CORRESPONDENCE

Related to Off Shore Wind

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

AUG 20 2018

Michelle Morin
Chief, Environment Branch for Renewable Energy
Bureau of Ocean Energy Management
Environmental Branch for Renewable Energy
45600 Woodland Road, VAM-OREP
Sterling, Virginia 20166

Re: Empire Wind Offshore Wind Farm Project Site Assessment Plan, Lease OCS-A 0512, New York Wind Energy Area

Dear Ms. Morin:

We have reviewed the Empire Wind Site Assessment Plan (SAP) and Benthic Assessment Report for Lease OCS-A 0512 offshore New York. Empire Wind plans to install and operate two floating light detection and ranging buoys (FLiDARs), one metocean buoy, and one subsurface current meter mooring (collectively referred to as metocean facilities) within the New York Wind Energy Area (WEA), Lease OCS-A 512. One FLiDAR buoy, the metocean buoy and the current meter mooring will be deployed in the center of the lease area in depths ranging between 110 feet (ft) and 124 ft NAVD88. The second FLiDAR buoy will be installed in the western side of the lease area in water depths ranging between 92 ft and 101 ft NAVD88. The purpose of the deployment of these metocean facilities is to collect wind resource and metocean data to support development of the Lease Area. The SAP addresses the installation, operation, and decommissioning of the metocean facilities.

The devices to be deployed include two RPS FLiDAR buoys, the RPS wave and met buoy, and one subsea Current Meter mooring equipped with 3 CM-04 acoustic current meters and 3 Seabird SBE37 conductivity and temperature CT loggers. The FliDAR buoys will be attached to the seafloor by means of a U-shaped mooring design which is comprised of chain, polypropylene rope, wire rope, trawl floats, an amsteel rope dispenser with acoustic release, and rubber cord that connects the RPS FLiDAR buoy to both a primary and secondary clump anchor on the sea floor as well as three underwater vinyl floats that sit approximately 55.8 feet (ft) above the seabed. The primary and secondary clump weights would weigh approximately 4,409 pounds (lbs) and 660 lbs, respectively and sit on the seabed for a total area of up to 21.5 ft^2 per clump weight. Due to the use of rubber cords in the mooring design, there will be no anchor chain sweep associated with operation of the FLiDAR buoy. Total area of mooring resting on the seafloor, including both clump weights, chains and wire ropes, would be approximately 67.8 ft^2. The wave and met buoy has a similar U-shaped mooring design. The primary and secondary

clump weights would weigh approximately 2646 lbs and 661 lbs, respectively, and will rest on the seafloor for an area of approximately 21.5 ft^2 per clump weight. Total area of mooring resting on the seafloor, inclusive of both clump weights, chains and wire ropes, would be approximately 62.4 ft^2. The current meter mooring design will consist of a subsurface mooring design with a single clump weight weighing 992 lbs and resting on the seafloor for an area of approximately 21.5 ft^2. Vertical penetration of the seabed for each clump weight associated with the metocean facilities is expected to be less than 2 ft. Based on the specifications of the mooring system for all metocean facilities, we can expect approximately 220 ft^2 of impacts to seafloor habitat.

Essential Fish Habitat

The New York WEA is designated as essential fish habitat (EFH) for more than 35 species of fish and shellfish including longfin squid (*Loligo pealeii*), monkfish (*Lophius americanus*), Atlantic sea herring (*Clupea harengus*), winter flounder (*Pseudopleuronectes americanus*), witch flounder (*Glyptocephalus cynoglossus*), summer flounder (*Paralichthys dentatus*), spiny dogfish (*Squalus acanthias*), scup (*Stenotomus chrysops*), Atlantic sea scallop (*Placopecten magellanicus*), ocean quahog (*Artica islandica*), surf clam (*Spisula solidissima*), bluefish (*Pomatomus saltatrix*), and black sea bass (*Centroprisis striata*) as well as several highly migratory species. The project area does not overlap with any designated habitat areas of particular concern (HAPCs).

Information provided in the SAP and the Benthic Assessment Report describe the seabed within the locations of the proposed metocean facilties as generally flat with less than 1 degree gradient, comprised of medium to coarse sand with isolated patches of gravelly sand. Samples among the two proposed locations showed a relatively low faunal community abundance dominated by Arthropoda and Annelida. The fauna observed in the samples included: Annelida (including Polychaeta worm tubes), Arthropoda (Amphipoda, Malacostraca, Paguroidea), Chordata (Tunicata), Cnidaria (cf *Hydractinia symbiolongicarpu*, Ceriantharia, Zoantharia), Echinodermata (*Echinarachnius parma*, Holothuroidea), Foraminifera, Mollusca (Bivalvia, Cardiidae, Gastropoda, Naticidae, Neogastropoda), Rhodophyta and indeterminate Animalia.

While the number of Anthozoan species collected in the samples were few, your Benthic Habitat guidelines specifically state that "Special attention should be given to the presence of sensitive benthic habitats. These include areas where information suggests the presence of exposed hard bottoms of high, moderate, or low relief; hard bottoms covered by thin, ephemeral sand layers; seagrass patches; or kelp and other algal beds, as well as the presence of anthozoan species"(BOEM, 2013). While the tube-dwelling anenomes (Ceriantharia) tend to be solitary, Zoantharia are colonial in nature and can be associated with cold water corals. Despite discussion in the Benthic Assessment Report, the SAP does not make any mention of the Zoantharia species so it is not clear if plans for deployment within this location remain.

Installation, operation, and decommissioning of the metocean facilities may have adverse

impacts on EFH. The benthic habitat and associated organisms may be directly impacted by the footprint and weight of the buoy anchor systems and support vessel anchoring. Based on information provided in the SAP, we can expect approximately 220 ft^2 of direct impacts to seafloor habitat. Indirect impacts from changes in water quality, largely from turbidity and suspended sediments, are expected to occur from deployment and decommissioning; however, based on the design of the mooring system, these impacts are expected to be minimal during operation. Other impacts to EFH from construction, operation, and decommissioning may include physical habitat modification, reduced prey availability, and elevated noise levels. The area of impacts from the metocean facilities is relatively limited and we expect the project effects would be short-term, temporary, and localized. While, in general, the information provided in the SAP and Benthic Assessment Report do not suggest extensive areas of sensitive or unique habitats, impacts to anthozoan species should be avoided.

Pursuant to Section 305 (b) (4) (A) of the MSA, and consistent with your 2013 Benthic Habitat guidelines, our EFH conservation recommendations are as follows to minimize adverse effects to EFH and sensitive habitats in the project area:

1. The metocean facilities should not be deployed on habitats with anthozoan species present to avoid the potential for impacts to cold water corals.

Please note that section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response within 30 days after receiving these EFH conservation recommendations, including a description of measures adopted by BOEM for avoiding, mitigating, or offsetting the adverse impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k).

Commercial and Recreational Fishing

The project area and the locations of the met buoys are within areas of moderate to high commercial and recreational fishing activity. This area is open to a variety of mobile gear (i.e., otter-trawl, mid-water trawl, purse sein, dredge, rod and real) and fixed gear (i.e., gillnets, lobster traps, fish traps) fishing vessels, which target several different species. Commercial fisheries most likely to be affected include the longfin squid and Atlantic sea scallop fisheries, although fisheries for Atlantic herring, Atlantic mackerel, black sea bass, butterfish, monkfish, scup, and summer flounder may also occur within this area.

The installation and operation of the met buoys will likely cause some vessels that fish this area to be displaced. The intended location of the FLiDAR 2 buoy in Buoy Deployment Area 2 is in the middle of high concentrations of longfin squid fishing activity on Cholera Bank. Similarly, the deployment of the FLiDAR 1 buoy, current meters, and met/wave buoy in Buoy Deployment

Area 1 will likely overlap with portions of the longfin squid fishery, but to a lesser extent than that on Cholera Bank. The delineated project boundary does not overlap within any habitat protection areas or exempted fishing areas, where fishing activity may be more restrictive. We recommend Empire Wind conduct an active outreach effort to the fishing community ahead of the deployment of the metocean facilities consistent with the draft Fisheries Liaison & Outline Coexistence Plan. Our agency had a call with Empire Wind, prior to the start of their geophysical and geotechnical surveys. During that call we discussed the need to sequence those surveys to avoid portions of the WEA during times of the year when squid spawning and fishing are most abundant. You should be aware that the Empire Wind Fisheries Liaison has reached out to our office on several occasions to discuss fishing activity in the project area, including during the survey periods. We appreciate this coordination, and ask that it continues to ensure impacts to the fishing community are minimized during the execution of these site assessment activities. In addition, to avoid impacts to fishing activities, vessels, and equipment, the FLiDAR buoys should be clearly marked for mariners.

Endangered Species Act

We issued a programmatic Biological Opinion to your agency on April 10, 2013, that analyzed the effects of site assessment activities to be carried out in the Massachusetts, Rhode Island, New Jersey and New York WEAs. This Opinion considered the effects to listed species associated with reasonably foreseeable site characterization scenarios associated with leasing (including geophysical, geotechnical, archeological and biological surveys), and for the NY WEAs site assessment activities (including the installation, operation and decommissioning of meteorological towers and buoys).

The programmatic consultation established a procedure for reviewing future actions to determine if they were consistent with the scope of the 2013 Opinion. We are currently waiting for a determination from your office regarding consistency between the SAP and the Opinion. Once we receive that determination, we will coordinate with our Office of Protected Resources to make determinations under the Marine Mammal Protection Act and Endangered Species Act as appropriate.

If you have any questions regarding this ESA coordination, please contact Julie Crocker at (978) 282-8480 or Julie.Crocker@Noaa.gov.

Agency Coordination

We appreciate your coordination with us throughout the offshore wind leasing process. We understand additional site characterization surveys will be conducted for development of the Construction and Operation Plan. We recommend that you continue to coordinate with us in the development of these surveys to ensure impacts to sensitive habitats, protected resources, and the fishing community be avoided and minimized throughout the process. We look forward to the opportunity to review and comment on applicable surveys to ensure our concerns and

information needs are addressed early in the process. Our staff is committed to full coordination on surveys, monitoring plans, and other material associated with this and other offshore wind projects moving forward. Should you have any questions about this matter, please contact Sue Tuxbury at 978-281-9176 or by email at susan.tuxbury@noaa.gov.

Sincerely,

for Louis A. Chiarella
Assistant Regional Administrator
for Habitat Conservation

cc: Brian Hooker, BOEM
Julie Crocker, NMFS PRD
Doug Christel, NMFS, SFD
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Seafreeze Ltd.

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July 27, 2018

Comment on BOEM– 2018-0004 Call for Information and Nominations for Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight

1. General Comments and Seafreeze Interest in the NY Bight Area

We do not support moving forward with leasing any of the NY Bight Call Areas until BOEM: (1) has collaborated fully with National Marine Fisheries Service and the commercial fishing industry to conduct a comprehensive coastwide fisheries impact analysis, as noted in our comments on BOEM's Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic OCS- BOEM-2018-0018, (2) has excluded commercial fishing areas from potential leases, and (3) has developed in conjunction with NMFS and the commercial fishing industry coastwide ecological monitoring and fisheries mitigation plans to monitor and mitigate ecological and economic impacts to fisheries resulting from the large scale offshore development that BOEM envisions. BOEM's current process of putting Call Areas out for interest to wind companies prior to such exclusions immediately puts commercial fisheries at a disadvantage in favor of offshore wind developers in contradiction to the Outer Continental Shelf Lands Act requirements to ensure that "**any activity**" (including identification of Call Areas) carried out under BOEM's authority to lease the OCS for renewable energy development provides for "**protection of correlative rights**", "**prevention of interference with reasonable uses**" and "**consideration of…any other use of the sea or seabed including use for a fishery**".[1] The Outer Continental Shelf Lands Act imposes a duty on the Secretary of the Interior to not go forward with a lease sale on the OCS if doing so would create an unreasonable risk to fisheries;[2] therefore Call Areas put out for interest to potential offshore wind development should be only those that result from the process previously described.

This process described above is also consistent with the position taken by the Mid Atlantic Fishery Management Council, which manages fisheries in the NY Bight area. BOEM states in this docket in Section 1.2 "Ocean Planning" that "BOEM intends to coordinate with the…Fishery Management Councils." However, in February 2018, the Mid Atlantic Fishery Management Council a passed motion related to offshore wind development which stated, "Move to submit a letter to the Secretaries of Interior and Commerce requesting that (1) no new wind energy areas be sited, nor project designs

[1] Outer Continental Shelf Lands Act, as amended by Section 388 of the Energy Policy Act 2005; bold print mine. See https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf.

[2] See *Massachusetts v Andrus,* 594 F. 2d 872, 891 (1st Cir. 1979). As mobile bottom tending gear vessels will be unable to operate in a wind facility, siting offshore wind leases on mobile bottom tending gear fishing grounds creates an unreasonable risk to those fisheries.

finalized, until the study [a collaborative study analyzing the cumulative socio-economic and ecological impacts to fisheries resulting from offshore wind energy facilities] is complete and fisheries impacts can be properly evaluated and (2) request that NOAA adopt a more active role in working with BOEM to effectively site future wind energy projects."[3] By moving ahead with this Call for Information and Nominations, BOEM is not meaningfully coordinating with the Mid Atlantic Council.

The BOEM docket for this action states "BOEM must receive nominations describing your interest in one or more, or any portion of, the Call Areas". Seafreeze Ltd. is the largest producer and trader of sea-frozen fish on the U.S. East Coast. [4] Our company has been established for over 30 years, has developed a globally recognized brand name, built domestic and export markets for our products, and created global partnerships on multiple continents. Our vessels have harvested product in the NY Bight Call Areas since our inception and have both historic and current vested interest in the areas, prior to any interest that may be procured from uninvested entities responding to this Call for Information and Nominations. For over 30 years, our vessels and business have built an economy by utilizing the Fairways North, Fairways South, Hudson North and north and eastern halves of Hudson South. We do not believe that offshore wind entities with no prior vested interest nor decades long developed markets should be allowed to essentially disenfranchise those established businesses such as Seafreeze that already depend on these areas. BOEM cannot create an industrial monopoly of the ocean by one industry over all others through a biased administrative offshore development policy, as it has until this point.

We also would like to point out the clear interagency conflict that BOEM's actions and policy have created between the Department of Commerce and the Department of the Interior. During his confirmation hearing Secretary of Commerce Ross stated, "I would like to try to figure out how we can be much more self-sufficient in fishing and perhaps even a net exporter"; [5] and has repeatedly called to reduce the US seafood trade deficit. In May 2018 Secretary Ross again stated, "… 80% of our seafood consumed in the US is imported, and that seems a little bit silly to me given the coastlines we have and given everything else. So one of my objectives is to change that trade deficit into a trade surplus…I've been working a lot with the fisheries group and with the private sector on how to solve that problem."[6] If we are to grow our fisheries and turn a trade deficit into a trade surplus, commercial fishing grounds cannot be covered in wind farms. If in fact, commercial fishing grounds do become covered by wind farms, we will only have an increase in the seafood trade deficit. European fisheries are already suffering due to offshore wind development on their fishing grounds, causing 600-700 fishermen to protest against offshore wind in Amsterdam this June.[7] Clearly, BOEM's wind development policy, created

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[3] See https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5a8c865ae2c48394490b030d/1519158874918/Motions_February+2018+Council+Meeting.pdf. Motion passed without any opposition.

[4] See https://www.seafreezeltd.com/.

[5] See https://www.politico.com/tipsheets/morning-trade/2017/02/ross-side-project-make-america-first-on-seafood-218934.

[6] See https://www.undercurrentnews.com/2018/05/15/commerce-secretary-ross-repeats-call-for-reducing-us-seafood-trade-deficit/.

