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Re: New Jersey Third Solicitation for Offshore Wind Renewable Energy Certificates;
Docket No. OO22080481

Ms. Aida Camacho, Secretary of the Board
New Jersey Board of Public Utilities
Email to: Board.Secretary@BPU.nj.gov

I am writing on behalf of the Garden State Seafood Association, representing the more than 1200 commercial fishermen of New Jersey, and the thousands of those employed on NJ based fishing vessels and by dock side processors, making up the commercial seafood industry in the State. Our comments focus on the portions of the document describing project developers' requirements to execute Stakeholder Engagement Plans, Environmental Protection Plans, and Fisheries Protection Plans and are in addition to the comments we have provided during the public comment hearings.

Of greatest concern is that the BPU solicitation is using the unfinished BOEM mitigation plan as a basis for interaction between the OSW development community and fishing communities. This plan is inadequate and only acts as a guide to the development community. The plan has no strict requirements and thus no enforcement ability. Therefore, we believe the BPU solicitation process must better identify a process that holds developers accountable for insuring protection of the environment and those business operating in these resource rich environments for generations in New Jersey.

We ask that the BPU and DEP notify interested developers, through this Solicitation, that verifiable compliance will also be a requirement of any approved Construction and Operation Plan (COP) that may be developed. There are currently limited, to no, incentives at the federal, regional, or state level for developers to directly partner with commercial fishing industry members on projects of mutual interest.

The majority of vessels fishing from New Jersey docks, for surf clams, ocean quahogs, sea scallops, fluke, scup, black sea bass, and other food fish, can be predicted to be permanently displaced from these areas, due either to operational constraints from turbine placement, or insurance prohibitions, or both. Unfortunately, planning for these impacts regionally, with the goal of wind developers and ratepayers understanding these potential costs, has been inadequate to date and ideally would be developed and finalized prior to additional solicitations. This result would add additional surety to the developers, ratepayers and fishing community.

According to the BOEM RFI on mitigation

- *Subsection 8(p)(4)(j)(ii) of OCSLA specifically requires the Secretary of Interior to ensure that any activity is carried out in a manner that provides for “consideration of any other use of the sea bed including use for a fishery”; and*
- *The NEPA process is intended to assist officials in making decisions based on a thorough analysis of environmental consequences.*

To date we believe these have not occurred through the existing leasing process and know this RFI is requesting input into a process that has already leased sites throughout the Mid Atlantic without addressing the process it is now trying to define.

As we commented in April of this year, with the new BOEM leases Docket No 2021-0021, the BOEM process is backwards with environmental analysis coming too late in the process and no fisheries considerations during site identification. The result of continuing the solicitation could be unreparable harm to our environment, our fishing industry and the consumers who must purchase power. We must allow the current projects to submit EISs and evaluate prior to continued solicitation.

The Federal government, State governments and developers have not yet addressed any major environmental concerns on the first project solicitations. There has yet to be any true commitment from developers to modify design plans in any way to limit impacts on the fishing community. The existing location of these proposed projects are directly located on prime fishing grounds. Although identified countless times, no science or research has occurred to insure minimal impact of windmill arrays on the Mid-Atlantic cold pool, for example.

This third solicitation will surely compound these unresearched impacts and additional impacts to the right whale, Atlantic sturgeon and other endangered species within the proposed area. Roughly a year ago NJDEP, BOEM and developers agreed to a two-year Rutgers study on fisheries research which only now is beginning. This must be completed before any projects should commence

Evaluation Criteria

The Solicitation's undervaluation of potential future impacts to New Jersey seafood producers and processors, from vessels being displaced to stranded capital from shoreside supply restrictions and fewer vessels operating, cannot be overstated. The proposed weighting of 'minimum' requirements for environmental and fisheries impacts, as being only 30% of the cost to wind developers earning an Offshore Wind Renewable Energy Certificate (OREC), only works to prove our point and fails to identify or require any amount of compensation for these costs accruing to developers anticipated to respond to the Solicitation.

Without clearly addressing this issue we fear fishermen and the supporting shore based processors will be displaced as decreased yields and or increased costs result in the unprofitability of these business. To run a canning facility requires a certain amount of seafood through the facility each day/week/month. Even a small yield decrease may leave these operations unprofitable and thus inoperable without outside support.

According to the National Marine Fisheries Service the five-year revenue from all four BOEM call areas from 2012-2016 equated to more than \$344.8 million. Most of the catch came from the Hudson North (28 million pounds) and Hudson south locations (18 million pounds) respectively, but both Fairways North and South added an additional \$59 million and 14.7 million pounds over the time period.

These revenues stem from more than a dozen species, with most revenue being generated from four fisheries complexes, those being the Scallop; Surfclam/Ocean Quahog; Flounder, Scup, Black Sea Bass; and Mackerel, Squid, and Butterfish fisheries. Monkfish are also very significant in these areas, with roughly \$819,000 of monkfish caught over the five years, which is significant for the size of the fishery.

