



April 30, 2024

Kimberly Sullivan  
Bureau of Ocean Energy Management  
Office of Renewable Energy Programs  
45600 Woodland Road  
Sterling, Virginia 20166

Dear Ms. Sullivan,

Please accept these comments from the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) and the New England Fishery Management Council (New England Council) on the notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed Atlantic Shores North offshore wind project off New Jersey.

The Mid-Atlantic Council manages more than 65 marine species<sup>1</sup> in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). The New England Council has primary management jurisdiction over 28 marine fishery species in federal waters and is composed of members from Maine to Connecticut. 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, the marine fisheries throughout the Mid-Atlantic and New England are profoundly important to the social and economic well-being of communities in this region and provide numerous benefits to the nation, including domestic food security.

Our key recommendations are as follows. Additional details are provided below.

- The EIS should not imply that BOEM will only approve projects that are large enough to meet existing or expected contractual agreements made by the developer as this limits BOEM's ability to reduce the negative impacts of the project.
- The alternatives should be informed by thorough site characterization work.
- All project infrastructure should be placed in the same uniform grid layout.

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<sup>1</sup> 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 consider how to best reduce the negative impacts of the project on habitats and fisheries. However, we no longer support use of the term “minimization” to describe alternatives which aim to achieve this goal.
- BOEM should work closely with NOAA Fisheries to identify appropriate fishing and habitat data to use when informing alternatives development and any potential impacts and mitigation measures needed.
- Setbacks and other restrictions should be considered to reduce the negative impacts of construction activities on important fishing areas, including artificial reefs.
- An overly wide project design envelope (PDE) poses challenges for thoroughly evaluating and understanding the range of possible impacts of the project.
- The recommendations outlined in the Council’s offshore wind energy policies should be adopted as required mitigation measures for this project.

### **Purpose and Need**

The National Environmental Policy Act (NEPA) requires consideration of a range of alternatives which could meet the defined purpose and need for the action. The EIS should clearly and succinctly define the purpose and need. The purpose and need should not be tied to broad federal renewable energy goals or the overall New Jersey state goal for renewable energy. This project has not yet entered into a contract for offshore renewable energy credits or another form of power purchase agreement. Therefore, the specific amount of energy production needed for the developer to meet contractual agreements is not yet known. In addition, as we have stated in previous comment letters for other wind projects, the implication that BOEM will not consider approving projects smaller than what is proposed by the developer or necessary to meet existing or expected contractual agreements made by the developer is very concerning as it limits BOEM’s ability to consider ways to reduce the potential negative impacts of the project, including “protecting biodiversity and ocean co-use.” The EIS should indicate that BOEM’s ability to approve a construction and operations plan with modifications could mean approving a smaller project than that proposed by the developer or than would be necessary to meet agreements made by the developer. For example, state energy procurements are often made well before detailed site characterization data have been collected and before the impacts of the project have been fully analyzed. This can result in overly ambitious procurements which can pose challenges for reducing the negative impacts of the project.

We also suggest expanding on the terms biodiversity and ocean co-use to make it clear that the project will avoid risks to the health of marine ecosystems, ecologically and economically sustainable fisheries, and ocean habitats. BOEM should clearly acknowledge that if these risks cannot be avoided, they should be minimized, mitigated, and compensated for.

## **Range of alternatives**

Thorough site characterization work should be done prior to publication of the draft EIS and the associated public comment period. We believe this is consistent with the recently published Renewable Energy Modernization Final Rule, under which “geophysical survey data is required at each foundation and cable location in the COP to develop the geologic model as well as for environmental reviews.” The range of alternatives should be informed by detailed information on seabed conditions in the lease area. BOEM should seek to avoid issues that occurred with other wind projects where alternatives taken out to public comment were later deemed infeasible based on seabed conditions (e.g., presence of glauconite in Empire Wind 1). The EIS should also specifically explain if, and to what extent, seabed conditions dictate turbine and offshore substation foundation type.

The NOI indicates that the EIS may consider a “uniform grid alternative” which would “move all permanent structures that narrow any linear rows and columns to fewer than 0.6 nautical miles (1,100 meters) or in a layout that eliminates two distinct lines of orientation in a grid pattern.” Uniform layout should not be an alternative; it should be a standard requirement that applies to all offshore wind energy projects. Uniform grid layouts are necessary for navigational safety and, when sufficiently spaced, can help to reduce negative impacts to fishing and transit within the project area. BOEM should not allow any consideration of placing permanent project infrastructure in locations that reduce the spacing for structures in this already tightly spaced project. It is worth noting that the proposed spacing of 0.6 by 1 nautical mile is narrower than several other projects planned for the East Coast. Further restricting navigation by placing structures in intermediate locations within the grid pattern would be very problematic and would undermine the intent of the grid pattern.