[7] See http://www.fiskerforum.dk/en/news/b/dutch-fishermen-to-take-protest-to-amsterdam and http://fiskerforum.dk/en/news/b/fishermen-take-protest-to-amsterdam. "'As a result of the wind farm construction, the southern North Sea has been lost,' commented den Helder fisherman Dirk Kraak following recent consultation with the government. 'The government has refused to back down one millimeter. This consultation

during a previous Administration in response to a National Ocean Policy of 2010 that is no longer in effect,[8] is in clear and direct conflict with the current Administration's policy regarding growth of our fisheries and reducing the US seafood trade deficit.

The assumption that the US seafood supply can simply be farmed should commercial fisheries disappear is also incorrect. Species such as those harvested by Seafreeze vessels cannot be farmed. For example, loligo squid, known to many as calamari, cannot be farmed. Even in scientific experiments, these fish do not survive in captivity for very long.[9] In the year 2016, worldwide squid production was down considerably due to widespread El Nino conditions.[10] However, on the East Coast of the United States, the loligo squid fishery experienced its best year on record. This opportunity offered tremendous economic benefits, export opportunities, etc., to East Coast commercial fishing businesses at an advantage over other world suppliers and markets. Should fishing grounds be covered in wind turbines, or wind farms placed on important squid habitat to the detriment of the species, these opportunities disappear and the seafood trade deficit increases. The NY Bight area is also important for Seafreeze vessels for the harvest of herring and mackerel, both of which cannot be farmed but support other businesses such as the lobster industry, recreational and commercial fishing bait markets, zoos and aquariums, etc, as well as export markets. The trickle-down effect to these other businesses will also be felt and require increased imports should wind facilities or leases be placed on our harvest areas.

As this Call for Information and Nominations was issued prior to the revocation of National Ocean Policy of 2010, under which policy offshore wind power was the primary ocean energy type, BOEM now has a new directive via President Trump's "Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States" which states in its very Purpose that "Our fisheries resources help feed the Nation and present tremendous export opportunities."[11] It is clear that the Trump Administration at the highest level continues to promote the growth of the commercial fishing industry, which BOEM must take into account before moving forward with offshore development. The new Executive Order also directs that it shall be the policy of the United States to "coordinate the activities of executive departments and agencies regarding ocean-related matters to ensure effective management of ocean…waters"[12] , to "facilitate the economic growth of coastal communities and

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was simply window dressing.'… 'A hundred wind farms in the North Sea do not only mean the end of fishing, as the marine environment is suffering serious damage. International research shows that birds, marine mammals, fish and bats are victims of windmills due to damage during construction, collisions, electromagnetic radiation and changing currents. Fish are also driven out of their traditional shallow spawning grounds and have nowhere to go when there are windmills everywhere,' said Texel fisherman Koos Boersen."

[8] National Ocean Policy of 2010 was revoked by President Donald Trump on June 19, 2018, after this Call for Information and Nominations was released on April 11, 2018. See https://www.whitehouse.gov/presidential-actions/executive-order-regarding-ocean-policy-advance-economic-security-environmental-interests-united-states/.

[9] For example, in one experiment conducted by Woods Hole Oceanographic Institution, the mean life span of female squid held in captivity was 13 days to 16 days. Maxwell and Hanlon, "Female reproductive output in the squid Loligo pealeii:multiple egg clutches and implications for a spawning strategy", *Marine Ecology Progress Series,* Volume 199:159-170, June 26, 2000. In other experiments, out of 6,673 squid, 99% were dead by day 5. Hanlon and Turk, "Fishery Bulletin:Vol. 85, No. 1", 1987.

[10] See for example https://www.undercurrentnews.com/2016/05/06/squid-prices-up-30-as-el-nino-tightens-global-supplies/.

[11] Ibid. Section 1.

[12] Ibid. Section 2(a).

promote ocean industries, which…feed the American people",[13]and to "ensure that Federal regulations and management decisions do not prevent productive and sustainable use of ocean…waters,"[14] and to "engage and collaborate, under existing laws and regulations, with stakeholders…to address ocean related matters that may require interagency or intergovernmental solutions."[15] As to date, BOEM has not coordinated its activities with that of National Marine Fisheries Service managed fisheries through the Department of Commerce or the commercial fishing industry's needs, but has been acting as the sole agency in siting offshore wind energy development. In order to comply with current Administration policy, BOEM must change its course of action and adopt a policy in alignment with the process described in our first paragraph, and as requested by the Mid Atlantic Fishery Management Council. BOEM is not the sole agency managing ocean related industries, and it needs to stop acting as such.

Furthermore, the current Administration does not merely speak of maintaining existing fishing industry size, but also expansion. The U.S. commercial fishing industry is much more highly regulated through National Marine Fisheries Service than the offshore wind industry is through BOEM.[16] In the Greater Atlantic Region alone, commercial fisheries abide by hundreds of spatial restrictions, as well as seasonal and other fishery restrictions and cannot simply "relocate" our business activities to other areas and be legally compliant. BOEM must coordinate its activities with commercial fishing industry practices, harvest areas, and regulations such as allows the commercial fishing industry to maintain current access and even increase its activity.

BOEM cannot analyze impacts to commercial fisheries and businesses, as it is not the agency with fisheries expertise or given legislative authority over fisheries. This must be done through National Marine Fisheries Service, and private partnerships with commercial fishing industry stakeholders, as specified by the new Executive Order ("collaboration with stakeholders to address ocean-related matters which may require interagency solutions"). Furthermore, ex-vessel value, as has been being utilized by BOEM to gauge fishery impacts, is not a sufficient analysis tool, as the economic multiplier effect generated by federal commercial fisheries is many orders of magnitude greater than ex-vessel value; thousands of land-based, year-round jobs relying on offshore commercial fishing must also be considered. At Seafreeze alone, many year-round salaried, full time, and part time jobs are at stake.

As vessels such as Seafreeze vessels will be unable to harvest our product in a wind farm due to operational and safety constraints, it is of paramount importance that offshore wind development sites not be placed on our fishing grounds. Additional impacts to fisheries and our business, aside from even the habitat destruction and ecological impacts to commercially harvested fish species due to large scale offshore wind development, are further complicated by the fact that National Marine Fisheries Service has also stated it will be unable to operate its annual bottom trawl surveys in wind facilities and has raised concern about the "impacts of these sampling area exclusions on the myriad of stocks dependent on these data streams".[17] As these data streams are what give the commercial fishing industry our

[13] Ibid. Section 2(d).
[14] Ibid. Section 2 (e).
[15] Ibid. Section 5(b).
[16] In 2014, a nationwide study showed fisheries as the 7th most regulated industry in the United States, even more highly regulated than oil and gas extraction managed by BOEM. The offshore wind industry is virtually unregulated. See https://www.mercatus.org/publication/mclaughlin-sherouse-list-10-most-regulated-industries-2014.
[17] See: NOAA/NMFS Vineyard Wind Comments at: https://www.regulations.gov/document?D=BOEM-2018-0015-0053 , page 13.

annual quotas necessary for the operation of our businesses, this leaves us in a very unstable future. The more uncertainty built into the science of fisheries stock assessments, the lower the commercial quotas our vessels will receive. This directly translates into loss of income for our business. BOEM has not even considered this type of detail in any of its analysis, but it is a huge impact to Seafreeze and other commercial fishing companies. No further leasing should go forward until a comprehensive investigation of fisheries impacts can be completed.

Nor should leasing go forward particularly in the NY Bight region until navigational, radar, and safety considerations can be fully investigated. The NY Bight area is one of the busiest maritime traffic areas in the nation. No comprehensive analysis by independent maritime safety experts of the implications of putting offshore wind facilities in this area has been conducted. However, NOAA has already informed BOEM that any wind facilities south of Long Island will result in a loss of coastal HF radar monitoring for 100 miles of the NY, NJ, and RI coasts, impacting both Coast Guard search and rescue and NOAA oil spill response.[18] The Department of Defense has also voiced concerns that "the impact from a group of turbines, each with three rotating blades, can quickly burden a radar system with thousands of false targets."[19] Please also see the attached picture of an actual commercial fishing vessel radar screenshot, taken while passing within 4 nautical miles of the Block Island Wind Farm off Rhode Island. The false images thrown by the turbines reached a span of 12 nautical miles, raising serious concerns about how close vessels can safely transit near wind turbines without presenting false radar targets which, particularly in inclement weather or at night, could make safe navigation impossible. An additional complication is the amount of recreational boating traffic in the area, which vessels do not necessarily possess radar or AIS, and could become "invisible" in clutter or confused with false radar targets. This issue is unique to the United States, as recreational boating exists on a much larger scale here than in European wind farm areas. Undersea navigational threats also exist, due to the fact that electrical cables the size of which would be utilized by projects proposed for the Call Areas generate magnetic fields sufficient to cause deviations on shipping compasses at the surface.[20]

Before siting offshore wind facilities around some of the most frequently transited waters in the United States, the potential safety issues must be resolved. Close to the current NY WEA and proposed Empire Wind offshore energy facility is the former site of Ambrose Light, which started as a lightship aide to navigation in 1823 and was replaced later by standing structure.[21] Although this tower was an aide and not an impediment to navigation, and known to mariners for well over 100 years, it was eventually taken down in 2008 due to strikes by oil tankers and freighters. These collisions occurred without any radar interference, compass deviations, or surrounding structure inhibiting maneuverability. If this one tower had so many incidents that it had to be dismantled, and if hundreds or thousands more towers which cause radar interference are planned for the surrounding areas frequented by oil tankers and other vessels, and search and rescue and oil spill response will be impeded

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[18] Comment letter, Zdenka Wllis, Director, U.S. IOOS Program Office, comment on BOEM-2014-0087 and BOEM-2014-0003, July 14, 2014.

[19] See http://greenfleet.dodlive.mil/files/2017/03/Win16-17_Interagency_Group_Wind_Turbines.pdf

[20] A 600 MW cable contains this capacity. See: Gill and Taylor, "The potential effects of electromagnetic fields generated by cabling between offshore wind turbines upon Elasmobranch Fishes", University of Liverpool 2001. http://www.offshorewindenergy.org/COD/reports/report-files/report_004.pdf. . According to Section 7 of this docket, New York is requesting four 800 MW lease areas.

[21] See https://en.wikipedia.org/wiki/Ambrose_Light.

should collisions occur, absolutely no further leases should even be considered until an independent maritime safety panel can assess the potential impacts of offshore wind development in this region. An oil spill due to improper planning would have devastating consequences for our fisheries, as would collisions of any kind between our vessels and other vessels or turbines themselves. Averting maritime disaster and loss of human life should be a much greater concern and priority to BOEM than appeasing the interests of wind developers.

2. Comments on Section 1, Background.

BOEM is not coordinating this action with the Mid Atlantic Fishery Management Council, as previously noted. BOEM continues to utilize information from the Northeast and Mid-Atlantic Data Portals, although these portals do not contain information on all fisheries and for many fisheries contain limited information. BOEM cannot continue to turn a blind eye to the fact that it is relying on incomplete information.

3. Comments on Section 2, Environmental Review Process.

BOEM's intended environmental review process, segmented into two stages of assessing the impacts of issuing a lease is inappropriate and illegal according to recent case law.[22] All cumulative and reasonably foreseeable impacts of an offshore wind lease, including all arising from an offshore wind facility, must be considered as part of an initial EA. In order to complete such analysis regarding commercial fisheries, a coastwide fishery impacts analysis must be completed in collaboration with National Marine Fisheries Service and the commercial fishing industry.

4. Comments on Section 3, Actions Taken by the State of New York in Support of Offshore Renewable Energy Development

The docket states that NYSERDA has spearheaded the development of the New York Offshore Wind Master Plan, to "advance offshore wind energy development in New York." We suggest that all lease areas be removed from the NY Bight area and placed in NY state waters rather than in federal waters if this is the case. The state of New York cannot simply present BOEM with an "Area for Consideration" in federal waters and then have that area be issued by BOEM as a Call for Information and Nominations. The state of New York does not have the authority to extend its state waters out past three miles, and BOEM cannot treat a single state as more important than an entire interstate maritime community of federally permitted and operating vessels.

5. Comments on Section 5, Development of the Call Areas

Although BOEM has stated it may exclude certain areas from leasing at the Area Identification stage if it concludes that fisheries conflicts cannot be properly mitigated, it has a poor track record to date of so doing.[23] We also submit that BOEM does not have the expertise to assess the levels of fisheries conflicts in order to make such decisions. Again, we refer BOEM to our opening paragraph. Also noteworthy is that BOEM has conducted a visual stimulation study to limit its areas for consideration due to viewshed concerns that are not protected by law but has still not completed a coastwide fisheries

[22] See *Public Employees for Environmental Responsibility v Hopper* 2016.
[23] See all commercial fisheries comments regarding the NY WEA.

impacts study and eliminated fishing grounds from its areas of consideration which would be compliant with the OCS Lands Act.

We also continue to draw attention to the fact that BOEM is relying on commercial fishing AIS data from 2013, before AIS was required on commercial fishing vessels in 2015 and only on vessels 65 feet or greater in registered length. This 2015 requirement also extends only to 12 nautical miles from shore, so all use in the NY Bight Call areas is voluntary and does not capture many vessels. Continued reliance on poor datasets is a clear indication that BOEM does not desire to properly consider fisheries impacts, as this point has been made to BOEM multiple times via multiple venues.

BOEM also is requesting information regarding commercial vessel port-to port or port-to-fishing location transit. Seafreeze vessels not only fish in all the Call areas, as previously stated, but also transit back to RI ports in North Kingstown and Point Judith through the areas. An independent analysis should be conducted to determine what the additional steam time and fuel consumption associated with each proposed development would cost commercial fishing businesses.

BOEM rightly states that the Call Areas contain a significant number of pre-existing cables traversing the seabed. This is also a concern for Seafreeze vessels. In Rhode Island, where the only offshore wind farm in the United States currently exists, commercial fishing vessels have already been negatively impacted by wind farm cables. Where the cables cannot be buried deep enough due to seabed obstructions, bottom type, or preexisting submerged cables as contained in the NY Bight Call Areas, the transmission cables have been covered with concrete mats. These mats have already damaged commercial fishing nets. The potential for this to occur on a large scale in the NY Bight Call areas is significant and must be addressed prior to leasing. Commercial fishing nets are not only intrinsically costly but gear damage also costs time and can lead to the termination of a fishing trip and subsequent loss of income. Furthermore, we do not believe that the target depth of burial (approximately 6 feet) utilized by the Block Island Wind Farm is deep enough to account for a dynamic ocean environment in areas as far reaching as the NY Call Areas. Should the cable become uncovered due to shifting sediments, fishing gear has the potential to hang up on the cable itself which would present another impediment to fishing. The size of the cables that projects the scale of which would be sited in the NY Bight areas would also create EMF fields that have the potential to affect commercially harvested species that rely on geomagnetic fields for navigation, as even a 600 MW cable can create a magnetic field equal to that of the natural geomagnetic field.[24] This is concerning, as the regulatory nature of fisheries may not allow for vessel relocation should commercial species be affected and/or relocate. Such impacts need to be studied and monitored and mitigated via our comments in the first paragraph.

6. Comments on Section 6, Description of the Area

The fact that BOEM is limiting its Call Areas by a 15 nautical mile buffer from shore in response to "viewshed concerns" but refuses to limit its Call Areas by consideration of established maritime industries is concerning.

[24] See Source: Gill and Taylor, "The potential effects of electromagnetic fields generated by cabling between offshore wind turbines upon Elasmobranch Fishes", University of Liverpool 2001. http://www.offshorewindenergy.org/COD/reports/report-files/report_004.pdf.

