

August 10, 2024

By Priority Mail

Environmental Appeals Board
89 King Highway
Dover, DE 19801

Attention: Administrative Assistant to
Environmental Appeals Board

Re: Statement of Appeal of Edward E. Bintz

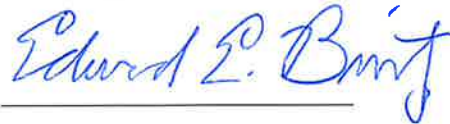
Dear Environmental Appeals Board:

Enclosed is a Statement of Appeal of Edward E. Bintz, challenging the Secretary's decision to conditionally concur with two certifications made by US Wind in purported satisfaction of Delaware's Coastal Management Program Federal Consistency Policies and Procedures."

Also enclosed is \$50 check as a deposit for costs.

Please let me know you have any questions. My email address is Ed.Bintz555@gmail.com and my cell phone number is 202-247-0892.

Sincerely,



Edward E. Bintz

STATEMENT OF APPEAL OF EDWARD E. BINTZ

Pursuant to 7 Del. C. § 6008(a) and 7 Del. Admin. Code § 105, Appellant Edward E. Bintz ("Appellant") submits this written statement of appeal to the Delaware Environmental Appeals Board. The appeal challenges the Secretary's decision to conditionally concur with two certifications made by US Wind in purported satisfaction of Delaware's Coastal Management Program Federal Consistency Policies and Procedures" (the Secretary's "DCMP Determinations"). The Secretary made the DCMP Determinations pursuant to two undated letters that were forwarded to Appellant by means of a July 25, 2024 email from DNREC to Appellant. The letters and related email correspondence are attached as Exhibit A.

For the reasons discussed below, the Secretary's DCMP Determinations are arbitrary, capricious, and in violation of law.

I. Background.

A. Proposed US Wind Project.

US Wind proposes to develop an offshore wind project having up to two gigawatts of generating capacity in an area off the coast of Maryland on the Outer Continental Shelf. The proposed project will include as many as 121 wind turbine generators, up to four offshore substations, and one met tower with associated scour protection for each structure, and inter-array cables, in the approximately 80,000-acre lease area.

The project would interconnect to the onshore electric grid through up to four 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 drilling (HDD), traverse the Indian River Bay and Indian River and make landfall via HDD and connect into a proposed substation to be constructed in Millsboro, 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.

B. Delaware's Coastal Management Plan.

Delaware's "Coastal Management Program Federal Consistency Policies and Procedures" (7 Del. Admin. C. §2201) (the "DCMP") were established under the federal Coastal Zone Management Act (16 U.S.C. § 1451 et seq). Pursuant to the DCMP, proposed activities that are subject to federal approval and that would have reasonably foreseeable effects on Delaware's coastal uses and/or resources are reviewed by DNREC for "consistency" with the environmental and other policies set forth in the DCMP. The consistency review applies regardless of whether the activity would occur within or outside of Delaware's coastal zone boundary.

In order to allow DNREC to conduct its consistency reviews, applicants, such as US Wind, are required to provide a range of information, including an assessment of the probable

coastal zone effects of the proposed activity/project and its associated facilities and whether they are consistent with the DCMP. *See* DCMP §§ 3.2.2, 3.4.3. For this purpose, coastal zone effects means “any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity. . . . *See* 15 CFR § 930.11(g). Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity that are reasonably foreseeable. . . . *See Id.* Also, effects are not just environmental effects, but include effects on coastal uses, such as recreation, fishing, and scenic and aesthetic enjoyment. *See* 15 CFR § 930.11(b).

Along with the information an applicant submits, the applicant is also required to submit a consistency certification stating that the proposed project/activities “comply with Delaware's approved coastal management program and will be conducted in a manner consistent with such program.” Under the DCMP, DNREC then concurs or objects to the applicant’s certification. Until DNREC has concurred with the applicant’s certification, no federal licenses or permits may be issued.¹ *See* DCMP §§ 2.2.2, 2.2.3.

