March 11, 2011

Program Manager
Office of Offshore Alternative Energy Programs (MS 4090)
Bureau of Ocean Energy Management, Regulation, and Enforcement
381 Elden Street
Herndon, Virginia 20170

Re: Scoping Comments for Regional Environmental Assessment for Commercial Wind Lease Issuance and Site Characterization Activities; Atlantic Outer Continental Shelf Offshore NJ, DE, MD, and VA
Federal Register info (February 9, 2011)
Docket ID ##, Document ID ##

To Whom It May Concern:

These comments are submitted on behalf of the undersigned organizations. We appreciate the opportunity to submit these comments to the Bureau of Ocean Energy Management, Regulation, and Enforcement [hereinafter BOEMRE]. We are submitting these comments today via electronic mail and forwarding a copy separately by mail.

As organizations, we represent the power and commitment of millions of members and supporters in the states and territories and the District of Columbia. We have a long history of working to conserve wildlife and wild places.

We also recognize that climate change poses an enormous threat to both the human environment and the earth's biologic diversity. For that reason, the United States needs to invest in and transition to clean, efficient renewable energy sources other than fossil fuels that contribute to greenhouse gas (GHG) emissions and climate change, and represent the biggest threat to our environment, public health, and way of life. Such a transition will create good-paying jobs and move our nation toward energy independence.

Vast offshore wind potential along the Atlantic coast can play an increasingly important role in getting our region and our nation off fossil fuels. For Mid-Atlantic States, offshore wind represents one of our best strategies to generate significant amounts of energy without creating more pollution.

Offshore winds in the mid-Atlantic are strong and reliable, and the Outer Continental Shelf (OCS) has relatively shallow ocean depths many miles off the coast. Beyond shallow water, the Atlantic states have significant additional wind resources. A September, 2010, National Renewable Energy Laboratory report classified 1,283.5 GW of total potential offshore wind in the Atlantic Ocean. Mid-Atlantic States are well positioned to take advantage of current wind turbine technology (5 MW) and future generations of larger, even more efficient wind turbines (8 – 10 MW) that can be built further away from the coast —– reducing visual impacts and other potential conflicts.

We support the Obama Administration's recently announced offshore wind initiative for the waters off the Atlantic coast states, "Smart from the Start," which seeks to expedite the development of first

generation offshore wind projects on the Atlantic coast through multi-agency collaboration, while ensuring that these projects are carefully and appropriately sited. As a first step, the Department of the Interior is working with the Governors of the Atlantic coast states to identify "wind energy areas". These high priority zones, with the potential for minimal conflict to the environment and to other ocean users, may be appropriate for the development of offshore wind and can be prioritized for a quick and responsible review and permitting process.

This can be done while protecting the Atlantic Ocean as a priceless and connected ecosystem. We need policies that enable swift deployment of offshore wind while at the same time setting standards to safeguard natural resources by, for example, proper siting of facilities in the right locations. We believe there is an important ecological imperative to move forward quickly with clean, sustainable energy and that it can be accomplished concurrently with ensuring the protection of fish and wildlife populations.

We are seeking clarification of two key issues, namely the nature of the leases that would be issued and assessed in the Environmental Assessment (EA) and the nature of the environmental review that will be performed in connection with the Construction and Operation Plan (COP).

SUFFICIENTLY CONDITIONED LEASING INSTRUMENT

Our organizations support well-planned offshore wind energy development given its enormous potential to expand the supply of clean and climate-friendly energy sources. We recognize that more certainty is needed for developers to commit the significant funding necessary to conduct site assessment and site characterization activities on an area of the OCS. This lack of certainty is a significant deterrent to attracting the early investment needed to make large-scale offshore wind generation a reality.

We are also committed to ensuring that this development proceeds in an environmentally sound way. To this end, we support a process that will expedite prompt site characterization and assessment, while at the same time ensuring that no development rights are granted until after there has been a full environmental review of the proposed project and the project has been approved.

<u>For these reasons, we believe that it is essential that the Department of Interior clarify the nature of the leases that it intends to issue for these Wind Energy Areas (WEAs) and that it clarify that a full Environmental Impact Statement (EIS) will be prepared in connection with the COP</u>. The following principles, which have been developed after consultation with the Offshore Wind Development Coalition, are being offered to clarify these two key issues. We believe that the multiple goals of thorough and well-timed environmental review, investor certainty, and a streamlined process will be achieved by adhering to these basic principles.

Principles:

- The lease shall ensure that no other party will be granted any right or interest that would interfere with the conduct of reasonable site assessment and characterization activities for the lease site;
- The lease shall provide the lessee with the exclusive right to apply for the approval of a COP for the site and with the right to have no COP application from other potential lessees considered unless the lease has been terminated by the Secretary. A basis for termination shall include but is not limited to the lessee's failure to make sufficient progress toward an approvable COP or the lessee's abandonment of the lease;

- The lease shall confer no right of occupancy on submerged lands of the OCS other than for routine site characterization and assessment activities;
- The grant of a lease shall in no way affect or impair the Secretary of the Interior's authority to deny pursuant to the factors in the Outer Continental Shelf Lands Act section 8(p), without compensation, development rights to the lessee in connection with its review of the COP.