7. Comments on Section 7, Requested Information or Affected Parties

BOEM is requesting information about potentially conflicting uses of the Call Areas including commercial fishing areas. At multiple Open Houses prior to this Call the commercial fishing industry provided feedback of fishing activity in the areas, however, the areas went out for a Call despite our concerns. As we have stated prior, Seafreeze vessels fish in every single Call Area. We encourage BOEM to utilize the process described in our first paragraph and work to ensure these fishing areas are removed from consideration.

BOEM is also requesting additional information about the determination of appropriate buffers for safety based on vessel types and density that transit the Call Areas, particularly for port-to-fishing and port-to-port commercial fishing traffic. BOEM not only needs to take a comprehensive view of the situation, but also engage a panel of independent maritime experts to assess what appropriate safety buffers are, taking into account all vessel traffic in the area as well as radar interference. As shown by our attached picture of radar interference near the Block Island Wind Farm, 4 nautical miles is not enough of a buffer, and the false signals given off by turbines can be thrown at least 12 nautical miles. All characteristics of vessels transiting the area should also be considered, as some large cargo/tanker vessels need literally miles to stop or change course, commercial fishing vessels engaged in fishing have very limited maneuverability particularly if their gear is deployed, and safe buffers would need to take into account all vessels that may be in an area at the same time, their capabilities, and how much maneuverability each vessel type requires. BOEM does not possess this type of expertise and cannot move forward with identification or leasing until an independent analysis is conducted.

8. Comments on Section 9, Protection of Privileged or Confidential Information

Although BOEM has made the commitment to protect privileged or confidential information such as trade secrets that are submitted as part of this Call for Information, we have concerns about continuing to submit such sensitive business information when BOEM has not committed to using it to protect our harvest areas and businesses. As part of the initial NY Call Area BOEM process, we submitted confidential information from over 20 commercial fishing businesses to BOEM detailing our activity in that area. Despite this information, BOEM did not remove any area from the Call in response to our submission or in consideration of our industry, but leased our historic business grounds to Statoil. BOEM must commit to work in good faith and partnership with the commercial fishing industry to remove our harvest areas from lease considerations and change its current process of soliciting sensitive information and then ignoring it. We do not know who is privy to this information and BOEM's bad faith actions have not increased our confidence in the agency.

9. Conclusion

In conclusion, BOEM cannot move forward with offshore wind development in the NY Bight until commercial fishing interests are comprehensively analyzed and protected from the outset. In 1976, Congress passed the Magnuson Stevens Fishery Conservation and Management Act, to establish a U.S. EEZ (Exclusive Economic Zone), extending 200 miles from shore in order to protect American commercial fishing grounds exclusively for American commercial fishermen. BOEM's current offshore wind siting and procurement policy now allows the leasing of these fishing grounds out from under the U.S. commercial fishing industry and undermines over 40 years of Congressional legislation and management. This is unacceptable. During previous oil exploration on the East Coast, when confronted

with conflict between impacts to the commercial fishing industry and the Department of Interior's offshore energy leasing process, the courts ruled multiple times that the Secretary of the Interior has a duty to stop offshore energy leasing if it creates an unreasonable risk to fisheries. The NY Bight Call Areas are in direct conflict with many fisheries and present risks of mobile gear operational exclusions and habitat losses that cannot be mitigated once leases are given. Our conversations with wind developers have made this very clear. No amount of BOEM promises of "mitigation" arising after a lease is granted are sufficient to reduce the risk to our business or our fisheries to an acceptable extent. BOEM has a legal responsibility to ensure that our interests are protected, and our fishing grounds removed from consideration, before leasing of any NY Bight Call Area would begin.

Thank you for the opportunity to comment.

Sincerely,

Meghan Lapp
Fisheries Liaison, Seafreeze Ltd.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
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NEW ENGLAND FISHERY
MANAGEMENT COUNCIL

Luke Feinberg
Project Coordinator
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, VA 20166

RE: Docket BOEM-2018-0004
Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight – Call for Information and Nominations

Dear Mr. Feinberg:

On April 11, 2018, your agency published a notice in the *Federal Register* (83 FR 15602) inviting the submission of information and nominations for commercial wind leases on the Outer Continental Shelf in the New York Bight. In response to your request for information, we submitted comments in a letter dated June 7, 2018, which also included several appendices with information on fishing operations, landings, vessel revenue, and essential fish habitat within the call for information and nomination areas (Call Areas). On May 22, 2018, you extended the comment period to July 30, 2018. In response that extension, we are providing additional information to supplement Appendix C of our June 7th letter. Specifically, the attached document provides new analysis on fishery landings and revenue, fishing communities that would be most affected by potential offshore energy development within the Call Areas, and individual vessel dependence on each Call Area for fishing revenue.

We appreciate the opportunity to provide additional comments and information on New York Bight Call Areas. We will continue to support the Administration's efforts to advance offshore renewable energy, while balancing our national strategic goals to maximize fishing opportunities, ensure the sustainability of fisheries and fishing communities, and recover and conserve protected species. We are committed to working with you to provide the necessary expertise and advice to avoid and minimize impacts to fishing activity, fisheries resources and habitats, and protected species. Should you have any questions regarding these comments, please contact Sue Tuxbury (978-281-9176, or susan.tuxbury@noaa.gov).

Sincerely,

Michael Pentony
Regional Administrator

MB 8/7/18

cc: Brian Hooker, BOEM
Tom Nies, NEFMC
Chris Moore, MAFMC
Lisa Havel, ASMFC
Lingard Knutson, EPA
Greg Lampman, NYSERDA
James Gilmore, NYSDEC
Jeffery Zappieri, NYDOS
Russell Babb, NJDEP
Kim Springer, NJDEP
David Pierce, MADMF
Bruce Carlisle, MACZM
Bill White, MACEC
Grover Fugate, RICRMC
Julia Livermore, RIDEM
Jon Hare, NEFSC
Greg Power, NMFS SED
Heather Sagar, NOAA

Supplement to Appendix C of NMFS June 7th Comment Letter

Utilizing the same data and methods from Appendix C, we present further analysis of the estimated impact to fisheries from wind energy development in the NY Bight call areas. The sections that follow include an update to the 2015 and 2016 surfclam and ocean quahog fishery management plan (FMP) data presented in Appendix C, an analysis of revenue by port, and an analysis of the percentage of total revenue each permit derives from the call areas.

Correction to 2015 and 2016 Surfclam Data as Presented in Appendix C

We have updated the 2015 and 2016 surfclam and ocean quahog FMP data to include electronic records that were not present in the original analysis. The 2012-2014 surfclam and ocean quahog data presented in Appendix C remain unchanged, however, we re-present the 5 year totals in Table 5.1, with a comparison between Appendix C and the updated data. In Figure 5.1, we present the data by year and call area. The estimated total surfclam and ocean quahog landings and revenue omitted in our original submission of Appendix C is 264,000 lb. valued at $2.894 million. This supplement updates the "Most Impacted FMPs" section of our original submission, specifically Figures 1.1 through 1.8 and Tables 1.1 through 1.9, and the "Bottom Tending Mobile Gear" section consisting of Tables 4.1 through 4.4. All of the updated surfclam and ocean quahog landings were fished using bottom tending mobile gear. We did not present the surfclam species data separated from ocean quahog in Appendix C; however, Tables 5.2 and 5.3 below present the isolated species data. The data update resulted in a decrease in surfclam and ocean quahog pounds landed in the Fairways North call area (See Table 5.1). The VTR dataset is not static, and records can undergo quality assurance and control for better accuracy. This process additionally updated the fishing location of several of the surfclam and ocean quahog trips. The update also resulted in minor changes to other federally regulated species, but of the magnitude of one to three percent of revenue. These changes are reported in Table 5.4.

Table 5.1 Comparison of Landings (pounds) and Revenue Between Appendix C and Updated Data, Surfclam and Ocean Quahog (Mid-Atlantic) FMP

Call Area	Appendix C Landings	Appendix C Revenue	Updated Landings	Updated Revenue
Fairways North	798,000	$6,251,000	792,000	$6,209,000
Fairways South	682,000	$6,006,000	695,000	$6,143,000
Hudson North	3,697,000	$24,783,000	3,868,000	$26,665,000
Hudson South	1,092,000	$10,663,000	1,178,000	$11,579,000
Total	6,269,000	$47,702,000	6,533,000	$50,596,000

Figure 5.1 Surfclam and Ocean Quahog (Mid-Atlantic) FMP Landings

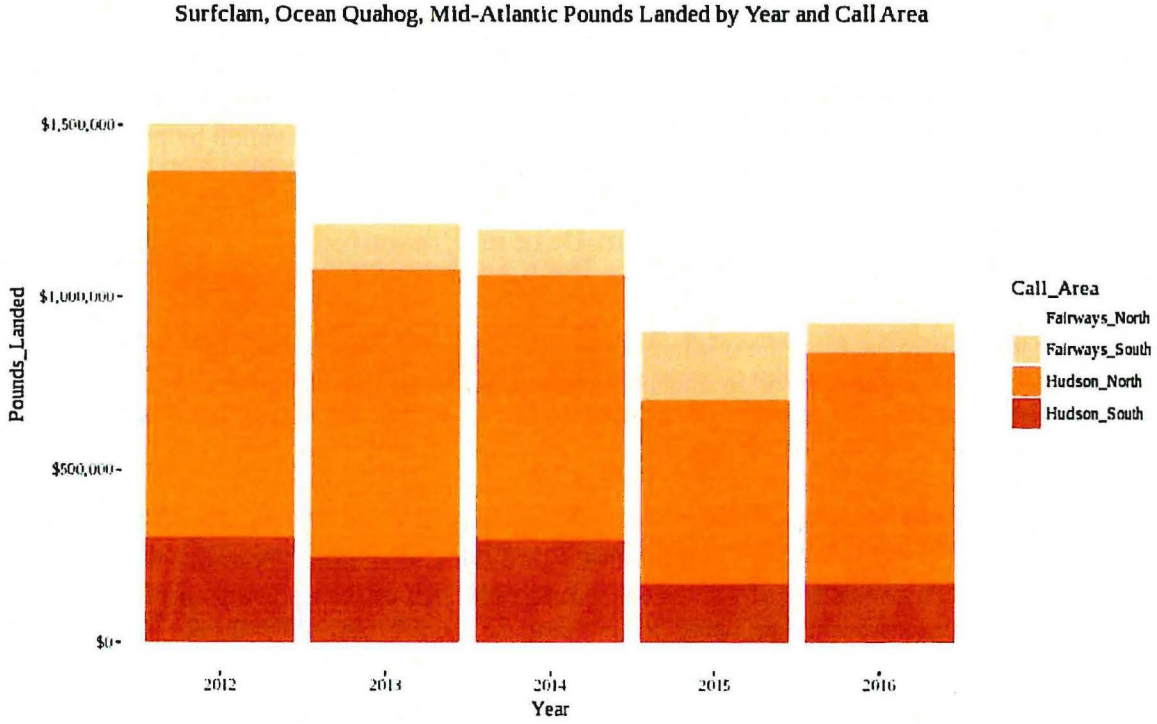


Figure 5.2 Surfclam and Ocean Quahog (Mid-Atlantic) FMP Revenue

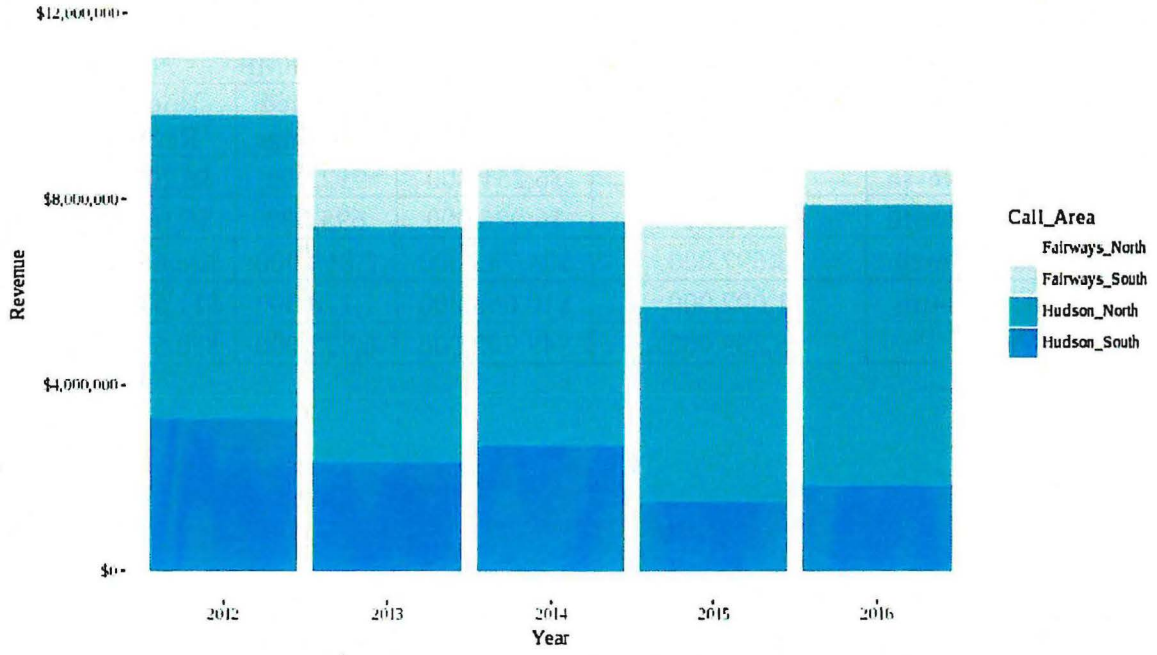


Table 5.2 Surfclam Species Landings and Revenue by Call Area, 2012-2016

Call Area	Appendix C Landings	Appendix C Revenue	Updated Landings	Updated Revenue
Fairways North	1,000	$15,000	1,000	$15,000
Fairways South	2,000	$23,000	3,000	$32,000
Hudson North	23,000	$262,000	23,000	$260,000
Hudson South	942,000	$9,475,000	1,009,000	$10,233,000
Total	968,000	$9,776,000	1,036,000	$10,541,000

