New England Fishery Management Council

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

February 23, 2024

Jill Lewandowski
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Sterling, Virginia 20166

Dear Ms. Lewandowski,

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 draft programmatic environmental impact statement (PEIS) to analyze the potential impacts of wind energy development in six lease areas in the New York Bight as well as possible changes in those impacts that could result from adopting avoidance, minimization, mitigation, and monitoring (AMMM) measures.

The Mid-Atlantic Council manages more than 65 marine species[1] 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.

- We support the concept of a PEIS for adopting programmatic AMMM measures; however, the value of this PEIS as a decision-making tool for determining which AMMM measures to adopt is unclear.

- The final PEIS should focus on the AMMM measures that are not already very likely to be required by regulation or guidance and are within BOEM's purview. This would make it easier to evaluate the incremental benefits of each AMMM measure on individual impacted resources.

[1] 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.

- It is not possible to comment effectively on AMMM measures related to the final guidance on fisheries mitigation as this document has not been released. BOEM should accept additional comments on these AMMM measures and their impacts once the final guidance is published.

- We support several of the proposed AMMM measures, although we are concerned that some afford too much flexibility in how they are implemented.

- We suggest additional AMMM measures related to coordination between developers on site assessment and fisheries surveys.

- We offer several specific comments on the impacts analysis, including areas where impacts to fish and fisheries may be underestimated.

General comments on the draft PEIS

We generally support the concepts of programmatic analysis and adoption of programmatic AMMM measures. Requiring the same AMMM measures across all six New York Bight projects might create efficiencies in the subsequent stages of the environmental review process, including EFH consultations, for both reviewing agencies and the public. However, for the reasons described below, we are uncertain as to the usefulness of the PEIS as a decision support tool.

Given that this PEIS is intended to support BOEM's decision making regarding adoption of programmatic AMMM measures, it is not clear why the document lists and considers the impacts of several AMMM measures which BOEM does not have the authority to implement, or which are described as voluntary. For example, the draft PEIS states "not all of these AMMM measures are within BOEM's statutory and regulatory authority; those that are not may still be adopted and imposed by other governmental agencies" (page G-1). We appreciate that the action/enforcing agency is identified for each AMMM measure; however, it is not clear why measures that cannot be adopted by BOEM are included in the draft PEIS at all. This should be clarified in the final PEIS.

It can be assumed that several AMMM measures listed in Appendix G will be implemented for each of these projects based on BOEM guidance or regulations, interagency agreements (e.g., the NOAA and BOEM fisheries survey mitigation agreement), or requirements that have been implemented for previously approved projects. This includes but is not limited to COMFIS-1 (compensation for gear loss and damage), COMFIS-5 (fishery survey guidelines), COMFIS-6 (fisheries compensatory mitigation), MUL-14 (UXO avoidance), and most aspects of MUL-25 (consistent turbine layout, markings, and lighting). Other listed AMMM measures are novel or are not presumed to the same extent, including COMFIS-3 (scallop monitoring plan), many components of COMFIS-4 (fisheries mitigation), and notably MUL-18 (shared transmission corridor). We recommend that the final PEIS more clearly distinguish AMMM measures that must or are assumed to be implemented to meet existing requirements and agreements from additional measures that could be adopted but are not required.

The draft PEIS attempts to evaluate a vast matrix of interactions and issues. Given the very long list of AMMM measures, the large number of impacted resources, and the complexity of the

potential project design envelopes (PDEs) across a range of projects, this is an inherently challenging exercise to execute effectively. Refinement of the list of AMMM measures considered in the final PEIS could help to improve the utility of the document. Limiting the number of AMMM measures considered in the final PEIS to those that are not already very likely to be required by regulation or guidance and are within BOEM's purview would make it easier to evaluate the incremental benefits of each AMMM measure on individual impacted resources. As it stands now, the very general impacts discussion and long list of AMMM measures makes it hard to assess the benefits of any individual measure. This undermines the usefulness of the PEIS as a decision-making tool for selecting the best and most impactful AMMM measures.

We appreciate that the purpose and need section does not state that programmatic AMMM measures will only be adopted if wind projects in these lease areas are still capable of producing a certain amount of electricity. In previous comments on draft EIS documents for other wind projects, we opposed closely tying state and federal goals to the purpose and need statements as this restricted consideration of modifications to avoid and minimize negative impacts to the environment and human communities.

