

Appendix D

Elements of the Fisheries Mitigation Plan

As stated in Section 2.2.7 of the RFP, the Proposer must submit as part of its Proposal, a Fisheries Mitigation Plan (“Plan”). The aim is to balance the interests of responsible offshore wind energy development with important commercial and recreational fishery resources and uses that may be present in the Project area. The Plan should detail, to the extent practical, specific measures the Proposer will take to avoid, minimize, and/or mitigate potential impacts of the Project on fish and fisheries. Where specific measures are not proposed for a specific category of impact, the Plan must describe how the Proposer will work with the State, federal agencies and other stakeholders to define avoidance, minimization, and mitigation measures. The Plan should provide a roadmap for the fisheries work to be included in the Project’s development and operation, and provide a degree of certainty that the Proposer is committed to working collaboratively with stakeholders to develop a cost-effective and responsible Project.

The fisheries mitigation hierarchy should be an organizing principle of the Fisheries Mitigation Plan. More specifically, the mitigation hierarchy can help Projects prepare for impacts and aim to achieve no net loss of revenue to commercial fishers. It involves a sequence of actions to anticipate and *avoid* impacts on fish and fisheries; where avoidance is not possible, to *minimize* such impacts; when impacts are predicted to occur notwithstanding the implementation of practical avoidance and mitigation measures, to rehabilitate or *restore* fisheries or fishing revenue; and where significant residual impacts are predicted to remain, *offset* such impacts. The Plan must account for potential adverse impacts of all phases and components of a Project, including pre-construction surveys, construction, operation, and, to the extent practical, decommissioning; and including turbines, cables, substations, and, if applicable, collector platforms.

While this RFP allows for flexibility to Proposers in devising avoidance, minimization and restoration/offset measures, some specific measures that will be required of all Projects are identified and must be included in the Proposer’s Plan. The Plan may include alternative measures that can be selected and refined based on stakeholder consultation as planning and Project development progresses.

Required elements of the Plan are set forth below.

D.1 Fisheries Mitigation Plan Summary

The Proposer must briefly present its philosophy and approach to avoiding, minimizing, restoring and offsetting the potential fisheries impacts of the proposed Project and how the Proposer will use research, data and stakeholder feedback to support decision making with respect to pre-construction surveys, site design, construction, operations and decommissioning.

D.2 Communications and Collaboration

The *New York State Offshore Wind Master Plan*, the *New York State Public Service Commission Order Establishing Offshore Wind Standard Framework for Phase 1 Procurement* (the “Order”), and this RFP

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emphasize the value of stakeholder engagement in the development of offshore wind energy Projects. Further, the Order requires Proposers to work with the State supported Fisheries Technical Working Group (“F-TWG”). The Proposer must describe how it will identify stakeholders relevant to fishery issues and describe how the Proposer intends to communicate with those stakeholders during survey work, and design, construction, operation, and decommissioning of the Project. The Proposer must also describe how, specifically, it will communicate with vessels actively fishing in areas in or adjacent to the Project area during site assessment and construction activities and facilitate proper notification to vessels and resource managers. This description of communication protocols must account for the need to coordinate with members of the F-TWG and consultations with New York State agencies during the various Project phases.

D.3 Monitoring and Research Pre-, During- and Post-Construction

Fisheries research and peer-reviewed publication of research findings is key to advancing the knowledge of how offshore wind energy development might affect fish and fisheries. Proposers are encouraged to publish their own work in scientific journals and to coordinate with scientists and regulators interested in investigating fishery- and wind energy-related scientific questions.

Because offshore wind energy development is in early stages in the US there is little empirical information as to the effects such development may have on ecological communities and fishery resources specific to the New York Bight. Thoughtfully planned, designed, and implemented pre-, during- and post-construction monitoring and research to understand fish responses and potential effects from development is key for adaptive management. Further, multiple regional sites working together and coordinating monitoring and research in a consistent manner would bring additional value to the scientific understanding of how development of offshore wind energy is affecting regional resources.

The Proposer must (to the extent possible at this stage) describe how it plans to conduct scientifically sound, statistically rigorous studies to accomplish the following:

1. Establish baseline data on the spatial and temporal presence of fish and invertebrates in the proposed area of the Project at multiple life history stages included egg, larval, juvenile, adult, and spawning stages, as well as associated fish and invertebrate habitats;
2. Monitor for impacts on these types of life history stages during each phase of physical work for the Project (site assessment, construction, operation, and decommissioning) to inform mitigation planning for later phases of the Project as well as for future Projects;
3. Assess and quantify (to the extent practical) changes attributable to Project activities; and
4. Determine how the proposed Project area is used by commercial and recreational fisheries in the region, including current and historic usage as well as associated transit routes, and how usages changes in commercial and recreational fishing patterns will be calculated post-construction.

