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**Via Electronic Filing to: <http://www.regulations.gov>.**

October 21, 2024

Seth Theuerkauf  
Bureau of Ocean Energy Management  
Office of Renewable Energy Programs  
45600 Woodland Road, Mailstop: VAM-OREP  
Sterling, VA 20166.

**Re: Bureau of Ocean Energy Management [Docket No. BOEM-2024-0040] Central Atlantic  
2 Call Area**

Dear Mr. Theuerkauf:

I am writing on behalf of the New Bedford Port Authority (NBPA) in response to BOEM's invitation for public comment on the Central Atlantic 2 Call Area (BOEM 2024-0040) on the Outer Continental Shelf ("OCS") offshore the U.S. central Atlantic coast.

The Port of New Bedford, as the most profitable fishing port in the country, and site of the first large scale offshore wind industrial marshalling port, has been diligent in providing comments for multiple offshore wind projects underway and proposed for the future. Throughout this process we recognize and support the need for offshore wind development. However, we have become more and more concerned that development must only be accomplished in a responsible manner by protecting established industries that share our waters. In particular, "responsible manner" must include learning from mistakes made in failing to avoid and address the interaction and conflicts between offshore wind and commercial fishing in connection with previous BOEM actions and avoiding such conflicts as early in the current BOEM planning process as possible.

Our grave concern about this CA2 call area is that it unnecessarily includes some of the most critically important scallop fishing areas on the East Coast. The comment letter submitted on behalf of the Fisheries Survival Fund by Kelly Drye provides all the technical and scientific detail necessary to understand how essential the Elephant Trunk, Hudson Canyon, and Delmarva areas are to the scallop industry. What is stunning to us is that all that data is and was available to BOEM prior to setting the boundaries of the proposed call area.

The National Marine Fisheries Service ("NMFS") estimated 16-year catch value for the most impacted commercial fisheries in the area of the proposed call is just under \$2 billion. Of that amount, just under \$1.5 billion is sea scallops. BOEM is well aware that mobile bottom-gear

fisheries such as scallops can be significantly impacted by offshore wind farms. It would take only a cursory look at the available fisheries data, VMS tracking, NMFS landings, etc., for anyone to see that the Northern and Northeastern portions of the proposed call area contain significant commercial fishing conflicts. Instead of undertaking its responsibility to not take an action in order to avoid the potential impact on commercial fishing altogether, BOEM has issued a call area that includes vital fishing grounds as potential lease areas.

What is further confounding is that avoiding the inclusion of those areas in the northernmost portions of CA2 would have left the vast majority of the more than 13 million acres and have virtually no effect on the overall area potentially available for future leases. A simple look at the CA2 map suggests the boundary could have been set approximately 150 miles to the south, avoiding these critical scallop grounds, while still leaving more than 400 miles and millions of acres of call area down to the South Carolina state line.

Perhaps a cynical interpretation is that BOEM included these areas in the initial CA2 so that in the next iteration the agency would appear diligent in their stakeholder responsibilities by almost immediately reducing the call area and claiming that it was an “effort” to deconflict the call area from these critical scallop grounds. Such an approach would also have the added benefit of making the remaining fisheries conflicts seem smaller in comparison and therefore more palatable. Such an approach invites rancor and frustration from the commercial fishing industry, an outcome which is counterproductive to advancing the responsible development of offshore wind. It also risks diluting the credibility of BOEM as an agency that claims to have heard the concerns expressed in the past.

It is an abandonment of BOEM’s stated intent in planning call areas and seeking to avoid and minimize impacts on other ocean users, including commercial fishing. Simply drawing the northern boundaries of CA2 a bit further to the south would have been an easy and obvious effort at avoidance. The agency could even have pointed out that effort up-front to claim the public credit for considering the scallop fishery in assessing the call area.

We understand that BOEM’s planning process begins with engaging with one of the regional task forces to help identify areas of significant promise for offshore development and provide early identification of, and steps toward resolving, potential conflicts. Although the idea of a regional task force is a good start, the very word “regional” in the name underscores BOEM’s limited understanding of the nature of the use of the OCS off the Atlantic coast. There is very little “regional” use, particularly where commercial fishing is concerned. Fishermen fish and catch far from their home port and where they land their catch.

According to BOEM, the process for BOEM's renewable energy program occurs in four distinct phases: (1) planning and analysis, (2) lease issuance, (3) site assessment, and (4) construction and operations.

