



August 13, 2021

Luke Feinberg
Program Manager, Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, Virginia 20166

Re: New York Bight Proposed Sale Notice

Dear Mr. Feinberg,

Please accept these comments from the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) and the New England Fishery Management Council (New England Council) regarding the Proposed Sale Notice (PSN) for wind energy leases in the New York Bight. We provided comments in April 2021 on issues to consider during development of the Environmental Assessment for these potential leases.¹ We reference some of those comments here.

The New England Council has primary management jurisdiction over 28 marine fishery species in federal waters and is composed of members from Connecticut to Maine. The Mid-Atlantic Council manages more than 65 marine species² in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). In addition to managing these fisheries, both Councils have enacted measures to identify and conserve essential fish habitats (EFH), protect deep sea corals, and sustainably manage forage fisheries. The Councils support policies for U.S. wind energy development and operations that will sustain the health of marine ecosystems and fisheries resources. While the Councils recognize the importance of domestic energy development to U.S. economic security, we note that the marine fisheries throughout New England and the Mid-Atlantic, including within the potential lease areas and in surrounding areas, are profoundly important to the social and economic well-being of communities in the Northeast U.S. and provide numerous benefits to the nation, including domestic food security.

Our comments focus on the subset of BOEM's questions that we deemed most relevant to fishery stakeholders, addressed in the order listed in the PSN. We also discuss transmission cable issues.

Summary of recommendations

- BOEM should not publish the final sale notice until the outstanding issues identified below are resolved.
- BOEM should work with the fishing industry to identify, document, and resolve issues related to lease area and transit lane configuration.

¹ Our April 2021 comment letter is available here: https://www.mafmc.org/s/2021-04-28_NEFMC-MAFMC-to-BOEM-re-NY-Bight-WEAs.pdf.

² Fifteen species are managed with specific Fishery Management Plans, and over 50 forage species are managed as "ecosystem components" within the Mid-Atlantic Council's FMPs.

- BOEM should further develop and refine through public comment the potential lease conditions generally identified in this PSN regarding coordinated layouts, compensation plans, communication plans, etc. BOEM should seek input from the public on specific condition language before publishing the final sale notice, rather than as part of final sale notice rollout.
- We recommend taking a precautionary approach in determining the setback distance from lease area boundaries, consistent with the precautionary principle used by the Councils in managing fishery resources.
- BOEM should require, as a condition of the leases, coordination among developers on the following: shared cable corridors and coordinated transmission for nearby projects, coordinated layouts, compensation plans, and communication plans.
- When holding workshops and meetings to elicit feedback from stakeholders, developers should be required to address and adequately answer each question, similar to what is done during the National Environmental Policy Act (NEPA) public comment period process.

Item A: Number, size, orientation, and location of the proposed lease areas

The call area to wind energy area (WEA) to lease area winnowing process removed areas from consideration over a multiyear period based on various use conflicts, including commercial and recreational fishing, maritime navigation, visual impacts, marine protected species, avian species, radar, and others. Between establishing the WEAs and defining possible leases, the state of New York expressed concerns about the importance of the Fairways North and South Areas as fishing grounds, and these were not among the eight lease areas identified in the PSN. We appreciate the exclusion of these areas. After the PSN was published, the Department of Defense (DOD) recommended removing areas from Hudson South A (OCS-A 0543).

Accounting for the DOD exclusion, just over 600,000 acres are proposed for leasing under this notice. This represents the largest renewable energy lease offering to date along the U.S. east coast (Massachusetts leases OCS-A 0520, 0521, and 0522 were offered in a single auction in 2019 and totaled approximately 388,000 acres). We recognize that leasing is many steps removed from issuing a permit to construct and operate a wind farm, but it is a critical early step that provides the first opportunity to mitigate adverse impacts on marine resources and ocean users. Specifically, while some impacts of renewable energy development can be mitigated through permit conditions on a specific project, other effects will be most easily avoided by not leasing certain areas or by establishing conditions associated with a lease.

To reiterate our April 2021 comments, this is not the time to rush into additional leases without a robust and public dialog about the potential effects of development in these areas. We recognize the work BOEM has done this summer to solicit feedback from fishermen and fishery organizations, but listening to these conversations, it appears that multiple issues around lease and transit area configuration remain unresolved.

In part, our concerns about this leasing opportunity are related to the intense pace of permitting work occurring in areas already leased and the ability of the fishing community to keep pace with these developments. Survey work, design, and environmental review are already occurring for over a dozen projects in previously leased areas, and additional areas within these existing leases could be developed through additional projects. The pace and number of offshore wind projects in development in our region already pose challenges for thorough analysis of potential impacts, informed public input,

and adopting lessons learned from each project. Available resources in the fishing, fishery management, and fishery science communities are already taxed by consulting and coordinating on the previously leased projects.