Clearly defined project parameters in the PEIS could help provide efficiencies for subsequent reviews. However, as we have noted in previous project-specific comments, broad project design envelopes pose a challenge for stakeholder and agency consultation and comments. We are concerned that is the case here; for example, while the PEIS focuses on two foundation types, all foundation types are within the range of the PDE, and different installation methods indicate different mitigation requirements are needed to avoid impacts. If any of the range of values in the PDE are outside those likely to be recommended for projects in these lease areas, we recommend narrowing the PDE. We recognize this may not be feasible. If certain design choices have a large effect on anticipated impacts, we suggest highlighting these features in the impacts analysis.

We appreciate that the draft PEIS notes which AMMM measures have been previously applied as Constructions and Operations Plan (COP) terms and conditions. The final PEIS should be updated to reflect all COPs that have been approved up until that point and should list the relevant COPs. Also, we understand that BOEM is not accepting COPs for projects in these lease areas while the PEIS is under development. Any adopted programmatic AMMM measures should be described in the COPs as actions that will be taken. Additional measures that are not programmatic AMMM measures should be presented separately in the COPs and project specific NEPA documents.

COMFIS-1 and COMFIS-6 refer to BOEM's draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf. It is our understanding that the final guidance has been internally approved by BOEM and will be released later this year. The public has not yet been notified of the ways in which the final guidance will differ from the draft. We recommend that BOEM release the final guidance as soon as possible. We also recommend that BOEM continue to solicit comments on these AMMM measures and related impacts analysis, following publication of the final guidance. The final PEIS should incorporate the final mitigation guidance.

Recommendations for implementation of AMMM measures

We support implementation of the following AMMM measures as described in Appendix G. These AMMM measures should be implemented at this stage, rather than deferring to later project- specific analyses.

We have not commented on every AMMM measure in Appendix G. Other listed AMMM measures may also be useful and appropriate but are not directly relevant to avoiding, mitigating, minimizing, or monitoring effects on fisheries or fisheries resources and their habitats.

- COMFIS-1: Compensation for gear loss and damage
- COMFIS-2: Scour and cable protection
- COMFIS-5: Fisheries survey guidelines
- COMFIS-6: Fisheries compensatory mitigation
- MUL-1: Marine debris awareness and elimination
- MUL-4: Final cable protection in hardbottom
- MUL-5: Low noise best practices
- MUL-7: Vessel noise reduction guidelines
- MUL-8: Gear identification
- MUL-9: Lost survey gear
- MUL-14: UXO avoidance
- MUL-19: Post-installation cable monitoring
- MUL-20: Soft start for impact pile-driving
- MUL-25: Consistent turbine layout, markings, and lighting – In particular, we strongly support requiring turbines to have "one of the two lines of orientation per lease stipulation spaced at least 1 nautical mile (1.9 kilometers) apart to support navigation safety and Search and Rescue" as recommended in the U.S. Coast Guard's 2020 Massachusetts and Rhode Island Port Access Route Study. We are pleased that BOEM is considering using this study in this way.
- MUL-26: Monitoring plan
- MUL-27: Minimize sediment disturbance
- MUL-28: Inadvertent returns plan and drilling fluids

- MUL-21: Sampling gear removal between seasons
- MUL-38: Noise mitigation plan
- MUL-39: Electrical shielding on underwater cables
- NAV-1: Boulder relocation reporting - We support this AMMM measure; however, the final PEIS should indicate how the threshold size of 6.6 ft (2 m) was selected. Relocation should be reported for all boulders that would constitute a hang that might entangle fishing gear, causing a safely issue.
- NAV-3: Cable placement for navigation and safety
- OU-7: Federal survey mitigation program
- STF-2: Sea turtle/Atlantic sturgeon identification and data collection - This AMMM measure does not directly impact Council-managed fisheries. However, the Councils are required to ensure that fishery management measures will not have adverse impacts on protected species; therefore, we support gathering data that will be useful in assessing protected species populations.

We are concerned that several of the AMMM measures in Appendix G provide too much flexibility for lessees, making their benefits uncertain, and consultation more challenging. For example, measure BEN-1 (boulder avoidance, identification, and relocation) states: "The plan must detail, to the extent technically and/or economically practical or feasible for the project, how the Lessee will relocate boulders as close as practicable to areas immediately adjacent to existing similar habitat." This seems to invite developers to argue that relocation of boulders to specific and more ecologically appropriate sites is overly costly or impractical. We are not directly involved in these negotiations; however, our observation of the South Fork and Revolution Wind projects suggests there may have been pushback on adopting conservation measures recommended by fisheries organizations due to concerns about costs. Offshore wind construction vessel availability is at a premium, resulting in pressure to complete work as quickly as possible.