“Planning and Analysis. The Planning and Analysis phase seeks to identify suitable areas for wind energy leasing consideration through collaborative, consultative, and analytical processes that engage stakeholders, tribes, and State and Federal government agencies. This is the phase when BOEM conducts

environmental compliance reviews and consultations with Tribes, States, and natural resource agencies.”

It would be a fair conclusion from this description that this process takes place **before** BOEM puts out a proposed call area available for offshore wind. It would also be fair to conclude that the “stakeholders” mentioned include those currently using the OCS, such as commercial fishermen and that the “Federal government agencies” engaged in the “collaborative” process would include NOAA and NMFS. Continuing the series of reasonable conclusions, it would be only after the input of these stakeholders is considered that BOEM would identify an area as being available or “suitable” for offshore wind development. The proposed CA2 call area belies all these perfectly rational conclusions.

### **Avoidance, Minimization, and Mitigation (AMM)**

BOEM has been making a minimal effort at mitigating or addressing the interaction or potential interaction between offshore wind and commercial fishing since 2011, where an initial report by BOEM identified 31 possible mitigation measures. BOEM then boiled that down to 9 mitigation Best Management Practices (“BMPs”) in 2013. In 2014, BOEM issued a final report that contained 5 BMPs. Currently, BOEM has had draft fisheries mitigation “guidance” since 2022. Apart from issuing the fisheries “guidance”, there have been no further steps taken to give the agency more authority to enforce mitigation.

As noted in BOEM’s guidance, per “the Council of Environmental Quality (CEQ) regulations (40 CFR 1508.1(s)), mitigation includes:

1. Avoiding the impact altogether by not taking a certain action or parts of an action.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
5. Compensating for the impact by replacing or providing substitute resources or environments.

There is no question that OCSLA requires BOEM to consider existing users of the OCS when undertaking new activities and new leases. The current call area represents BOEM actively choosing not to follow #1 above to avoid potential impact on commercial fishing in the development of CA2. BOEM appears to be “testing the waters” to see if there may be potential for a lease in areas it knows are significant fisheries areas.

### **Mitigation**

Recent BOEM documents associated with pending WEAs are a concern to the NBPA and the commercial fishing industries. There have been several instances where EIS, COP and ROD language appears to take the position that financial mitigation payments to commercial fishermen

are an acceptable or satisfactory form of mitigation for the impact of offshore wind. The extent of the proposed call area gives rise to the same concern that BOEM considers financial payments as a substitute to avoidance and minimization.

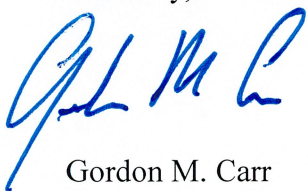
Reliance on financial compensation as a primary form of fisheries mitigation is a dangerous practice for fishermen and the communities they support. It damages shoreside businesses, reduces the likelihood of new generations entering the business, and devalues fisheries permits. It also will have the extremely counterproductive, at least from an environmental sustainability standpoint, result of consumers buying their fish not from U.S. commercial fishermen but from foreign, less sustainable, fisheries. Offshore wind won't impact the amount of fish people eat, it will simply impact the amount of sustainable American-caught fish they are able to eat.

As noted above, BOEM's own guidance states that financial mitigation is paid only when necessary, after the other four standards are applied. Fishermen do not want to be paid not to fish. They simply want the least amount of interference possible in fishing areas of the OCS they have fished for hundreds of years before offshore wind entered the picture. In CA2, BOEM had the opportunity to avoid conflict between offshore wind and commercial fishing at the very outset of the process – not at the end where the payment of money not to fish will seem like the only available recourse – and simply failed to do so.

It is long past time for BOEM to take seriously its responsibility towards the other users of the OCS, some of which, like commercial fishing, have been using the same areas for hundreds of years. BOEM must begin to demonstrate a concerted effort to avoid and minimize the potential impact of a call area, collective lease areas, WEA and each turbine. This effort must take place before the potential impact is felt and must be based on more substantive scientific data and information than a hunch. People's livelihoods are based on these actions.

Thank you for the opportunity to comment at this stage. We remain available to provide additional information and support to BOEM for a more responsible and consistent approach to call area processes in the future.

Sincerely,



Gordon M. Carr  
Executive Director