Fishing activity takes place within all the proposed lease areas. Therefore, if any of these areas are to be leased, difficult tradeoffs must be made regarding fisheries. When identifying final lease areas that minimize conflicts with fishing activity, BOEM must use all available data sources, combined with direct input from the fishing industry, and be transparent in explaining how these data were used to make tradeoffs across different objectives and categories of user conflicts. BOEM's [memorandum for area identification](#) describes the Relative Use Index and weighting approach used to evaluate fisheries data (pg. 14-15). We are concerned that the Relative Use Index is overly reliant on AIS data, which does not represent all fishing activity in the New York Bight. Vessel trip reports (VTRs) and/or logbooks are required for virtually all commercial and for-hire trips in federal waters in this region (except for vessels participating in the commercial lobster fishery that do not also hold permits for any other federal waters commercial fisheries). For this reason, they are a much more comprehensive source of information than AIS; however, they lack the spatial precision of AIS data.

Based on VTR data and clam logbooks, commercial fisheries in the New York Bight lease areas generally include surfclam, ocean quahog, sea scallop, mackerel, squid, butterfish, summer flounder, scup, black sea bass, Atlantic herring, and Atlantic mackerel (data from NOAA Fisheries). It is important to note that landings, revenue, and the distribution of fishing effort for each fishery can vary over time based on many factors including fluctuations in abundance and distribution of multiple target and non-target species, changes in fisheries regulations, changing market conditions, and other factors. Patterns in future fishing effort can be challenging to accurately predict; however, when assessing tradeoffs around areas to lease or not lease for renewable energy development, BOEM should consider past, current, and potential future changes in fishing activity, as renewable energy projects are developed, installed, and operated over decadal timescales.

Item B: To what degree do transit corridors meet user needs?

The transit corridors between adjacent leases in the Hudson South WEA are useful and important to retain in the final leasing configuration. The six Hudson South leases collectively encompass nearly 475,000 acres, accounting for the transit corridors and DOD exclusion from Area A. Important fishing grounds, including a scallop access area, lie on the far side of the lease areas and consistent equal width transit corridors will provide a direct route to and from these fishing grounds. As we understand it, the transit lanes of 2.44 nm width accounted for in the potential lease areas match the input provided by the fishing industry during the March 2019 New York Bight Transit Workshop organized by NYSERDA and RODA. It would be useful for BOEM to document this consistency more clearly since the workshop transit proposals are not publicly available for overlay with the lease areas. Tug and towing lanes under development by the United States Coast Guard overlap with potential lease areas as well, and while this issue is beyond our area of expertise, the need to balance multiple competing uses provides another argument for continued public dialog before lease areas are finalized. Further dialog about the transit corridor between OCE-A 0546 (Hudson South A) and OCS-A 540 and OCS-A 541 is warranted given the DOD exclusion in the middle of OCS-A 0543 that occurred after the PSN was published.

While not transit corridors per se, surface structure setbacks along the edges of lease areas can

effectively create open corridors along these boundaries, which could be used for transit, fishing, or provide other benefits including protection of fishery species and habitats adjacent to the lease areas. A setback distance of 750 m is suggested in the PSN. Two adjacent setbacks would create a corridor of roughly 0.8 nm between structures placed within adjacent lease areas. Setbacks larger than the suggested 750 m may be needed to reduce potential effects of development to the adjacent scallop Mid-Atlantic Access Area (MAAA), which has supported roughly one third of all scallop landings and revenue between 2015 and 2019 (Table 1). Exploitable biomass from the MAAA (Table 2) constitutes a substantial fraction of exploitable biomass for the stock. A larger setback from the access area could help reduce the effects of disrupting scallop larval flow/transport through the access area and reduce any potential changes to settlement patterns by wind development ([Chen 2020](#)). Scallop settlement determines where adults will occur, and thus, where the fishery can occur. Therefore, any changes in settlement patterns could influence future fishing distributions relative to historical patterns. Additionally, [Hart, et al. 2020](#) evaluated source-sink dynamics and found that the Hudson Canyon area is important for seeding down-stream areas to the south, particularly the Elephant Trunk, which has supported the bulk of scallop landings from the MAAA since 2015.

We are not recommending a specific setback distance; however, the 5 nm setback being suggested by the scallop industry is illustrated in Figure 1. Overall, we recommend taking a precautionary approach in determining the setback distance, consistent with the precautionary approaches the Councils apply when managing fishery resources. Setback distances should be determined to minimize the possibility of adverse effects on fishery resources, especially sessile species including sea scallops.

