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January 16, 2019

Ms. Aileen Kenny
Senior Vice President, Development
Deepwater Wind, LLC
56 Exchange Terrace
Providence, RI 02903

Re: CZMA federal consistency review status for proposed South Fork Wind Farm 90MW offshore wind project.

Reference CRMC File No.: 2018-10-082

Dear Ms. Kenney,

The purpose of this letter is to provide a status update on the Rhode Island Coastal Resources Management Council's (CRMC) federal consistency review of the proposed South Fork Wind Farm (SFWF) project in accordance with 15 CFR § 930.78(a). Accordingly, this letter details some additional information necessary for the CRMC to make a consistency certification determination by April 22, 2019¹ concerning the enforceable policies of the State's federally approved coastal management program, specifically 650-RICR-20-05-11 (CRMC's Ocean Special Area Management Plan (Ocean SAMP))

On October 22, 2018 Deepwater Wind, LLC² filed with the CRMC a Construction and Operations Plan (COP) dated September 2018 for the proposed South Fork Wind Farm. The SFWF project consists of up to 15 wind turbine generators (WTGs) with a capacity of 6 to 12 megawatts per turbine, submarine cables between the WTGs (inter-array cables), and an offshore electric substation. These project components will be located within federal waters on the outer continental shelf (OCS) within Bureau of Ocean Energy Management (BOEM) renewable energy lease area OCS-A 0486, approximately 19 miles southeast of Block Island, Rhode Island, and 35 miles east of Montauk Point, New York. The SFWF is also located within the CRMC's Ocean SAMP boundary that is coincident with Rhode Island's 2011 geographic location description (GLD), including the associated listed federal actions, as approved by NOAA Office of Coastal Management. The SFWF project also includes an alternating current electric submarine export cable, known as the South Fork Export Cable (SFEC) that will connect the SFWF to an existing mainland electric grid at East Hampton, New York. The SFEC will be buried beneath the seabed within federal waters on the OCS from the SFWF to the boundary of New York State territorial waters (3 miles offshore). The intended purpose of the project is to supply 90 megawatts (MW) of electricity to the State of New York.

¹ Unless Deepwater Wind and the CRMC mutually agree to stay the CRMC's six-month review period pursuant to 15 CFR § 930.60.

² On October 8, 2018 Ørsted announced that it entered into an agreement with the D.E. Shaw Group to acquire a 100% equity interest in Rhode Island-based Deepwater Wind. In November 2018 federal regulators approved the merger of the two companies as a single organization named Ørsted US Offshore Wind.

The proposed SFWF project is subject to CRMC federal consistency review authority pursuant to the federal Coastal Zone Management Act (CZMA) at 16 USC § 1456(c)(3)(A) and the CZMA's implementing regulations at 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit and Subpart E - Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities. The SFWF project meets the definition of a "large-scale offshore development" as specified in § 11.3(H)(1)³.

Included within Section 1.3.4 of the COP was a general statement of Coastal Zone Management Act consistency with the State's enforceable policies. See COP at 1-34. As you know, I indicated to you via email dated October 24, 2018 that the consistency certification included within the COP was not in compliance with 15 CFR § 930.57. Additionally, the COP statement concerning Deepwater Wind's voluntary filing of the consistency certification with the state of Rhode Island was also incorrect. As stated in my October 24 email, Deepwater Wind is subject to CRMC federal consistency review and is required to file a consistency certification with Rhode Island, pursuant to 15 CFR Part 930 Subpart D, because the proposed project is a listed activity on the State's approved federal consistency list, and the project is located within Rhode Island's GLD. In addition to the proper consistency certification statement, my email of October 24 also requested a draft fisheries monitoring plan that outlines the specifics as to what species will be monitored and what methods will be used and when the surveying will be conducted to demonstrate compliance with enforceable policy § 11.10.9(C)(1). I had requested that the information be provided to the CRMC prior by Tuesday, November 13, 2018 to avoid the CRMC having to issue an incomplete submission notice pursuant to 15 CFR § 930.60, which would stop the agency's six-month CZMA review period.

