

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Atlantic Highlands Arts Council
Bayside Regional Watershed Council
Bayside Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Clean Water Action
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1075
Concerned Businesses of COA
Concerned Citizens of Bensonhurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Eastern Monmouth Chamber of Commerce
Environment NJ
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Food and Water Watch, NJ
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Allenhurst
Garden Club of Bay Head and Mantoloking/Seaweeders
Garden Club of Brielle/Bayberry
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Sea Girt/Holly
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Terra Nova
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Partnership
Junior League of Monmouth County
Keypoint Environmental Commission
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Auction Society
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Environmental Lobby
NJ Friends of Clearwater
NJ Marine Education Association
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOut.org
Piscataway Saltwater Sportsmen Club
Rantan Riverkeeper
Religious on Water
Rotary Club of Point Pleasant
Rotary District #7540—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Sunrise Rod & Gun Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
Surfrider Foundation, South Jersey Chapter
TACK I, MA
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Viking Village
WATERSPIRIT
Women's Club of Brick Township
Women's Club of Keypoint
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Zen Society, NJ



Ocean Advocacy
Since 1984

Clean Ocean Action

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Submitted Electronically

New Jersey Department of Environmental Protection
Division of Land Resource Protection
P.O. Box 420, Code 501-02A
Trenton, New Jersey 08625
Attn: Janet Stewart, Section Chief

**Re: Ocean Wind Federal Consistency Certification for Review,
Lease Area OCS-0498, DEP 0000-21-0008.1 -CDT – 210001**

Dear Section Chief Stewart,

Clean Ocean Action (COA) is a regional, broad-based coalition of 125 conservation, environmental, fishing, boating, diving, student, surfing, women's, business, civic and community groups with a mission to improve the water quality of the marine waters off the New Jersey/New York coast. We submit the following comments regarding the Federal Consistency Certification submitted by Ocean Wind for the review and concurrence by the New Jersey Department of Environmental Protection ("DEP") for the Ocean Wind Offshore Wind Farm within Bureau of Ocean Energy Management Lease Area (OCS-A 0498). The Ocean Wind project ("the Project") includes up to 98 wind turbine generators, inter-array cables, up to three offshore substations, two onshore substations, and two transmission cables making landfall in Ocean County, NJ, and Cape May County, NJ. A Consistency Certification and Necessary Data & Information are to be supplied to DEP for the Project because OCS leases and pre-leasing activities are regulated by DEP as "Listed Activities" under Coastal Zone Management Program.¹

The Project is to be reviewed by DEP to ensure that the activities in or affecting the State's coastal zone are consistent with New Jersey's enforceable Coastal Management policies. The Coastal Zone Management Act (CZMA)² of 1972 mandates that federal actions that affect coastal uses must be consistent with the relevant state's federally-approved Coastal Zone Management Program. The evant federal regulations grant states the authority to conduct coastal zone

¹ New Jersey Coastal Management Program, Federal Consistency Listings (May 2008) available at https://www.nj.gov/dep/cmp/2008_fc_listing.pdf

consistency reviews within or affecting the state's coastal zone.³ In compliance with the federal consistency requirements of the Coastal Zone Management Act, the federal activities tied to the Ocean Wind project include approval of the Constructions and Operations Plan by BOEM and individual permits under Section 10 and 404 of the Clean Water Act.⁴ These policies are set forth in DEP's Coastal Zone Management Rules⁵. Under its Coastal Zone Management Rules, DEP must consider a number of factors in making its consistency determination, such as the effects upon navigational safety in the established traffic lanes, the impacts upon important finfish, shellfish and wildlife populations and spawning areas, economic effects upon commercial and recreational fishing activities, impacts upon public recreational resources and opportunities along the marine coast, the potential for hazards, impacts upon biological communities, and water quality.

COA has thoroughly reviewed the Coastal Zone Consistency Assessment submitted by Ocean Wind and respectfully submits that the Project is not fully and demonstrably consistent with numerous enforceable policies of the State of New Jersey. Accordingly, DEP should not grant its concurrence with the Consistency Certification submitted by Ocean Wind at this time. Ocean Wind's compliance with New Jersey coastal zone management rules is significantly lacking, as described below.