Similar language about technical and economic flexibility is included in COMFIS-2 (scour and cable protection), COMFIS-4 (in reference to cable burial depths), MUL-2 (anchoring plan), MUL-3 (berm survey and report), MUL-12 (ecological design elements), and MUL-18 (shared transmission corridor). The language in MUL-4 related to cable protection materials is much more definitive.

We generally support implementation of the following AMMM measures; however, we have concerns with how they are described in Appendix G.

- BEN-1: Boulder avoidance, identification, and relocation – As written, this AMMM measure provides lessees too much flexibility. For example, it allows lessees to deviate from the listed requirements based on considerations about technical and/or economic

practicality or feasibility. This AMMM measure would be more useful if it were more prescriptive.

- BEN-2: Foundation scour protection monitoring – We support this AMMM measure; however, it should include further details on what action will be required if issues with scour protection are detected.

- COMFIS-3: Scallop monitoring plan – We support this AMMM measure; however, we are concerned with the implication that lessees will decide if their monitoring results show impacts that differ from expectations and new mitigation and/or monitoring measures are needed. We recommend that BOEM and NMFS work together to review the monitoring results and make this determination.

- COMFIS-4: Fisheries mitigation – We generally support this AMMM measure; however, it requires several revisions. It contains a long list of potential requirements. It is not clear if BOEM may choose to implement only some components or if everything is intended to be implemented together. It may be beneficial to split this into multiple separate AMMM measures to allow for consideration of the various components separately. We are also concerned that a minimum cable burial depth of three feet below stable seabed "where technically feasible" is too shallow to minimize impacts to mobile bottom tending gear fisheries and provides lessees with too much flexibility.

- MUL-2: Anchoring plan – We generally support this AMMM measure; however, as written, it provides lessees too much flexibility (e.g., "to the maximum extent practicable" and "wherever feasible"). It should be revised to be more prescriptive, while still allowing for deviations to ensure safety.

- MUL-3: Berm survey and report – We generally support this AMMM measure; however, as written, it provides lessees too much flexibility and it essentially requires just a plan without associated action.

- MUL-6: Low noise foundations – We generally support this AMMM measure; however, careful consideration should be given to the greater amount of impacted habitat with some foundation types that do not require pile driving. This may be more appropriate as a project-specific consideration rather than a programmatic measure.

- MUL-12: Ecological design elements – We generally support this AMMM measure; however, we are concerned that use of the phrase "where practicable" provides too much flexibility.

- MUL-15: Marine debris monitoring around wind turbines – We support this AMMM measure, which would require lessees to monitor and adaptively mitigate impacts associated with fishing gear lost around turbine foundations. It is important, however, that this lost gear not be used as justification for later implementation of fisheries exclusion zones outside of the Council process.

- MUL-16: Post-storm event monitoring plan - We generally support this AMMM measure; however, as written, it essentially requires just a plan without associated action.

- MUL-18: Shared transmission corridor – We strongly support this concept as it has the potential to meaningfully reduce negative impacts of offshore wind energy projects on the environment and on mobile bottom tending fisheries. However, we are concerned that the phrasing used in Appendix G provides too much flexibility to be meaningful (e.g., "where practicable" and "where possible"). It is also noteworthy that this AMMM measure is described as voluntary and has not been previously approved as a COP term and condition. BOEM must play a leadership role in requiring shared transmission if this concept is to become a reality.

- MUL-21: Use of new and emerging technologies – We generally support this AMMM measure; however, its description is overly broad, which poses challenges for understanding what specific measures may be implemented by BOEM at this stage in the process.

- MUL-23: Adjust project design to reduce impacts – We support this AMMM measure; however, it is unclear how it could be effectively implemented at this stage rather than during the review of project-specific construction and operations plans. We are also concerned that this AMMM measure will have limited effectiveness given that it requires consideration of how to reduce impacts but does not appear to require any specific actions.

- MUL-35: Monthly/annual reporting requirements – We support this AMMM measure and request that the associated reports be made available to the public.

- STF-1: Monitoring on strategically placed wind turbines – We support incorporation of technologies to detect tagged marine life within the wind project areas and sharing of the associated data. However, we question if this AMMM measure serves a meaningful purpose given that it is phrased as encouragement but not a requirement.

Additional AMMM measures

We recommend that the following additional programmatic AMMM measures be analyzed in the final PEIS and adopted for all six New York Bight leases. All these recommendations are consistent with past recommendations provided by the Councils.

