



February 12, 2024

Bridgette Duplantis
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road, VAM-OREP
Sterling, Virginia 20166

Dear Ms. Duplantis,

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 Proposed Sale Notice (PSN) for Lease Area A-2, OCS-A 0557, off Delaware and Maryland and Lease Area C-1, OCS-A 0558, off Virginia.

The Mid-Atlantic Council manages more than 65 marine species¹ 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.

As described in more detail below, we have several recommendations for lease terms and conditions to incorporate into the final sale notice. We generally support the proposed fishery compensatory mitigation fund bidding credit, but we have concerns about the potential for designation of additional Wind Energy Areas in this region.

Lease terms and conditions

We have made the following comments in previous letters to BOEM and now recommend that they be incorporated into the final sale notice as conditions of lease approval:

- 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](#)

¹ Fifteen species are managed with specific Fishery Management Plans, and over 50 forage species are managed as “ecosystem components” across all the Mid-Atlantic Council’s Fishery Management Plans.

[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.
- All permanent vertical project structures, including turbines, offshore substations, and meteorological towers (if used), should be arranged in a uniform grid layout to reduce navigation safety risks. The spacing and orientation of the grid should allow for continued use of the area by commercial and recreational fisheries, with minimal impacts to existing fishing practices and transit patterns.
- BOEM should prohibit construction activities and placement of structures in areas with submerged aquatic vegetation (SAV), natural and artificial reefs, other structured or sensitive habitats, and areas designated by the Councils as Habitat Areas of Particular Concern (HAPC).² In this part of the Mid-Atlantic region, structured habitats can include sand bedforms (shoal/trough systems) as well as deep-sea corals.
- All project cables must be buried to 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 6 foot burial depth is sufficient to address these objectives, as suggested in the BOEM Draft Fisheries Mitigation Guidance, we recommend a minimum cable burial depth of 6 feet be required as a condition for all current and future leases.
- Materials used for external cable armoring and scour protection should mimic natural, nearby habitats. These materials should not be obtained from existing marine habitats and must not be toxic.

² It is worth noting that the Mid-Atlantic Council has designated all native species of macroalgae, seagrasses, and freshwater and tidal macrophytes in any size bed, as well as loose aggregations, as HAPC for summer flounder. In defining this HAPC, the Mid-Atlantic Council also noted that if native species of SAV are eliminated, then exotic species should be protected because of functional value; however, all efforts should be made to restore native species.

- 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.
- Developers should be responsible for the safe disposal of unexploded ordinances (UXO) exposed due to survey and construction activities. Clear, timely, and repeated communication about UXO locations and any changes in the location or status of UXOs are essential and should not rely only on email notifications. Mariner notification may be sufficient when UXOs are detected via surveys but are not exposed, given disposal may present greater risks.

The PSN indicates that restrictions will likely be required within the lease areas to minimize impacts to navigational safety, radar used by the Department of Defense, the Navy’s advanced dynamic aircraft measurement system operations, Air Force operations, NASA operations, and BOEM sand mining. It is noteworthy that fisheries, fisheries surveys, and sensitive habitats are not included in this list. As described in more detail below, we appreciate that the PSN includes provisions for a fisheries compensatory mitigation fund; however, BOEM should first seek to avoid and minimize negative impacts to commercial and recreational fisheries, as well as fishery species and sensitive habitats. Compensatory mitigation should be used for any remaining impacts that could not be avoided or minimized.

The final sale notice should include additional details on the overlap of each lease area with fishing areas and sensitive habitats. Some of this information was provided in the [memorandum for WEA identification](#); however, it does not appear to be included in the PSN and associated documents. For example, there is remaining overlap of lease area A-2 with surfclam fishing and scallop vessel transiting areas as shown in vessel monitoring system data, as well as overlap with areas in the “New Jersey prime fishing grounds” data set. There is also remaining overlap of lease area C-1 with sand ridge and trough complexes. BOEM should work with NOAA Fisheries to consider the appropriate data sources and data limitations for characterizing commercial and recreational fishing and transit locations as well as important marine habitats in these areas. This information can help prospective lessees anticipate what types of restrictions may be needed to avoid and minimize negative impacts. These impacts can be best avoided by refining the lease areas to exclude these areas of overlap in the final sale notice. We support the NOAA Fisheries recommendations for specific aliquots to remove from the lease areas, as communicated in their February 6, 2024 comment letter on the PSN.