I. Lack of Baseline & Cumulative Impact Assessments

With specific concerns set-out below, Clean Ocean Action is concerned that DEP does not currently possess sufficient baseline data to analyze the effects of wide-scale, vast offshore wind energy projects. Clean Ocean Action recently attended the recent State of the Science Workshop on Wildlife and Offshore Wind Energy: Cumulative Impacts; the New York State Environmental Technical Working Group has found that there is significant scientific uncertainty and lack of baseline data regarding the cumulative effects of offshore wind development on the physical and biological ocean environment. The working group has recommended studies, monitoring, baseline analyses, and pointed-out gaps in the literature on impacts from offshore wind.⁶ Finally, the Ocean Wind project is not being built in a vacuum. From a baseline data and cumulative effects perspective, the DEP must assess the overall impacts of the scale and magnitude of massive wind energy development within and beyond the wind farm areas in progress in the New York/New Jersey Bight. Only then can measures be taken to avoid or mitigate potential harm.

We recognize the essential role that renewable energy provides to help reduce the use of fossil fuels, and that the ocean can play a role. It is also true that a healthy ocean, including all of its natural resources, plays an essential role in curbing impacts from climate change by absorbing heat and carbon. Indeed, the planet would be in far worse condition if it were not for the ocean mitigating the harmful effects of fossil fuels. Thus, offshore wind development must be done to

³ Relevant projects include those that require a federal license or permit, are federally funded, or are a direct activity of a federal agency.

⁴ 15 CFR part 930, subpart D.

⁵ New Jersey Administrative Code 7:7-1.1 *et seq.* (last amended Feb. 20, 2020).

⁶ New York State Environmental Technical Working Group: State of the Science Workshop on Wildlife and Offshore Wind Energy: Cumulative Impacts (Final workgroup reports to be posted in late June 2021). Draft reports available at <https://www.nyetwg.com/2020-workgroups>

be environmentally-protective of ocean resources. There are significant impacts from this new massive, large-scale ocean industrialization, including the placement of unnatural structures, that will have unknown and/or unexpected effects on and consequences too the marine ecosystem. There are onshore impacts as well. As such, identifying, assessing, understanding and addressing these impacts are key to avoiding or reducing harm including as required by the CZM program.

Per an April 1st DEP e-mail, we understand there is a “stay agreement” whereby DEP agreed that a decision on consistency will be made in October 2022. COA reserves the right to supplement these comments as information becomes available during this so-called stay. COA will be submitting an Open Public Records Act request for a copy of the March 31st “Stay Agreement.” In the interest of protecting New Jersey’s marine resources as required by the CZMA, Clean Ocean Action trusts DEP will use this time-period to address these deficiencies as well as the issues set forth below, such that the decision-making process can be more informed and transparent and protective of the marine environment.

II. Environmental Concerns

Together, the below-listed impacts from constructing, operating, and decommissioning the interconnection and onshore elements of Ocean Wind’s project present an immense challenge to the DEP’s environmental assessment and mitigation capabilities. The Coastal Zone Management Program for New Jersey sets clear standards for coastal development projects. Yet, Ocean Wind has not incorporated extensive analysis of both the individual and comprehensive effects of the entire project into the Construction and Operations Plan or the Coastal Zone Consistency Assessment in Appendix Q. From the turbines themselves to transmission facilities, there are numerous reasonably foreseeable coastal effects and environmental impacts posed by the Ocean Wind project.

Among other impacts, large-scale construction of wind farm areas could intensify navigational dangers in the through-ways between wind energy project areas. Scouring and physical displacement from the placement of the turbines could disturb habitats and seafloor conditions. Further, there could be critical, cumulative impacts to water quality, ocean noise, and vulnerable species. As shown in the subsections below, Ocean Wind has failed to demonstrate that its project will not violate the New Jersey Coastal Management Program (CMP) rules and will not have a significant effect on marine life, water quality, and sensitive habitat in the cabling, interconnection, and wind farm project areas.⁷

Below we review numerous Coastal Zone Management rules for special areas, all of which would be compromised by this Project.

a. N.J.A.C. 7:7-9.2 Shellfish Habitat:

Shellfish are important natural resources in terms of preserving and improving water quality. Shellfish remove pollutants, particularly turbidity and nutrients, from the water column. For

⁷ However, Clean Ocean Action does acknowledge that the project has willingly submitted their consistency assessment to the New Jersey Department of Environmental Protection and the primary footprint of the project lies outside of the New Jersey coastal management zone.

these and other reasons, Shellfish Habitat is designated as a special area. New dredging within shellfish habitat is prohibited.⁸