Table 5.3 Ocean Quahog Species Landings and Revenue by Call Area, 2012-2016

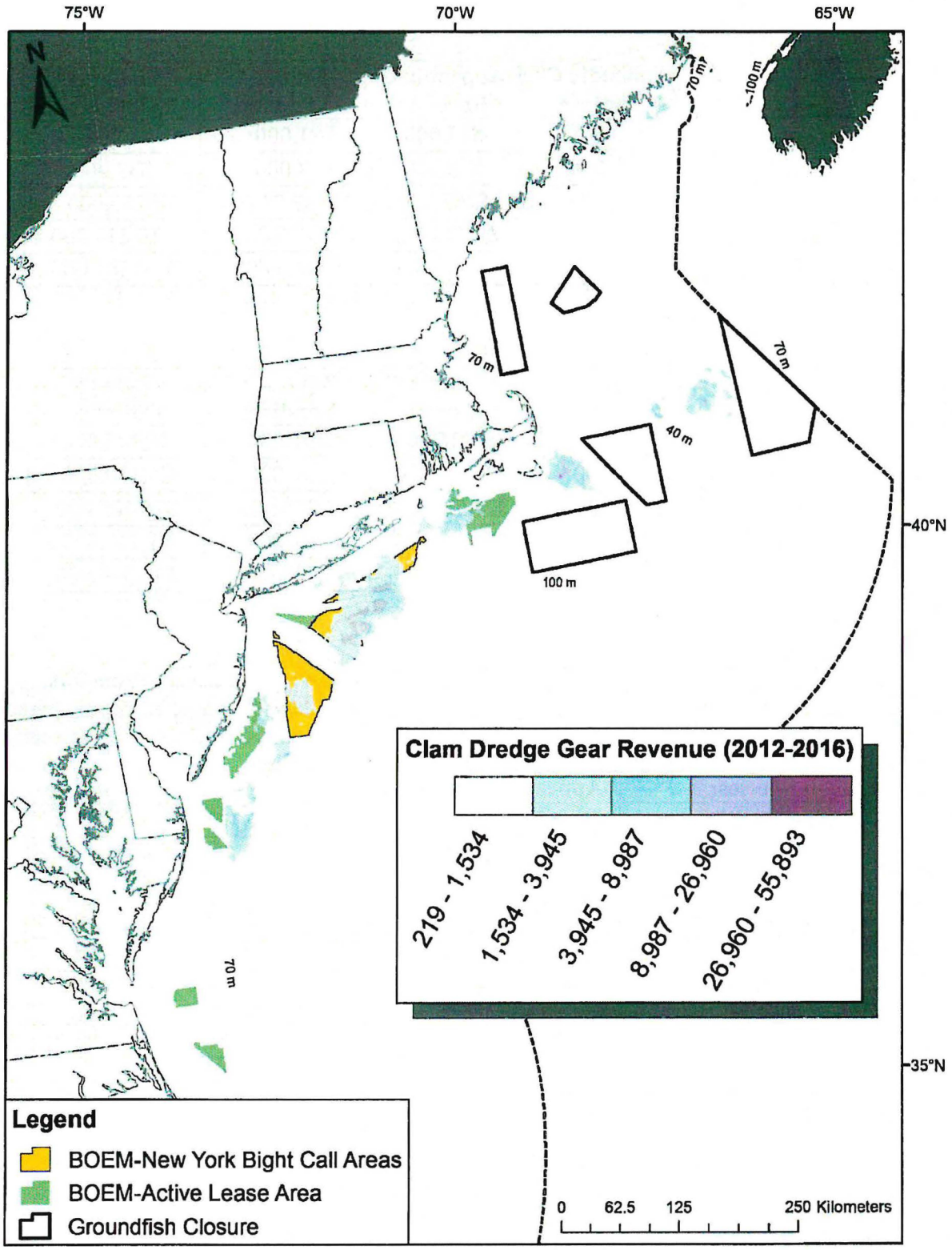
Call Area	Appendix C Landings	Appendix C Revenue	Updated Landings	Updated Revenue
Fairways North	796,000	$6,236,000	791,000	$6,194,000
Fairways South	680,000	$5,982,000	693,000	$6,110,000
Hudson North	3,674,000	$24,520,000	3,845,000	$26,405,000
Hudson South	150,000	$1,188,000	169,000	$1,345,000
Total	5,300,000	$37,926,000	5,498,000	$40,055,000

The update in records indicate that the value of Surfclams caught in the call areas from 2012-2016 was 8 percent more than originally reported in Appendix C and the value of Ocean Quahog was 6 percent more than originally reported. Table 5.4 below presents changes to other species.

Table 5.4 Other Species' Updated Revenues

Species	Appendix C Revenue	Updated Revenue	Change
Black Sea Bass	$1,856,000	$1,893,000	2%
Monkfish	$6,527,000	$6,636,000	2%
Scup	$1,985,000	$2,018,000	2%
Inshore Longfin Squid	$3,398,000	$3,449,000	2%
Summer Flounder	$5,227,000	$5,300,000	1%
Lobster	$1,796,000	$1,809,000	1%
Conchs	$1,491,000	$1,460,000	-2%

The incorporation of additional electronic records for clam dredge trips requires an updated depiction of clam dredge gear revenue data for 2012-2016. The figure below updates Map 3 on page 45 of our June 7, 2018, letter to include these additional electronic records.



Revenue by Port

The ten most impacted (by revenue) ports are listed below in Table 1.3. These ports are estimated to receive the most landings from fishing done within the NY Bight call areas. Table 1.4 below displays each port's landings breakdown by call area. Both tables present the cumulative revenues from 2012-2016. New Bedford receives the highest value of landings of any port, with $113.120 million from 2012-2016. New Bedford's revenues from fishing in Hudson North alone are $64.955 million, as displayed in Table 1.4. It is important to note that vessels from other ports fish within the call areas, but are not included in Table 6.1 in part because they land lower-value species. The ports represented in Table 6.1 are those in which higher value species such as Atlantic sea scallops, Atlantic surfclams, and ocean quahogs are landed most frequently instead of ports in which lower value species, such as whiting, squid, and herring, are more often landed.

Table 6.1 Most Impacted Ports, by Landings Revenues from 2012-2016

City	State	Total Five Year Revenue
New Bedford	MA	$113,120,000
Point Pleasant	NJ	$45,214,000
Cape May	NJ	$42,472,000
Barnegat	NJ	$40,148,000
Atlantic City	NJ	$28,969,000
City Of Seaford	VA	$15,651,000
Newport News	VA	$15,103,000
Point Judith	RI	$8,586,000
Hampton	VA	$5,498,000
New London	CT	$4,897,000

Table 6.2 Landings by NY Bight Call Area from 2012-2016

	Total Five Year Revenue			
Port	Fairways North	Fairways South	Hudson North	Hudson South
New Bedford, MA	$16,740,000	$13,253,000	$64,955,000	$18,171,000
Point Pleasant, NJ	$456,000	$1,586,000	$31,324,000	$11,848,000
Cape May, NJ	$928,000	$2,357,000	$20,886,000	$18,301,000
Barnegat, NJ	$137,000	$1,199,000	$11,560,000	$27,252,000
Atlantic City, NJ	$567,000	$3,146,000	$9,832,000	$15,424,000
City of Seaford, VA*	$15,651,000			
Newport News, VA	$345,000	$489,000	$7,571,000	$6,699,000
Point Judith, RI	$2,407,000	$875,000	$4,637,000	$667,000
Hampton, VA	$172,000	$210,000	$2,885,000	$2,231,000
New London, CT	$2,797,000	$630,000	$1,348,000	$122,000

*Revenue totals by call area are suppressed for City of Seaford, VA to ensure confidentiality

Percentage of Revenue by Permit

We also analyzed the percentage of each permit's revenue (out of total fishing done within the vicinity of the wind areas) coming from within the NY Bight call areas and present them in boxplots figures and tables below. Boxplots are important statistical summaries because they provide information about the distribution of the percentages of each permit's fishing revenue. The boxplots below begin at the 1st quartile, or the value beneath which 25 percent of all observations fall. A thick line within the box identifies the median, the observation at which 50 percent of observations are above or beneath. The box ends at the 3rd quartile, or the observation beneath which 75 percent of observations fall. The minimum and maximum values are also indicated by the "whiskers" that extend out from each side of the box. The circles are observations that are substantially larger than the rest of the data. In our tables; however, the maximum values are inclusive of these high dependence observations. Table 1.3 below presents the minimum, 1st quartile, median, 3rd quartile, and maximum values for each call area. These are the five year revenue percentages. The boxplots in Figures 1.3-1.6 below further separate each call area out by year.

Twenty-five percent of the permits that fished in Fairways North between 2012 and 2016 derived 0.03 percent or less of their revenue from directly within the call area. Seventy-five percent of the permits fishing within Fairways North derived 0.64 percent of their revenues from within Fairways North. The maximum percentage of revenues any one permit derived from within Fairways North was 57 percent. What these quartiles show is that most of the permits are deriving less than 1 percent of their total revenues from within the call area, but some permits are fishing heavily in Fairways North. Hudson North had the highest median and 3rd quartile percentages, meaning 50 percent of the permits fishing within Hudson North from 2012-2016 derived 2 percent or less from the call area, and 75 percent derived 5 percent or less. Overall, Hudson North and Hudson South are more important to the fleet at large, but each area may be very important to some vessels, with individual vessels reliant upon these areas for up to 92 percent of their 5-year fishing revenue.

Table 1.5 Analysis of Five Year Permit Revenue Percentage Boxplots, by Call Area

Call Area	Min	1st Quartile	Median	3rd Quartile	Max
Fairways North	0	0.03	0.17	0.64	57
Fairways South	0	0.03	0.14	0.55	11
Hudson North	0	0.28	2	5	53
Hudson South	0	0.20	0.89	3	92

Figure 1.3 Annual Permit Revenue Percentage Boxplots, Fairways North

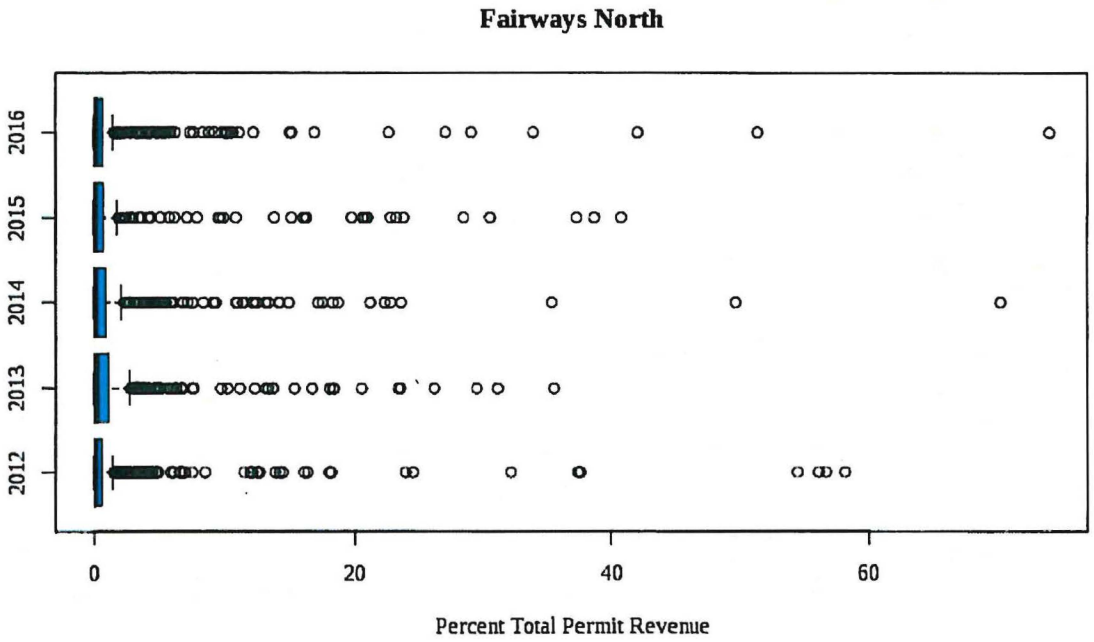


Figure 1.4 Annual Permit Revenue Percentage Boxplots, Fairways South

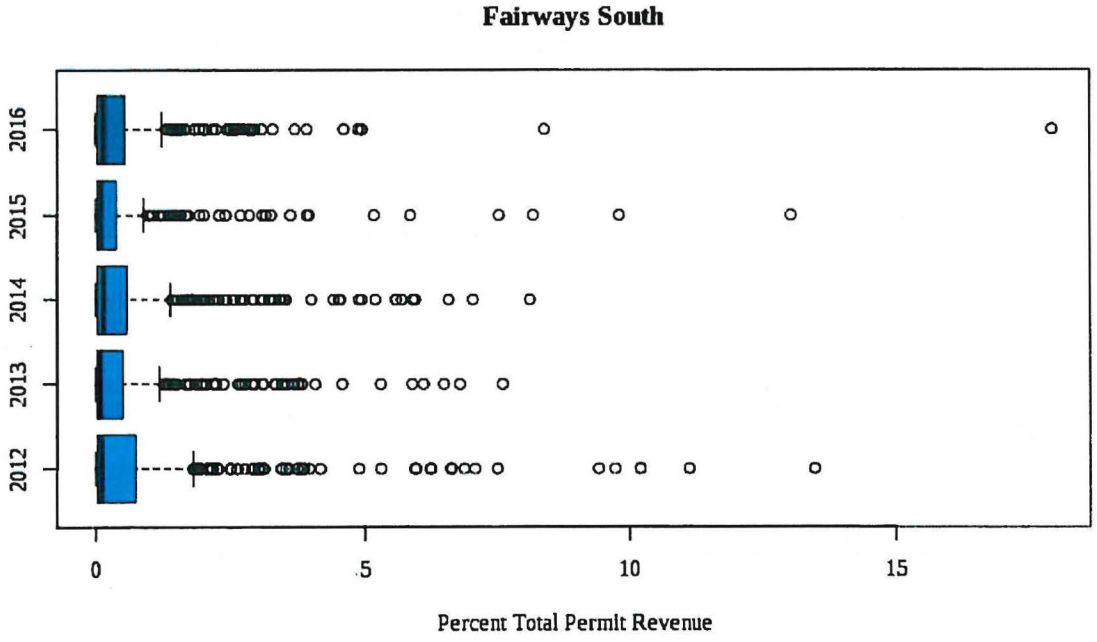


Figure 1.5 Annual Permit Revenue Percentage Boxplots, Hudson North

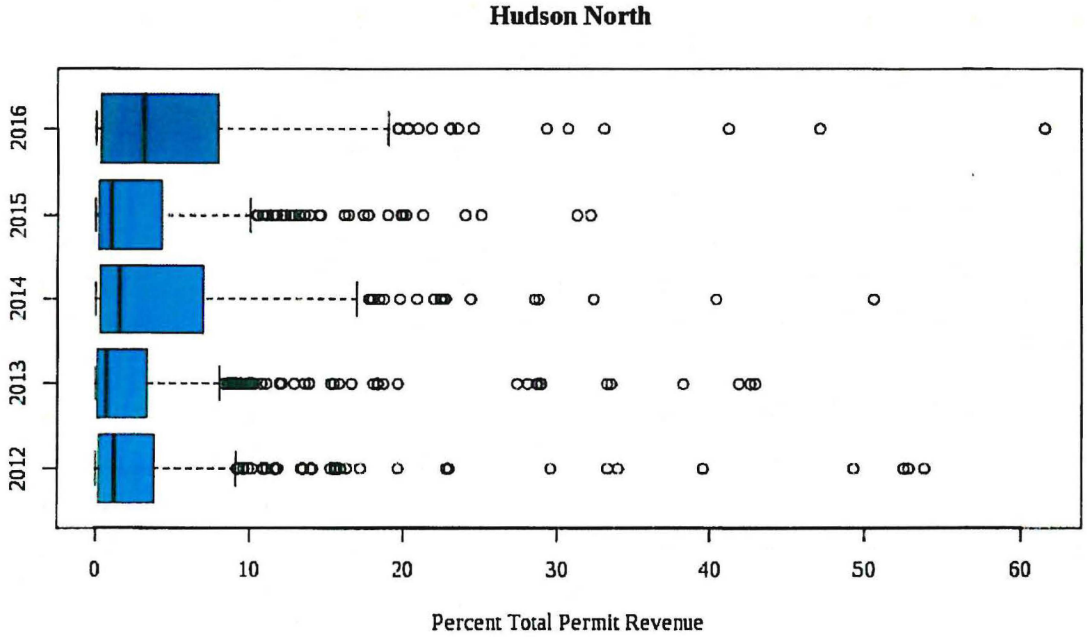
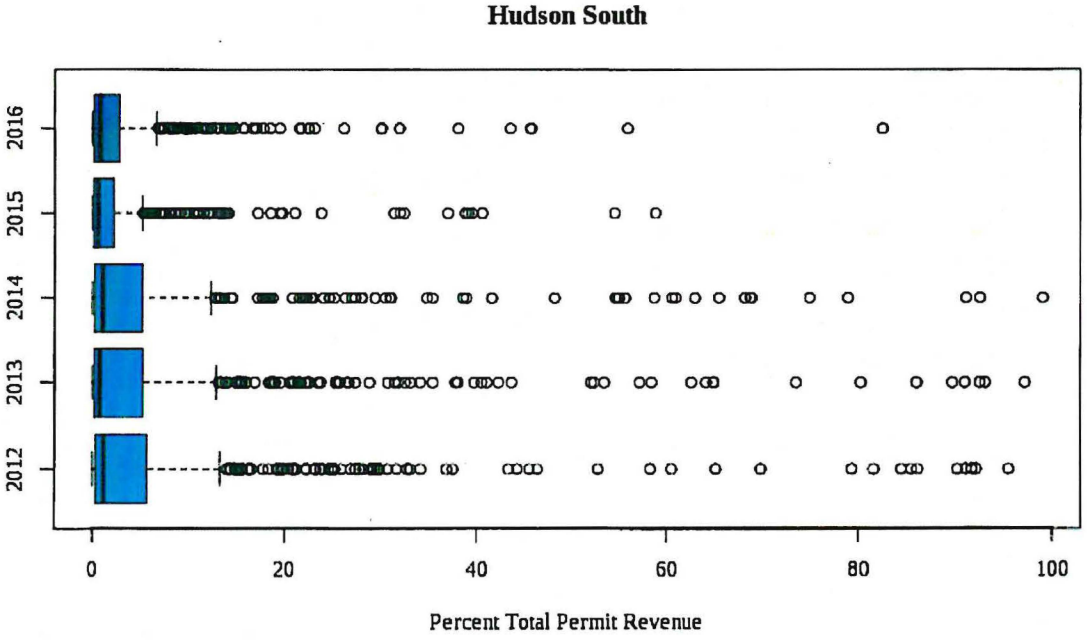


Figure 1.6 Annual Permit Revenue Percentage Boxplots, Hudson South



Considering the close location of the call areas, it is likely that a permit may be fishing in multiple areas. Therefore, in Table 1.4 below, we present the analysis of all the areas across all 5 years, summed. In total, 988 unique permits fished in one or more call areas in the 5 year time period. Fifty percent of these permits derived 3 percent or less of their revenues from the call areas, and 75 percent derived 8 percent or less.