- BOEM should require consistency and coordination between new and existing lessees on site assessment and characterization survey methods, including fisheries surveys, considering the recommendations of the Responsible Offshore Science Alliance for fisheries assessment and NOAA Fisheries habitat mapping recommendations for seabed characterization.

- Site assessment and characterization survey activities should be carried out as early as possible to inform potential locations for all types of project infrastructure. Information from these surveys should be available to inform the development of alternatives for

public comment. Survey locations, including for geophysical surveys, should not be so narrowly prioritized or limited that flexibility in the precise final locations of project infrastructure is precluded.

- Clear and coordinated communication should be required for all pre-construction, construction, and post-construction activities, including surveys. This should include the specific locations, times, vessels, gear types, contact information, and procedures for filing claims for compensatory mitigation.

Impacts analysis

We recommend that all fisheries data be updated through 2023 in the final PEIS. The draft PEIS includes data through 2021, which is already three years out of date.

In the context of the cumulative impacts analysis, the final PEIS should update the list of ongoing vs. planned offshore wind projects to account for all COPs that have been approved by the time the PEIS is finalized. For example, the draft PEIS lists the commercial scale Coastal Virginia Offshore Wind project as "planned." This should be corrected to "ongoing" in the final PEIS.

The potential benefits of MUL-25, which would require wider spacing of the area (1 nm in one orientation) seem to be underestimated. This could allow for easier transit and better search and rescue outcomes compared to narrower spacing and could have a material effect on fisheries operations. We are also concerned that the draft PEIS indicates wider spacing for six projects would have essentially the same impacts as for one project (Section 3.6.1.5.2). This evaluation seems to conflict with a statement made in the cumulative impacts evaluation: "BOEM anticipates that the cumulative impacts on commercial fisheries and for-hire recreational fishing associated with NY Bight projects when combined with impacts from ongoing and planned activities including offshore wind would be unchanged (negligible to major) because some commercial and for-hire recreational fisheries and fishing operations could experience substantial disruptions indefinitely, even with these project-specific mitigation measures."

In the finfish and EFH section, Atlantic cod is referenced as a species that could benefit from increased hard bottom habitat resulting from project development. While we agree that it is important to ensure suitable habitats exist for Atlantic cod, the New York Bight is not an important area for this species, and the creation of new structures in this region may not confer a noticeable benefit. We remain concerned about the possible negative impacts of offshore wind construction on this species, and we appreciate that acoustic impacts on cod and other fishes are discussed in this section.

We are concerned that the discussion of open loop cooling systems underestimates potential effects on plankton, including fish eggs and larvae (Section 3.5.2.4.1). For example, the draft PEIS notes that discharge water for the SouthCoast project was predicted to reach 90°F, which is quite high. This was modeled to result in a 1.4° F increase up to 155 feet from the discharge point and was expected to result in mortality for many types of plankton. Impacts are described as negligible given that they are highly localized, even when considered across all six New York Bight projects. It may not be appropriate to draw these conclusions without further consideration

of the specific locations of these cooling systems within each lease area. We recommend a more detailed evaluation of this topic in the final PEIS and subsequent project-specific analysis.

The draft PEIS seems dismissive of EMF impacts (Section 3.5.2.4.1). Given that large scale offshore wind projects are just now being installed off the East Coast, this issue requires further study.

We are also concerned that the draft PEIS downplays the potential for wind projects in these lease areas to result in expanding species distributions through the "steppingstone effect." The PEIS notes that wind projects in these lease areas may not notably contribute to the steppingstone effect given the existing network of artificial reefs off New York and New Jersey (Section 3.5.2.4.1). However, the document fails to acknowledge that the six New York Bight lease areas are much further offshore than the existing artificial reefs. Fully built out along the East Coast, offshore wind will result in a very large increase in artificial structures offshore that run from the seabed through the entire water column. Blue mussels, for example, may be demonstrating a steppingstone effect in the Block Island Wind Farm (Hogan et. al 2023[2], Section 1.1. and references therein).

Conclusion

We appreciate the opportunity to provide comments to ensure that important social and ecological issues are considered in the final PEIS for these lease areas. 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 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

[2] Hogan, F., B. Hooker, B. Jensen, L. Johnston, A. Lipsky, E. Methratta, A. Silva and A. Hawkins (2023). Fisheries and Offshore Wind Interactions: Synthesis of the Science. 383p. https://repository.library.noaa.gov/view/noaa/49151