The proposed Project will cause “direct, adverse impacts, such as mortality or injury to benthic organisms” due to dredging associated with the laying of the transmission cables.⁹ Ocean Wind makes erroneously claims that new dredging does not include the laying of electric transmission wires.¹⁰ On the contrary, new dredging is generally defined as the removal of sediment, an example of which is the temporary or permanent displacement or removal of sediment for the purpose of installing submerged cables.¹¹ The type of submerged cable is not relevant, as the removal of the sediment—not the cable—causes the direct adverse impact to shellfish and other benthic organisms. Therefore, Ocean Wind has not shown the Project to be consistent with the Special Areas rule for Shellfish Habitat.

b. N.J.A.C. 7:7-9.3 Surf Clam Areas:

Surf clams are vital to the health of New Jersey near-shore ecosystems and are one of New Jersey’s most valuable fisheries. Over 80 percent of the total Mid-Atlantic and New England area catch of surf clams are landed in New Jersey, per the annual DEP inventory.¹² Ocean Wind acknowledges in their consistency assessment that there will be “localized project impacts to the seabed” associated with project infrastructure during construction. Ocean Wind says that the Project will “not have long term adverse impacts” from increased turbidity associated with construction.

As Ocean Wind has stated, increased turbidity will result from construction of the offshore export cable pathway. Ocean Wind cites best management and mitigation practices, low landing rates among New Jersey fishers, and swift re-colonization tendencies as sufficient rationale for consistency with N.J.A.C. 7:7E-3.3. However, mitigation alone is not enough to ensure that vast numbers of surf clam are not affected. Substantial baseline and other extensive surveys and monitoring must be conducted throughout the life of the project. While landing rates may have decreased, New Jersey remains one of the richest surf clam areas in the United States. Further, re-colonization characteristics of surf clams has not been studied in the project area and should not be considered as part of Ocean Wind’s mitigation analysis. Ocean Wind’s assessment of its obligations under the N.J.A.C. 7:7E presume the best-case mitigation scenario. The reality is that long-term impacts are unknown. The Project may result in the “destruction, condemnation, or contamination of surf clam areas” and is in violation of this standard under N.J.A.C. 7:7E-9.3.

c. N.J.A.C. 7:7-9.4 Prime Fishing Areas:

New Jersey boasts bountiful harvests of four of the five most important recreational fish species (summer flounder, bluefish, seabass, and tautog), as well as for striped bass.¹³ According to the DEP, the recreational fishery industry is worth \$ 1.5 billion annually to the economy of New

⁸ See N.J.A.C. 7:7-9.2(e).

⁹ Ocean Wind Coastal Zone Consistency Assessment at 8.

¹⁰ Ocean Wind Coastal Zone Consistency Assessment at 7.

¹¹ N.J.A.C. 7:7-12.7(a).

¹² Fisheries of the United States Report 2019, National Marine Fisheries Service Office of Science and Technology available at <https://media.fisheries.noaa.gov/2021-05/FUS2019-FINAL-webready-2.3.pdf?null=>

¹³ N.J.A.C. 7:7-9.4(c).

Jersey.¹⁴ DEP further reports that in 2011, New Jersey’s commercial fisheries had a dockside value of more than \$ 220 million and an overall economic impact of \$ 1.3 billion to the State’s economy.¹⁵ In its Coastal Zone Management rules, Prime Fishing Areas are designated as a special area to protect this valuable resource.¹⁶

The New Jersey coastal management rule on fishing areas prohibits any “sand or gravel mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas.” Ocean Wind claims that they will not affect existing bathymetry or prime fishing areas under N.J.A.C. 7:7E-3.4. Yet, this provision includes a wide variety of activities as related to “prime fishing areas” beyond the areas where the project will affect bathymetry. Increased vessel traffic and other impacts during operation of the wind project may have an effect on “coastal jetties, groins, public fishing piers or docks, and artificial reefs,” among other natural features. These areas are also protected under the N.J.A.C. rule and will likely be affected by the construction, operation, decommissioning, and associated vessel traffic from Ocean Wind’s activities.