Table 1.6 Analysis of Five Year Permit Revenue Percentage Boxplots, All Call Areas

Area	Min	1st Quartile	Median	3rd Quartile	Max
All Call Areas	0	0.46	3	8	92

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JUN 27 2018
NEW ENGLAND FISHERY MANAGEMENT COUNCIL

June 22, 2018

Comments on BOEM Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic OCS- BOEM-2018-0018

BOEM's initial factors to be considered in analysis are blatantly pro-offshore wind industry and anti-commercial fishing industry. They also do not comply with the Outer Continental Shelf Lands Act requirements to "ensure that **any activity** [including siting and formulating a "Path Forward, not simply a COP review or NEPA process] in this subsection is carried out in a manner that provides for... (G) **protection of correlative rights on the outer Continental Shelf** ; ....(I) **prevention of interference with reasonable uses** (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas; (J) **consideration of...any other use of the sea or seabed including use for a fishery**". [1] These requirements are not an option for BOEM to use in identifying appropriate siting for offshore wind development; they are legal obligations. However, BOEM has ignored these legal obligations in its 9 "factors to be considered in the analysis contemplated in this notice", and has instead included such non-legally required factors such as "Areas for which industry has expressed interest". We assume this means the offshore wind industry rather than industries with pre-established interest in an area. Thus, BOEM is not only ignoring the legal requirements of OCSLA, it is biasing its entire process towards the interests and desires of offshore wind developers, to the detriment of existing ocean industries whose correlative rights BOEM is mandated to protect in any activity it undertakes regarding offshore development. This is unethical and illegal. We suggest that BOEM add "Areas used for commercial fishing activity" to its list of exclusionary factors. Below we address the BOEM docket claims in more detail:

1. BOEM states: "BOEM is aware of many other factors that affect the appropriateness of offshore development, including commercial and recreational fisheries concerns.... However, unlike the factors identified above, evaluation of these factors requires a detailed, site-specific analysis that would not be practicable on a landscape scale for the entire Atlantic Coast". This is not true. Both the New England Fishery Management Council and the Mid Atlantic Fishery Management Council routinely complete analysis of fishing effort per fishery for the entire Atlantic Coast as part of impacts assessments and management measures for federally managed fish species. Fisheries for these species can occur along the OCS from Maine to North Carolina, making a coastwide analysis not only possible but practical and necessary, particularly for assessing cumulative impacts to any particular fishery.[2] Siting is the most important aspect of the entire offshore wind process, and to

[1] Outer Continental Shelf Lands Act, as amended by Section 388 of the Energy Policy Act 2005; bold print mine. See https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf.

[2] See for example http://s3.amazonaws.com/nefmc.org/Herring-A8-Volume-II-Appendices.pdf , page AVI 9 and forward; http://s3.amazonaws.com/nefmc.org/Herring-A8-DEIS.Submission.April-12.pdf, page 173; https://www.greateratlantic.fisheries.noaa.gov/regs/2016/September/16msbamend16ea.pdf,

mb 7/2/18

date BOEM has repeatedly sited offshore wind leases on important commercial fishing areas with complete disregard for the fisheries, fishing communities, sustainable US jobs, and biological stocks that will be affected. This must change.

2. *Background and Purpose:* "BOEM has now completed seven offshore wind lease sales for wind energy areas in the Atlantic Ocean offshore Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia, and North Carolina. Each of these sales were the result of processes that BOEM undertook over a period of years to identify and reduce potential conflicts between offshore wind leases and incompatible ocean uses" – this is not true. BOEM did not identify and reduce potential conflicts between offshore wind leases and incompatible ocean uses such as commercial fishing, particularly trawling. Despite the fact that the commercial fishing industry has participated in multiple BOEM open houses, stakeholder conference calls, state/BOEM Task Force meetings, submitted written comments at many public comment periods, supplied confidential business information in attempts to protect our place of business from offshore wind development, etc., BOEM has repeatedly ignored our concerns and continued to move forward with wind development on fishing grounds. This is why members of the squid and sea scallop fisheries, including several fishing ports, are engaged in a lawsuit with BOEM over the siting of the New York Wind Energy Area referenced above. The fishing industry has repeatedly commented as to the inadequacy, incomplete nature or misleading information regarding fisheries locations that BOEM uses meeting after meeting when presenting to the public, wind developers, governmental officials, etc., but BOEM continues to use this same information. This type of conflict and ensuing legal activity is inevitable in the future if BOEM continues its current path of leaving fishing interests unconsidered until after the fact. Furthermore, false and misleading statements such as above must be removed from any BOEM documents.

3. *Background and Purpose*: "BOEM has issued thirteen commercial leases (competitively or noncompetitively) in every state with territorial waters bordering the OCS from Massachusetts to North Carolina." Correction: BOEM has not issued wind leases IN any state. All BOEM leases are in federal waters which are not the jurisdiction of any state. The mentality that any state owns federal waters and has the right to initiate offshore development in federal waters without the prior involvement of current federally permitted industries or federal agencies that manage industries in federal waters, such as the National Marine Fisheries Service which manages federally permitted commercial fishing, is flawed.

4. *Background and Purpose*: "BOEM has received feedback from state and industry stakeholders requesting that BOEM propose additional lease areas. This feedback has been reinforced by increased competition in BOEM's most recent lease sales in New York and North Carolina, as well as a recent increase in the number of unsolicited lease applications submitted to BOEM." It is very apparent that BOEM is undertaking all of its initiatives in response to placating offshore wind developers at the expense of existing ocean users. BOEM's "Path Forward" is being developed in response to "industry stakeholders" who are responsible for a "recent increase in the number of unsolicited lease applications". However, BOEM has been receiving feedback for the past few years from commercial fishing industry stakeholders – who are apparently not considered industry stakeholders by BOEM- requesting a different approach to offshore energy siting which would exclude commercial fishing grounds from the areas being considered for leasing. To date, this has

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https://www.nefmc.org/library/omnibus-habitat-amendment-2, http://s3.amazonaws.com/nefmc.org/OA2-FEIS_Vol_1_FINAL_161208.pdf,

not happened, and BOEM continues to move forward with solely the interest of offshore wind developers in mind. This is an egregious miscarriage of justice and preferential treatment of one unestablished industry over another very established industry. BOEM's "Path Forward" must be one of responsive action to protect and support other ocean industries such as commercial fishing rather than carrying out offshore wind development at the expense of all other parties except offshore wind developers.

5. *Background and Purpose*: "BOEM seeks input from stakeholders regarding areas where development may or may not be appropriate and what factors BOEM should consider in the early stages of its future planning process". Commercial fishing grounds, in particular those used by mobile bottom tending gear fisheries such as trawl fisheries, are not appropriate for offshore wind development. We have continually explained to BOEM how and why these federal trawl fisheries will be operationally prohibited from operating in a wind farm. This fact is further supported by NOAA's National Marine Fisheries Service which has also stated it will be unable to operate its federal trawl survey in a wind farm, creating additional implications for fishery stock assessments, the setting of commercial fishery quotas and a new set of potential economic impacts.[3] Therefore, consideration of trawl fishery grounds and removal of these areas from future consideration and planning of offshore wind development is imperative.

6. Exclusionary Factors: "*Maritime navigation conflict areas:* At this time, BOEM would not consider leasing areas within official (*i.e.,* charted) marine vessel traffic routing measures. Later in the Area Identification process, BOEM would conduct a case-specific analysis of maritime vessel traffic information (*e.g.,* automatic identification system data) and might further refine and delineate areas of high traffic use outside of official traffic separation schemes and other routing measures." In its impacts analysis for this subject, BOEM continues to use, rely on and present at public meetings automatic identification system (AIS) traffic data for commercial fishing vessels from 2013. This is despite the fact that commercial fishing representatives have repeatedly told BOEM that AIS was not required on commercial fishing vessels until 2015, so it is an inadequate measurement of commercial traffic. Furthermore, AIS is only required on commercial fishing vessels of 65 feet or greater registered length, and therefore does not cover all federally permitted vessels. In lieu of AIS data, Vessel Monitoring System (VMS) data is more appropriate to use for commercial fishing traffic information, as most fisheries occurring in federal waters require VMS for all permitted vessels regardless of size. This information is readily available via National Marine Fisheries Service but BOEM continues to ignore it. Commercial fishing VMS data should be incorporated into the maritime navigation conflict/maritime vessel traffic information dataset and used as an exclusionary factor.

7. Positive Factors: "*Areas not previously removed*: Some of the areas of the OCS were removed from consideration for leasing in BOEM's past Area Identification processes for a variety of different reasons. In most cases, they were removed for reasons that remain applicable today, such as certain high value fishing grounds off the coasts of Massachusetts and Rhode Island..." This statement begs the question why other high value fishing grounds have not been removed from consideration, considering the fact that other high value fishing grounds have been sited for offshore wind development and those affected fisheries submitted the same type of information that was considered for the removal of certain portions of the MA/RI areas. We would ask BOEM why this is the case, and why this process of removing fishing grounds from consideration based on

[3] See https://www.regulations.gov/document?D=BOEM-2018-0015-0053, page 13.

vessel data has not been utilized for other areas or in the planning process, particularly as this is a reason that "remain[s] applicable today"? However, the assertion that the MA/RI area removals were adequate is incorrect; in this particular process BOEM communicated with only a select group of fisheries and left other heavily affected users out of the conversation.[4] BOEM's public process has not been equitable or consistent, which must change moving forward.

8. Positive Factors: *"Areas greater than 10 nautical miles (nm) from shore:* BOEM recognizes that an offshore energy facility may present viewshed concerns for coastal stakeholders...concerns about potential visual impacts of wind development". We are curious what section of the Outer Continental Shelf Lands Act elevates viewshed concerns of the recipients of wind power over the protection of correlative rights on the Outer Continental Shelf, the interference with reasonable uses, and the use of the seabed for a fishery? This "Positive Factor" in determination of offshore wind siting should be removed and replaced with "areas not used as commercial fishing grounds". Simply because those individuals who will be consumers of the wind generated power do not want their ocean views affected by the very power they themselves are consuming does not mean that this consideration is elevated to the same or a higher level than those explicitly protected by Congress.

9. Positive Factors: *"Areas for which industry has expressed interest:* This factor includes areas where offshore wind developers have expressed interest in leasing a specific location.... As part of this RFF, BOEM requests that developers identify areas along the Atlantic Coast that may be of interest for future offshore wind leasing. This request is not a formal Request for Interest, but rather to inform BOEM's planning efforts for future potential offshore wind leasing." Again, we highlight the inherent bias in BOEM's offshore wind development process and formally request that this section be removed and replaced with collaboration with existing ocean users to ensure the sustainability of current ocean industries such as commercial fishing. The commercial fishing industry has already requested and will continue to request that BOEM remove areas identified as commercial fishing grounds from consideration, as these are areas which the commercial fishing industry already has vested interest. This will better inform the BOEM process as to which areas will generate significant opposition and potential legal activity which should be avoided.

10. Positive Factors: *"Areas with resource and locational potential (potential factor):* BOEM acknowledges that certain areas of the OCS may have greater commercial potential than others. As described in a recent March 2017 publication...the National Renewable Energy Laboratory (NREL) has developed a model predicting the economic potential for specific portions of the OCS. BOEM has identified this as a potential additional factor and has not included it in the evaluation of forecast areas at this time. We are requesting comments on the utility of this study in our planning efforts..." The commercial fishing industry has been requesting similar economic studies on the potential impacts of offshore wind on commercial fishing revenue, jobs, and communities from the

[4] See for example, RI DEM analysis of economic impacts to fisheries in the MA/RI WEAs at: http://www.dem.ri.gov/programs/bnatres/fishwild/pdf/RIDEM_VMS_Report_2017.pdf. This analysis shows substantial impacts to fisheries arising from the MA/RI WEAs. However, this analysis limited the economic impact purely to data points falling within a WEA; for mobile bottom tending gear, the impacts are much greater due to the nature of the operation. For example, one harvest tow may start outside the WEA, move through it, and end on the outside of it. If a mobile gear vessel loses the section of the tow within the WEA, it loses the whole tow, not simply the section or income attributed inside the WEA. This analysis is also limited purely to ex-vessel value, and does not account for the economic multiplier effect of fish dealers, processors, gear suppliers, transport, food supply businesses, restaurants, all related jobs, and consumers.

loss of fishing area, combined with the over 300 spatial commercial fishing regulations from ME to NC, in even the currently proposed wind areas. Similarly, the commercial fishing industry has emphasized the fact that each fishery occurs in certain areas at certain times, as "certain areas...have greater commercial potential than others." Commercial fishing is literally the embodiment of "areas with resource and locational potential." Until similar studies can be completed for the commercial fishing industry to analyze the potential economic impacts per fishing area of the OCS per fishery, and the possible interaction with the NREL study areas, this study should not be used. Again, BOEM is under legal mandate to protect correlative rights on the OCS, not give wind companies regulatory advantage.

11. *"Regional Ocean Plans and Data Portals":* Per President Trump's June 19, 2018 Executive Order "Ocean Policy to Advance the Economic, Security and Environmental Interests of the United States", Regional Ocean Plans are no longer in effect and are no longer binding on agencies. The Regional Ocean Plans are products of the RPBs which have been disbanded by the new Presidential Executive Order in order to "remove unnecessary Federal bureaucracy" and "provide regulatory certainty". [5] In contrast, the new Executive Order acknowledges in its "Purpose" section that "fisheries resources help feed the Nation and present tremendous export opportunities."[6] BOEM should take note.

