

Attachment 9

Fisheries Protection Requirements and Recommendations

Qualified Projects are expected to follow the protection hierarchy (avoid, minimize, mitigate) to address adverse impacts to fisheries resources associated with their projects. Section 3.11 of the SGD describes the elements that each Applicant must submit as part of its FPP. ***In addition to*** each of the elements listed in Section 3.11, the FPP must also include an explanation of how the Applicant will implement each of the fisheries protection measures that are described in this Attachment. These fisheries protection measures are intended to establish a set of baseline requirements that are required of each Qualified Project and provide guidance to developers on additional measures BPU encourages Applicants to employ. The fisheries protection measures span all phases and components of a Project, including onshore and offshore activities, and including pre-construction surveys, construction, operation, and, as applicable, decommissioning. Required protection measures are indicated by “shall,” whereas recommended protection measures that BPU encourages developers to employ or consider are indicated by “should.” If any of the required minimum fisheries protection measures cannot be implemented or are not applicable to the Applicant’s Project, the FPP must explain why.

Where protection measures are not defined for a specific resource type or activity, it is expected that the Qualified Project shall:

- Work collaboratively with the State, federal agencies, and other stakeholders to identify such impacts and to develop approaches that avoid impacts on biodiversity and ecosystem services;
- Where avoidance is not possible, minimize such impacts;
- When impacts are predicted to occur notwithstanding the implementation of practical avoidance and mitigation measures, rehabilitate or restore ecosystems; and
- Where significant residual impacts are predicted to remain, offset such impacts.

The requirements and recommendations below are based on BOEM’s [COP Guidelines](#), Attachment A, Best Management Practices (“BMPs”),¹ but incorporate updates reflecting evolving fisheries protection measures since the initial development of the BOEM BMPs. These requirements and recommendations are not intended to supplant or alter the federal or state regulatory process or any other requirements under federal, state, and local permit programs.

Qualified Projects, after Board approval, shall develop an Adaptive Fisheries Monitoring Plan. The Fisheries Monitoring Plan shall be informed by collaboration with BPU, the NJDEP, NOAA Fisheries, and regional science entities, to detect impacts to marine fisheries.

Qualified Projects, after Board approval, shall also develop an Adaptive Fisheries Mitigation Plan. This plan will be informed through input from stakeholders and in collaboration with the BPU, NJDEP, NOAA Fisheries, and regional science entities.

In collaboration with BPU and NJDEP, Qualified Projects shall establish milestones for the development and issuance of the Adaptive Fisheries Monitoring Plan and Adaptive Fisheries Mitigation Plan. The

¹ See BOEM, [Information Guidelines for a Renewable Energy Construction and Operations Plan \(COP\)](#), Version 4.0 (May 27, 2020), www.boem.gov/sites/default/files/documents/about-boem/COP%20Guidelines.pdf

Adaptive Fisheries Monitoring Plan and the Adaptive Fisheries Mitigation Plan shall be publicly available documents.

Fish Resources and Essential Fish Habitat

- The Qualified Project shall collect data to adequately identify and characterize Essential Fish Habitat, following recommendations in the NOAA publication, "[Information Needs to Assess Essential Fish Habitat Impacts from Offshore Wind Energy Projects Along the U.S. Atlantic](#)" (September 2021), and any subsequent updates.²
- Qualified Projects shall also follow the recommended steps for mapping seafloor habitat in NOAA's "[Recommendations for Mapping Fish Habitat](#),"³ and any subsequent updates, to ensure that the information collected is sufficient for BOEM to meet the requirements for the Essential Fish Habitat consultation under the Magnuson-Stevens Fishery Conservation and Management Act.⁴

Conflicting Use Avoidance, Minimization, and Mitigation

- Qualified Projects shall actively engage with fishing communities to ensure that Project design maximizes safe access to fisheries to the extent feasible.
- The Qualified Project shall consult with the fishing industry, preferably through regional fisheries groups to inform siting (of turbines, substations, and interarray and export cable routes) and regarding navigational safety and risk management, transit routes, and employment opportunities to displaced fishers (e.g., use of fishing vessels for survey work). Additionally, Qualified Projects should seek opportunities to collaborate with the fishing community on projects of mutual benefit.
- Qualified Projects shall collaborate with New Jersey's fishing industry, preferably through regional fisheries groups, to review their Fisheries Communication Plan and supplement it as needed to ensure that it is sufficient to facilitate effective engagement at all stages of project development. The Fisheries Communication Plan should include engagement with the United States Regional Fishery Management Councils.⁵ The Fisheries Communication Plan shall be a publicly available document.
- Qualified Projects shall consult and cooperate with stakeholders identified in the Fisheries Communication Plan to develop a Fisheries Mitigation Plan. The Fisheries Mitigation Plan shall include consideration of safety concerns and recommendations from the U.S. Coast Guard and industry recommended safety measures (e.g., mitigation of radar interference, Automatic Identification System ("AIS") transmitters at turbine locations, and Wi-Fi or cell phone and other technical approaches to improving communication at sea).

Fisheries Compensation

- Qualified Projects shall develop and implement a program for addressing damage to or loss of gear, vessels, and income from interactions with offshore wind surveying, construction,

² Further information may be found at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/aquaculture/information-needs-assess-essential-fish-habitat-impacts>.

³ NOAA, Letter from Louis A. Chiarella to Michelle Morin, BOEM Office of Renewable Energy Programs, re: Updated Recommendations for Mapping Fish Habitat (March 29, 2021).

⁴ Fishery Conservation and Management Act of 1976, 94 P.L. 265, 90 Stat. 331 (enacted April 13, 1976).

⁵ See U.S. Regional Fishery Management Councils, <http://www.fisherycouncils.org>.

operation, or decommissioning activities or structures. In developing the program, the Qualified Project should follow the “Compensation for Gear Loss and Damage” section of BOEM’s Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf⁶ and consult the commercial fishing industry and other leaseholders to ensure consistency, fairness, and accessibility in substantiating losses, filing claims, mediation, and reimbursement.

- New Jersey was one of nine states on the east coast that encouraged BOEM to develop Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf. Qualified Projects should address compensation to commercial and recreational fisheries by, at a minimum, following BOEM’s Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf.⁶ Additionally, Qualified Projects shall perform a thorough review of the information needed and available to assess the full economic value of the commercial and recreational fisheries that operate in the Project area. This review should include information needed to assess both direct effects on fisheries (e.g., potential loss of harvest and landing revenue) and indirect effects on shoreside markets and support industries. Shoreside industries may include docks, suppliers (e.g., gear, fuel, repairs), processing facilities, shipping, tourism, and other businesses that rely on marine fisheries. The review should also consider the information needed to understand potential impacts to port cities, identification of underserved communities in our working waterfronts, potential cumulative impacts from full build out of existing lease areas, and the potential for permanent losses of fisheries infrastructure (e.g. fish processing facilities, marinas) that may result from incremental losses in access over time. The review should include consultation with fisheries managers, fisheries economist(s), representatives of the commercial and recreational fishing industries, and other experts, as well as a thorough review of scientific and industry publications.
- Qualified Projects shall work with state, federal, and fishing industry representatives to identify the most appropriate entity for administration of fisheries mitigation funds and shall continue to participate in a resulting regional compensation program if recommended by New Jersey. Qualified Projects should consider mitigation of fisheries impacts at all stages of development through direct partnership with commercial fishing industry members.

⁶ BOEM’s Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf are in draft form as of February 2023 (https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf), but are expected to be finalized prior to the Application Submission Deadline.