Public outreach and notice to mariners and fishers, the only mitigation measure mentioned by Ocean Wind, are not sufficient to abate the impact of construction activities. Federal agency activities must be consistent to the maximum extent practicable with the enforceable policies of a state coastal management program, but license, permit and financial assistance activities must be fully consistent. The project constitutes a “prohibited use” of prime fishing habitat that is inconsistent with the Prime Fishing Area rule.”¹⁷ Further, Ocean Wind does not address “disposal of domestic or industrial wastes” in its discussion of impacts to fishing areas. While domestic wastes on renewable energy facilities are processed through on-site waste treatment, there could be “operational discharges or accidental fuel releases from construction sites and construction vessels,” with significant impacts to prime fishing areas and the marine ecosystem.¹⁸

d. N.J.A.C. 7:7-9.5 Finfish Migratory Pathways:

Ocean Wind states in its consistency assessment that the standard for compliance with New Jersey state regulations is development that “would create physical barriers to migratory fish.” While the cables for the project will be buried, New Jersey law additionally requires that “development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards **is prohibited.**”¹⁹ It is clear from Ocean Wind’s consistency assessment that there will be turbidity impacts to water quality.²⁰ As a result, the Project does not comply with DEP requirements in its current form.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ N.J.A.C. 7:7-9.4.

¹⁷ N.J.A.C. 7:7E-3.4 Prime fishing areas.

¹⁸ BOEM Alternative Energy Final Programmatic EIS, Chapter 5 (2007) available at https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/Alt_Energy_FPEIS_Chapter5.pdf

¹⁹ N.J.A.C. 7:7-9.5 Finfish Migratory Pathways.

²⁰ Coastal Zone Consistency Assessment at 9.

e. N.J.A.C. 7:7-9.6 Submerged Vegetation Habitat:

Ocean Wind recognizes that the Project will cross protected vegetation habitat in Barnegat Bay, one of the habitat areas defined as protected under the New Jersey coastal management rules. Submerged Aquatic Vegetation (SAV) is of rich ecological and economical value to the New Jersey and entire Atlantic coast. With the worldwide cover of seagrasses rapidly declining, SAV is increasingly scarce and extraordinarily valuable to ecosystem nutrient levels and overall ocean health.²¹ While trenching for projects in the public interest is allowed under New Jersey law, Ocean Wind admits that it may not be able to “use trenchless technology options” in protected areas in Barnegat Bay. As a result, Ocean Wind would have to recolonize the area within three years, with substantial monitoring and replanting of the disturbed areas under N.J.A.C. 7:7-17:9. If DEP concurs with Ocean Wind’s Consistency Certification, there may be significant, unacceptable impacts to submerged vegetation. Ocean Wind’s assessment runs contrary to DEP regulations and is evidence of the significant adverse impacts associated with this project, notwithstanding monitoring and replanting requirements as “future permit conditions”, as suggested by Ocean Wind.²² Compensation pursuant to N.J.A.C. 7:7E-3.6(b)(8) may also be appropriate depending on the severity and permanence of changes to habitat.

f. N.J.A.C. 7:7-9.7 Navigation Channels:

Due to construction of the export cable across New Jersey’s Intracoastal Waterway, the Project would cause siltation that potentially hinders navigation. While Ocean Wind has proposed mitigation that minimizes siltation, it has not proposed specific approaches in its consistency assessment nor its Construction and Operations Plan. Further, New Jersey regulations require that Ocean Wind affirmatively demonstrate that the “proposed structure will not hinder navigation.” This requirement does not only apply during construction, as suggested by Ocean Wind in its assessment.²³ Mitigation measures alone are not sufficient to meet this standard. DEP should consider the effects of temporary and permanent structures and activity in its review of the Ocean Wind consistency assessment.

g. N.J.A.C. 7:7-16.2 Marine Fish and Fisheries:

DEP rules on marine and estuarine animals (not marine mammals) discourage impacts to the natural processes that support healthy reproductive, spawning, migratory patterns, and abundance. However, the location and use rules for proposed development do allow for construction of “submerged cables and pipelines.” With that said, Ocean Wind must still comply with the stringent impact minimization and monitoring requirements. Ocean Wind has identified significant temporary displacement of species due to water quality, noise, and collision risks from vessel traffic.

Seasonal work restrictions and other mitigation measures are absolutely essential to reducing impact to finfish and shellfish, particularly within Barnegat Bay as required in N.J.A.C. 7:7-9-2. Ocean Wind has proposed numerous mitigation measures for Marine Fish and Fisheries. Yet, they contend that their project is consistent with New Jersey coastal management rules and the

²¹ Jonathan Lefcheck *et al.*, *Long-term nutrient reductions lead to the unprecedented recovery of a temperate coastal region*, PNAS Vol. 115 no. 14 (2018) available at <https://www.pnas.org/content/pnas/115/14/3658.full.pdf>

²² Coastal Zone Consistency Assessment at 10.