US Wind’s proposed offshore wind farm project is subject to consistency reviews under both Sections 3.2 and 3.4 of the DCMP. Thus, US Wind provided two certifications to DNREC. The Section 3.2 review applies with respect to activities covered by the USACE-required permits. US Wind’s consistency certification analysis for Section 3.2 refers to it as being “for purposes of Subpart D” since Section 3.2 of the DCMP implements Subpart D of the federal consistency regulations (15 CFR Part 930). The Section 3.4 review applies with respect to US Wind’s Outer Continental Shelf (“OCS”) plan, which is subject to BOEM approval. US Wind’s consistency analysis for Section 3.4 refers to it as being “for purposes of Subpart E” since Section 3.4 of the DCMP implements Subpart D of the federal consistency regulations.

Section 3.2.3.1 of the DCMP requires that DNREC provide at least 30-days’ advance public notice prior to responding to an applicant’s consistency certification. *See* DCMP § 3.2.3.1. The notice is required to be published in at least two Delaware newspapers of general circulation. *See Id.*

C. The Secretary’s DCMP Determinations.

The Secretary made the DCMP Determinations pursuant to two undated letters that Appellant received by email from DNREC on July 25, 2024. The letter addressing the certification for USACE-required permits states that it is responding to a certification dated and received on October 11, 2023. The letter addressing the certification for the COP/BOEM approvals states that it is responding to a certification dated and received on June 23, 2022. The contents of the letters include the following:

- They recite various “time of year” restrictions stated by US Wind in its federal applications that are intended to protect wildlife and reduce interference with recreational activities.

¹ Failure to act on the part of DNREC can result in a deemed concurrence.

- They make a number of environmental-related recommendations and discuss a letter of intent entered into between US Wind and DNREC that is intended to compensate impacted offshore commercial and recreational for-hire fishers for the impact of the US Wind Project.²
- They address US Wind's confirming that its offshore cables will be installed at least 400 meters from active sand borrow areas and a proposed borrow area immediately in the vicinity of Indian River Inlet. The sand borrow areas are used as a source of sand for beach replenishment projects in South Bethany and other Sussex County coastal towns.

The letters conditionally concur with US Wind's consistency certifications, with the conditions imposed including the obtaining of certain DNREC permits. If the conditions are not met, the conditional concurrence is deemed an objection.

II. Basis for Appeal

A. Appellant's Interests Have Been Substantially Affected by the Secretary's DCMF Determinations.

Appellant is a "person whose interest is substantially affected by" an "action of the Secretary" and is therefore entitled to bring this appeal under 7 Del. C. § 6008(a). This is demonstrated by the following:

1. Appellant has been a South Bethany homeowner for more than 20 years. His current home, which he has owned for more than fifteen years, directly fronts the ocean in South Bethany.

2. Appellant is an active recreational user of the beach area adjacent to his home and to the north and south of his home. He regularly swims on South Bethany's beach. He regularly walks along the shoreline from South Bethany to Bethany Beach and from South Bethany into Fenwick Island State Park. He regularly fat bikes along the shoreline from South Bethany to Fenwick Island and Ocean City and from South Bethany to Indian River Inlet.

3. Appellant regularly enjoys with guests the beautiful ocean views from his home and particularly from his roof deck. His roof deck is a social gathering spot, with photographs regularly being taken of the extraordinary views from the deck, both during the day and at night.

4. Appellant and his family and guests are always excited by their regular spotting of dolphins (and occasionally whales) and enjoy other shore wildlife.

² <https://documents.dnrec.delaware.gov/coastal/federal-consistency/us-wind/DNREC-US-Wind-LOI-Fisheries-Mitigation.pdf>

5. The industrialization of the ocean and shoreline viewscape that would occur due to the US Wind Project and its damaging effects on marine life will significantly damage the aesthetic, scenic and recreational values Appellant has enjoyed for many years from his home and along the shoreline.

6. The damage to aesthetic, scenic, and recreational values and the ongoing risk of environmental damage arising from risks of wind turbine blade failures/breaks, petroleum leakages, or other problems will materially damage not only Appellant's enjoyment of his home but its value as well. The same factors will damage South Bethany's and Sussex County's tourism revenues, impairing their ability to provide important government services.

7. The DCMP is intended to ensure protection of Delaware's coastal areas from environmental damage and to preserve its use for recreation and scenic and aesthetic enjoyment.

