



April 26, 2023

Georgeann Smale, Renewable Energy Modernization Rule Lead
BOEM Office of Regulations
45600 Woodland Road
Sterling, Virginia 20166

Re: Renewable Energy Modernization Rule

Dear Ms. Smale,

Please accept these comments from the New England Fishery Management Council (New England Council) and the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) regarding the Renewable Energy Modernization Rule.

The New England Council manages over 28 marine fishery species in federal waters and is composed of members from the coastal states of Maine to Connecticut. The Mid-Atlantic Council manages commercial and recreational fisheries for more than 65 marine species¹ in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). In addition to managing these fisheries, both Councils have enacted measures to identify and conserve essential fish habitat (EFH), protect deep sea corals, and sustainably manage fisheries for forage species. The Councils support policies for U.S. wind energy development and operations that will sustain the health of marine ecosystems and fisheries resources. While the Councils recognize the importance of domestic energy development to U.S. economic security, we note that marine fisheries throughout New England and the Mid-Atlantic are profoundly important to the social and economic well-being of communities and provide numerous benefits to the nation, including domestic food security.

Geophysical and Geotechnical Surveys (Proposed Changes Section C)

As noted in the proposed rule, the current regulations require lessees to carry out geotechnical surveys and take borings of all locations where foundations are expected to be installed before submitting their Construction and Operations Plan (COP) to BOEM. Given the high cost of this survey work, lessees often prioritize certain areas rather than surveying the entire lease area. If lessees change their preferred locations, they must survey new areas and revise their COP. BOEM proposes to provide additional flexibility for lessees by modifying the regulations to allow submission of geotechnical data for foundation locations with a facility design report *after BOEM has approved the COP through the Record of Decision and after the NEPA analysis is complete.*

We acknowledge BOEM's comments that "under the proposed rule, the COP must still contain information sufficient to define the baseline geological conditions of the seabed, develop a geologic model, assess geologic hazards, and determine the feasibility of the proposed site for the proposed

¹ Fifteen species are managed with specific Fishery Management Plans, and over 50 forage species are managed as "ecosystem components" within the Mid-Atlantic Council's FMPs.

facility. At the COP review stage, lessees would still be required to provide the data necessary to conduct the required consultations.” However, we oppose this proposed change to the regulations for the reasons described below.

Without these geotechnical data, it will not be possible to know which turbine locations are realistically under consideration. We are very concerned that a lack of geophysical and geotechnical data prior to NEPA analysis will limit the ability of partner agencies, stakeholders, and the general public to meaningfully review and provide comments on projects. The specific locations of turbine foundations and specific turbine array layouts are often essential for evaluating environmental and socioeconomic impacts.

We have already seen examples of these issues under the current regulations and are concerned that the proposed revisions would only exacerbate the problem. For example, some layouts considered in the Empire Wind DEIS, including the alternative identified as the proposed action, were found to be infeasible due to glauconite in the seabed which precludes installation in a portion of the lease area. This was very confusing to readers of the DEIS, posed challenges for informed public comment, and we question whether it complies with the NEPA requirements for a reasonable range of alternatives to meet the purpose and need of the action.

BOEM’s regulations should ensure that sufficient data are collected before development and release of NEPA analysis for public input. The alternatives considered in the NEPA analysis must be realistic given geologic conditions in the lease area. For this reason, we recommend conducting a site assessment for the entire lease area prior to the NEPA analysis in order to identify any geotechnical issues that would substantially alter development of the site.

It is also important that the timing of geophysical surveys be suitable to inform the Essential Fish Habitat (EFH) Assessment and any ancillary data provided to NOAA Fisheries as they complete their EFH consultation. EFH consultation regulations have specific timelines that must align with broader environmental review. Having insufficient seabed habitat data for the site can delay this important step in the regulatory process.

BOEM is also seeking comments on whether future rulemaking related to offshore wind surveys would be helpful. The Council’s offshore wind policies state “Developers should coordinate monitoring survey designs and methods across projects wherever possible to generate datasets that can be used in combination. Benthic habitat, geological and geophysical, and fisheries surveys should be coordinated to ensure that the prosecution of one survey does not affect the results of another. Coordinated monitoring will support cumulative impacts analysis.” When writing the policies, we anticipated that developers might coordinate amongst themselves to minimize conflicts. We are uncertain as to whether conflicts between surveys are occurring now, but if BOEM is aware that this has become an issue, future rulemaking might be appropriate. Also, we recommend that BOEM evaluate the performance of reimbursement programs for those harmed by survey activities. We would support rulemaking if problems are identified that cannot be easily remedied by coordinating with individual developers. We also recommend that BOEM track and inventory survey activities and provide this information in a single publicly accessible website or database. Survey results should also be available to the public.

