



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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SECRETARY

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Laurie Jodziewicz
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401 East Pratt Street, Suite 1810
Baltimore, MD 21202

**RE: Delaware Coastal Management Program — Federal Consistency Certification
Conditional Concurrence for the USACE Permits/Authorizations for the US Wind
Offshore Maryland Project (FC 2022.0088D)**

Dear Ms. Jodziewicz:

The Delaware Department of Natural Resources and Environmental Control (DNREC), through the Delaware Coastal Management Program (DCMP), has completed its review of the above referenced project. This letter is in response to the federal consistency certification dated and received on October 11, 2023, submitted through the US Army Corps of Engineer's (USACE) public notice on behalf of US Wind, Inc. (US Wind). The DCMP and US Wind entered into a stay agreement for a period of approximately three months, from November 11, 2023, to February 9, 2024, bringing the end of the review period to July 9, 2024. The 3-month notification was sent on April 5, 2024, notifying the applicant that the review would take the full six months.

PROPOSED ACTION

US Wind proposes to develop an offshore wind project of up to two (2) gigawatts of generating capacity within OCS-A 0490 (the Lease), an area off the coast of Maryland on the Outer Continental Shelf. The proposed project will include as many as 121 wind turbine generators (WTGs), up to four (4) offshore substations (OSS), and one (1) met tower with associated scour protection for each structure, and inter-array cables, in the approximately 80,000-acre Lease area. The applicant proposes to interconnect to the onshore electric grid through up to four (4) new 230-275 kV export subsea electric transmission cables that are proposed to traverse the Atlantic Ocean, land at 3R's Beach through horizontal directional drill (HDD), traverse the Indian River Bay and Indian River, and to make landfall via HDD and connect into a proposed substation to be constructed on tax parcel 233-2.00-2.01 in Millsboro,

Sussex County, Delaware. Additionally, US Wind proposes to dredge approximately 74,000 cubic yards of material in the Indian River for barge access for cable installation. The dredge material will be hydraulically dredged with a pipe temporarily impacting tidal wetlands for the dredge material to be piped into dewatering bags and disposed of via landfill. The project requires a Clean Water Act Section 404 permit and Section 408 review and a Rivers and Harbors Act Section 10 permit from the USACE.

FEDERAL CONSISTENCY WITH STATE COASTAL MANAGEMENT PROGRAMS

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, any applicant for a required federal license or permit to conduct an activity, in or outside of the coastal zone, that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone of that state, shall provide a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. The National Oceanic and Atmospheric Administration (NOAA) is required to review and approve a proposed state management program for it to become effective. Under the CZMA implementing regulations, Federal Consistency with Approved Coastal Management Programs (15 CFR 930), subpart D, state agencies are directed to develop a list of federal license or permit activities to be included as part of the management program, with the federal license or permit activities described in terms of the specific licenses or permits involved. Any applicant for a federal license or agency permit selected for review by a state agency should obtain the views and assistance of the state regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program.

During the period when the state agency is reviewing the consistency certification, the applicant and the state agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit state agency concurrence.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.61 and 15 CFR §930.77, the public was invited to participate during the review of the proposed Construction and Operations Plan for the US Wind Offshore Maryland project. Public notice of this proposed action was published in the Delaware State News, The News Journal, and DNREC public notices website on April 21, 2024. Additionally, the notification was published in the Cape Gazette on April 24, 2024. The public comment period remained open until June 5, 2024. The notifications were published on DNREC public notices website in English, Spanish, and Haitian Creole. During the public comment period the DCMP received 11 submissions.

FEDERAL CONSISTENCY ANALYSIS

The DCMP coordinates the review of consistency certifications with agencies administering the enforceable and advisory policies of the program. The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP. The following agencies participated in this review:

DNREC, Division of Air Quality (DAQ)
DNREC, Division of Fish and Wildlife (DFW)
DNREC, Division of Parks and Recreation (DPR)
DNREC, Division of Water (DW)
DNREC, Division of Watershed Stewardship (DWS)
DNREC, Division of Waste and Hazardous Substances (DWHS)
DNREC, Office of the Secretary, Environmental Justice Office (EJO)
Department of State, State Historic Preservation Office (SHPO)