12. *"Regional Ocean Plans and Data Portals":* The Data Portals are incomplete datasets that do not incorporate all commercial fisheries in New England and the Mid Atlantic, for example summer flounder, scup, black sea bass, whiting, red hake, butterfish, etc., and cannot be used to inform proper planning efforts. Certain important commercial species, such as squid and mackerel, only have spatial data contained on the portal from very recent years when reporting requirements for those fisheries changed. Therefore, commercial fisheries representatives have repeatedly encouraged BOEM to contact the Regional Fishery Management Councils and National Marine Fisheries Service to obtain the data for these and other fisheries which would be more complete and offer a greater time series of information, which is necessary for fisheries impacts analysis. However, BOEM has refused to obtain this data or request any of the suggested analysis. Even when in possession of the Data Portal information, BOEM has ignored the data and sited WEAs on important commercial fishing areas notwithstanding. BOEM needs to obtain a time series of the correct data and analysis for all federally managed fisheries from the appropriate management and regulatory agencies on which to rely, rather than purely the Data Portals. This information will take time to collect and analyze, and no "Path Forward" should move ahead until after such a time, as it will be required for BOEM to fulfill its legal mandate to protect correlative rights on the OCS as well as the ability to consider the use of a seabed for a fishery. Without appropriate data on the use of the seabed for a fishery, BOEM cannot "consider" it.

In conclusion, BOEM's "Path Forward" should be a pause until commercial fishing data and rights can be analyzed and protected, in accordance with the law as well as the spirit of President Trump's June 19, 2018 Executive Order which recognizes the importance of commercial fishing to the United States economy. BOEM thus far has skirted its responsibility for responsible offshore development that protects these rights, and also misled the public as well as the fishing industry as to the nature of

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[5] See https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-promoting-americas-ocean-economy/

[6] See https://www.whitehouse.gov/presidential-actions/executive-order-regarding-ocean-policy-advance-economic-security-environmental-interests-united-states/.

offshore wind lease siting/leasing/analysis/construction. In any "Path Forward" this broken process must change.

For example, BOEM's reply to the fishing industry's brief on the NY WEA lawsuit stated that it was too early and uncertain a point in the process to do a fishery impact analysis until a COP finalized. BOEM has also maintained that a wind energy facility is not a foreseeable outcome of a lease and therefore they are not obligated to consider fisheries issues at the point of lease. However, the MA/RI lease areas have Power Purchase Agreements in several states, before Vineyard Wind has an accepted COP, and before Deepwater Wind has even submitted a COP. Clearly the process is so certain on leases becoming the reality of a wind farm that states and power purchasers are willing to sign contracts. This is why a coastwide fishery impact assessment will be necessary at the outset, prior to any leasing activity or moving a "Path Forward", to determine the areas least impactful to commercial fishing to site wind leases. Additionally, a fisheries impact analysis on any potential lease area must be completed prior to leasing, and BOEM must develop a comprehensive mitigation and compensation plan with the commercial fishing industry to all vessels affected by current and potential future leases as a part of its "Path Forward".

Thank you for the opportunity to comment.

Sincerely,
Meghan Lapp
Fisheries Liaison, Seafreeze Ltd.

From: Browning, Jeffrey [mailto:jeffrey.browning@boem.gov]
Sent: Thursday, June 07, 2018 3:48 PM
To: Tom Nies
Cc: David Macduffee; James Bennett; Brian Hooker; Stromberg, Jessica; Brian Krevor
Subject: Massachusetts Proposed Sale Notice - Response to NEFMC Comment

Mr. Nies,

Thank you for your comment on the Massachusetts Proposed Sale Notice (PSN). Unfortunately, we will not be able to extend the comment period for the PSN. While we will not be able to extend the comment period for the PSN, we will make every attempt to accommodate your comments as noted below.

As you noted, and in response to your request to extend the comment period on the Request for Feedback on BOEM's Proposed Path Forward, we have extended that comment period an additional 45 days to July 5, 2018. Also, the comment period for the Call for Information and Nominations for the New York Bight has been extended an additional 60 days. Because the comment periods of these notices have been lengthened and their due dates staggered, we believe that stakeholders now have adequate time to provide comments on each notice.

Furthermore, BOEM will, if possible, address any information the New England Fisheries Management Council could provide to help inform BOEM's decision-making on the Massachusetts Lease areas.

Regards,

Jeff Browning
Project Coordinator, Office of Renewable Energy Programs
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mb 6/8/18

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

June 7, 2018

Luke Feinberg
Project Coordinator
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, VA 20166

RE: Docket BOEM-2018-0004
Commercial Leasing for Wind Power on the Outer Continental Shelf in the New York Bight – Call for Information and Nominations

Dear Mr. Feinberg:

We have reviewed the April 11, 2018, *Federal Register* (FR) Notice, inviting the submission of information and nominations for commercial wind leases on the Outer Continental Shelf (OCS) in the New York Bight that would allow a lessee to propose the construction of a wind energy project and develop one or more projects, if approved, after further environmental review. While this is not a leasing announcement, the areas described in the FR Notice may lead to the identification of wind energy areas to be available for future leasing. The Call for Information and Nomination Areas (Call Areas) described in the FR Notice are delineated into four areas titled Fairways North (250 square nautical miles (nmi^2)), Fairways South (126.4 nmi^2), Hudson North (696.9 nmi^2) and Hudson South (974 nmi^2). These areas include 222 whole OCS blocks and 172 partial blocks in total, and comprise approximately 2,047 nmi^2 or approximately 1.7 million acres (702,192 hectares). The development of approximately 14% of the proposed Call Areas would be needed to meet New York's goal of procuring 2.4 gigawatts (GW) of offshore wind energy by 2030. The development of approximately 18% of the Call Areas would be needed to meet New York State's recommendation that BOEM designate four 800 megawatt (MW) lease areas.

The announcement requests comments and information from interested and affected parties about the site conditions, resources, and multiple uses in close proximity to, or within, the Call Areas. In the FR Notice, you specifically request information on resources within our jurisdiction, including information on commercial and recreational fishing, fisheries resources and sensitive habitats, marine protected species and biologically important areas.

As the agency responsible for the stewardship of the nation's ocean resources and their habitat, our core goals include using science-based decision making to 1) maximize fishing opportunities

while ensuring sustainability of fisheries and fishing communities and 2) to recover and conserve protected species. To help achieve our goals, we have responsibilities in this matter pursuant to:

- The Fish and Wildlife Coordination Act (16 U.S.C. § § 661 et seq.), which requires that the Federal action agency give full consideration of recommendations provided by Federal resource agencies;
- The Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265), which requires consultation between the Federal action agency and us for projects that have the potential to affect Essential Fish Habitat (EFH);
- The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. § 1531 et seq.), which requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat; and
- The Marine Mammal Protection Act (MMPA) of 1972 (50 CFR 216), which provides protection to all marine mammals regardless of their listing status under the ESA.

We appreciate the opportunity to provide input and information for your consideration as you begin the process to identify potential wind energy areas (WEA) in the New York Bight. We offer the following information and comments related to resources within our jurisdiction.

General Comments

The proposed Call Areas encompass a large portion of the New York Bight, covering more than 1.7 million acres. According to the FR Notice, you will identify potential WEAs for future leasing based on information and commercial interest you receive through this announcement. Given the large size of the Call Area and the importance of the New York Bight for marine resources and commerce, we recommend you develop a broad stakeholder engagement process with multiple opportunities for public input. We recommend identifying specific WEAs for leasing in two phases, with an initial reduction in areas considered based on comments received on this notice, and further refinement based on a second comment period and stakeholder feedback process. We recommend that you hold public meetings across the region to gather additional information on these areas and identify potential use conflicts. This will ensure that resulting WEAs achieve the stated energy generation objectives, while minimizing conflicts with existing uses and impacts to marine resources.

Under the FR Notice, you are specifically requesting information on how you should determine the appropriate size and number of wind energy areas to offer for leasing. You have indicated that the energy capacity requests from New York will be a factor, but you are also requesting information on what additional factors should be considered. In addition to the information provided in this letter related to commercial and recreational fisheries, habitat, and protected species should be considered in identifying appropriate locations for development and a broad cumulative analysis is needed.

In order to sufficiently identify the appropriate scale of leasing in the New York Bight or elsewhere, you should conduct a cumulative analysis to inform the planning process. Currently, cumulative impacts are evaluated on a project-by-project basis with very limited assessment at

the leasing stage. This is not sufficient given the scale and speed of proposed development on the OCS. The construction of wind farms is a reasonably foreseeable action in the leasing process that should be assessed for its cumulative effects on marine resources, habitat, commercial and recreational fisheries, and associated communities that may be affected by the development of offshore energy leases in one or more areas within the New York Bight. Given the number of wind energy areas proposed along the East Coast, we recommend you consider cumulative impacts to marine resources and the fishing community when identifying the size and scale of potential WEAs in the New York Bight. While additional information and factors may be needed to inform such an evaluation, we consider this to be necessary to understand the appropriate size and scale of development.

In addition to addressing capacity and cumulative effects questions, we recommend that prior to any leasing in the New York Bight, you focus on establishing regional research and monitoring frameworks. This should include a process to use that data for planning and management to help assess the appropriate size and number of potential wind energy areas in the New York Bight. Ecosystem-scale monitoring conducted at the appropriate temporal and spatial scales is important to track both natural and human features of the ecosystem that overlap multiple planning areas and leases. Coordinated and strategic landscape scale data collection and monitoring approaches would generate data sufficient to track changes due to wind farms or other factors and would also help address significant stakeholder concerns of potential impacts from individual and cumulative offshore wind development. The compilation of existing data and identification of information and monitoring needs should be a priority to inform this process. This would be important to not only assess the cumulative impacts of multiple projects, but also to help inform the appropriate size and scale of future development. We encourage you to work closely with our agency in the development of any monitoring program for resources under our jurisdiction.

Fisheries Management Comments

Regulated and unregulated marine species may seasonally concentrate in high numbers throughout the proposed Call Areas for migratory, spawning, or foraging purposes. For sessile species such as scallops and ocean quahogs, portions of the Call Areas are important year-round. The spatial and temporal distribution of marine species must be considered in relation to any potential offshore wind development. Such information is readily available in stock assessment reports on the Northeast Fisheries Science Center (NEFSC) website at https://www.nefsc.noaa.gov/saw. In addition, fishery performance reports and National Environmental Policy Act (NEPA) documents associated with recent management actions in affected fisheries often depict both resource and fishery distribution patterns based on available Federal and state marine resource surveys, observer data, and fishery-dependent data. These documents are available on the websites of the New England and Mid-Atlantic Fishery Management Councils at https://www.nefmc.org and http://www.mafmc.org. Many of these reports, particularly stock assessments, also identify key research needs for each managed species. There are also a number of economically important species within and inshore of the Call Areas that are managed through the Atlantic States Marine Fisheries Commission (ASMFC), such as lobster, striped bass, and menhaden. You should be aware that information on ASMFC managed species in Federal waters can be limited. Stock assessments, available

information, and research needs can be found on the ASMFC website at http://www.asmfc.org. You should consider all of these available resources when determining the scale and, location of potential Call Areas and when identifying research that should be conducted to inform future evaluations of impacts from potential project development.

Species availability within the Call Areas is affected by the presence of suitable habitat, and for migratory species, the connectivity of habitat along migration routes. For migratory species, such as Atlantic mackerel, that prefer a narrow temperature range, habitat connectivity along the winter migration route is an important determinant of dynamic patterns of habitat occupancy and winter fishery catch, as fish are not caught in preferred thermal habitat unless it has been connected to suitable habitat along the winter migration route. To assess the availability of suitable thermal habitat within the Call Areas, staff from the NEFSC used bottom temperature output from the Numerical Ocean Model Expresso ROMS (www.myroms.org/espresso) to approximate the cumulative proportion of available mackerel overwintering habitat falling within, and in deeper waters adjacent to, the proposed Call Areas (Figure 1). This work suggests that 5-10 % of the available thermal habitat for mackerel occurred within the Call Areas, with preferred thermal habitat present about 50% of the time in the vicinity of these areas during the winter of 2016-2017. However, this likely underestimates the importance of the Call Areas with respect to thermal habitat and importance to fisheries targeting similar pelagic species because it does not integrate circulation patterns we hypothesize to be a critical determinant of southwestward extent of migration. Although overwintering habitat was much less persistent in the area during the winter of 2017-2018, nearly all of the mackerel fishing effort and associated landings (about 18 million pounds) from mid-January through mid-March 2018 came from within the Call Area (Figures 2a and 2b). This suggests that other factors beyond thermal habitat may be affecting resource availability within the Call Areas.

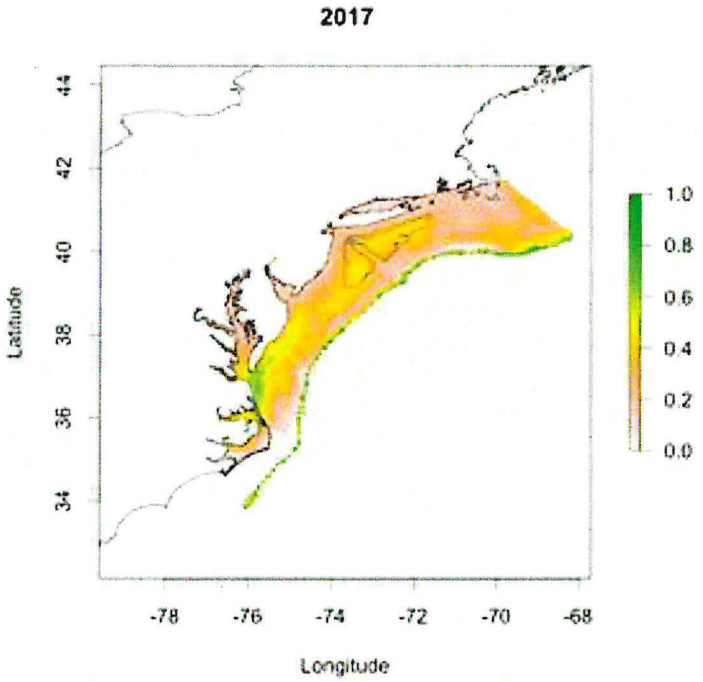


Figure 1: Proportion of available Atlantic mackerel thermal habitat within the Call Areas during

2017 (Note: Call Areas are slightly different based on cell size used within the model).

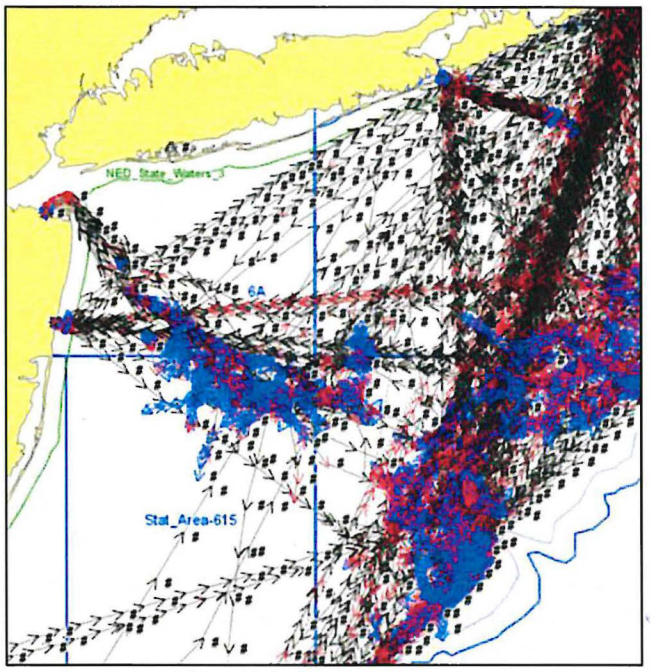


Figure 2a: Vessel Monitoring System (VMS) tracks of federally permitted vessels intending to catch Atlantic mackerel and squid during February 2018 (black icons reflect speeds >6 knots, red icons reflect speeds of 3-6 knots, and blue icons indicate speeds <3 knots).