Deepwater Wind submitted the requested information to the CRMC on November 13, 2018 via email and a hardcopy package via FedEx the following day. In review of the package filed by Deepwater Wind, we have determined that it satisfactorily addresses the consistency certification statement. See revised Appendix A at A-2 dated November 10, 2018. The fisheries monitoring plan titled "Demersal Fisheries Resources Survey Protocol" was stamped "*DRAFT*" and it outlines the minimum information necessary to proceed with review. However, the fisheries monitoring plan lacks specificity and is insufficient to develop a pre-construction baseline data set necessary to assess targeted commercial fisheries species that are typically harvested from the project area. A more robust monitoring plan as detailed below in Section A will be required for the CRMC review.

A. Supplemental information required to address Rhode Island's enforceable policies

The regulatory standards contained within 650-RICR-20-05-11 are the enforceable policies for purposes of the CZMA federal consistency provisions, specifically Part 11.10. These standards in addition to other applicable federally approved Rhode Island Coastal Resources Management

³ The enforceable policies of the Rhode Island coastal management program applicable to the SFWF project are contained in the CRMC's Ocean Special Area Management Plan, which is codified in the Rhode Island Code of Regulations as 650-RICR-20-05-11. For purposes of federal consistency, enforceable policies are defined at 15 CFR § 930.11(h).

Program (CRMP) enforceable policies are the basis for the CRMC’s CZMA federal consistency certification concurrence or objection.

§ 11.10.1(C): *Offshore Developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone, as described in the Ocean SAMP. In making the evaluation of the effect on human uses, the Council will determine, for example, if there is an overall net benefit to the Rhode Island marine economic sector from the development of the project or if there is an overall net loss. Where the Council determines that impacts on the natural resources or human uses of the Rhode Island coastal zone through the pre-construction, construction, operation, or decommissioning phases of a project constitute significant adverse effects not previously evaluated, the Council shall, through its permitting and enforcement authorities in state waters and through any subsequent CZMA federal consistency reviews, require that the applicant modify the proposal to avoid and/or mitigate the impacts or the Council shall deny the proposal.*

Deepwater Wind’s response to this enforceable policy states that “The SFWF [SFEC] is consistent with this policy. The SFWF [SFEC] will not have significant adverse impact on the natural resources or human uses of the RI Ocean SAMP study area. It is expected that current activities will be able to continue post construction.” See Appendix A-2 at A-2-1. While current activities may well continue post construction, it is still is not clear whether there may need to be modifications to the proposed project to avoid potential significant impacts to Rhode Island-based commercial fishery operations. Therefore, the CRMC cannot at this time conclude that the project is consistent with this enforceable policy.

Figure 1.1-2 of the SFWF COP shows a grid layout with north-south and east-west orientation of the WTGs within a “maximum work area” in context with Deepwater Wind’s lease area OCS-A 0486. Inset details show both 0.8 mile and 1.0 mile spacing of the WTGs within a maximum work area boundary. It appears that Deepwater Wind has committed to an east-west layout of the project based on representations by Deepwater Wind staff at the August 27, 2018 CRMC Fishermen’s Advisory Board meeting and the BOEM public scoping meeting for the SFWF project held on November 8, 2018 in Narragansett, RI. Deepwater Wind to date has confirmed that the maximum spacing between WTGs will be 1.0 (statute) mile. As you know, the alternative wind farm layout proposal developed by the Commercial Fisheries Center of Rhode Island (CFCRI), and included in the CRMC’s 3-month letter to Vineyard Wind for their proposed 800MW project, consists of a grid of east-west lanes with 1 **nautical** mile (1 nm) spacing between the WTGs. The alternative wind farm layout proposal was developed by CFCRI so that if adopted by the offshore wind energy industry for southern New England waters, then a majority of Rhode Island-based commercial fishing operations would be able to continue harvesting activities with some exceptions and adjustments, and coexist with the offshore wind energy industry. I would encourage Deepwater Wind to consider increasing the spacing between WTGs to 1 nautical mile to achieve the spacing necessary for consistency with the CFCRI proposal in an attempt to accommodate the commercial fishing industry and avoid potential adverse impacts. Furthermore, from a risk management perspective it is imperative that wind turbines be installed by all renewable energy developers throughout southern New England

waters in a consistent grid pattern of east-west orientation with a minimum 1 nm spacing between turbines to enhance safe navigation and operations of all recreational and commercial vessels.