As part of this review, the following time of year restrictions were described in the federal applications, BOEM's EIS, and/or supplemental information; and therefore, the conditional concurrence with the DCMP enforceable policies noted herein is based on the implementation of these time of year restrictions in addition to other mitigation and monitoring efforts to protect the natural resources and/or uses of these resources:

- Land-based construction (including wetlands, beach, and uplands)
 - Long-eared bats - No tree clearing required for project construction shall take place between April 1 - July 31.
 - Horseshoe crab spawning - No construction shall take place at the beach landfall from April 15 through September 15 to avoid impacts to spawning horseshoe crabs.
 - Marsh nesting birds - No cable installation, maintenance, and/or monitoring shall occur between April 1 and July 31 to minimize impacts to marsh nesting birds.
 - Colonial waterbird nesting - No construction shall occur at the beach landfall location within the nesting season. *Please be advised that DNREC DFW defines the colonial waterbird nesting season as April 1 – September 15.*
 - Terns - Construction activities will not occur within 100 m (328 ft) of hummocks in Indian River Bay between May 1 and August 1 to avoid impacts to nesting terns.
 - Seabeach amaranth - No construction shall take place on beach habitat between July 1 and September 30.
 - Bethany Beach firefly
 - No artificial lighting shall be utilized at night from June 1 to September 1 to minimize impacts to Bethany Beach firefly.
 - No alternations to dune topography or woody vegetation during this time period (June 1 to September 1) within 100 feet of interdunal swales to minimize light pollution to these sensitive species.
 - Wetlands - Installation of cables underneath tidal marshes will not be conducted during the nesting season between April 1 and July 31.
 - Recreation and tourism - Onshore construction activities shall be conducted outside

of the summer recreation season to the greatest extent practicable and will coordinate with DNREC Division of Parks and Recreation to minimize interference with beach activities. No horizontal directional drilling (HDD) in the Atlantic Ocean to the beach landfall from April 1 through September 15 (inclusive of recreational period avoidance May 15 through September 15).

- In-water in/onshore (state waters)
 - Benthic and sediment disturbance
 - No HDD in the Atlantic Ocean to the beach landfall from April 1 through September 15 (inclusive of recreational period avoidance May 15 through September 15).
 - No onshore HDD activities or in-water work in Indian River Bay from April 15 through September 30 to avoid impacts to spawning horseshoe crabs.
 - No in-water work (e.g., cable installation, HDD, dredging) within the Indian River Bay between March 1 through September 30.
 - Marsh nesting birds - No cable installation, maintenance, and/or monitoring shall occur between April 1 and July 31 to minimize impacts to marsh nesting birds.
 - Colonial waterbird nesting - No in-water work shall occur during the nesting season. *Please be advised that DNREC DFW defines the colonial waterbird nesting season as April 1 - September 15.*
 - Finfish and Essential Fish Habitat
 - American eel - No in-water work shall be conducted in the Indian River Bay from March 1 to May 15 to protect the American eel and allow passage of elvers upstream.
 - Summer flounder - No in-water work (cables, HDD, etc.) in Indian River Bay from March 1 through September 30 to avoid impacts to young of year summer flounder.
 - Hibernating terrapins (Indian River) - US Wind would avoid in water work between Hickory Cove and the US Wind substation, i.e., in Indian River, between November 15 and March 1 to avoid impacts to hibernating terrapins in this area. Should work be necessary prior to March 1, DNREC suggests BMPs be implemented such as diver surveys to look for hibernating terrapins.
- In-water offshore (federal waters)
 - Marine mammals
 - Pile-driving is planned between May 1 and November 30, which means that no pile-driving would occur between December 1 and April 30. Pile driving, if necessary, in November, may require additional mitigation measures such as larger clearance or exclusion zones.
 - US Wind will ensure that from November 1 through April 30, vessel operators monitor National Marine Fisheries Service (NMFS) North Atlantic right whale (NARW) reporting systems (e.g., Early Warning System, Sighting Advisory System, and Mandatory Ship Reporting System) for the presence of NARWs.
 - Sea turtles

- Limited offshore site preparation, specifically hopper dredging to avoid impacts to sea turtles, at offshore substation locations June 1 through October 31.
- For all vessels operating north of the Virginia/North Carolina border, between June 1 and November 30, US Wind would have a trained lookout posted on all vessel transits during all phases of the project to observe for sea turtles. The trained lookout would communicate any sightings, in real time, to the captain so that the requirements below can be implemented.