Item E: Lessee progress reports on stakeholder engagement

Regular engagement with the fishing industry and other stakeholders potentially impacted by the project should be conducted through progress reports, workshops, dockside visits, and updates to state and regional management groups, including at Council meetings. Both the quality and the quantity of engagement are important. Progress reports that summarize such efforts could be useful collaboration tools, depending on the information provided. In our view, these reports will better support collaboration if they go beyond lists of meetings and document questions and concerns raised by stakeholders and provide answers to those questions. In addition, such reports should clearly identify how lessees are using stakeholder feedback to modify project designs, including layout considerations, or better evaluate conditions at the site. This should benefit both the public and the lessee. Layout issues are very important to fishery stakeholders and any dialog related to these issues should be clearly documented in the reports. If fishery concerns are reflected in the design, the reports should say how and where this was done. If they were not used to adjust the design, the report should explain why not, or if the comments remain under ongoing consideration. Semi-annual or annual reports would likely suffice early on as the site assessment plan is being developed, but semi-annual or even quarterly updates could be important as the project design evolves.

Item F: Limits on number of lease areas per bidder

BOEM has proposed eight lease areas and is considering limiting the number of lease sales per bidder. This will likely result in multiple different developers carrying out site assessment work and eventually construction and operations in adjacent or nearby areas. We believe the number of different lease holders is not as important as close coordination across nearby projects. However, there could be some advantages to having fewer leaseholders. A smaller number of lease holders would likely facilitate

coordination across projects in terms of consistent data collection and analysis, as well as coordinated layouts, transmission, and engagement with other ocean users, including fisheries and fisheries management. Fewer and/or well-coordinated leaseholders would also provide for more consistent analysis of habitat and fisheries survey data collected as part of site assessment and monitoring.

Regardless of the lease holder, surveys should be coordinated across lease areas so that consistent baseline data are collected, considering the recent [recommendations](#) of the Responsible Offshore Science Alliance relative to fisheries assessment, and NOAA Fisheries [habitat mapping recommendations](#) for seabed characterization.

Item G: Coordinating engagement among lessees, tribes, ocean users and stakeholders

Meaningful consultation between developers, tribes, and other ocean users, including commercial and recreational fisheries, is extremely important. These consultations should be meaningful to avoid the perception of a “checking the box” exercise. For example, when holding workshops and meetings to elicit feedback from stakeholders, developers should be required to address and adequately answer each question, similar to what is done during the NEPA public comment period process. We recognize this is resource intensive; however, it is a critical component of the public participation process that ensures all voices are heard and incorporated into the project development where possible. BOEM and developers should be mindful of the meeting fatigue which is already occurring due to the number and pace of offshore wind projects already in development in this region.

We understand that the BOEM regulations allow offshore wind project developers to revise their COPs throughout the environmental review process. These changes, which have sometimes occurred during open scoping periods, pose significant challenges for stakeholders and partner agencies to provide input on and understand the likely impacts of the project. To help address this concern, we request that BOEM announce to the public whenever a COP has been revised along with a summary of the revisions.

Compensation and financial mitigation for fisheries losses is an area where regional-scale coordination across lease areas would be helpful. At present, separate discussions are occurring across each project and state consulting under the Coastal Zone Management Act. While we assume project and state specific planning will continue to occur, regional coordination related to mitigation and compensation could help the fishing industry to engage constructively and efficiently in this process.

Item H: Prescribing uniform and aligned layouts

Coordinated turbine layouts should be prescribed by BOEM when leases are issued, and not left to lessees to determine later, especially in the Hudson South area where there are multiple adjacent lease areas. The goal of these stipulations should be to allow safe transit through nearby lease areas, even if they are not immediately adjacent to one another. There are multiple approaches that could help minimize impacts to other ocean users, including commercial and recreational fisheries, search and rescue operations, and scientific surveys. One option is standardized, uniform turbine layouts, such as those implemented in New England, or layouts based on benthic contours across projects. Regardless of the specific approach employed, BOEM should develop lease conditions that will require coordinated planning across projects and lease areas. Identifying any restrictions or conditions during leasing will avoid inconsistent approaches within adjacent lease areas and benefit

developers because they can consider this information when submitting bids. Layout coordination during the leasing phase would not negate the need for established transit corridors. Some vessels may not be able to fish within the wind array but would likely be able to fish in the wider transit lanes, potentially helping to offset loss of landings and revenues from the wind farm.

Item I: Preferred lease area size

The Councils do not have a recommendation as to what lease area size is most appropriate. However, we have observed that leases are frequently segmented with multiple projects developed within a single lease. This could be problematic if segmentation excludes project design alternatives that would be possible in a larger area. More specifically, this could result in less flexibility for changing turbine locations to minimize impacts to habitat and fisheries.