Based on the experience of the Block Island wind farm construction it became evident that burial depth of the export cable was insufficient in some locations, which necessitated the installation of concrete mats to protect the cable. Considering that the SFEC will be installed in an area of high mobile gear activity it will be important to achieve proper cable burial depth to avoid unnecessary use of cable protection that has a potential to snag mobile gear (trawling nets). It appears that Deepwater Wind is considering the use of self-propelled mechanical and hydraulic trenchers based on discussion in the COP in section 4.1.2.2 and the submarine cable installation drawing contained in Appendix G2 to achieve the targeted cable burial depth of 1.2 to 1.8 meters. However, the SFWF COP indicates that articulated concrete mattresses or rock placement will be used to protect cables where sea bed conditions may not allow burial to the desired depth within the inter-array cable route or the SFEC route. See COP at 3-31 and 3-45. Deepwater should confirm that the described equipment will be used to the maximum extent practicable and limit the use of hydro-jet plow trenching equipment to sea bed areas that are suitable for such equipment (e.g., predominantly sands). Achieving proper cable burial depth and minimizing the use of cable protection will aid in avoiding impacts to the commercial fishing sector.

Given a positive outcome with the issues detailed above, the CRMC could then likely conclude that the SFWF project has been modified to avoid unnecessary impacts and meets its burden of proof under enforceable policy § 11.10.1(C).

§ 11.10.1(I): *The Council recognizes that moraine edges, as illustrated in Figures 3 and 4 in § 11.10.2 of this Part, are important to commercial and recreational fishermen. In addition to these mapped areas, the FAB may identify other edge areas that are important to fisheries within a proposed project location. The Council shall consider the potential adverse impacts of future activities or projects on these areas to Rhode Island's commercial and recreational fisheries. Where it is determined that there is a significant adverse impact, the Council will modify or deny activities that would impact these areas. In addition, the Council will require assent holders for offshore developments to employ micro-siting techniques in order to minimize the potential impacts of such projects on these edge areas.*

§ 11.10.1(J): *The finfish, shellfish, and crustacean species that are targeted by commercial and recreational fishermen rely on appropriate habitat at all stages of their life cycles. While all fish habitat is important, spawning and nursery areas are especially important in providing shelter for these species during the most vulnerable stages of their life cycles. The Council shall protect sensitive habitat areas where they have been identified through the Site Assessment Plan or Construction and Operation Plan review processes for offshore developments as described in § 11.10.5(C) of this Part.*

§ 11.10.2(A): *Areas of Particular Concern (APCs) have been designated in state waters through the Ocean SAMP process with the goal of protecting areas that have high conservation value, cultural and historic value, or human use value from large-scale offshore development. These*

areas may be limited in their use by a particular regulatory agency (e.g., shipping lanes), or have inherent risk associated with them (e.g., unexploded ordnance locations), or have inherent natural value or value assigned by human interest (e.g., glacial moraines, historic shipwreck sites). Areas of Particular Concern have been designated by reviewing habitat data, cultural and historic features data, and human use data that has been developed and analyzed through the Ocean SAMP process. Currently designated Areas of Particular Concern are based on current knowledge and available datasets; additional Areas of Particular Concern may be identified by the Council in the future as new datasets are made available. Areas of Particular Concern may be elevated to Areas Designated for Preservation in the future if future studies show that Areas of Particular Concern cannot risk even low levels of large-scale offshore development within these areas. Areas of Particular Concern include:

- 1. Areas with unique or fragile physical features, or important natural habitats;*
- 2. Areas of high natural productivity;*
- 3. Areas with features of historical significance or cultural value;*
- 4. Areas of substantial recreational value;*
- 5. Areas important for navigation, transportation, military and other human uses; and*
- 6. Areas of high fishing activity.*