In addition to the time of year restrictions noted above, DNREC DFW recommends that pile driving not occur between November 1 - April 30 for the protection of marine mammals, specifically NARW. DNREC DFW also recommends that no construction occurs at the substation location from April 1 - September 15 to minimize impacts to marsh nesting birds in tidal wetlands adjacent to the site. For colonial nesting waterbirds, DNREC DFW recommends that construction activities not occur within 150 m for small colonies (<30 nests) and 300 m for larger colonies (>30 nests) between April 1 and September 15. Additionally, US Wind has proposed cable installation at 3Rs Beach via HDD and vault construction within the parking lot at 3Rs Beach and has provided an installation configuration that currently avoids identified interdunal swales. This conditional concurrence is based on the configuration of the cable installation provided. DNREC recommends that mitigation and monitoring projects for offshore impacts be consistent and in collaboration with the Regional Wildlife Science Collaborative (RWSC) Offshore Wind Science Plan¹.

US Wind is willing to compensate impacted fishers as a mitigation measure to meet DCMP policies 5.4.23.2 regarding environmental considerations and 5.14.1 regarding the public trust doctrine. Because the DCMP cannot require monetary compensation for mitigation as part of federal consistency, the DCMP could not object for failure to pay a compensation amount or include a condition that an applicant must pay a compensation amount. However, the DNREC and US Wind can mutually agree upon a compensation package to meet the applicable enforceable policies. As a result of mitigation negotiations US Wind and DNREC have executed a letter of intent to enter into a memorandum of understanding to compensate impacted offshore commercial and recreational for-hire fishers as a result of the proposed US Wind project. The letter of intent between US Wind and DNREC is attached. Impacts to inshore fisheries would be addressed as part of state permit application reviews for which this concurrence has been conditioned.

Sand borrow sites off the coast of Delaware are important resources for future beach renourishment projects to protect state resources and uses. In a May 17, 2024, letter to the DCMP in response to an additional information request, US Wind confirmed that offshore cables would be installed at least 400 m (1,312 ft) from active sand borrow areas, including a proposed sand borrow area immediately off the coast of Delaware in the vicinity of the Indian River Inlet. Additionally, US Wind noted that decommissioning of infrastructure such as the cables must be in accordance with 30 CFR 285 Subpart I and would be subject to the Bureau of Safety and

¹ <https://rwsc.org/science-plan/>

Environmental Enforcement's (BSEE) decommissioning plan review and approval process prior to commencing any decommissioning activities. Removal of all infrastructure to at least 15 feet below the mudline is required by 30 CFR §285.910(a), unless authorized by BSEE. In coordination with BSEE and other appropriate regulatory agencies, US Wind would provide a preferred cable decommissioning approach to minimize environmental impacts, either retired in place or removed from the seabed. It is assumed that any cables buried under or within proven sand resource areas would be decommissioned. Following cable removal, a site clearance survey would be conducted to ensure no infrastructure is remaining within the sand resource areas.

Please be advised that the Division of Air Quality (DAQ) recommends that on-road and non-road retrofitted diesel engines be used to reduce emissions associated with the project construction. DAQ also recommends the use of dust suppressants and measures to prevent the transport of dust off-site from material stockpile, material movement, and use of unpaved roads. Please note that the following Delaware air quality regulations may apply: Particulate Emissions from Construction and Materials Handling (7 Del. Admin. Code 1106), Open Burning (7 Del. Admin. Code 1113), Conformity of General Federal Actions to the State Implementation Plan (7 Del. Admin. Code 1135), Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products (7 Del. Admin. Code 1141) and Excessive Idling of Heavy-Duty Vehicles (7 Del. Admin. Code 1145). Please note that incineration is prohibited in Delaware's coastal zone including Delaware waters pursuant to 7 Del. C. Chapter 70, 7 Del. Admin. Code 100, this includes any waste incineration on vessels within the coastal zone.

Also be advised that a dewatering permit from the Division of Water may be required, should dewatering need to occur during the construction of in/onshore infrastructure such as cable vaults pursuant to 7 Del. Admin. Code 7301, Section 3.6.