According to the Notice of Intent (NOI):

"The proposed action is the issuance of renewable energy leases within the WEAs described in Section 3 of this Notice, and approval of site assessment activities on those leases. The regional EA will consider the environmental consequences associated with reasonably foreseeable leasing scenarios, reasonably foreseeable site characterization scenarios in these lease areas (including geophysical, geotechnical, archeological and biological surveys), and reasonably foreseeable site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the potential leaseholds."[1]

The NOI defines a renewable energy lease as giving "the lessee an exclusive right to apply for subsequent approvals that are necessary to advance to the next stage of the renewable energy development process."[2] The next stage is described as review and approval of a Site Assessment Plan (SAP), and after sufficient collection of site characterization and assessment data, the lessee would submit a (COP).

The notice envisions that the proposed regional EA would constitute National Environmental Policy Act (NEPA) compliance throughout both the leasing and SAP stages for all leases issued in the areas covered by the WEAs (approximately 900 square miles). However, the NOI notes that NEPA analysis for the COP will likely take the form of an Environmental Impact Statement (EIS).

Full environmental review of any project is required under law, and is needed to protect wildlife and other natural resources and secure public support for projects. This can be achieved in the "Smart from the Start" initiative if the initial lease for any part of the WEA's covered by the current NOI is sufficiently conditioned so as to not constitute an irreversible or irretrievable commitment of resources by the Government. Developers would not receive right to erect any wind turbines until the Government reviews and approves the developer's COP and issues an EIS analyzing all potential impacts of the project.

CLARIFYING NEPA REVIEW FOR COP; CUMULATIVE IMPACT ANALYSIS

The NOI notes that NEPA analysis for a future submitted COP "will likely take the form of an EIS". The Department of Interior must clarify that a full Environmental Impact Statement (EIS) *will be prepared* in connection with the COP.

Additionally, we would like to stress that at some future point, but before decisions are made to approve construction and operation of offshore wind development projects, BOEMRE needs to prepare an EIS that includes an analysis of the cumulative impacts of reasonably foreseeable offshore wind projects in the Atlantic. This potentially could be done as part of an individual EIS for a project specific

[1] 76 Fed. Reg. 7226-7227 (Feb 9, 2011).

[2] *Id.*

COP, as part of an EIS on the proposed Atlantic Wind Connection project or in a programmatic EIS prepared during site assessment processes.

PROPOSED WIND ENERGY AREAS

The notice describes the distance from shore, length and width, approximate square nautical mileage, and approximate number of OCS blocks for each of the mid-Atlantic WEAs.

Mid-atlantic coastal habitats and environmental resources that may be directly or indirectly impacted by offshore wind include seafloor habitats, coastal habitats, fishery resources, marine mammals, marine and coastal birds, and bats.[3] Better baseline information for the four WEAs would help predict the presence and absence of certain marine mammals, and we need to increase our understanding of key species' life history traits and critical habitat in each of these areas as well.

Fishery resources can be impacted by offshore space-use conflicts, artificial reef effects, habitat alteration, noise from pile driving, and effects from electromagnetic fields.[4] Anthropogenic sound can temporarily or permanently impair marine mammals' vitally important ability to process and use sound. BOEMRE should consult with the appropriate state, federal and university and NGO experts to identify potential impacts on Essential Fish Habitat in the proposed WEAs. BOEMRE should also identify whether seasonal sea turtle and northern right whale migration corridors conflict with potential WEAs.

Much like onshore wind development, there is the potential for Atlantic offshore wind turbines to impact marine and coastal birds and bats, including millions of migratory birds that traverse the Atlantic Flyway, pelagic species (petrels, shearwaters, etc), and those that nest and winter along the Atlantic coast. Expanding our knowledge about the seasonal distribution and abundance of key species will be critical to understanding the potential risk of collision or behavioral change from offshore wind development. There is some evidence of localized coastal wind turbines placed near tern colonies resulting in a surprisingly high avian mortality rate. Avian studies in the North Sea have found indirect impacts through habitat loss or fragmentation. While some seabirds return to the offshore wind turbine matrix post-construction, studies indicate that others, such as Longtailed Ducks, will no longer utilize the area. This "avoidance" can include displacement from foraging areas and disruption of daily or seasonal movement patterns.

Generally, BOEMRE should consult with other agencies to ensure WEAs avoid:

- shoals, boulder reefs, and rocky cobble areas which support large aggregations of fish and wildlife populations;
- the mouths of inlets —– hot-spots for daily and seasonal fish and wildlife movement between estuarine and near-shore ecosystems;
- threatened or endangered species habitats; and

[3] Fox, T.; Desholm, M.; Kahlert, J.; Petersen, I.K.; and Christensen, T.K. (November 2006). Assessing effects of the Horns Rev and Nysted offshore wind farms on birds — conclusions from 6 years' monitoring. *Final Results Conference, November 27-29, 2006, National Environmental Research Institute*; available at: http://www.bluewaterwind.com/pdfs/Horns_Rev_and_Nysted_six_years.pdf (accessed October 26, 2010)

[4] MMS (2009), Survey of Available Data on OCS Resources and Identification of Data Gaps, MMS Report to the Secretary of the Interior. OCS Report MMS 2009-015; pp 8-9; available at: http://www.doi.gov/whatwedo/energy/ocs/loader.cfm?csModule=security/getfile&PageID=37041 (accessed October 26, 2010)

- areas critical to migration, breeding, wintering, or other sensitive life stages needed to sustain healthy populations of wildlife.