8. Under Sections 2.2.2 and 2.2.3 of the DCMP, no federal licenses or permits may be issued until the DCMP has concurred with an applicant's certification. *See* Section I.B. above. With DNREC concurrences, US Wind can obtain needed permits and move forward to begin construction of the project.

B. DNREC's Published Public Notice Failed to Comply with DCMP § 3.2.3.1.

The DCMP requires that DNREC provide at least 30-days' advance public notice prior to responding to an applicant's consistency certification. *See* DCMP § 3.2.3.1. Among other things, the notice is required to "describe the subject matter of the certification review, including a summary of the proposed activity and an announcement of the availability of consistency certification and accompanying public information."³ *See* DCMP §§ 3.2.3.1.5. DNREC's published public notice for the US Wind's certifications violated Section § 3.2.3.1 and was invalid for the reasons described below.

1. DNREC's Published Public Notice Failed to Announce the Availability of the Certifications, and the Certifications Cited in the Notice Are Different from Those Provided by DNREC on its Notice Webpage, Which are also Different From Those Cited in the Secretary's DCMP Determinations.

DNREC's published public notice for the consistency certifications⁴ announced that DNREC had received certifications from US Wind, but the notice failed to announce their availability to the public, as required by DCMP § 3.2.3.1.2. And even if a member of the public went to DNREC's notice webpage looking for the certifications, he or she would be left to sort through a confusing maze of US Wind documents and certifications, none of which are dated as

³ The DCMP also provides that "[p]ublic notice may be expanded in proportion to the degree of likely public interest involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good reasons. *See* DCMP §§ 3.2.3.1.5

⁴ *See* Exhibit B

of the dates cited in the DNREC's published public notice. Compounding the problems, the Secretary's DCMP Determination letter for the USACE permits cites a certification having a different date than the one cited in DNREC's published public notice. And they are both different from the date of the USACE certification provided on DNREC's notice webpage.⁵ This is addressed below in more detail.

a. ***Consistency Certification for Construction and Operations Plan (COP)/BOEM.***⁶ DNREC's published public notice stated that "[t]he Bureau of Ocean Energy Management submitted the federal consistency certification with the Construction and Operations Plan to the DCMP on behalf of US Wind, Inc. on June 23, 2022, with updated information received on March 14, 2024, and April 1, 2024." But the link on DNREC's public notice webpage (dated April 21, 2024) for the COP/BOEM "Federal Consistency Submission" links to a confusing sea of documents and certifications, none of which are dated as of the dates cited in DNREC's published public notice.⁷

The first document provided by DNREC's notice webpage link for the COP/BOEM consistency certification is an unsigned report/analysis document prepared by TRC (a consulting firm) that is dated "November 21, 2021, Revised March 2024." The TRC document includes a consistency certification statement that does not comply with the DCMP (as addressed below). The TRC document is then followed by a DNREC "Coastal Zone Management Act Federal Consistency Form," which is identified in Section II of the form as being for "Outer Continental Shelf Activity." The form repeatedly references an unidentified "Appendix II-M2" and includes a different consistency certification statement (from the one in the TRC document) that also does not comply with the DCMP. The form is signed by US Wind's CEO and dated March 29, 2024. This form is then followed by an unsigned "EES group" report/analysis document that is dated November 21, 2021. The EES document, which also includes a consistency certification statement that does not comply with the DCMP, is followed by another DNREC "Coastal Zone Management Act Federal Consistency Form" that appears to be identical to the prior form included in the link, except that it is not identified as being for "Outer Continental Shelf Activity." This form is also signed by US Wind's CEO and dated March 29, 2024.

Adding to the confusion, the Secretary's letter for the COP/BOEM consistency certification refers to the COP/BOEM consistency certification as being "dated and received on June 23, 2022." DNREC's published public notice also refers to the USACE consistency

⁵ DNREC's notice webpage for the US Wind consistency certifications is: <https://dnrec.delaware.gov/public-notices/cce20240149/>. The US Wind COP/BOEM consistency certification is on a sidebar tab with the label "Documents for Review: 2022.0088, Federal Consistency Submission." The USACE consistency certification is on a sidebar tab with the label "Documents for Review: 2022.0088D, Federal Consistency Submission."