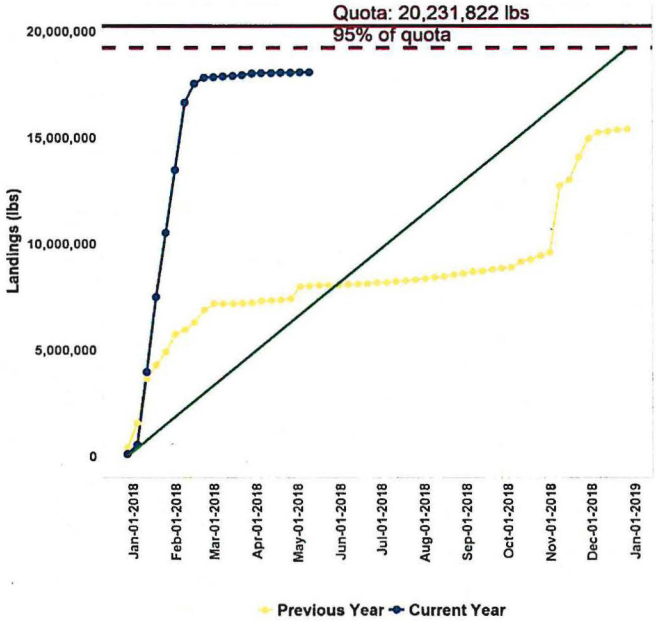


Figure 2b: Catch of Atlantic mackerel during 2018 (blue line), most of which came from operations within the Call Areas. Most of the catch during 2017 (yellow line) came from operations east of Cape Cod.

The waters within the proposed Call Areas are important to many commercial and recreational fisheries within the Greater Atlantic Region, not only Atlantic mackerel. Publicly available information clearly documents that commercial vessels from many states operate as part of various fisheries within the proposed Call Areas, especially the butterfish; Atlantic herring; Atlantic mackerel; Atlantic sea scallop; Atlantic surfclam and ocean quahog; longfin and *Illex* squid; monkfish; Northeast multispecies; whiting; and summer flounder, scup, and black sea bass fisheries. The Call Areas also specifically overlap with prime fishing areas identified under New Jersey's Coastal Zone Management Program (http://www.nj.gov/dep/rules/rules/njac7_7.pdf).

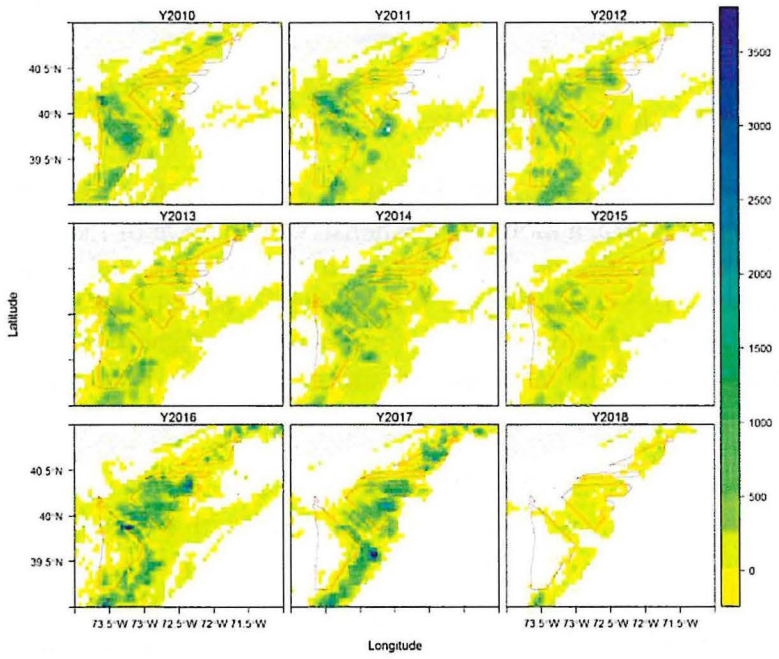
The data used in assessing potential impacts to fisheries resources should be considered over multiple years, as available, rather than a snapshot of one year or season. As discussed further below, resource availability and harvest rates vary throughout the year, and from year-to-year. Data on operational patterns in various fisheries are available on the Northeast and Mid-Atlantic Ocean Data Portals, with recently published maps depicting fishing effort in 2015 and 2016. Additional documentation of fishing effort concentrations in these fisheries are available in NEPA documents associated with recent management actions that are available on the websites of both fishery management councils. Stock Assessment and Fishery Evaluation (SAFE) reports and fishery information documents prepared by the fishery management councils for many fishery management plans (FMP) also describe recent trends in species availability and fishing effort. See, for example, the fishery information document prepared for the Atlantic Mackerel, Squid, and Butterfish FMP available at https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5907231d9de4bb35a6d1c9ab/1493639966952/MSB_APInfo-2017.pdf. Additional resources are available on the New England Fishery Management Council and Mid-Atlantic Fishery Management Council websites and on our website at http://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=5d3a684fe2844eedb6beacf1169ca854.

The degree and the timing of the overlap between fishing operations and the proposed Call Areas is difficult to predict on a yearly basis. Considering these temporal variations in the use of the Call Areas as well as historic fishing distribution from a variety of sources will fully inform site suitability rather than relying solely on one data source. You should also consider operational factors and data limitations when evaluating fisheries data for the Call Areas (Appendix A).

Although vessel monitoring system (VMS) data only cover a subset of the fisheries operating within the New York Bight (Appendix A), such data provide the most spatially accurate assessment of fishing activity within the Call Areas for the fisheries using VMS. According to VMS data from 2010-2018 (Appendix B), the Atlantic sea scallop and ocean quahog fisheries were the most active VMS fisheries operating within the Call Areas during 2010-2018[1]. Figures 3 and 4 show likely fishing locations based on the assumption that fishing is occurring when the vessel is moving at a speed of less than 5 knots. Scallop fishing occurs in all four proposed Call

[1] The scallop and ocean quahog fisheries have required VMS before 2010, indicating that VMS data accurately represent fishing activity in these fisheries for the entire time series evaluated. In contrast, other fisheries such as the squid and mackerel fisheries have only required the use of VMS in recent years, indicating that historical operations within the Call Areas are underrepresented by VMS data

Areas, with the highest fishing concentrations occurring within and around the Hudson South, Hudson North, and Fairways North Call Areas. Similarly, ocean quahog fishing occurs in all four proposed Call Areas, although effort is most often concentrated in the Hudson North and Fairways South Call Areas and western portions of the Hudson South Call Area. Follow-up work to evaluate fishing patterns in other fisheries, even if only partially covered by VMS, could provide additional insight into fishery operations and transit patterns within the proposed Call Areas. Due to the overlap between the herring and mackerel fisheries, the higher speeds towed by vessels when targeting mackerel, and concerns about the compliance with mackerel VMS declaration requirements, we would consider the mackerel information provided in Appendix B (see Figure 3 Squid, Mack, Butterfish (hours/cell) in Appendix B) to likely underestimate the degree of mackerel effort within the Call Areas and the importance of these areas to the mackerel fishery when mackerel are present within the area. Although only a snapshot of one month of fishery operations in one fishery, Figure 2a (above) offers a glimpse of potential transit patterns within the proposed Call Areas, even if fishing activities occur outside of the Call Areas. We are working on analyzing more VMS data to provide additional maps depicting fishing vessel transit patterns within the Call Areas. We will provide you with that information as it is developed.



Figures 3: VMS position data indicating the number of hours fished at a speed of < 5 knots within each cell (5 nmi^2) within the Call Areas by year in the Atlantic scallop fishery, 2010-2018.

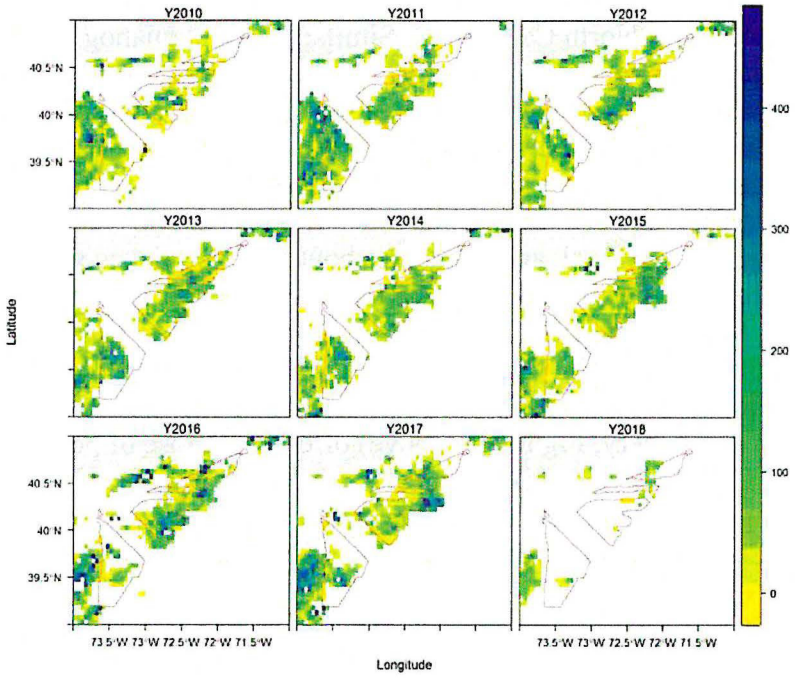


Figure 4: VMS position data indicating the number of hours fished at a speed of < 5 knots within each cell (5 nmi^2) within the Call Areas by year in the ocean quahog fishery, 2010-2018.

Nearly all fisheries within the Greater Atlantic Region are subject to vessel trip report (VTR) and observer requirements, therefore, a more comprehensive evaluation of fishing activity within the proposed Call Areas entails analyzing fishing location derived from such data. We have worked in coordination with our NEFSC and Fishery Management Council staff to provide additional data products using VTR information to help inform potential offshore wind development (Appendix C), and are currently in the process of making this data available to the public on the Council website.

As described in Appendix C, a model was developed that utilizes VTR and observer data to depict likely fishing concentrations, which were then linked with dealer-derived revenue data to estimate fishery landings and value within the proposed Call Areas during 2012-2016. This analysis breaks down landings and revenue by FMP and specific species within an FMP, by individual Call Area, and by gear type. Overall, fishing within the proposed Call Areas landed over 62.6 million pounds (lb), valued at over $344.8 million during 2012-2016. Landings from bottom tending mobile gear (dredge and trawl gear) represented 70 percent of the landings from the proposed Call Areas and 96 % of the revenue generated from such landings during 2012-2016.

Using VTR data, we estimate that the primary FMPs operating within the Call Areas (Atlantic Scallop; Summer Flounder, Scup, and Black Sea Bass; Surfclam and Ocean Quahog; Atlantic Mackerel, Squid, and Butterfish; and no Federal FMP[2]) landed over 45 million lbs. valued at over $335 million fishing within the Call Areas (Appendix C). Atlantic sea scallops constituted

[2] No Federal FMP includes species such as lobster, Jonah crab, and whelk.

the highest landings volume (23.4 million lb) and fishery revenue ($268.2 million) within all Call Areas during this period, followed by ocean quahog (6.2 million lb valued at $47.7 million). For these five FMPs, fishing within Hudson North and Hudson South resulted in the highest landings and revenue (83% of landings and 84% of revenue), with nearly 23 million lb valued at $166.5 million landed from Hudson North and 14.7 million lb valued at $115 million landed from Hudson South during 2012-2016. While these FMPs comprise the majority of the landings and revenue derived from fishing within the Call Areas, revenue from these fisheries, particularly the scallop fishery, may mask the importance of fishing in these areas to other fisheries and associated communities. For instance, although revenue from landing mackerel and squid is relatively low compared to high value scallop revenue, ports like Pt. Judith, RI are heavily dependent upon these higher volume, lower value fisheries. Additional analysis is necessary to illustrate the dependence of communities upon fishing within these Call Areas. This would help you evaluate the potential social and economic impacts of any potential WEAs that may be identified within these Call Areas.

Outside the top five FMPs, other FMPs land substantial amounts from within the Call Areas, including the Atlantic Herring and Monkfish FMPs. Herring was the dominant catch from all Call Areas (10.8 million lb valued at $1.3 million), with monkfish (3.3 million lb) and skate (1.7 million lb) following, but monkfish was most important in terms of revenue generated ($6.2 million) of these other FMPs. Different areas are important to different fisheries in different years, underscoring the dynamic nature of species availability, commercial fishery operations, and revenue within the proposed Call Areas. For example, of the individual species examined, Atlantic mackerel landings were highest from Hudson South in 2012 and 2016, but longfin squid and summer flounder were the species with highest landings from this area in the other years. Similar patterns are evident in the revenue streams from this area, with summer flounder representing the highest value in 2014-2016, and with lobster valued higher in 2012-2013.

Most FMPs include multiple different species, so in some cases individual species were broken out in the analysis to better show trends (see Table 3.9 of Appendix C). Of the species listed in Table 3.9, ocean quahogs had the highest landings from all areas (5.3 million lb), followed by longfin squid (3.0 million lb), scup (2.8 million lb), and summer flounder (1.9 million lb). Ocean quahog also was the highest valued species with $37.9 million landed from all areas, followed by summer flounder ($5.2 million), longfin squid ($3.3 million), and scup ($1.9 million). Hudson North generated the most landings and revenue.

In addition to commercial activity, there are numerous recreational fisheries that operate within the proposed Call Areas, including recreational tuna and marlin tournaments. You can find a list of registered tournaments on our website at http://www.nmfs.noaa.gov/sfa/hms/compliance/tournaments/main/PDFs/2017_registered_hms_tournaments.pdf. While discrete areas important to these tournaments specifically, and to recreational fisheries in general, have not been identified for all waters off New York, it is likely that operations in these fisheries and tournaments overlap with the proposed Call Areas. Additional information on the recreational fishing tournaments in New York and New Jersey can be found in Appendix D, including catch of important recreational species during these tournaments.

Management plan adjustments developed by both Fishery Management Councils and the ASMFC may increase or decrease fishing effort or shift effort into other fishing grounds within the proposed Call Areas. For example, although the Atlantic sea scallop access area adjacent to the Hudson South Call Area has been opened recently, if it closes again, scallop fishing operations will increase outside of this area and will likely shift effort into both the Hudson South and North Call Areas. This can be observed in the maps of VMS scallop effort concentrations in 2010-2012 and 2014 (Figure 3 above) when the area was previously closed (2010 and 2014) or restricted to a very small number of trips (one trip/vessel in 2011 and 1.5 trips/vessel in 2012). Similar spatial/temporal closures or effort controls (possession limits, permit restrictions, etc.) in other fisheries may affect fishing operations in such a way that past operations are not reflective of future operations. In addition, construction of offshore energy projects south of Nantucket and Martha's Vineyard will likely affect fishing operations in the longfin squid, ocean quahog, scup, summer flounder, and whiting fisheries. The longfin squid, herring, mackerel, ocean quahog, and scallop fisheries are also expected to be impacted by the Empire Wind project within the Statoil lease area. These other initiatives are important to consider when evaluating potential user conflicts within the proposed Call Areas, as the cumulative effects of fishery management and offshore wind development projects will likely affect the distribution of fishery effort throughout the New York Bight. It will be important for you to fully evaluate established and evolving patterns of fishing effort before deciding upon final areas to designate as WEAs.