The NOI also notes that the EIS may consider a “visual minimization alternative” which would restrict the height of wind turbines. The EIS should consider that height restrictions would require more, smaller turbines to produce the same amount of energy as fewer, taller turbines. This could result in a greater area of impacted habitat, additional construction work, and other impacts.

The NOI also notes that BOEM may develop a “habitat and fisheries minimization alternative” to reduce impacts to habitat and fisheries. We strongly support project modifications to reduce negative impacts to habitats and fisheries. We urge BOEM to work closely with NOAA Fisheries to consider the most appropriate fishing and habitat data and other considerations to inform the alternatives and associated mitigation measures. However, we recommend that BOEM not use the term “minimization” when describing such alternatives. Depending on the final parameters of the alternatives, impacts to habitat and fisheries may be reduced, but we have not seen prior examples of alternatives developed by BOEM that truly minimize these impacts. We are concerned that the term “minimization” may be misleading in this context, implying that no additional project restrictions or other mitigation measures are needed.

We support efforts to avoid impacts to submerged aquatic vegetation (SAV) and other structured habitats along the cable route and to avoid impacts to areas designated by the Councils as Habitat Areas of Particular Concern.

### **Affected environment and analysis of impacts**

Fisheries change over time based on a variety of factors; therefore, the EIS should use the most recent data possible to analyze the impacts of the alternatives on commercial and recreational fisheries. BOEM should coordinate early and often with NOAA Fisheries on the most appropriate data for analysis of potential impacts to fisheries, including fishing and transiting locations, as well as socioeconomic impacts. The EIS should clearly and repeatedly acknowledge the limitations of each data set.

Several areas in the prime fishing grounds of New Jersey data set and several artificial reefs overlap with or are close to the lease area or the proposed cable corridors. Impacts to fisheries in these areas should be thoroughly analyzed. Setbacks and other restrictions should be considered to reduce the negative impacts of construction activities in these areas.

Grouping fisheries by fishery management plan (e.g., Mackerel/Squid/Butterfish, Summer Flounder/Scup/Black Sea Bass) may be useful in some cases (e.g., to prevent disclosure of confidential information associated with fewer than three vessels and/or dealers). However, the EIS should provide as much species-specific information as possible. Although some species are grouped together under one fishery management plan, they have separate regulations and often have important differences in terms of gear types, markets, seasonality, number of participants, and other factors which may be relevant to the impacts considerations in the EIS.

The materials provided with the NOI indicate that three wind turbine and offshore substation foundation types are under consideration (monopile, mono suction bucket, and gravity-based). We appreciate the clarification that one foundation type will be selected for use throughout the project area; they will not be mixed and matched. The documents also indicate that up to eight small, four medium, or three large offshore substations will be considered. In addition, the export cable may use HVAC or HVDC. These design options result in a wide project design envelope (PDE). We understand that a sufficiently wide PDE is necessary to assess various tradeoffs, to allow final decisions to be made based on the best technically feasible options, which can change over time, and to allow for public input on which parameters may be preferred. However, each of these design choices will have different environmental impacts and an overly wide PDE can pose challenges for thoroughly evaluating and understanding the range of possible impacts of the project. This can also pose challenges for essential fish habitat (EFH) consultations. In some cases, it may be appropriate for some of these design choices to be analyzed as separate alternatives to help provide clarity on how impacts may differ and the relevant tradeoffs.

The analysis should clearly state the differences in expected impacts between HVAC vs. HVDC cabling and how that interacts with small, medium, or large offshore substations in terms of impacts to fish, invertebrates, EFH, and fisheries. For example, different configurations of cables

and substations will alter interarray cable layouts and the width of export cable corridors, potentially running cables through additional important habitats and fishing locations. The EIS should describe the extent to which EMF may impact marine species, including the differences between different types of cables and how they would be installed for this project.

The EIS should thoroughly describe the commercial and recreational fisheries that may be impacted by the export cable corridor and within the lease area. These separate components of the project are likely to impact different fisheries in different ways.

The EIS should not imply that fishermen are likely to adapt by switching gear types and/or target species. This may not be feasible given the high cost, potentially lower prices, and different permits that would be required. Such adaptation would only occur over the longer term and may require fishery management changes. It should not be assumed that fisheries management will adapt in any particular way as fisheries management must achieve a number of varied objectives and offshore wind energy development is just one consideration.