²³ In pertinent part, “No permanent structures or vessels will be within the navigation channel during construction.” Yet, the export cable will be a permanent structure within the navigation channel.

best interests of the region and nation. This certainly runs contrary to the state’s approach²⁴ of discouraging coastal development that would “adversely impact” the natural behaviors and health of marine fish.²⁵

h. N.J.A.C. 7:7-16.3 Water Quality:

As mentioned above, water quality impacts from the project’s construction activities are likely. Further, the current scholarly “research has to no or little extent investigated physiological effects on marine species, in response to e.g. elevated noise, vibration, and EMF.”²⁶ Shielded electric transmission cables are encompassed by magnetic fields that induce electric fields in flowing water. While the likelihood of significant negative impacts is low, uncertainty across various ecosystem elements indicates that there could be long-term implications for species in the project areas.²⁷ Electromagnetic fields, or EMF, have also been found to potentially interrupt fish migration and feeding patterns.²⁸ Increased air and water temperatures associated with offshore wind development could also play a role in contributing to potential adverse effects to marine species, causing ecological changes that could cause invasive species to occur, and bringing about interactions with simultaneous effects of climate change in the New York/New Jersey Bight. These conclusions about the long-term, population level dynamics, including mortality, for sensitive species has been confirmed by recent research on the operation of offshore wind farms.²⁹ However, these effects are “likely restricted to masking animal communication and orientation signals, rather than causing physiological damage or permanent avoidance reactions.”³⁰

In Ocean Wind’s consistency assessment, Surface Water Use, Groundwater Use, and Stormwater Management are the main water quality concerns governed by Coastal Zone Management rules. For Surface Water Use, Ocean Wind simply states that “this rule sets standards for coastal development.” Ocean Wind not only does not satisfy consistency with this policy, it has not clearly stated the policy itself.

Ocean Wind claims that the Project satisfies DEP requirements by planning for oil spills, mitigating construction activity, and armoring surfaces in cable areas where bottom scour could occur. Ocean Wind has not demonstrated their potential “anticipated surface water demand, including phased planned increases.” Nor have they shown that the construction of the Project’s export cable will “not cause unacceptable surface water disturbances.”³¹ Beyond spills and other

²⁴ N.J.A.C. 7:7E-8.2 Marine fish and fisheries.

²⁵ N.J.A.C. 7:7-16.2.

²⁶ : Lena Bergström *et al.* Environ. Res. Lett. 9 034012 (2014).

²⁷ A. Gill, M. Bartlett, F. Thomsen, *Potential interactions between diadromous fishes of UK conservation importance and the electromagnetic fields and subsea noise from marine renewable energy developments*, J. Fish Biol. 81 664–95 (2012).

²⁸ H. Westerberg and M. Begout-Anras, *Orientation of silver eel (Anguilla anguilla) in a disturbed geomagnetic field Advances in Fish Telemetry: Proc. 3rd Conf. on Fish Telemetry Centre for Environment, Fisheries and Aquaculture Science (Lowestoft)* pp 149–58 (2000).

²⁹ Andrew Gill *et al.*, *Setting the Context for Offshore Wind Development Effects on Fish and Fisheries*, Oceanography Vol. 33 No. 4 (2020) available at https://tos.org/oceanography/assets/docs/33-4_gill.pdf

³⁰ Arthur Popper and Anthony Hawkins, *An overview of fish bioacoustics and the impacts of anthropogenic sounds on fishes*, Journal of Fish Biology (2018) available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jfb.13948>

³¹ N.J.A.C. 7:7E-8.4.

wastes from the project and associated vessel traffic, Ocean Wind has not complied with the base requirement of demonstrating compliance with New Jersey’s Surface Water Use rule.

Under New Jersey’s Groundwater Use rule, N.J.A.C. 7:7-16:5, proposed coastal developers must demonstrate that the project will not cause salinity intrusion, degrade groundwater quality, or significantly degrade the water table or flow of nearby water sources, including aquifers. Ocean Wind states that “all appropriate approvals” associated with construction will be obtained, but does not specify the potential impacts that would require permits.³² This does not demonstrate compliance with water quality rules.