As discussed above, the surfclam and ocean quahog fishery operate within the proposed Call Areas. Vessels associated with this fishery have been shifting effort north as resource abundance, particularly for ocean quahogs, becomes more widely available in northern grounds. Despite this shift northward for ocean quahogs, surfclams are increasing in abundance in southern fishing areas. This has resulted in occasional landings in Ocean City, MD, as well as Cape May and Wildwood, NJ, with these ports becoming less vital to the support of these fisheries than they were historically. Most of the fleet is increasingly based out of more northerly ports such as Pt. Pleasant and Atlantic City, NJ; Oceanview, NY; Hyannis, MA (surfclams only); and New Bedford, MA. However, access to fishing grounds within the proposed Call Areas remains critical to the viability of the fishery and associated communities. You can access the fishery performance report at https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5937ffa5f5e231d26daeedd4/1496842149723/4_SCOQ_FPR_for2017.pdf. Given this shift in population, you should carefully consider the impacts to the surfclam and ocean quahog fisheries as well as mid-Atlantic shore side support businesses, such as processors, when evaluating potential call areas.

Regional fishing communities use the proposed Call Areas for their livelihood. Communities that access this area extend beyond New York and New Jersey and include Connecticut, Rhode Island, and southern Massachusetts, as well as Virginia and North Carolina. The communities that support the commercial fishing industry are composed of fishermen, processors, distributors, fuel and ice suppliers, and provisions suppliers. Impacts to shore-side support should also be considered when developing potential wind energy areas. The social science branch at our NEFSC conducts applied economic and sociocultural research on the use and management of commercial and recreational fisheries, protected species resources, and marine ecosystems. Their website features a tool that provides snap shots of the communities that will use the

propose Call Areas. You can access this on the NEFSC website at: https://www.nefsc.noaa.gov/read/socialsci/communitySnapshots.php.

As documented in Appendix C and summarized above, most of the fisheries that operate within the proposed Call Areas use bottom tending mobile fishing gear such as bottom trawls and dredges. This type of gear can have a scope up to 0.3 miles from the vessel, making it more difficult and dangerous to navigate within a wind farm and avoid wind turbine structures, particularly during rough weather conditions. When gear is deployed in the water it does not always fall directly behind the vessel. Tides, current, benthic surface, and wind strength and direction all influence where the gear lands behind the vessel. This can be particularly difficult and dangerous when there are multiple vessels with gear deployed within proximity of each other, which is a characteristic of these fisheries. Vessels using these gears operate with a limited turning radius and often follow depth contours when fishing for particular species. Due to the proximity of the Call Areas to vessel traffic lanes, vessels will often transit or tow perpendicular to these lanes to minimize interfering with passing vessels and avoid collisions. Some vessel tracks showing these use patterns are available via VMS and AIS, but not all vessels are required to use these tracking technologies. Because fishing vessels from many ports within the Greater Atlantic Region fish within and transit the Call Areas (see Figure 2a for a snapshot for just one month in one fishery), consultation with fishery interests and communities is needed to better characterize fishing vessel transit patterns. In addition to turbine orientation and spacing, the location of proposed WEAs and proximity to vessel traffic lanes are important factors to consider for any offshore wind development in the Mid-Atlantic Bight region.

As you know, fisheries management under the Magnuson-Stevens Act is a participatory process in which the fishing industry actively contributes toward the development of conservation and management measures. Industry participants expect to be consulted, and to have their input considered and integrated into management decisions. These expectations are also being applied in the offshore wind development process. We recommend you make engagement with the fishing industry a priority in this process and ensure that decisions are explained in relation to input offered. Eliminating areas that pose a high fishing conflict early in the process will better serve the process and ensure productive participation by stakeholders as you move toward additional leasing and eventual possible construction of wind farms in the New York Bight.

The information provided in this comment letter was compiled under the original 45-day comment period timeline set forth in the FR Notice. With the extension of time for comments, issued on May 22, 2018, we can conduct additional analysis that would enhance the information needed to evaluate future offshore energy development. Any additional analysis will be provided as a supplemental document ahead of the revised July 30, 2018 deadline. We believe this information would be important for your decision-making process.

Essential Fish Habitat Comments

As you are aware, under the Magnuson-Stevens Act you are responsible for consultation with our agency on projects that may adversely impact essential fish habitat (EFH). The Call Areas provide EFH for 36 species of fish and shellfish. Twenty-three of them are species of commercial and recreational importance that are managed by the two regional fishery management councils, and 13 are highly migratory tunas and sharks managed by NOAA

Fisheries (Appendix E). EFH for many of these species is designated for more than one life stage. Of the 23 council-managed species, there is a high degree of spatial overlap for 39 life stages (17 juveniles, 14 adults, 3 eggs, and 5 larvae), and a low to moderate degree of overlap for another 19 life stages. Thirteen of these species occupy mostly mud and sand habitats and five occupy mixed bottom habitats that include gravel, cobble, and boulders (if present). Five species (including multiple life stages) are pelagic, inhabiting the water column. Six of the bottom-dwelling species with EFH in the Call Areas are currently overfished, as are three of the highly-migratory species. Of the 13 HMS species, sandbar shark, dusky shark, and smooth dogfish are the most likely to occupy bottom habitats.

It is important to protect essential habitats for managed species that are more sensitive to any adverse impacts resulting from wind energy construction and operation activities, as well as habitats that are vital to the growth, survival, and reproduction of any species that is currently overfished. The nine overfished EFH species in the Call Areas are: Atlantic cod; winter flounder; yellowtail flounder; windowpane flounder; ocean pout; red hake; dusky shark; sandbar shark; and shortfin mako shark. A tenth species, summer flounder, is currently experiencing overfishing, but has not yet been depleted enough to be classified as overfished.

Several species that support commercial and recreational fisheries spawn within the Call Areas. These include four species of flounder (summer, windowpane, winter, and yellowtail), three shellfish species (surfclams, ocean quahogs, and sea scallops), as well as mackerel, black sea bass, bluefish, longfin inshore squid, ocean pout and scup. Most of these species produce eggs that are broadcast into the water column and become planktonic. However, three species (winter flounder, longfin inshore squid, and ocean pout) are demersal spawners and deposit their eggs on the bottom, where they are highly vulnerable to impacts to benthic habitat. Available information indicates that winter flounder and longfin inshore squid spawn in shallower water closer to shore, and therefore, could be impacted by construction of transmission infrastructure associated with any proposed development in the Call Areas. Ocean pout spawns from coastal waters to approximately 100 m on rocky hard bottom, and therefore could be impacted by all wind energy activities disturbing such habitat, either directly, if impacts occur during the spawning season, or indirectly, if habitat is degraded or destroyed at other times of the year. Moderate to high concentrations of neonates and juveniles of dusky shark and sandbar shark also occur in the Call Areas. Information summarizing current knowledge on the times of year for spawning activity for some federally managed species in southern New England and the upper Mid-Atlantic Bight is provided in Table 3 in Appendix E.

Gravel and other hard-bottom rocky habitats that are important to species such as cod, black sea bass, haddock, ocean pout, and scup are generally more vulnerable to habitat disturbance than mud and sand habitats. Black sea bass congregate over low profile reefs in the spring and summer, the juveniles to feed and shelter from predators, and the adults to spawn. Black sea bass have strong associations with structured habitats and high fidelity for their "home" reefs, with some males exhibiting territorial behavior and site fidelity during the spawning season (Fabrizio *et al.* 2013 and 2014; Moser and Shepherd 2009). Ocean pout deposit and guard demersal eggs in sheltered hard bottom habitat such as rocky crevices, and larvae/early juveniles remain associated with the bottom. This species is especially vulnerable to benthic impacts during spawning and early development (Steimle *et al.* 1999). Hard bottom habitats are rare in the Call

Areas and should be protected from any adverse impacts associated with construction activities.

Much of the New York Bight offshore area is composed of sandy sediments with sporadic sand and gravel ridges (Poti *et al.* 2012). However, additional sensitive habitats that may occur in the Call Areas include sand ridges, sand waves, cobble/gravel, and other unique bathymetric features. This heterogeneous bathymetry is a result of a variety of processes, including prevailing hydrodynamic conditions and relict glacial activity. Features such as shoreface sand ridges can provide vertical relief up to 10 meters (McBride and Moslow 1991). These sand ridges provide important habitat for economically important fish species, supporting higher species abundance and richness compared to surrounding areas (Vasslides and Able 2008). Bathymetric features also exhibit variability on scales from a meter to multiple kilometers. For example, subtle, kilometer-scale ridge and depression topography is apparent in the Hudson West Call Area. Maps illustrating bathymetric features of the Call Areas and adjacent sites are found in Appendix F.

As mentioned above, the Call Areas also overlap with prime fishing areas identified under New Jersey's Coastal Zone Management Program. These areas may include features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell, tubeworms, and slough areas.

When evaluating the location and scale of potential WEA, you should also consider how potential development in these areas would impact pelagic habitat. Persistent hydrographic fronts exist off the coast of Long Island, and such fronts are often associated with areas of high biological activity. You can access more information on the NEFSC website at https://www.nefsc.noaa.gov/ecosys/ecosystem-ecology/oceanography.html. Seasonal changes to pelagic habitats in the New York Bight, including, but not limited to, thermal habitat and food availability, will influence species presence and habitat uses in the region.

As mentioned in our fisheries comments, the potential Call Areas overlap with high populations of surfclam, ocean quahog, and scallops. Impacts to these resources must be considered when evaluating the potential Call Areas, as sessile species with limited mobility are more susceptible to impacts from construction. Furthermore shellfish provide an important food source for other federally managed species (Steimle *et al.* 2000). Specifically, impacts of any construction on spawning and settlement of these resources need to be fully considered to ensure the fishery resources that exist in this region can coexist with any future development.

There are several factors related to habitat that you should consider when identifying potential WEAs in the New York Bight. First, it will be necessary to conduct further site-specific and finer scale evaluations to determine potential locations of sensitive habitats or high spawning or pupping activity that would not be suitable for development. You should also consider important habitat features adjacent to the Call Areas that could be impacted from construction of the project or displacement of other activities resulting from project operation. As part of your evaluation to determine the potential size and scale of any potential WEAs, it will be important to consider how the addition of substantial amounts of structure within vast sandy areas of the New York Bight may modify both benthic and pelagic habitat in the region. Existing infrastructure, and current and historical uses should also be considered, including existing

submarine cables, pipelines, and historical waste disposal sites that overlap with the Call Areas. Construction within these sites may exacerbate benthic and pelagic impacts, through additional scour protection or elevated levels of contamination.

You will be required to conduct an EFH consultation with our agency on potential impacts associated with issuing a lease within any designated WEAs. The most up-to-date EFH and Habitat Area of Particular Concern (HAPC) designations should be used in your evaluation. The NEFMC Omnibus EFH Amendment 2 was approved on January 3, 2018, and implemented April 9, 2018. EFH and HAPC for 28 species managed by the NEFMC have been modified under the Omnibus Amendment. While spatial data for these species are not yet available for viewing or location queries under the EFH Mapper, the New England EFH designation maps can be downloaded from our habitat website at https://www.habitat.noaa.gov/protection/efh/newInv/index.html and text descriptions and HAPC designations can also be accessed on our habitat website at https://www.habitat.noaa.gov/protection/efh/efhmapper/oa2_efh_hapc.pdf. The EFH mapper can be used to query and view and spatial data for the species managed under the Mid-Atlantic Council and for Highly Migratory Species. The EFH mapper can be accessed from our habitat website at https://www.habitat.noaa.gov/protection/efh/efhmapper/.

You should also be aware that the Amendment 10 to the 2006 Consolidated Atlantic Highly Migratory Species FMP went into effect on September 1, 2017. This amendment ontains several changes to the EFH designations for sharks and other highly migratory species. More information can be found on our website at https://www.fisheries.noaa.gov/action/amendment-10-2006-consolidated-hms-fishery-management-plan-essential-fish-habitat.

Protected Resources Comments

Endangered Species Act

The following listed species may be found in the New York Bight Call Areas: North Atlantic right (*Eubalaena glacialis*); blue (*Balaenoptera musculus*); fin (*Balaenoptera physalus*); humpback (*Megaptera novaengliae*); sei (*Balaenoptera borealis*); and sperm (*Physeter macrocephalus*) whales; and green (*Chelonia mydas*); hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and loggerhead (*Caretta caretta*) sea turtles. Endangered fish occurring in the program areas include Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*). All ESA listed marine mammals are also protected by the Marine Mammal Protection Act (see below). There is no critical habitat designated by us under the ESA that occurs in the Call Areas. More information on ESA listed species, including their seasonal distribution, is available on our webpage at https://www.fisheries.noaa.gov/species-directory/threatened-endangered. Sightings information for right whales in the Call Areas can be found at https://www.nefsc.noaa.gov/psb/surveys/.

Consideration of Potential Impacts to ESA Listed Species

Under Section 7(a)(2) of the ESA, each Federal agency is required to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species. Consultation is necessary for any permits, authorizations, leases,

easements, or right of ways issued by your agency that may affect a listed species. It is our understanding that you will be the lead Federal agency for any section 7 consultations regarding any wind energy facility proposed in the Call area and that section 7 consultation will be completed prior to the issuance of any authorization or approval of the Site Assessment Plan or Construction and Operations Plan. We expect that any environmental documentation regarding a proposed wind facility in the Call area will fully examine all potential impacts to listed species under our jurisdiction including: acoustic impacts of construction and operation; any pre-construction geophysical and/or geotechnical surveys; effects on prey; effects to migratory behavior; potential entanglement; vessel traffic; benthic impacts; and impacts to water quality. More information on the section 7 process is available on our webpage: https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html. We would like to note that, as you are aware, the right whale population is very small (fewer than 500 whales), declining, and may be particularly vulnerable to threats to individuals and their ecosystems. We therefore, encourage you to carefully consider the effects of any proposal in the Call Area on right whales.

Marine Mammal Protection Act

Several species of marine mammals are common residents or occasional visitors to the waters identified in the Call Areas. All marine mammals receive protection under the Marine Mammal Protection Act (MMPA) of 1972, as amended. The MMPA prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. We may issue permits under MMPA Section 104 (16 U.S.C. 1374) that authorize the taking or importing of specific species of marine mammals.

As noted above regarding listed species, any environmental documentation should fully examine all potential impacts to species protected under the MMPA including: effects on prey; effects to migratory behavior; potential entanglement; vessel traffic; benthic impacts; and impacts to water quality. We recommend that any project developer discuss permitting needs with our Office of Protected Resources Permits, Conservation, & Education Division (301-713-2289). Information on the MMPA permitting process is online at http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm.

We encourage you and any potential developer to continue to work with us as project plans become more developed to identify and evaluate the potential for impacts to the species under our jurisdiction. These informal discussions can greatly facilitate consultation.

Conclusion

We appreciate the opportunity to provide information and comments on New York Bight Call Areas. We will continue to support the Administration's efforts to advance offshore renewable energy through our participation in the offshore wind development regulatory and planning processes. As we engage in this processes, we are committed to implementing our national strategic goals to maximize fishing opportunities while ensuring the sustainability of fisheries and fishing communities, and to recover and conserve protected species while supporting responsible fishing and resource development. We are committed to working with you to

provide the necessary expertise and advice to avoid areas of important fishing activity, sensitive habitats, and to minimize impacts to fisheries and protected species.

Should you have any questions regarding these comments, please contact Sue Tuxbury in our Habitat Conservation Division (978-281-9176 or susan.tuxbury@noaa.gov). For questions regarding ESA, please contact Julie Crocker in our Protected Resources Division (978-282-8480 or Julie.Crocker@noaa.gov).

Sincerely,

for Michael Pentony
Regional Administrator