What remains unclear under this BOEM and subsequent BPU process is, from a fishery financial standpoint, at what point is a sight ruled undevelopable? When asked in hearings, BOEM could not define a point where the impact to commercial fishing would be deemed significant enough to alter a project, either from a revenue or landings accounting.

The Federal government and BPU must provide some standard for a cost benefit analysis of the sites being proposed and their short term and long-term impacts on fishing communities. Without this analysis there is no ability for the Government and a project developer to prioritize certain areas over others. Additionally, these analyses must also take into consideration the impact on a specific port, both on a year-round and seasonal basis.

Stakeholder Engagement Plan

We appreciate the requirement that applicants are 'required to work collaboratively with state and federal agencies and other stakeholders to avoid, minimize and mitigate potential impacts to New Jersey's natural resources'. While we support this approach, to date, there has been little action in avoidance and impact minimization relating to fisheries operations. We believe the

sites to date reflect closed zones to future fishing from a safety and logistics approach as well as by the insurance industry which covers our vessels.

We are disappointed, that commercial and recreational fishing interests are not specifically listed, in the hierarchy of stakeholders, and that a reference to protecting New Jersey's seafood economy is also missing from the draft document. After all, are there any other stakeholders more likely to be displaced or impacted by these offshore structures?

Environmental Protection Plan

At the same time, we do appreciate the BPU requirement that, 'to facilitate a shared understanding of these (environmental) effects' each applicant must commit a fee of \$10,000 per megawatt of project nameplate capacity, to fund the ongoing, and valuable, Research and Monitoring Initiative of the Bureau and Department of Environmental Protection.

The list of measures required to be identified in an Environmental Protection Plan is reasonable thorough and several elements are important to emphasize here:

- Protections for sensitive marine habitats (pre and post-construction monitoring needed);
- Cable burying depth and monitoring requirements; Cable depth maintenance should also be stated/clarified.
- Turbine foundation scour protection;
- Lighting controls to improve navigation (AIS technology should be referenced here);
- Requirements for minimizing noise and acoustic impacts; and
- Measures to avoid marine mammal and sea turtle strikes by vessels.

Fisheries Protection Plan

As mentioned, **and** unfortunately, the draft solicitation uses the BOEM Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries, as a foundation for applicant guidance from BPU, although we believe those guidelines, yet to be finalized, to be wholly inadequate, as identified by New Jersey seafood industry comments.

The elements required of these plans seems comprehensive, including the identification of all potential impacts on fish and on commercial and recreational fisheries off the coast of New Jersey, from pre-construction activities through decommissioning, and is appreciated.

There are currently limited, to no, incentives at the federal, regional, or state level for developers to directly partner with commercial fishing industry members on projects of mutual interest. Also, there have been no state or interstate commitments to require developers to wholly compensate stakeholders for negative fisheries impacts.

While we applaud New Jersey's support for a regional evaluation of these potential impacts, as evidenced in the RFI from the 9-Atlantic states' network for establishing a regional funds administrator (comment period open until the end of this month), the proposal discusses the administration of funds that, to date, do not exist.

We believe this provides us with a timely opportunity for the BPU to revise this solicitation to further require applicants to also commit a fee of \$10,000 per megawatt of project nameplate capacity, to facilitate a shared understanding of affects to New Jersey's seafood industry from offshore wind energy development and establish a baseline for compensation for lost-fishing access.

In this way, New Jersey would become a leader of the 9-state coalition in facilitating contributions to a fund that would begin to represent a reasonable estimate of the costs from the temporal and spatial impacts of offshore wind energy development to New Jersey's seafood industry and recreational fisheries.

It is worth noting the following shortfalls GSSA identified in the BOEM document;

- The current EIS process does not sufficiently account for cumulative impacts of multiple projects on fisheries or fishing.
- The limitations of the guidance need to be more clearly articulated in the final document, including but not limited to cumulative impacts, lack of current evidence of fishing ability in arrays once constructed, limits of revenue loss estimation given limited data and limited methodologies, and inability to address post-construction unforeseen additional impacts. Actual experienced financial losses due to gear loss and damage will most likely be greater than the estimations from BOEM and its EIS.
- The guidance must stress the mitigation hierarchy including avoidance first and foremost before mitigation or compensation (largely ignored to date in our view).
- The time frames for submitting claims should be increased and the response time by developers be as short as possible to address the financial hardship imposed on a fishing participant who experiences loss.
- The guidance should adhere more closely to recommendations for mitigation in the National Academy of Science's (NAS) report with regards to OSW and radar in the Safety Section of the Mitigation Framework Document. and acknowledge that more study is needed to better understand complex radar interference issues. See: <https://www.nationalacademies.org/our-work/wind-turbine-generator-impacts-to-marine-vessel-radar>
- The multiplier effect for shoreside fishing businesses of only 1 to 2% (BOEM Appendix A) is incorrect and needs to be addressed. The final guidance should include reference to other studies estimating multipliers in several fisheries, already completed, that indicate at least a 4 to 18 times ex-vessel value effect and should also reference critiques of NMFS's methodology for calculating such effects. See: August 12, 2022, Hodges, Murray, and Scheld to SCEMFIS Industry Advisory Board <https://scemfis.org> . Several GSSA members are also original SCEMFIS member, first organized as an Industry/University Cooperative Research Center within the NAS, in 2014.
- The decreasing percentage of revenue to be compensated after construction from years 1 to 5 is not detailed by gear type, fishing season, vessel size and operation, and is not based on any study, evidence, or other scientific data. Thus, the more cautious and reasonable approach to avoid adverse impacts is to assume, at least in the first 5 years of

