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Amanda Lefton, Director
Bureau of Ocean Energy Management
1849 C Street, NW
Washington, DC 20240

August 22, 2022

RE: Docket No. BOEM-2022-0033
Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development

Dear Ms. Lefton,

The New Jersey Department of Environmental Protection (NJDEP) appreciates the significant effort by BOEM staff and state and federal partners, including the National Marine Fisheries Service, in preparing this Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development (Guidance). The final Guidance will be a valuable tool for establishing standards for effective mitigation and facilitating equitable compensation across projects and states. Commercial and recreational fishing in New Jersey is a multi-billion-dollar heritage industry and preserving that industry and our working waterfronts by avoiding and compensating losses is an important aspect of offshore wind development.

On July 12, NJDEP staff attended a Joint States Working Meeting for Fisheries Stakeholders from CT, NY, NJ, and VA to gather input from the commercial and recreational fishing industries. A summary of that meeting was submitted by Morgan Brunbauer of NYSERDA on behalf of the participating states, including New Jersey. Additionally, NJDEP staff attended BOEM's east coast public meeting to hear stakeholder feedback in response to the draft Guidance. Further, NJDEP supports the comments submitted by the New England, Mid Atlantic, and South Atlantic Fishery Management Councils.

NJDEP's comments herein were informed by fisheries stakeholders, including commercial and recreational industry representatives from New Jersey, the New Jersey Marine Fisheries Council's Offshore Wind Committee, and its advisors, and by consultation with Dr. Andrew Scheld, a fisheries economist from the Virginia Institute of Marine Science. The broad and inclusive scope of the draft Guidance provides an excellent framework for discussions of mitigation between developers and stakeholders. NJDEP encourages BOEM to consider regular review and revisions as necessary once the Guidance is put into practice and we learn from experience.

Project Siting, Design, Navigation, and Access

BOEM has made significant improvements in communicating the process of winnowing in lease area development, but process by which BOEM evaluates and prioritizes resources in that process remains unclear to some extent. For example, New Jersey stakeholders have expressed that it in certain instances, it appears impacts to fishing are considered less important in siting than impacts to other marine uses. The draft Guidance provides a list of criteria for developers to consider for mitigating impacts, but there is no similar documentation for the criteria BOEM uses during the winnowing process. More information about the process used for weighting competing uses would be helpful to inform stakeholders.

Further, NJDEP supports the static cable design guidance, which is consistent with New Jersey's recommendations. BOEM may consider addressing whether vessel operators could be held responsible for accidental damage to cables or other offshore wind structures.

Safety Measures

NJDEP supports the mitigation measures outlined in the safety section of the draft Guidance. Additionally, fisheries stakeholders have provided the following suggestions for mitigation measures to improve navigational safety in the wind farm area:

- Continue to conduct research into mitigating impacts to marine radar
- Provide radar equipment that will be effective in a windfarm as well as training to vessel operators (including recreational fishing vessel operators)
- Install AIS transponders on every turbine and substation
- Provide AIS transponders and receivers to vessels
- Provide cell phone coverage in wind farms

Environmental Monitoring

BOEM should consider identifying the need for new and revised guidance documents for pre- and post- construction surveys. For context, New Jersey's Coastal Zone Management Rules do not include specific parameters for monitoring; including where, how, and for how long. In order for monitoring to be effective and economical, standardization across projects is needed.

Also, evaluating environmental change related to offshore wind requires a time series of data, pre- and post- construction, to provide statistical power in order to detect change in the spatially and temporally variable marine environment. At least two years of pre-construction data should be recommended, and monitoring should continue for the life of the project. It may be many years for post-construction changes to be detectable, since some fish species have population cycles of a decade or more. Therefore, extended monitoring periods are necessary to identify the cause of changes. Monitoring studies should be hypothesis-based and designed to detect impacts from offshore wind. Before After Control Impact studies (BACI) and Before After Gradient (BAG) studies are promising approaches. However, we caution against overly prescriptive

guidance. Offshore wind research is a rapidly changing field, and a requirement for effective stakeholdering for monitoring plans is recommended rather than identifying specific methods.

Additionally, guidance for habitat mapping would inform micro-siting and reduce loss in ecological services. This can be done via remote sensing equipment and appropriate ground-truthing work (side scan sonar, single/multi-beam echosounders, profile camera equipped with appropriate acoustic sensing equipment, etc.). This will also help in tracking sediment movement (accumulation, scour) across a lease area over time. There is currently no guidance for assessing the effects of turbine foundations on hydrodynamics. Modeling and monitoring hydrodynamic changes within turbine arrays and across multiple arrays in the region may help to substantially inform turbine placement (for minimization of hydrodynamic changes) and to assist with predictive modeling for fisheries impacts.

Further, methods should be identified to determine the nature and size of potential economic losses. This should include consideration of how losses will be documented, and how to ensure all claimants have equal access to information about claims and making claims. Larger businesses likely have more resources to stay engaged with offshore wind development, including how to avoid, document, and get compensated for losses. And economic losses can come in many forms, including reduced catch, higher operating expenses, and increased competition for fishing space. This is a complex problem that is likely best approached in a cooperative effort that includes fisheries economists, industry representatives, and managers. Monitoring should also include the recreational fishery.