⁶ DNREC's published public notice and the DCMP Determination letters refer to the DCMP § 3.4 consistency certification as a Construction and Operation Plan (COP) certification. DCMP § 3.4, however, refers to Outer Continental Shelf (OCS Plans). They both refer to the same certification.

⁷ The COP Federal Consistency Submission is at: <https://documents.dnrec.delaware.gov/Admin/Public-Notices/CCE20240149/2022-0088/Federal-Consistency-Submission.pdf>

certification as being submitted to DNREC on June 23, 2023, but adds that it was supplemented “with updated information received on March 14, 2024, and April 1, 2024.”

b. *Consistency Certification for USACE Permits/Authorizations:* DNREC’s published public notice stated that “[t]he DCMP received the federal consistency certification for the proposed use of U.S. Army Corps of Engineers (USACE) permits and authorizations associated with the project on October 23, 2023, with updated information received on March 14, 2024, and April 1, 2024.” But, as with respect to the COP/BOEM consistency certification, the link on DNREC’s public notice webpage (dated April 21, 2024) for the USACE Licenses/Permits “Federal Consistency Submission” links to a confusing sea of documents that contradict DNREC’s published public notice.

The link for the USACE consistency certification⁸ first includes the same unsigned TRC document as included for the COP/BOEM consistency submission and is also followed by a DNREC “Coastal Zone Management Act Federal Consistency Form,” which is identified as being for “Federal License or Permit Activity” and includes the same consistency certification statement as in the COP/BOEM form that does not comply with the DCMP. The form is signed by US Wind’s CEO and is dated March 29, 2024. This form is then followed by the same unsigned EES document and the same “Coastal Zone Management Act Federal Consistency Form” as included for the COP/BOEM consistency submission.

Creating further confusion, the Secretary’s letter for the USACE consistency certification refers to the certification as being “dated and received on October 11, 2023.” But, as stated above, DNREC’s published public notice refers to the USACE consistency certification as being received on October 23, 2023, “with updated information being received on March 14, 2024, and April 1, 2024.”

c. *DNREC’s Published Public Notice Violated DCMP § 3.2.3.1.*

Even the most diligent members of the public would be thoroughly confused in trying to review and comment on the consistency certifications and would be unable to find the consistency certifications referenced in DNREC’s published public notice. Thus, the published public notice violates the DCMP because it fails to make available the consistency certification as required by DCMP § 3.2.3.1.2.

2. *DNREC’s Published Public Notice Violated the DCMP By Providing a Deficient “Summary of the Proposed Activity.”*

As noted above, Section 3.2.3.1.2 of the DCMP requires DNREC’s published public notice to include “a summary of the proposed activity.” Although the notice summary addressed offshore export cables, it failed to mention that (a) up to four onshore cables will be buried and

⁸ The COP/BOEM Federal Consistency Submission is at:
<https://documents.dnrec.delaware.gov/Admin/Public-Notices/CCE20240149/2022-0088D/Federal-Consistency-Submission.pdf>

then transition to overhead lines and (b) alternative corridors for the onshore cables are proposed. The onshore cables and the decision as to the corridor that will be used are major and controversial public issues that should have been addressed in the summary. DNREC's failure to do so violated DCMP § 3.2.3.1.2.

C. The Secretary's DCMP Determinations Violate the DCMP Because the Consistency Concurrence Statements They Affirm Violate the DCMP.

1. DCMP-Mandated Language for Consistency Certification Statements.

Section 3.2.1 of the DCMP directs that consistency certification statements for federal licenses and permits (referred to by US Wind as the Subpart D certification statement) state as follows: "The proposed activity complies with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."⁹

Similarly, Section 3.4.3 of the DCMP directs that COP/BOEM consistency certification statements (referred to by US Wind as the Subpart E certification) state as follows: "The proposed activities described in detail in this plan comply with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."¹⁰

2. US Wind Provides Consistency Certification Statements That Do Not Comply with Sections 3.2.1 and 3.4.3 of the DCMP.

Setting aside that, as discussed above, DNREC failed to make available to the public the consistency certifications identified in its published public notice, the ones that were provided on DNREC's notice webpage do not comply with DCMP §§ 3.2.1 and 3.4.3.