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Proposers should also identify opportunities for developing or investing in collaborative research with the fishing industry to collect ecological and/or fishing data. The description must account for the need to coordinate with members of the F-TWG during data gathering and assessment.

In the event that these activities cannot be clearly defined at this stage, the Proposer must describe how it will approach these questions and data gaps.

The Proposer must describe how it plans to make fisheries data available in accordance with Section 2.2.5 of the RFP.

D.4 Supporting Other Research

The selected Proposer will be required to coordinate with third-party supported scientists, providing reasonably-requested Project data and access to the Project area for independent scientists examining environmental and fishery sensitivities and/or the impacts of offshore wind energy development on fish, invertebrates and fisheries for the purpose of publication in peer reviewed journals.

The Proposer must describe how such requests will be considered and processed, and any restrictions on data provision or access the Proposer believes may be required to protect trade secrets or maintain site security.

The Proposer may also elect to identify a level of financial commitment that will be appropriated to leverage third-party environmental research funding related to fish, invertebrates and fisheries, including federal or State-supported research, or that the Proposer would be willing to contribute to a general fund for supporting third-party research into relevant fish and invertebrate communities and associated commercial and recreational fisheries and the effects of offshore wind energy development. Such financial commitments will be favorably considered.

D.5 Site Design Considerations

As offshore wind energy technology advances, Proposers are able to consider various alternatives for elements of the proposed site design and related infrastructure. The Proposer must describe how it will consider the potential adverse impacts of infrastructure design elements (e.g., turbine spacing and layout, turbine foundation type, cable burial and protection methods, and cable crossing designs) on fishing in the proposed Project area.

The Proposer must demonstrate that the Project area and proposed site design allows for reasonable flexibility in the site layout (e.g. orientation of turbine lines, distance between turbines, and navigation areas) to accommodate changes that may be needed in the future. The Proposal must outline how the Proposer will engage with stakeholder groups such as the F-TWG and other regional fishermen and shipping and navigation to determine Project layouts that address stakeholder concerns.

D.6 Construction and Operation

The Proposer must describe its planned operational protocol to avoid, minimize, and mitigate impacts to fish, invertebrates and fisheries during Project construction and operation phases, such as vessel transit routes, designation and monitoring of safety zones, gear monitoring and retrieval, and communication

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with fishing vessels and resource managers. The Proposer must also describe its process for determining when mitigation strategies are insufficient and under what conditions they might elect to rehabilitate or restore fisheries in an alternative location or when the provision of compensation of some form may be appropriate.

The Proposer must describe how they will minimize potential loss of fishing gear due to snags on turbine structures, associated cables or cable mattresses, or related structures installed or deployed as a result of offshore wind energy development, and how the Proposer will approach claims of lost gear in the event of a snag that provides for a fair and timely review of the claim and appropriate compensation of impacted parties.

D.7 Project Decommissioning

The Proposer must describe how it will develop a decommissioning plan, including coordination with fisheries stakeholders, and any elements of its contemplated decommissioning plan that can be identified at this stage. Proposals demonstrating thoughtful consideration of the full life cycle of offshore wind energy Projects will be considered favorably.

D.8 (Optional) Fisheries Compensation Plan

If a fisheries compensation plan is being considered to offset impacts, the Proposer must describe how it will determine instances where all reasonable attempts to avoid and minimize Project impacts, or restoration to predevelopment conditions are not feasible and some type of fisheries compensation plan is warranted. The Proposer must describe how a fisheries compensation plan was, or will be developed; how the Proposer will coordinate with the F-TWG and other entities in the design or review of the fisheries compensation plan, and; how the compensation plan will be administered by a non-governmental third-party to provide reasonable and fair compensation for impacts that cannot be sufficiently addressed through other means.

D.9 Additional Considerations

The Proposer must outline any additional mitigation strategies not otherwise described herein that would improve the Plan and reduce impacts on the fishing community. Proposers are encouraged to review the Bureau of Ocean Energy Management (BOEM) *Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 Code of Federal Regulations (CFR) Part 585*. (Available at <https://www.boem.gov/Social-and-Economic-Conditions-Fishery-Communication-Guidelines/>) and *Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf Report on Best Management Practices and Mitigation Measures. A final report for the U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Renewal Energy Programs, Herndon, VA. OCS Study BOEM* (available at <https://www.boem.gov/OCS-Study-BOEM-2014-654/>) in the development of their Plan.