CONDITIONAL CONCURRENCE

Based on its review, DNREC conditionally concurs that the US Wind Offshore Maryland Project as proposed in the USACE permit/authorization applications and in alignment with the Environmental Impact Statement (EIS) as prepared by BOEM is consistent with DCMP's enforceable policies. As such, to be consistent with these enforceable policies, the following conditions must be satisfied as they relate to the policies noted after each condition.

1. The applicant shall obtain all necessary state permits/authorizations/leases regarding but not limited to the following: wetlands, subaqueous lands, water quality, air quality, coastal construction and/or sediment and stormwater plan reviews related to the construction and operation of the proposed project as regulated by the State of Delaware or its delegated authorities. State permits/authorizations/leases are included in the DCMP enforceable policies and must be obtained to be consistent with these policies. (DCMP Policies 5.2.4, 5.3.1.1, 5.3.1.19-20, 5.3.1.23, 5.3.1.31, 5.4.18, 5.4.20-21, 5.20.2, 5.21.1)
2. To ensure that beaches and dunes are able to perform their protective and recreational functions, no damage, destruction, or removal of any trees, shrubbery, beach grass or other vegetation growing on any state-owned or maintained beach seaward of the Building Line

- pursuant to 7 Del. Admin. Code 5102 shall occur. (DCMP Policy 5.2.13.4)
3. No bulk product transfer including bunkering and/or lightering shall occur in Delaware's coastal zone including Delaware waters pursuant to 7 Del. C. Chapter 70, 7 Del. Admin. Code 100, and *DE Natural Resources v. Vane Line, No. 06A-12-001-ESB (Del. Super. Ct. Nov. 19, 2007)*. (DCMP Policies 5.4.2, 5.4.10)
 4. No permanent lighting shall be installed at the proposed landing location to minimize impacts to the Bethany Beach firefly (*Photuris bethaniensis*). (DCMP Policies 5.11.2.1, 5.11.3.2)
 5. Onshore export cables in Delaware waters shall be buried at least 1.83 m (6 ft) below the authorized depth of any state or federal navigation channel. For the portions of the Indian River Bay not overlapping with a designated navigation channel, the cables shall be buried to 1.83 m (6 ft) pending obtaining state permits. This depth is necessary to avoid impacts to species that inhabit these state waters, and to minimize impact by other users including fisheries and other recreational activities. (DCMP Policies 5.4.22, 5.4.23, 5.4.24)
 6. To ensure that proposed mitigation adequately offsets the proposed impacts to resources and uses, the applicant shall submit all mitigation and monitoring plans to the DCMP (DNREC_FederalConsistency@delaware.gov) for impacts to habitat and living resources such as marine mammals, sea turtles, birds, bats, fish, and invertebrates. (DCMP Policies 5.11.2.1, 5.11.3.2)
 7. The applicant shall not conduct dredging in a biologically productive areas, such as nursery areas, shellfish beds, and submerged aquatic vegetation, if such dredging will have a significant or lasting impact on the biological productivity of the area. (DCMP Policy 5.4.26.1)
 8. The applicant shall utilize any environmental engineering control (e.g., turbidity curtains) if required by state permits to minimize the impacts of turbidity on water quality from installation of the export cable within the Indian River and Indian River Bay, which is considered an exceptional recreational or ecological significance water. (DCMP Policies 5.3.1.7 and 5.4.23.1)

Failure to comply with 15 CFR §930.4 as it relates to the conditions above will result in this conditional concurrence being deemed an objection. Under this scenario, the applicant is advised that pursuant to 15 CFR §930.120-131, and within 30 days from receipt of this letter, a request may be submitted to the Secretary of Commerce to override this objection. In order to grant an override request, the Secretary of Commerce must find that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DCMP and the federal permitting or licensing agency. The Secretary of Commerce may collect fees for administering and processing your request.

Pursuant to 15 CFR §930.66, US Wind shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described. Please be advised that this federal consistency review does not negate the need for any other authorizations that may be required.

Thank you for the opportunity to review and respond to the USACE Permits/Authorizations for the US Wind Offshore Maryland Project federal consistency certification. If you have any questions, please contact Jennifer Holmes of my staff at (302) 739-9283.

Sincerely,



Shawn M. Garvin
Secretary

Enclosure

cc: FC File 2022.0088D

Erica Schmidt, USACE Baltimore District
Bishel Baby, USACE Philadelphia District
Todd Schaible, USACE Philadelphia District
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