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Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore New Jersey –
Call for Information and Nominations

Comment On: BOEM-2011-0005-0001

Commercial Leasing for Wind Power; Call for Information and Nominations Outer Continental Shelf
Offshore New Jersey

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Comment from David Frulla, organization

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Government Agency: BOEM

General Comment

See attached file(s)

Attachments

BOEM-2011-0005-DRAFT-0008.1: Comment from David Frulla, organization

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June 6, 2011

VIA ELECTRONIC MAIL

Bureau of Ocean Energy Management, Regulation and Enforcement
Office of Offshore Alternative Energy Programs
381 Elden Street
Mail Stop 4090
Herndon, VA 20170

**Re: BOEM-2011-0005 Comments on Commercial Leasing for Wind Power on
the Outer Continental Shelf Offshore New Jersey**

Dear Mr. Bromwich:

On behalf of the Fisheries Survival Fund, we offer the following comments regarding the call for information on the commercial leasing of Outer Continental Shelf ("OCS") offshore New Jersey for the construction of wind energy projects. 76 Fed. Reg. 22130 (Apr. 20, 2011). The Fisheries Survival Fund is comprised of a significant majority of full-time limited access permit holders in the federal Atlantic scallop fishery. We are confident that other commercial fishing interests along the mid-Atlantic coast, particularly mobile gear fishermen, share our concerns.

The Federal Register notice requests that interested and affected parties, such as commercial fishermen, provide comments and information on site conditions, resources, and multiple uses within the identified area. This is the first public outreach directly made to the fishing community, despite multiple interim leases already having been approved before regulations defining the leasing process were finalized. Further, the Mid-Atlantic Fishery Management Council (the principal federally chartered coordinating body for fisheries in the exclusive economic zone ("EEZ") along the mid-Atlantic) should be allowed to play a prominent consultative role regarding the measures to be taken by Bureau of Ocean Energy, Management, Regulation and Enforcement ("BOEMRE") and their effects on commercial fishermen. We note that BOEMRE has apparently now begun such coordination, and we encourage continued coordination in the future. We nevertheless stress that the impacts of offshore wind on federally permitted fishermen in the EEZ should be prevented, or at a minimum, mitigated, even if they are home-ported elsewhere in the mid-Atlantic region or in New England (e.g., some federal fisheries, such as the scallop fishery, include both New England and the mid-Atlantic).

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I. Fishing and Navigation

The federal government holds submerged lands in public trust. BOEMRE, as a division of the Department of the Interior, regulates the leasing of submerged lands on the OCS to private persons and corporations for energy and mineral development. 43 U.S.C. § 1334(a). Under the Outer Continental Shelf Lands Act (“OCSLA”), congressional policy demands that “the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected” by the leasing of OCS’ submerged lands. *Id.* § 1332(2). More pertinently, under the Energy Policy Act of 2005, which amended the OCSLA to grant BOEMRE the power to authorize renewable energy projects on the OCS, the agency is required by law to protect existing “reasonable uses” and consider areas for fisheries and navigation purposes. *Id.* § 1337(p)(4)(I), (J). Fishermen, therefore, require additional protection.

The area identified offshore New Jersey is fished and navigated extensively by scallop, surf clam, quahog, fluke, squid, purse seine, and otter trawl fishermen. These fishermen primarily employ mobile gear, which can be most adversely effected by wind farm development. Federally licensed fishermen do not have unfettered access to fish in the EEZ. As outlined in species-specific fishery management plans implemented under authority of the Magnuson-Stevens Fisheries Conservation and Management Act, these fisheries very often are regulated in where and when they can fish. *See generally* 50 C.F.R. Part 648 (regulating gear, time, and areas fished). For its part, the scallop fishery is managed using an explicitly spatial rotational model; a constriction of scallop fishing areas not only limits fishing opportunities in that area, but decreases overall allowable catch levels. Commercial mobile gear fishermen, moreover, require space to navigate their gear through the water column and reach their target species in designated access areas. New uses, such as offshore wind farms, have the general potential to displace fishermen from their managed fishing grounds.