Project Design Envelope (Proposed Changes Section B)

The proposed rule would codify the use of project design envelopes (PDEs) in COP submissions. The Councils support the use of PDEs given the complexity of renewable energy projects. The proposed rule notes that “BOEM recognizes that a PDE should not be overly broad to avoid not defining the project well enough for meaningful analysis”, and we agree. However, as stated in previous comment letters, the PDEs for some recent projects have in fact been overly broad and have not been sufficiently analyzed. The analysis of PDEs should consider the differential impacts of the relevant components of the PDE. For example, if multiple turbine sizes or foundation types are considered, the impacts of each should be analyzed and compared to the others to allow for an evaluation of the different impacts and consideration of tradeoffs. Recent DEIS documents have in some cases lacked sufficient detail to allow a solid comparison of each design choice.

The proposed rule also notes that BOEM assumes the “maximum design scenario” when analyzing projects. This has posed some challenges in previous DEIS documents. For example, it poses challenges for considering which scale of a project or which specific design parameters might reduce negative impacts to acceptable levels if the impacts of the maximum design scenario are too great. These considerations may vary by resource and/or user group; therefore, it is necessary to provide details to allow for consideration of and public comment on these types of tradeoffs. In addition, the maximum design scenario will not be the same across all affected resources. For instance, gravity base foundations destroy more benthic habitat compared to monopile or jacket foundations, but the acoustic impacts during installation are much lower. Considering alternate parts of the design envelope across multiple VECs is confusing.

As we have stated in previous comment letters, the megawatt capacity of the turbines should be included in the PDE, in addition to the dimensions of the turbines.

Leasing Schedule (Proposed Changes Section E)

We support the concept of a renewable energy leasing schedule as a way to provide stakeholders with early notice of BOEM’s plans for potential future leasing. However, this should not be viewed as a commitment by BOEM to lease any areas. Each area must undergo a thorough review, analysis, and stakeholder input process to determine suitability for leasing. This process may reveal that areas included in a leasing schedule are not suitable for wind energy development.

It is concerning that the proposed rule states that the proposed regulations would not include a requirement for public meetings and comment periods on the leasing schedule itself (page 5985). BOEM should consider stakeholder and public interests and concerns when developing leasing schedules and when carrying out all subsequent steps to develop planning areas, call areas, wind energy areas, and lease areas. Public hearings on these issues should be required.

We also recommend that BOEM use the proposed leasing schedule process to communicate when no new leases are planned for the upcoming five years.

Lease Issuance Procedures (Proposed Changes Section F)

The proposed rule would clarify the regulations regarding the use of bidding credits in lease auctions and seeks comments regarding their use to mitigate possible adverse, project-related impacts. The

Councils generally support the use of bidding credits as a way to encourage practices that can avoid, minimize, and mitigate the potential negative environmental and socioeconomic impacts of offshore wind energy projects. For example, BOEM used community benefit agreement bidding credits for the recent California lease areas and has proposed a fisheries compensatory mitigation fund bidding credit for Gulf of Mexico leases. Bidding credits could be used for a number of other practices, such as funding research or committing to a certain minimum spacing between structures to minimize impacts to fisheries. As noted in the proposed rule, the specific bidding credits and any associated limitations should be described in the proposed sale notice to allow for public comment on the details before they are finalized.

Potential Revisions to Regulations Governing Transmission (Proposed Changes Section L)

The proposed rule notes that BOEM is continuing efforts to explore a coordinated approach to transmission, which could include the shared use of cable corridors or other shared transmission solutions, such as regional transmission systems, meshed systems, and the development of an offshore grid. The proposed rule does not suggest specific changes to the regulations regarding coordinated transmission but seeks public comment on the types of regulatory changes that would be appropriate to better accommodate these options and to minimize impacts to environmental, natural, and cultural resources.

We support efforts by BOEM to more strongly encourage or require coordinated transmission, either through federal regulations, via lease stipulations, and/or in other ways.

Conclusion

We appreciate the opportunity to provide comments to ensure that issues of social and ecological importance are considered in the final rule. We look forward to working with BOEM to ensure that wind development in our region minimizes impacts on the marine environment and can be developed in a manner that ensures coexistence with our fisheries. Please contact us if you have any questions.

Sincerely,



Thomas A. Nies
Executive Director, New England Fishery Management Council



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

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