Fisheries compensatory mitigation fund bidding credit

The PSN indicates BOEM may allow an up to 8% bidding credit for a commitment to contribute to a commercial and for-hire recreational fisheries compensatory mitigation fund. The PSN states that such a fund must, at a minimum, address gear loss or damage and loss of fishing income that results directly from the preconstruction (including site surveys), construction, operations, and decommissioning of an offshore wind project. The PSN encourages the use of regional funds coordinated across multiple lessees, which we support. This most appropriately reflects the nature of commercial and recreational fisheries in federal waters and will create efficiencies and simplify the process for the fishing community.

We appreciate that the PSN outlines additional acceptable uses of funds to support fisheries if more funding than necessary has been set aside through this bidding credit to address gear loss, gear damage, and loss of fishing income. However, the final sale notice also should more clearly indicate that the amount of funding set aside through this bidding credit may not be sufficient to cover the full amount needed to compensate for gear loss, gear damage, and loss of fishing income. Prospective lessees should not be under the impression that they have completely satisfied their requirements to compensate fisheries based on this bidding credit alone. The appropriate dollar amount needed to compensate for all relevant fisheries impacts will not be known until projects in these lease areas are much closer to final consideration for approval and NEPA analyses have been completed. Therefore, it will be impossible to determine at the leasing stage if the amount set aside through a bidding credit is appropriate.

The PSN recommends that the fund “minimize costs by leveraging existing processes, procedures, and information from BOEM Fisheries Mitigation Guidance, the Eleven Atlantic States' Fisheries Mitigation Project, or other sources.” We support this recommendation; however, neither the BOEM Mitigation Guidance nor the state-led initiative have been finalized and both have experienced significant delays over the past year. We hope both will be finalized in the near future so they can inform compensation decisions for the greatest number of wind projects possible.

Addendum C to the draft leases states that the fisheries compensatory mitigation fund must be independently managed by a third party and must include trustees or board members from fishing stakeholder groups. We support this and hope the Councils will be consulted in the process of identifying fishery stakeholder trustees or board members. For example, the Councils can help ensure fishery stakeholders are aware of this need and can help consider the representativeness of the membership in these groups.

Consideration of additional WEAs

On the same day the PSN was released, BOEM announced continued collaboration with other federal agencies and the state of Maryland to “evaluate additional areas off Maryland’s shores that could become wind energy areas (WEAs).” The announcement indicates an area off Maryland’s coast has been preliminarily identified and will be further analyzed, along with additional potential offshore WEAs all along the Central Atlantic coastline, for inclusion in a subsequent offshore wind lease sale as early as 2025.³ Additional details on the location of this preliminarily identified area are not provided.

Identification of additional WEAs should require a supplemental analysis with an associated public comment period. As indicated in previous comment letters, we had many concerns with the Central Atlantic Call Areas. Many of these concerns were addressed by the delineation of Lease Areas A-2 and C-1, which are a fraction of the size of the Call Areas, avoid overlap with the Frank R. Lautenberg Deep Sea Coral Protection Areas, and minimize overlap with many major fishing areas. We reiterate our previous comments that any consideration of identifying

³ <https://www.boem.gov/newsroom/press-releases/biden-harris-administration-advances-offshore-wind-central-atlantic>

additional WEAs in the Central Atlantic should avoid deep sea coral areas and major commercial and recreational fishing grounds.

Conclusion

We appreciate the opportunity to provide comments to ensure that important social and ecological issues are considered in the final sale notice 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,

A handwritten signature in black ink, appearing to read "C. Moore".

Dr. Christopher M. Moore
Executive Director, Mid-Atlantic Fishery Management Council

A handwritten signature in blue ink, appearing to read "Cate O'Keefe".

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

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