Financial Compensation

The draft Guidance includes compensation of losses, but not avoiding losses by funding adaptation in vessels, gear, and methods. Claims-based compensation alone does not support the fishing community adapting in advance to operation inside windfarms. Vineyard Wind's Fisheries Mitigation plans include funding a Future Viability Trust intended to support "continued viability and success of Rhode Island's fishing industry by providing funds to address concerns raised about safety and effective fishing in and around the Vineyard Wind project area and wind farms generally," and Massachusetts has a Fisheries Innovation Fund to "support programs and projects that support innovative solutions and technology development to ensure safe and profitable fishing continues." This compensatory approach should also be considered by BOEM for inclusion the Guidance.

Estimating Revenue Exposure
NJDEP agrees with the proposed fisheries mitigation measures, however, we encourage BOEM to consider that compensation for economic losses will require extensive, fishery-by-fishery analysis including consultation with fisheries economists and industry. Determining the value of compensations funds is complex. Expertise in vulnerable Atlantic fisheries and fisheries economics, adequate and recent fisheries data, and extensive stakeholder engagement may all be necessary for success. A fisheries economics task force staffed by fisheries economists, industry representatives, management councils, and managers should be considered.

The commercial fishing industry should be involved at all stages of the compensation processes, beginning in the early stages. 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 in this process to the greatest extent possible.

We agree that compensation to commercial and recreational fisheries must include secondary industries and that landings revenues are only a starting place for estimating potential economic losses. Also, economic impacts to processors, fuel suppliers, distributors, etc., must be considered and compensated. Multipliers will vary between areas and fisheries, however the 1-2% value in the guidance seems low. For example, a 2020 report by Murray et al.[1] provided estimates of value added for summer flounder that suggest a multiplier of 12X. A 2020 study from Scheld[2] reported a multiplier for longfin squid of 7.64X. Therefore, we strongly recommend consulting with the industry, fisheries economists, and the Science Center for Marine Fisheries.

Moreover, recreational fisheries have expressed concern about potential economic losses and should be engaged in compensation. We recommend including private and shore-based recreational fishing under socioeconomic and cultural resources. Though the for-hire recreational fleet is a significant part of the recreational fishery, other participants and shoreside support industries (e.g., bait/tackle shops, vessel, and tackle manufacturers, etc.) also contribute significantly to the economic, social, and cultural characteristics of coastal communities potentially impacted by offshore wind energy developments. For recreational data: https://asafishing.org/state-reports/economic-impacts-of-recreational-fishing-new-jersey/

Duration of Compensatory Period
Stakeholders expressed concern about the stepdown in compensation, and the assumption that economic losses will decrease over time. The assumption that all fisheries will recover may be problematic. While some may recover, it seems possible that economic losses may continue over time for some as more areas become inaccessible. Vineyard Wind's ROD provided for compensation over the 30-year lifetime of the project. A compromise BOEM might consider may be a mandatory three-to-five-year review of socioeconomic impacts.

Claims
NJDEP received comments regarding the need for more comprehensive income compensation following gear loss, and compensation for capital losses for commercial operators.

[1] Murray, T.J. 2020. Economic Impacts of Reduced Uncertainty Associated with Fishery Management Actions with Summer Flounder, Report to the Science Center for Marine Fisheries, June 2020, available at https://scemfis.org/wp-content/uploads/2020/06/Econ_Flounder_2020.pdf.
[2] Scheld, A.M. 2020. Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S, Report to Science Center for Marine Fisheries, August, 2020, available at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf.

In addition, BOEM should consider how permit transfers will affect eligibility of claims. Permits may be transferred between individuals; in which case the permit holder should be entitled to claims for losses related to historic use of that permit while the former owner should not.

Claims Process
BOEM should consider that the two-year time limit on claims may not be enough time for claimants to substantiate their loss with state or federal landings records. In some cases, the necessary data may not be available for two years or more.

Cumulative impacts
There is a need for developing a transparent, stakeholder-approved methodology for estimating, measuring, and compensating cumulative impacts to specific industries and states. Moreover, guidance for cumulative impacts should avoid any time limits on claims or proposed step-downs in value unless there is supporting data.

Beyond the direct impacts to fisheries, changes in fishing industry may result in impacts to the broader communities they support. Effects could include changes in landings leading to changes in value-added industries, increased competition for shoreside support services, opportunities for skilled labor / labor competition, impacts on local seafood culture, etc. Additionally, environmental justice considerations for the fishing industry should be considered to protect small fishing ports and their workers.

Finally, there is a large information gap in estimating potential impacts and measuring actual impacts. As windfarms are constructed across the outer continental shelf, regular reporting of impacts, including cumulative impacts, and evaluation of mitigation success may be an effective way to inform the industry, state and federal agencies, and stakeholders, over time.

Administration of Funds
BOEM has asserted that it does not have jurisdiction to either establish or administer a compensatory mitigation fund. In response, New Jersey and other states are considering the need to establish a regional administrator to manage fishery compensation dollars. These discussions among the states are ongoing.

NJDEP appreciates the opportunity BOEM provided for stakeholders to engage in this important work, and the significant efforts of the individuals involved. We believe that offshore wind can be developed responsibly if we continue to work together to protect the valuable fisheries of our state, including our unique and diverse ports and secondary industries. There are many willing partners in the fishing industry, resource management, regional groups, and the academic community. We encourage continued efforts to engage and utilize these resources. The final Guidance will be a critical tool for establishing standards, facilitating discussions, and ensuring equitable compensation across projects and states.

Thank you for providing the New Jersey Department of Environmental Protection with the opportunity to comment on the Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development. If you have any questions or would like to discuss these comments, please contact Colleen Brust at Colleen.Brust@dep.nj.gov.

Sincerely,

Megan Brunatti
Deputy Chief of Staff