The consistency certification statements included in the TRC and EES documents provided on DNREC's notice webpage state as follows:

"US Wind has determined that the Project complies with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."⁹ [Emphasis added].

The consistency certification statements included in the DNREC forms signed by US Wind state as follows:

Based upon the information, data, and analysis included herein, the non-federal applicant for a federal license or permit, or state or local government agency applying for federal funding, listed in (1) above, finds that the proposed activity complies with the enforceable policies of the Delaware Coastal Management Program and will be conducted in a manner consistent with such program. [Emphasis added].

⁹ 15 CFR §930.57(b) specifies the same language.

¹⁰ 15 CFR §930.76(c) specifies the same language.

The bolded and italicized language in the certifications above severely weakens the certification language mandated by the DCMP and severely undermines the potency of the certification statements and their usefulness for DCMP compliance purposes. The unqualified certifications mandated by the DCMP effectively serve to compel an applicant to exercise a high level of diligence to ensure the accuracy of the analyses and information the applicant provides. Applicants generally will not want to risk making a false certification. But with the bolded and italicized language, the validity of a certification that a proposed activity is consistent with the DCMP does not change if it is later determined that the action is inconsistent with the DCMP (provided that the applicant did not knowingly use invalid analyses and incorrect facts).

Even if the certifications provided on DNREC's notices webpage matched the dates stated in the Secretary's DCMP Determinations, they would not comply with the DCMP and would be invalid.¹¹

D. US Wind's Consistency Certification Analysis Fails to Address the Reasonably Foreseeable Coastal Zone Effects of Its Project in Violation of the DCMP.

1. *The DCMP Requires Applicants to Take into Account Reasonably Foreseeable Coastal Effects of Project Activities and Associated Facilities.*

As discussed in Section I.B. above, in order to allow DNREC to conduct its consistency reviews, the DCMP requires applicants, such as US Wind, to provide a range of information, including an assessment of the probable coastal zone effects of the proposed project and its associated facilities and whether they are consistent with the DCMP. *See* DCMP §§ 3.2.2, 3.4.3. US Wind failed to comply with this requirement.

As previously noted, coastal zone effects means "any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity. . . ." Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity that are reasonably foreseeable. . . . *See* 15 CFR § 930.11(g). Also, effects are not just environmental effects, but include effects on coastal uses, such as recreation, fishing, and scenic and aesthetic enjoyment. *See* 15 CFR § 930.11(b).

2. *US Wind's Consistency Certification Analysis Violates the DCMP by Failing to Take into Account Reasonably Foreseeable Effects.*

US Wind's analysis (reflected in the TRI document) supporting its consistency certifications fails to consider reasonably foreseeable effects, as required by the DCP, in analyzing consistency with the DCMP. This is reflected, for example, by US Wind's analysis of consistency with Section 5.4.22 of the DCMP. Section 5.4.22 provides that "DNREC shall consider the public interest in any proposed activity which might affect the use of subaqueous lands" and provides a nonexclusive list of factors to be considered.

¹¹ The certifications in the TRC and EES documents are also invalid since they are not signed.

One of the factors is set forth in Section 5.4.22.3, which requires taking into account “[t]he potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources and other uses of the subaqueous lands.” US Wind’s analysis of Section 5.4.22.3, however, entirely fails to address important foreseeable effects of its proposed use of subaqueous lands. If US Wind’s export cables are laid, the up to 938-foot wind turbines will be built (it is not just reasonably foreseeable, it is a practical certainty).¹² This will have major effects on aesthetic enjoyment of subaqueous lands (the Atlantic Ocean, both within and outside of Delaware’s coastal boundary), as well as on commerce, navigation, recreation, natural resources and other uses of the subaqueous lands.

US Wind’s analysis in the TRC document fails to correctly interpret and apply the DCMF by limiting its analysis to direct, localized effects. The TRC document states as follows in its analysis of Section 5.4.22.3.

There would be localized, temporary impacts on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources and other uses of the subaqueous lands. Impacts would be limited to installation and removal of the temporary gravity cells at the Atlantic Ocean, Indian River Bay, and Indian River HDD locations, dredging for cable installation, and installation of the onshore export cables in the seabed and bay bottom. Impacts associated with installation may temporarily preclude the public from using the immediate construction area. US Wind would limit construction to the period outside of peak recreational activity as described in Section 2.3.