We continue to have significant concerns about the cumulative impacts of offshore wind development on fishery independent surveys. Major negative impacts to these surveys would translate into greater uncertainty in stock assessments, the potential for more conservative fisheries management measures, and resulting impacts on fishery participants and communities.

### **Mitigation measures**

We remain concerned that BOEM has not yet released the final guidance on fisheries mitigation. The comment period for the draft guidance closed in the summer of 2022. Additional coordination with Tribes concluded in the summer of 2023. It is not clear why the final guidance has not yet been released. In the meanwhile, BOEM has continued releasing NEPA documents and approving offshore wind projects in the absence of this final guidance.

BOEM should consider the recommendations listed in the wind energy policies adopted by both of our Councils, which apply across all projects.<sup>2</sup> Our two Councils worked together on and adopted the same wording for these policies. The recommendations outlined in these policies should be adopted as required mitigation measures for this project.

The EIS should clearly indicate which mitigation measures will be required, including those proposed by the developer and those required by other agencies, and how they affect the impacts determinations.

The information provided with the NOI indicates there is high or medium-high surfclam commercial fishing density throughout all of the lease area and part of the cable corridor. Ocean quahog commercial fishing density is high or medium-high in part of the lease area and cable corridor. There is high or medium-high scallop commercial fishing density in part of cable

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<sup>2</sup> Available at [https://www.mafmc.org/s/MAFMC\\_wind\\_policy\\_Dec2021.pdf](https://www.mafmc.org/s/MAFMC_wind_policy_Dec2021.pdf).

corridor and most of the lease area. There is very high monkfish and “MSB” (i.e., mackerel/squid/butterfish, species not specified) commercial fishing density in nearshore part of one of the cable corridors. This information can be used to consider project modifications and mitigation measures to reduce impacts; however, it is important to consider that the distribution of fishing effort changes over time based on a variety of factors and not all impacts can be mitigated by modifying the design parameters of the project.

BOEM should require sufficient funds to be set aside to mitigate the negative impacts of this project on commercial and recreational fisheries, including shoreside businesses. Eligibility for compensation from these funds should not be overly restrictive based on metrics such as homeport. The fisheries the Councils manage are regional in nature. These lease and export cable areas are used by a variety of vessels which are homeported in many different states and often have permits to land their catch in multiple states.

The Councils have not endorsed a specific cable burial depth, but rather have recommended depths that are adequate “to reduce conflicts with other ocean uses, including fishing operations and fishery surveys, and to minimize effects of heat and electromagnetic field emissions” (from the BOEM Draft Fisheries Mitigation Guidance). Assuming a depth of 6 feet is sufficient to address these objectives, we recommend that BOEM require all project cables to be buried to a minimum depth of 6 feet. Sufficient burial depth is especially important to the surfclam and ocean quahog dredge fisheries.

Where AC to DC conversion is required (e.g., if the export cables will use HVAC), closed-cycle systems should be considered to minimize entrainment of larvae.

The EIS should consider buffers around artificial reefs in which no construction activities would take place. Additional conversations with state and federal fishery managers and the fishermen who use these locations are necessary to inform these considerations and to determine the appropriate buffer distance. Some of these conversations were initiated during development of the Atlantic Shores South EIS; however, those considerations and analyses should be more thoroughly developed.

We support time of year restrictions to reduce potential impacts to sensitive life stages of fishery species, to reduce impacts to commercial and recreational fisheries, and to reduce impacts to SAV and other structured habitats throughout the project area and cable route.

BOEM should consider mitigation measures that support vessel radar upgrades and training to minimize impacts to fishermen and others navigating through and around the project area. Fishermen have noted a need to declutter radar within lease areas, otherwise fine scale targets may be lost while navigating through them. If AIS transponders are most appropriate on a subset of structures only (versus on every turbine, offshore substation, and any other offshore structures), BOEM should consult with the fishing industry and the U.S. Coast Guard to identify where AIS would be most helpful.

## Conclusion

We appreciate the opportunity to provide comments to ensure that important social and ecological issues are considered in the EIS for this project. We look forward to working with BOEM to ensure that any wind development in our region avoids and, if need be, reduces impacts on the marine environment and can be developed in a manner that ensures coexistence with commercial and recreational fisheries.

Please contact us if you have any questions.

Sincerely,



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Dr. Cate O'Keefe  
Executive Director, New England Fishery Management Council

cc: J. Beaty, W. Townsend, M. Luisi