Fishermen require working navigation equipment. The United States Coast Guard has confirmed offshore windmills disrupt radar equipment on vessels, creating navigational hazards. Such navigation challenges will create safety concerns and inefficiencies in the fisheries. Navigational complexities also will increase fuel consumption. We further understand from prior NOAA Fisheries comments on the subject of ocean wind, in Europe, mobile gear fishermen are not able to obtain insurance if they fish in wind turbine areas. NOAA Fisheries Comments to Massachusetts RFI, p. 5 (Mar. 8, 2011).

Areas of concern involve more than just a wind farm’s offshore footprint, but also the area where cables are laid. Cables need to be buried, so they do not disrupt fishing activities. Further, the wind farm operator should be responsible to monitor the cables to ensure they remain buried, and to re-bury them in the even they become exposed. Finally, and most fundamentally, wind farm development should proceed consistent with the development of markets for electricity generated from the offshore turbines. Such incremental development would also enable all involved to learn from experience.

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II. Recommendations

Because of the potential overlap in leased areas and areas where fishermen fish and navigate, we recommend that such overlaps be rigorously assessed before any submerged lands lease is issued. Indeed, this should have been done before any interim lease was issued. Even if the process to lease areas offshore New Jersey is not a competitive one, BOEMRE is still constrained to consider established, competing uses for the area in question. Indeed, the President's high profile Coastal and Marine Spatial Planning efforts along with BOEMRE and NOAA's newly issued Memorandum of Understanding demand interagency consultation and coordination between BOEMRE and NOAA early in the leasing process.

We understand that both the Mid-Atlantic Council and NOAA Fisheries either have provided, or will be providing, extensive information regarding fisheries resources and management, as well as fishing effort, in response to this call for information. BOEMRE should examine these comments carefully and withdraw key and historic fishing grounds from the lease offering, as recently occurred with respect to BOEMRE's Request for Information regarding areas offshore Massachusetts. In addition to these comments, FSF would direct BOEMRE's attention to the following sources of information which would be most useful in identifying key fishing grounds:

- **Vessel Monitoring System data:** All vessels in the scallop, groundfish, and other major fisheries must use these satellite tracking systems when engaged in fishing. They record a vessel's position twice an hour. A vessel's course, speed, and location can be used to roughly identify when and where a vessel is fishing.
- **Vessel Trip Reports:** Filed weekly, these logbooks identify when and where fishing activity is occurring. NMFS must input the data by hand, so the information in the database often lags, but this is a good source of past effort information.
- **The SASI Model:** The Swept Area Seabed Impact ("SASI") model is a tool developed by the New England Fishery Management Council and the National Marine Fisheries Service ("NMFS") to help identify fishing's impacts on essential fish habitat. It contains fishery-specific effort data for over a ten year period drawn from VMS, VTR, and other data sources. We believe the model contains the most comprehensive and finest scale information available. These, or similar, data sources should be used for the Mid-Atlantic area offshore New Jersey.
- **Scallop Survey Data:** The University of Massachusetts School of Marine Sciences and Technology ("SMAST"), NOAA Fisheries, and the Virginia Institute of Marine Science all conduct resource surveys, the former using video technology, and the latter

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two with dredges. These data can be used to identify key aggregations of scallops over time, helping identify valuable fishing grounds. SMAST has done an overlay of the lease areas using its survey data, but all sources should be employed.

Offshore wind developers and regulators should mitigate the impact of offshore wind farms on fishermen. To do so, federal managers and wind developers should be required to do the following:

- Include a representative of the relevant Regional Fishery Management Council on the planning taskforce and conduct coast-wide outreach to affected users;
- Remove historic and key fishing grounds from the lease offering;
- Site wind farms to minimize conflict with existing uses; and
- Provide mitigation payments to fishermen for their cumulative losses (*e.g.*, impediments to navigation, increased fuel consumption, displacement, loss of fishing area, etc.), should they occur.

* * *

We appreciate the opportunity to provide information regarding the New Jersey call for information. We hope BOEMRE will take these recommendations into account as it undertakes the leasing of submerged lands. As always, please do not hesitate to contact us if we can provide any further information or answer any questions about these comments.

Sincerely



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Shaun M. Gehan
Andrew E. Minkiewicz
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Counsel for the Fisheries Survival Fund