Once installed, the onshore export cables are not anticipated to affect the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources and other uses of the subaqueous lands as the onshore export cables would be buried below the bay bottom. Export cables would be buried, at the direction of USACE, at least 1.8 m (6 ft) below the maintenance depth of the Indian River Inlet and Bay Federal Channel to accommodate any future dredging of the navigation channel by USACE or DNREC.

There may be temporary, localized impacts for routine maintenance or repair activities associated with the onshore export cables and HDD conduits. Maintenance or repair activities are anticipated to be significantly less than installation activities.

The Project and Proposed Project are consistent with Policy 5.4.22.3.

Other reasonably foreseeable coastal effects that US Wind failed to address in its consistency certification analysis include the following:

¹² The turbines are also “associated facilities” with respect to the export cables.

- The effect of US Wind's export cables on the availability and accessibility of sand "borrow areas" used as a source of sand for periodic and critically needed beach replenishment activities in South Bethany and other Sussex County coastal towns. The Secretary's DCMP Determination letters partially address this by obtaining confirmation from US Wind that its offshore cables will be installed at least 400 meters from active sand "borrow areas" and a proposed sand borrow area in the vicinity of Indian River Inlet. But individual sand borrow areas have finite sand volumes and limited lifespans.¹³ As a result, ensuring only the continuing availability of existing borrow areas and a single proposed borrow area creates major risks if the effect of the export cables is to reduce the number and/or size of potential future borrow areas. The more difficult it becomes to find nearby borrow areas, the more expensive beach replenishment becomes as borrow sites migrate farther away from the shoreline. This is a threat to South Bethany's beach and others that are covered by replenishment programs. To comply with the DCMP, US Wind's consistency certification analysis should have addressed this issue in a significant way for its analysis of at least DCMP §§ 5.2.1 and 5.4.22.1.
- US Wind's consistency certification analysis fails to address the risk of a turbine blade breaks and emergency response plans. US Wind has stated that the turbines it plans to install are capable of withstanding a Category 2 hurricane. US Wind has also stated that since the mid-1800s two category 3 hurricanes have come through the "latitudes" where the proposed wind farm would be located but that they were significantly farther east of where the proposed wind farm would be located. With the reported increase in extreme weather events, designing the turbines to withstand only a category 2 hurricane is a high risk bet that could be catastrophic for South Bethany and other coastal towns in Sussex County. In addition, the recent turbine blade breakage at Vineyard Wind demonstrates that breakages can occur outside of extreme weather events.¹⁴ To comply with the DCMP, US Wind's consistency certification analysis should have addressed this issue in a significant way for its analysis of at least DCMP §§ 5.2 and 5.3.

¹³ See generally, *Site Specific Exploration of Sand Resources*, Delaware Geologic Survey (August 2019) <https://www.boem.gov/sites/default/files/mm-research/2021-05/DGS2019SiteSpecificExplorationSandResources.pdf>; *From where should beach replenishment sand come?*, (June 18, 2014), <https://www.dgs.udel.edu/news/where-should-beach-replenishment-sand-come>

¹⁴ <https://nantucketcurrent.com/news/vineyard-wind-installed-the-largest-offshore-turbines-in-the-world-were-they-ready-for-primetime>; <https://www.windpowermonthly.com/article/1347145/annual-blade-failures-estimated-around-3800>

E. Reliance on Environmental Impact Statement; Permitting Condition.

The DCMP Determinations are invalid because they cite to BOEM's Environmental Impact Statement (EIS) for the US Wind Project as part of their terms, even though the EIS was not issued by BOEM until July 29, 2024. Prior to July 29, 2024, BOEM had issued only a draft EIS for the US Wind Project. The DCMP Determinations are also premature and invalid because they are conditioned on satisfying permitting standards embodied in the DCMP.