Glacial moraines of the cobble and boulder nature represent areas of high biodiversity and important fish habitat. Impacts to these areas could result in long-term or permanent impacts to fish populations that are dependent on these habitat types and thus impact the Rhode Island fishery in the area. Additionally, the CRMC is obligated through § 11.10.1(J) to protect sensitive habitat areas where they have been identified through the Site Assessment Plan or Construction and Operation Plan review processes. The Ocean SAMP has identified specific glacial moraines as areas of particular concern (APC) as shown in §§ 11.10.2(F) and (G), Figures 3 and 4, respectively. Deepwater Wind's COP indicates that the project is consistent with the enforceable policy and that the project has been sited to avoid any areas of particular concern, including moraine edges. See COP Appendix A-2 at A-2-2. While the project may not be located within a glacial moraine, there is no graphic or other evidence within the COP that clearly shows that the project is not located within a glacial moraine as depicted within §§ 11.10.2(F) and (G) of the Ocean SAMP. Even if shown that the project is not sited within an existing identified moraine or moraine edge, "the FAB may identify other edge areas that are important to fisheries within a proposed project location" pursuant to § 11.10.1(I) as part of the CRMC review process. An appropriate graphic is requested showing the project in relation to existing glacial moraines mapped within the Ocean SAMP as indicated above. Some of the Ocean SAMP geological mapping and data are available at the www.narrbay.org website here: http://www.narrbay.org/d_projects/oceansamp/.

The CRMC may identify additional Areas of Particular Concern as new datasets are made available, as provided by § 11.10.2(A). The more detailed geotechnical survey data collected by Deepwater Wind for the SFWF/SFEC project would likely be helpful in establishing whether either project element is located within a moraine or APC, or whether the project is located within sensitive

habitat areas as may be identified by the CRMC. Accordingly, absent additional information and consideration by the FAB and the CRMC pursuant to §§ 11.10.1(I), 11.10.1(J) and 11.10.2(A), the CRMC at this time cannot conclude that the SFWF/SFEC project is not located within a moraine, an APC or sensitive habitat areas. Therefore, the CRMC presently does not agree that the SFWF and SFEC are consistent with the enforceable policies of §§ 11.10.1(I) and 11.10.2(A) as stated within Deepwater Wind's Appendix A-2.

§ 11.10.9(C): *The items listed below shall be required for all offshore developments:*

1. A biological assessment of commercially and recreationally targeted species shall be required within the project area for all offshore developments. This assessment shall assess the relative abundance, distribution, and different life stages of these species at all four seasons of the year. This assessment shall comprise a series of surveys, employing survey equipment and methods that are appropriate for sampling finfish, shellfish, and crustacean species at the project's proposed location. Such an assessment shall be performed at least four times: pre-construction (to assess baseline conditions); during construction; and at two different intervals during operation (i.e. one (1) year after construction and then post-construction). At each time this assessment must capture all four seasons of the year. This assessment may include evaluation of survey data collected through an existing survey program, if data are available for the proposed site. The Council will not require this assessment for proposed projects within the renewable energy zone that are proposed within two (2) years of the adoption of the Ocean SAMP.

As you know, I had advised you in my October 24, 2018 email that the COP filed with the CRMC on October 22, 2018 indicated that Deepwater Wind was developing a fisheries monitoring plan to further assess targeted species for pre-construction, during construction and under operational conditions. Thus, a fisheries monitoring plan was not yet completed for CRMC review. Deepwater Wind provided to the CRMC on November 13, 2018 a fisheries monitoring plan titled "Demersal Fisheries Resources Survey Protocol" that was stamped "DRAFT". The submitted fisheries monitoring plan essentially details a gillnet survey for demersal fish species, but it lacks specificity to develop a comprehensive pre-construction baseline data set necessary to assess targeted commercial fisheries species that are typically harvested from the area. Moreover, the gillnet survey design is insufficient to establish a baseline assessment of demersal finfish. In addition, an assessment and monitoring plan for commercially harvested crustacean species must be included as part of the biological assessment. Pelagic fish and molluscan shellfish are known to be present in the project area and should be included in the assessment and monitoring plan. In conclusion, a more robust monitoring plan will be required for the CRMC review that outlines the specifics as to what species will be monitored and what methods will be used and when the surveying will be conducted to demonstrate compliance with enforceable policy § 11.10.9(C)(1).