operation, no commercial fishing will take place. An additional evaluation of cumulative effects should be reviewed with the fishing industry after that period.

- BOEM should initiate a fishing navigation study with NFMS and USCG so that there is a better understanding of potential transit within an offshore wind project area for safety purposes by vessel, gear, season, and other factors.
- Current language, that compensatory mitigation activities may extend beyond five years and may require additional evaluation, is not strong enough to address the likelihood that impacts may extend beyond five years and out to at least 25-30 years.
- The mitigation guidance should address state water fisheries (the Atlantic menhaden fishery is one example), with limited or no data, and consider how to address those potential losses due to construction and cabling.
- The guidance, if written well in its final form, should be enforceable and not merely guidance that could be ignored by individual developers.

Ensure Navigational Safety

Federal waters offshore of New Jersey and New York are among the busiest in the world, with regard to vessel activity, including a staggering range of vessel sizes and uses. Ocean traffic lanes, which provide vital corridors for these vessels to safely navigate and coexist, can be compromised when wind turbines are placed too close.

Moreover, any wind energy facility that is built offshore New Jersey is certain to overlap important informal transit routes between and among fishing ports and fishery grounds beyond the lease area. It is imperative that arrays are designed so that fishing vessels may continue to safely transit from their homeports to their destinations. The BPU should therefore require that developers work with the fishing industry to design and implement reasonable transit lanes within any arrays so as not to impact fishing activity well beyond the lease area.

Finally, there must be requirements to prevent windmill interference with existing marine and shore-based radar systems. The safety of maritime commerce and recreation must be prioritized as these projects are considered for future development.

BPU Should Coordinate This Process with NMFS and the Regional Fishery Management Councils and Coordinate with Affected Fishing Interests

We request that BPU, for this third offshore wind energy procurement, require the developer to work closely with regional fishing industry groups to achieve all of the goals enumerated in these comments. The industry holds a wealth of knowledge about, and experience with, offshore fisheries and their environment. This experience is not only an enormous asset in and of itself, but is critical to informing the emerging offshore renewable energy activities so that conflicts may be avoided, minimized, or mitigated.

Participants in the fisheries that occur in federal waters offshore New Jersey are homeported throughout the East Coast, and operate their vessels on a regional, not state-level,

scale. These communities have been overwhelmed by the rapid pace and piecemeal approach with which BOEM, Atlantic states, and developers have moved forward with offshore wind energy development. Fishing industry groups have extremely limited resources for meeting the enormous time commitments demanded by these processes. The solicitation should therefore require the developer to provide funding necessary for the industry to provide its own representation and input in support of activities to address wind farm impacts.

Regional Fishery Management Councils

In addition to engaging directly with fishing industry participants, the BPU should require developers to submit their plans for construction, operations, and decommissioning to the Regional Fishery Management Councils for review. Specifically, both the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council were statutorily created and charged with managing federal fisheries in the waters considered for renewable energy leasing offshore New York and New Jersey. Each council has a committee (the Habitat Committee and Ecosystems and Ocean Planning Committee, respectively) and related Advisory Panel that considers and manages interactions between managed fish stocks and the physical environment. In order to ensure the renewable energy projects development in a manner that does not unreasonably impact fisheries. Developers should be required to submit information collected pursuant to the scientific inquiries described above to these committees for review and guidance.

Economic Impacts on New Jersey Consumers

While we understand the Government's goal and timelines to meet. There are too many yet undecided variables to move forward with the next solicitation. Neither the NJ BPU, BOEM nor any developer has done a cost benefit analysis on the impact to the existing fishing industry v the cost benefit of these projects. We are being sold a promise of future job creation with no analysis of existing jobs and investments that will be impacted and lost. Additionally, there has been no true cost identified with the production of power. This information is withheld as proprietary but likely represents a two-, or three-fold increase over current power costs. These cost projections must be shared with consumers to allow for adequate input by consumers into future solicitations and assessments.

Sincerely,

A handwritten signature in black ink, appearing to read "Scot Mackey". The signature is stylized with a large initial "S" and a long horizontal stroke.

Scot Mackey

Garden State Seafood Association