Coordinated transmission planning

We are very concerned about the hundreds of miles or more of transmission cables that will be required for development of these leases, the distribution of which is driven in large part by lease area configurations. Transmission issues were not identified as a topic for feedback within the PSN, but they should be planned for in conjunction with leasing. As you are aware, the Atlantic coast states support robust, regional transmission planning.³

The concept of a transmission backbone connecting multiple wind projects was previously discussed by BOEM in [2011](#) and further evaluated by New Jersey in [2020](#); however, discussions of this issue seem to have stalled and we are not aware of further planning for coordinated transmission in this region. We have commented to BOEM in the past that coordinated transmission could have environmental benefits as it might reduce the number of cable installations required. Absent lease provisions for coordinated transmission, each of the eight or more projects that could be developed within these lease areas could have its own cable corridor. Separate corridors for each project seem especially likely if a bidder can only secure a single lease area (item F). More and longer cables will have greater environmental impacts. Effects of cable installation include both noise and sediment plumes, which may affect biological processes for fish species. In addition, as we have noted in previous letters, fishing industry stakeholders remain concerned about the potential impacts of electromagnetic fields (EMF) generated by these cables on fishery species, which is an area of ongoing scientific study.

To minimize these impacts, transmission planning in conjunction with leasing is extremely important. BOEM should require, as a condition of the leases, coordination across developers around shared cable corridors for neighboring projects. Careful transmission planning will avoid or minimize impacts to habitat and fisheries. We also recommend that developers not be restricted in where they can connect to shore based on state procurement agreements. As we have seen with the proposed Beacon Wind project, such restrictions can result in very long cable corridors which can vastly increase the amount of impacted marine habitat. We recognize that this issue does not entirely fall under BOEM's authority as states can implement their own requirements; however, we believe it is an important issue to raise.

We have commented in response to recent NOIs that in the context of both cable and turbine

³ [Joint Governors Letter to Biden Admin OSW priorities FINAL.pdf\(ny.gov\)](#)

installation, any place where the bottom sediments will be disturbed must be evaluated for sediment contamination to understand the potential for environmental effects associated with contaminant release. Two obvious sources of contamination are dredged spoils from inshore, nearshore, or harbor maintenance and disposal of onshore materials (including waste). Crossings with existing cables or other planned cables are also of concern because unburied cables pose an entanglement risk for bottom-contact fishing gears. There are many other existing cables in the New York Bight as well as areas of environmental contamination that should be avoided. These sources of contamination need to be assessed and managed as part of the offshore wind development process. Also, we are concerned that cable routes could occur within sensitive habitats, namely areas adjacent to both Hudson Canyon and the mudhole.

Given concerns about habitat impacts, existing cable crossings, sediment contamination, and the use of longer cable corridors than may be necessary, we strongly recommend that BOEM reinvigorate these conversations on coordinated transmission prior to leasing additional areas in the New York Bight.

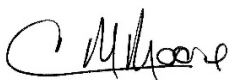
Conclusion

We recommend that the final sale notice not be published until the issues identified above have been resolved. Generally, setting lease conditions regarding coordinated layouts, compensation plans, and communication plans seem reasonable, but it is difficult to provide feedback absent more specific proposals.

We appreciate the opportunity to provide comments to ensure that issues of social and ecological importance are considered as BOEM considers leasing areas of the New York Bight for wind energy development. We look forward to working with BOEM to ensure that any wind development in our region minimizes impacts on the marine environment and can be developed in a manner that ensures coexistence with the fisheries we manage. We would be happy to assist in communicating information to the fishing industry through our respective Council processes.

Please contact us if you have any questions.

Sincerely,



Dr. Christopher M. Moore

Executive Director, Mid-Atlantic Fishery Management Council



Thomas A. Nies

Executive Director, New England Fishery Management Council

cc: J. Beaty, M. Luisi, W. Townsend, J. Bennett, A. Lefton

Tables and figures

Table 1. Scallop landings (lb) and revenue (USD) from the Mid-Atlantic Access Area from 2015 to 2019. Also shown is the percent of total annual landings and revenue from the Mid-Atlantic Access Area.

Fishing Year	Scallop landings (lb)	Revenue	% of total landings	% of total revenue
2015	18,067,453	\$218,709,496	51%	50%
2016	17,404,187	\$201,076,913	42%	41%
2017	12,453,473	\$110,867,646	23%	21%
2018	13,270,490	\$115,347,491	22%	21%
2019	19,549,644	\$178,963,760	33%	32%
Total	80,745,247	\$824,965,305	32%	32%

Table 2. Exploitable biomass projections for fishing years 2016-2021 in the Mid-Atlantic Access Area.

Year	Exploitable Biomass Projection (mt)
2016	33,840
2017	30,227
2018	40,119
2019	43,569
2020	34,975
2021	15,777

Note: Survey data used are from 2015-2020. Values represent the estimated biomass at the time of the survey, plus one year of growth, and adjusted for fishing mortality and natural mortality in that area that is assumed to occur between the time of the surveys and the start of the next fishing year.

Figure 1. Scallop rotational area with 5 nm buffer.