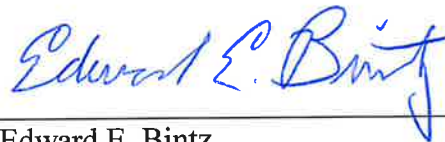
III. Estimated Number of Witnesses; Estimated Time to Present Appeal; Fee

Appellant does not currently anticipate calling witnesses at the hearing in this matter, but Appellant reserves the right to examine any witnesses called or listed by DNREC. Appellant further reserves the right to call one or more witnesses upon learning the identity of witnesses and evidence that DNREC may present and to request reasonable discovery of DNREC in advance of the hearing. Appellant estimates that 2 hours will be required to present his appeal at the public hearing.

Appellant reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal upon discovery of additional facts.

Appellant has enclosed a \$50.00 deposit with this Statement of Appeal in accordance with the Board's regulations.

Respectfully submitted,



Edward E. Bintz
PO Box 1240
Bethany Beach, DE. 19930
Email: Ed.Bintz555@gmail.com

Dated: August 10, 2024

EXHIBIT A



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

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

Laurie Jodziewicz
Senior Director of Environmental Affairs
US Wind, Inc.
401 East Pratt Street, Suite 1810
Baltimore, MD 21202

**RE: Delaware Coastal Management Program — Federal Consistency Certification
Conditional Concurrence for the Construction and Operations Plan for the US Wind
Offshore Maryland Project (FC 2022.0088)**

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 June 23, 2022, submitted by the Bureau of Ocean Energy Management (BOEM) on behalf of US Wind, Inc. (US Wind). The DCMP and US Wind entered into a stay agreement for a period of one year and 17 days, from July 23, 2022, to August 9, 2023, bringing the end of the review period to January 9, 2024. Additionally, the DCMP and US Wind entered into a second stay agreement for a period of six months, from August 9, 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 (WTG), up to four (4) offshore substations (OSS), one (1) met tower, and inter-array cables, in the approximately 80,000-acre Lease area. US Wind 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 land at 3R's Beach and to connect into a proposed

substation to be constructed on tax parcel 233-2.00-2.01 in Millsboro, Sussex County, Delaware.

FEDERAL CONSISTENCY WITH STATE COASTAL MANAGEMENT PROGRAMS

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, any applicant who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such 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 E, state agencies are required to include a reference to outer continental shelf (OCS) plans which describe in detail federal license or permit activities affecting any coastal use or resource.

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 COP, 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 150m for small colonies (<30 nests) and 300m 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 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

¹ <https://rwsc.org/science-plan/>

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 Construction and Operations Plan 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 Construction and Operations Plan for the US Wind Offshore Maryland 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 2022.0088
Lorena Edenfield, BOEM
Sindey Chaky, BOEM
Jeff Payne, NOAA OCM
Erica Schmidt, USACE Baltimore District



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

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

Laurie Jodziewicz
Senior Director of Environmental Affairs
US Wind, Inc.
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
Lorena Edenfield, BOEM
Sindey Chaky, BOEM
Jeff Payne, NOAA OCM



Re: US Wind Consistency Review

Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov>
To: Edward Bintz <ed.bintz555@gmail.com>

Wed, Jul 31, 2024 at 10:11 AM

Good morning Mr. Bintz,

We did not prepare a backup memo/analysis for consistency determinations.

Cheers,
Kim

From: Edward Bintz <ed.bintz555@gmail.com>
Sent: Monday, July 29, 2024 1:58 PM
To: Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov>
Subject: Re: US Wind Consistency Review

Ms Cole,

Did DNREC prepare any type of backup memo or analysis for its consistency determinations? If yes, please send me a copy.

Thanks. Ed Bintz

On Thu, Jul 25, 2024 at 3:49 PM Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov> wrote:
Mr. Bintz,

They were signed and sent on July 9, 2024.

Cheers,
Kim

From: Edward Bintz <ed.bintz555@gmail.com>
Sent: Thursday, July 25, 2024 3:39 PM
To: Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov>
Subject: Re: US Wind Consistency Review

Ms. Cole,

Thanks for your email. It looks like the concurrence letters are not dated. When were they signed/issued?