B. Conclusion

Pursuant to the enforceable policies of the Ocean SAMP, offshore developments shall not have a significant adverse impact on the natural resources or existing human uses of the Rhode Island coastal zone. Where the CRMC determines that there are significant adverse effects on Rhode Island

coastal resources or uses, it can require that the applicant modify the proposal to avoid and/or mitigate the impacts or the CRMC shall deny the proposal. See Ocean SAMP § 11.10.1(C). As detailed above, there is further information necessary for Deepwater Wind to file with the CRMC to properly evaluate potential coastal effects to the Rhode Island-based commercial fishing operations.

I am requesting that Deepwater Wind provide the following data and information **within thirty (30) days from the date of this letter** to demonstrate that the SFWF/SFEC project is consistent with the enforceable policies of the Ocean SAMP at § 11.10. Absent this information within the CRMC's review period, presently scheduled to end on April 22, 2019, the CRMC would be unable to conclude that the SFWF/SFEC project is consistent with the Rhode Island coastal management program. Thus, the CRMC would then have to object to Deepwater Wind's consistency certification pursuant to 15 CFR §§ 930.63(c) and 930.78.

Additional data and information necessary for CRMC review

1. Alternative layout showing an increase in spacing between WTGs to 1 nautical mile.
2. Confirmation as to what specific trenching equipment, hydraulic or mechanical, will be used and under what conditions, and to limit the use of hydro-jet plow trenching only to sea bed areas that are suitable for such equipment (e.g., predominantly sands) to ensure achievement of proper cable burial depth and minimize the use of cable protection (concrete mats or rock) to avoid adverse impacts to the commercial fishing sector. Deepwater should identify specific areas of sea bed where specific trenching techniques will likely be used.
3. Supply a graphic(s) showing the proposed SFWF and SFEC project elements in relation to the currently existing CRMC identified glacial moraines as depicted within §§ 11.10.2(F) and (G) of the Ocean SAMP. Additional non-confidential geotechnical data should be filed with the CRMC to aid in determining whether the SFWF/SFEC is located within a glacial moraine a moraine edge or an area of particular concern.
4. A more robust fisheries monitoring plan that details the specifics as to what commercial and recreational species will be monitored, what survey methods will be used and when the surveying will be conducted to meet the requirement of a biological assessment of the relative abundance, distribution, and different life stages of these species at all four seasons of the year. The assessment must comprise a series of surveys, using survey equipment and methods appropriate for sampling finfish, shellfish, and crustacean species at the project's proposed location. The assessment must be performed at least four times: pre-construction (to assess baseline conditions); during construction; and at two different intervals during operation (i.e. one (1) year after construction and then post-construction) and must capture all four seasons of the year.

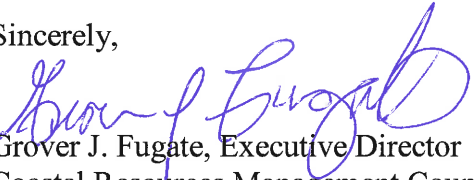
A final decision by the CRMC for concurrence or objection to Deepwater Wind's SFWF consistency certification must be issued by April 22, 2019 pursuant to 15 CFR §§ 930.62, 930.63 and 930.78. Should Deepwater Wind require additional time to prepare and file the requested information

or determine that additional time for the CRMC to review the SFWF/SFEC project would be in Deepwater Wind's best interests given the current federal government shutdown and other factors, the CRMC would be amenable to a stay agreement with Deepwater Wind as provided for under 15 CFR § 930.60(b) to stay the CRMC federal consistency review period for a reasonable period of time and extend the deadline for a final determination on Deepwater Wind's consistency certification filing.

The CRMC will file a copy of this consistency review status with the Acting Director of the Bureau of Ocean Energy Management as required pursuant to 15 CFR §§ 930.62(b) and 930.78.

Please contact me at 401-783-3370 or email gfugate@crmc.ri.gov should you have any questions.

Sincerely,



Grover J. Fugate, Executive Director
Coastal Resources Management Council

/lat

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