In accordance with the federal consistency process, New Jersey law also requires conformity with Stormwater Management rules at N.J.A.C. 7:8, which include management measures, best management practices, and monitoring. Stormwater management alone is a substantial requirement for many onshore developers. Obtaining the required approvals for a “major development” will involve meeting minimum design standards, a maintenance plan, preventing adverse impact, green infrastructure measures, and more. Ocean Wind must include potential impacts and management measures in their planning and permitting process. In its consistency assessment, Ocean Wind has not shown the ability to meet these obligations.

i. N.J.A.C. 7:7-9.36 (Endangered or Threatened Wildlife or Plant Species Habitats):

The Coastal Zone Management Rules prohibit development of endangered or threatened wildlife or plant species habitat. Ocean Wind is required, through an endangered or threatened wildlife or plant species impact assessment, to show that such habitat would not be adversely affected.³³

On tables occupying approximately four (4) pages, Ocean Wind identifies numerous marine animals, plants, mammals and birds that may be impacted by the Project, such as the Kemp’s Ridley turtle, Atlantic Sturgeon, and North Atlantic Right Whale, all of which are endangered species.³⁴ Ocean Wind does not yet know whether site facilities will be located in habitat of threatened or endangered species, but nevertheless concludes that the Project is consistent with this Special Area rule. This premature conclusion is unpersuasive.

Marine-based windmill farms can potentially impact fish, marine mammals, invertebrates, bats and birds. These negative impacts include, without limitation, collision, habitat displacement and exposure to electromagnetic fields and underwater noise (particularly during pile driving). It is not clear how development that threatens such impacts could possibly be consistent with the E/T Habitat rule, and Ocean Wind’s assessment does not provide any clarity in this regard.

j. N.J.A.C. 7:7-15.4 (Energy Facility):

Ocean Wind recognizes this Energy Facility use rule³⁵ as applicable, but fails to demonstrate compliance. Subsection (b)(1) states that “Energy facilities shall not be sited in special areas as defined at N.J.A.C. 7:7-9.1 through 9.40, 9.42 and 9.44, and marine fish and fisheries defined at

³² Coastal Zone Consistency Assessment at 35.

³³ N.J.A.C. 7:7-9.36(b).

³⁴ Coastal Zone Consistency Assessment at 17-21.

³⁵ N.J.A.C. 7:7-15.4

N.J.A.C. 7:7-16.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas”. In its consistency assessment, Ocean Wind acknowledges the Project will adversely impact 30 of such special areas. While Ocean Wind attempts to downplay the impact to these numerous special areas and fisheries with promises to utilize existing areas of disturbance in some instances and mitigation in others, Ocean Wind does not affirmatively state that the facilities will not adversely impact those areas. Therefore, there would appear to be no factual basis for Ocean Wind to assert that “the Project is consistent with this policy.”³⁶

We further note that Ocean Wind asserts that it will comply with N.J.A.C. 7:7-15.4(r)(1)(viii) without providing any specifics. That provision requires numerous mandatory and voluntary measures to minimize (not eliminate) adverse effects on birds, bats and marine organisms, none of which are discussed by Ocean Wind in its consistency assessment. Additional details must be provided before consistency can be found.

k. Subchapter 17 (Mitigation):

Ocean Wind seeks to avail itself of the mitigation rules for some of the inevitable and irreparable damages the Project will cause to various special areas. We submit that such reliance is misplaced in the context of a consistency review. N.J.A.C. 7:7-17.2(b) provides that “[t]he **Department shall not consider a mitigation proposal in determining whether to approve any application under this chapter.**” This means that the subject consistency determination is to be made without any consideration of mitigation to offset ecological destruction. Accordingly, Ocean Wind has failed to demonstrate that the Project is consistent with New Jersey’s Coastal Zone Management rules.

III. Conclusion

The very purpose of State consistency review is to ensure that federal actions and federally permitted projects do not impact State waters and resources in ways that States do not permit. Here, Ocean Wind proposes an ambitious wind farm project that will impact State waters and resources in numerous ways that are not allowed under the enforceable policies of New Jersey. In their Federal Consistency assessment, Ocean Wind has not sufficiently addressed New Jersey’s robust coastal management requirements. Shellfish, surf clams, valued recreational fish, fin fish, and other marine and estuarine animals, submerged vegetative habitat, navigational channels, and water quality will all be impacted by the proposed Project.

Accordingly, Clean Ocean Action respectfully requests that the DEP not concur with the Federal Consistency Certification made by Ocean Wind.

³⁶ Coastal Zone Consistency Assessment at 32.

Sincerely,



Cindy A. Zipf,
Executive Director



G. Connor Fagan, J.D.,
Legal Policy Advocate