In analyzing and refining the four proposed wind energy areas, we suggest considering the best available information on future shifts in wildlife geographic ranges and other ecological changes that will result from climate change, and to gather best available information on cumulative impacts. Additionally, areas further offshore are better suited generally to avoid environmental and other potential conflicts, such as military needs and navigation. In general, avian species abundance and diversity declines further from the shoreline.[5]

Finally, BOEMRE should gather information on potential impacts to commercial and recreation fisheries, transportation routes and vessel traffic safety, scenic resources, coastal communities, historic and cultural resources (including shipwrecks), radar, military readiness, and other technical challenges.

POTENTIAL ENVIRONMENTAL RESOURCE IMPACT MITIGATION MEASURES FOR SITE CHARACTERIZATION AND ASSESSMENT ACTIVITIES

As with any major activity, sound science should guide the development of regulatory measures to help developers avoid, minimize, and mitigate direct and indirect environmental risks. Because the proposed leases would allow for the potential construction, operation and decommissioning of meteorological and oceanographic data collection facilities as well as site characterization activities (including geophysical, geotechnical, archeological and biological surveys) on the leased areas, BOEMRE should stipulate mitigation measures in the lease instrument.

An appropriate starting point for developing mitigation measures is Appendix A (Proposed Mitigation Measures) of the June 2009 Interim Policy mitigated Finding of No Significant Impact for the Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey (OCS EIS/EA, MMS 2009-025). It is reasonable to believe the general measures in that document will also be applicable for the entire WEA in both NJ and DE, and similarly useful for MD and VA. Measures should include but not be limited to:

- Specific measures to reduce or eliminate the potential for adverse impact on protected species;
- Seafloor habitat biological survey and associate report requirement, including guidelines for conducting surveys and preparing the report, should biologically sensitive habitats exist near proposed lease activities;
- Seismic survey mitigation measures, including exclusion zone requirements, 'ramp-up' and shut-down requirements, compliance with noise standards, and National Marine Fisheries Service-approved site monitoring;
- Specific measures to reduce or eliminate the potential for adverse impacts to marine mammals and sea turtles from pile driving, including 'soft-start' and air bubble curtain requirements, and use of smaller, hydraulic, and vibratory hammers;

[5] Bird density is much more decreased in offshore environments than in land-based environments. See: Gordon, C. (December 2009). Integrating Wildlife Risk Considerations into Offshore Wind Permitting Processes: Challenges and Opportunities," Pandion Systems, Inc., Presentation given at the AWEA Offshore Wind Project Workshop; slide 6; available at: http://www.pandionsystems.com/LinkClick.aspx?fileticket=sbvFUCq06zQ%3d&tabid=149 (accessed October 26, 2010)

- Support vessel training and training requirements and speed restrictions to avoid vessel strikes;
- Specific measures to reduce or eliminate adverse impacts from facilities, support vessels, and associated activities to birds and bats through anti-perching devices, restricted use of guy wires, and lighting requirements;
- Process for determining the presence of archeological resources and measures to avoid disturbing those resources, including a distance buffer and a process for determining eligibility for National Register of Historic Places;
- Site clearance stipulations following completion of data collection;

WIND ENERGY AREAS AND THE NATIONAL OCEAN POLICY

The notice indicates the Regional EA will be developed using many of the principles of coastal and marine spatial planning, such as comprehensive interagency coordination, to identify information needs for COP submittals.

We believe that the most efficient way to advance offshore wind energy and actually build working wind turbines into the ocean environment is to ensure that decisions on offshore wind are part of the federal and state governments' vision for the sustainable use of their coastal and marine resources. The President's recent Executive Order that establishes the National Ocean Policy, including the Framework for Effective Coastal and Marine Spatial Planning, offers a guide for using multi-objective principles to promote conservation, science-based decision making and coordination between federal agencies, states and all ocean users. These principles can be used to help can identify and establish wind energy areas, and through a public process, coordinate wind energy development with the many other uses of coastal and marine resources and gather needed data. This planning framework need not delay current and proposed wind projects.

PUBLIC STAKEHOLDER ENGAGEMENT

Development of offshore wind resources in NJ, MD, DE, and VA has the potential to greatly affect residents of impacted communities, as well as stakeholders in the states and region. We believe that in order to provide a meaningful opportunity for stakeholders to comment upon and shape the regional EA, public meetings should be held in each of the four states and in Washington, DC at a minimum.

CONCLUSION

Thank you for the opportunity to provide scoping comments for the Regional EA. Appropriately sited and developed Mid-Atlantic offshore wind is an important part of our clean energy future, and we look forward to additional federal action and comment opportunities.

Sincerely,

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