Thanks. Ed Bintz

On Thu, Jul 25, 2024 at 10:10 AM Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov> wrote:
Good Morning Mr. Bintz,

You are able to access the information regarding the federal consistency certifications for US Wind online at this location:

<https://dnrec.delaware.gov/coastal-programs/coastal-management/federal-consistency/us-wind-2/>

Cheers,
Kim

From: Edward Bintz <ed.bintz555@gmail.com>
Sent: Tuesday, July 9, 2024 2:28 AM
To: Cole, Kimberly B. (DNREC) <Kimberly.Cole@delaware.gov>
Subject: US Wind Consistency Review

Ms Cole,

As a follow-up on the voice mail message I left you yesterday, please forward to me copies of any public comments received by DNREC on US Wind's federal consistency certification. Alternatively, if they are posted online, please pass along the link. Please also send to me DNREC's final determination (and any related analysis document) on US Wind's consistency filing (DNREC's website states its review is scheduled to be completed today (7/9)).

Thanks. Ed Bintz

EXHIBIT B



Originally published at delawareonline.com on 04/21/2024

DNREC – DELAWARE COASTAL PROGRAMS PUBLIC NOTICE

Federal Consistency Certifications have been submitted to the Delaware Department of Natural Resources and Environmental Control (DNREC) Coastal Management Program (DCMP) for the following:

US Wind Maryland Offshore Project – Construction and Operations Plan (2022.0088)

US Wind, Inc. proposes to develop a commercial-scale, offshore wind energy project in the Lease Area known as Lease OCS–A 0490 offshore of Maryland. The proposed project is comprised of up to 121 wind turbine generators, up to four offshore substations, up to four offshore export cables, and one meteorological tower, in a gridded array pattern distributed across the Lease Area. The offshore export cables are proposed to land at 3R's Beach and to interconnect into a proposed substation to be constructed on tax parcel 233-2.00-2.01 adjacent to the Indian River Power Plant in Sussex County, Delaware.

The Bureau of Ocean Energy Management submitted the federal consistency certification with the Construction and Operations Plan to the DCMP on behalf of US Wind, Inc. on June 23, 2022, with updated information received on March 14, 2024, and April 1, 2024. US Wind, Inc. and the DCMP entered into two stay agreements to pause the project review in accordance with 15 CFR 930.60(b) until February 9, 2024. The project review has commenced and is currently set to be completed on July 9, 2024. The proposed activity is subject to review pursuant to 15 CFR 930 subpart E for consistency with the policies of the DCMP.

US Wind Maryland Offshore Project – USACE Licenses/Permits Review (2022.0088D)

US Wind, Inc. proposes to develop a commercial-scale, offshore wind energy project in the Lease Area known as Lease OCS–A 0490 offshore of Maryland. The proposed project is comprised of up to 121 wind turbine generators, up to four offshore substations, up to four offshore export cables, and one meteorological tower, in a gridded array pattern distributed across the Lease Area. The offshore export cables are proposed to land at 3R's Beach and to interconnect into a proposed substation to be constructed on tax parcel 233-2.00-2.01 adjacent to the Indian River Power Plant in Sussex County, Delaware. Overall, the project as proposed, would permanently impact approximately 1,836 acres of open water habitat and would include the dredging of material to facilitate construction of the offshore wind project and associated infrastructure.

The DCMP received the federal consistency certification for the proposed use of U.S. Army Corps of Engineers (USACE) permits and authorizations associated with the project on October 23, 2023, with updated information received on March 14, 2024, and April 1, 2024. US Wind, Inc. and the DCMP entered into a stay agreement to pause the project review in accordance with 15 CFR 930.60(b) until February 9, 2024. The project review has commenced and is currently set to be completed on July 9, 2024. The proposed activity is subject to review pursuant to 15 CFR 930 subpart D for consistency with the policies of the DCMP.

Comments concerning these Federal Consistency Certifications will be accepted through June 5, 2024.

Comments may be sent to: Delaware Coastal Programs, Ms. Kimberly Cole, Administrator, 100 W. Water Street, Suite 7B, Dover, DE, 19904, or electronically to DNREC_DCP_PublicComment@delaware.gov (Please note that there are underscores between DNREC, DCP, and Public.). For additional information please visit <https://de.gov/dnrecnotices> or call (302) 739-9283.

Encuentre la versión en español de este aviso en <https://de.gov/dnrecavisos>. Jwenn vésyon kreyòl nan <https://de.gov/dnrecavi>. View DNREC's non-

discrimination policy at <https://de.gov/titlevi>.

DNREC Notice No. CCE20240149

4/21-NJ