegetation. This Alternative reroutes the transmission cable as it enters



Barnegat Bay from Island Beach State Park through a relic channel, which is a relatively short diversion that avoids denser areas of SAV on the inside shoreline of the island. Avoiding SAV in cable siting will substantially reduce the need for SAV compensatory mitigation, which is costly, time-consuming, and difficult to successfully achieve. Any SAV loss or damage should be documented carefully in a pre- and post-construction survey.

Island Beach State Park (IBSP)

The DEIS states the target depth of the cable at Island Beach State Park is 4 feet, but it is not clear if this refers to the area where the cable will be direct-buried, or the area that will be installed via horizontal directional drill (HDD) under the beach and dunes. NJDEP notes that during storms, IBSP may lose 6 feet or more in depth at the beach berm. If the cable is at a depth of 4 feet, the cable would become exposed. Exposed cable across the beach would impede vehicle access for park staff and mobile fishing permit holders. Additionally, there are years where the beach berm will not build back up to its pre-storm elevation, which may mean exposed cables during the busy summer season. The depth of the cable on the beachfront berm should be deeper to avoid impacts to travel and tourism as well as normal park operations and post storm work on the beach. Additionally, Ocean Wind will be responsible for maintaining exposed cables post-storm within IBSP, and within the IBSP swimming areas (275 yards into the water). Ocean Wind will also be responsible for maintaining the cable line that will be located on the bayside of IBSP. Regarding this section of cable, DEP notes that the DEIS does not make specific reference to the living shoreline proposed by Ocean Wind for the purpose of protecting the cable. This should be addressed in the Final EIS.

Although Ocean Wind plans to remove all above ground structures upon project decommissioning, the cable, including all underground components, will need to be removed from IBSP, including the swimming area and in Barnegat Bay; and any areas of disturbance will need to be restored to the pre-project conditions at IBSP.

Finally, NJDEP recommends that areas of temporary disturbance be re-seeded or replanted with species native to New Jersey barrier islands, and efforts to reduce soil erosion and sediment control should not include application of fertilizer or lime.

Coastal Engineering

The DEIS notes that no exclusion zones will be implemented, except the potential for a safety zone exercised by the United States Coast Guard during construction. NJDEP requests that BOEM and Ocean Wind confirm that there will be no restrictions near/around cables related to marine navigation, anchoring, fishing, or dredging operations. Additionally, the current proposal avoids borrow areas/sand resource areas but there are proposed cable landings that may impact beach replenishment projects, and therefore require coordination & communication with the U.S. Army Corps of Engineers, the Non-federal Sponsor, and local owner (municipal and/or private).

NJDEP also recommends that vibration monitoring/structure monitoring be implemented for the onshore construction activities including but not limited to infrastructure, bridges, businesses, homes, and drainage structures.

Water Allocation and Well Permitting

The plan calls for the installation of transmission lines from the offshore export cables to the onshore distribution system. The onshore cables and substation construction would require either trenching or directional drilling. These projects may require some form of construction related dewatering authorization from the Bureau of Water Allocation and Well Permitting and are identified in Appendix A, Table A-1 of the DEIS. As indicated in Appendix A, Table A-1 a Temporary Dewatering Permit for each site, which



requires the submittal of a hydrogeological report to determine potential impacts from the dewatering activities. These permits typically take between 6-9 months to review and may include a public hearing.

Surface Water & Pretreatment Permitting

Based on the information provided in the DEIS, a NJPDES Discharge to Surface Water General Permit will be needed for a surface water discharge from construction related dewatering.

If the discharge will be uncontaminated groundwater generated during construction activities, the appropriate NJPDES Discharge to Surface Water General Permit is the B7 - Short Term De Minimis General Permit (<http://www.nj.gov/dep/dwq/gp-b7.htm>). As per the B7 application checklist, analytical lab data of all the parameters specified in Attachment 1 must be submitted and the results must demonstrate that they are below the effluent standards.

If the discharge will be treated groundwater from remediations and dewaterings, the appropriate NJPDES Discharge to Surface Water General Permit is the BGR – General Groundwater Remediation Clean-up Permit (http://www.nj.gov/dep/dwq/gp_bgr.htm). As per the BGR permit application, a summary of the contaminants of concern must be submitted where the data was collected no more than 12 months prior to the submittal of the application. In addition, a Treatment Works Approval (TWA) may be needed for the construction of the treatment system.

Air Quality - Evaluation and Planning

Section 3.4.1 Description of the Affected Environment for Air Quality

In addition to Ocean, Atlantic, and Cape May counties, the counties of Cumberland, Gloucester and Salem are also in the southern New Jersey nonattainment area (Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE) for ozone where activities are taking place for this project. This area is currently classified as marginal nonattainment for both the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS), and the 2008 8-hour ozone NAAQS. Also, the area designations for carbon monoxide (CO) are incorrect. The counties of Cape May, Cumberland, Gloucester, and Salem are in attainment of CO. The second ten-year maintenance plan for CO for Atlantic and Ocean counties ended on December 31, 2017, therefore General Conformity no longer applies (40 CFR Section 93.102(b)(4))

Therefore, Section 3.4.1 of the Final EIS should be updated to be consistent with the current nonattainment and maintenance area status for New Jersey that are applicable to this project.

In addition, a General Conformity Applicability Analysis and possibly a Conformity Determination may be required by any federal department or agency that has authority for any portions of the emissions from activities taking place in the nonattainment areas in accordance with the USEPA's Federal General Conformity regulation (40 CFR, part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans). Clarification of compliance with the General conformity regulations should be included in the final EIS.

Further, a General Conformity Applicability Analysis and possibly a Conformity Determination may be required pursuant to the USEPA Federal General Conformity regulation for any portions of the emissions from activities taking place in the nonattainment areas (40 CFR, part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans). Clarification of compliance with the General conformity regulations should be included in the final EIS.

Section 2.1.3.1 Affected Environment

NJDEP notes that the DEIS should mention that Gloucester County is in the maintenance area for the 2006 PM2.5 NAAQS, and also that EPA has revoked the 1979 1-hour ozone standard.



Therefore, Section 2.1.3.1 of the final EIS should be updated to be consistent with the current nonattainment and maintenance area status for New Jersey that are applicable to this project.

Thank you for providing the New Jersey Department of Environmental Protection with the opportunity to comment on the Draft Environmental Impact Statement for Ocean Wind, LLC's Proposed Wind Energy Facility Offshore New Jersey. 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,

A handwritten signature in black ink that reads "Megan Brunatti". The signature is written in a cursive, flowing style.

Megan Brunatti
Deputy Chief of Staff

w/Attachment

