

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8648

EMAIL: dfrulla@kelleydrye.com

January 10, 2011

VIA ELECTRONIC MAIL

Bureau of Ocean Energy Management, Regulation and Enforcement
Office of Offshore Alternative Energy Programs
381 Elden Street
Mail Stop 4090
Herndon, VA 20170

**Re: BOEM-2010-0038 Comments on Commercial Leasing for Wind Power on
the Outer Continental Shelf Offshore Maryland - Request for Interest**

Dear Mr. Bromwich:

On behalf of the Fisheries Survival Fund, we offer the following comments regarding the request for interest ("RFI") in commercial leases for the construction of wind energy projects on the Outer Continental Shelf ("OCS") offshore Maryland. 75 Fed Reg. 68,824 (Nov. 9, 2010). The Fisheries Survival Fund is comprised of a significant majority of the full-time limited access permit holders in the federal Atlantic scallop fishery. We are confident that other commercial fishing interests along the mid-Atlantic coast, particularly mobile gear fishermen, share these concerns.

The Federal Register notice requests comments and information provided by interested and affected parties that will be useful in the consideration of the RFI area for commercial wind energy leases. *Id.* Notably, this is a non-competitive proposal; and so, as described by the Department of Interior's Smart from the Start program, this is an especially abbreviated process.

We understand that, although state outreach to other user groups occurred over the summer, this was an essentially Maryland-centric process. For instance, formal consultations did not occur in conjunction with regional fishery management council meetings or processes; indeed, it appears that the Mid-Atlantic Fishery Management Council (the principal federally-chartered coordinating body for fisheries in the exclusive economic zone (EEZ) along the Mid-Atlantic) had little to no consultative role in any outreach conducted. We stress that the impacts of offshore wind on federally-permitted fishermen in the EEZ should be prevented, or at a

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minimum, mitigated, even if they are home-ported elsewhere in the Mid-Atlantic region. (We also note that BOEMRE's process is being conducted outside—and maybe calculatedly so—the President's high-profile Coastal and Marine Spatial Planning efforts.)

I. Fishing and Navigation

The area for the Maryland RFI is fished and navigated extensively by scallop, surf clam, quahog, fluke, squid, purse seine, and otter trawl fishermen. Federally licensed fishermen do not have unfettered access to fish in the EEZ. As outlined in species-specific fishery management plans under the Magnuson-Stevens Fisheries Conservation and Management Act, these fisheries are very often regulated in where and when they can fish. *See generally* 50 C.F.R. Part 648 (regulating gear, time, and areas fished). For its part, the scallop fishery is managed using an explicitly spatial rotational model; a constriction of scallop fishing areas not only limits fishing opportunities in that area, but decreases overall allowable catch levels. Commercial mobile gear fishermen, moreover, require space to navigate their gear through the water column and reach their target species in designated access areas. New uses, such as offshore wind farms, have the general potential to displace fishermen from their managed fishing grounds.

II. Right to Fish and Navigate

The federal government holds submerged lands in public trust. The Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), as a division of the Department of the Interior, regulates the leasing of submerged lands on the OCS to private persons and corporations for energy and mineral development. 43 U.S.C. § 1334(a). Under the Outer Continental Shelf Lands Act, congressional policy demands that "the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected" by the leasing of OCS' submerged lands. *Id.* § 1332(2). Fishermen, therefore, require additional protection than what is being proposed.

We understand from the consultation materials that only a segment of the areas identified by Maryland fishermen within the RFI area were identified by the State as a priority area. We do not see any analysis of why these few areas were chosen, except that other potentially conflicting uses also occurred in that corner of the area under consideration. Further, as explained above, it is not clear how much, if any, coordination occurred with the federal fisheries managers (not to mention affected stakeholders) that engage in coast-wide fisheries along the East Coast.

Fishermen also require working navigational equipment. The United States Coast Guard has confirmed offshore windmills disrupt radar equipment on vessels, creating navigational hazards. Such navigation challenges will create safety concerns and inefficiencies in the fisheries and increase fuel consumption.

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III. Recommendations

Because of the potential overlap in leased areas and areas where fishermen fish and navigate, we recommend that such overlaps be rigorously assessed before any submerged lands lease—even a preliminary lease—is issued. Even if the process to lease areas offshore Maryland may not be a competitive one, BOEMRE is still constrained to consider established, competing uses for the area in question. Offshore wind developers and regulators should mitigate the impact of offshore wind farms on fishermen. To do so, federal managers and wind developers should be required to do the following:

- Include a representative of the relevant Regional Fishery Management Council on the planning taskforce and conduct coast-wide outreach to affected users;
- Site wind farms to minimize conflict with existing uses; and
- Provide mitigation payments to fishermen for their cumulative losses (*e.g.*, impediments to navigation, increased fuel consumption, displacement, loss of fishing area, etc.), should they occur.

* * *

We appreciate this opportunity to comment on the Maryland RFI. We hope BOEMRE will take these recommendations into account as it undertakes the leasing of submerged lands. As always, please do not hesitate to contact us if we can provide any further information or answer any questions about this comments.

Sincerely,

/s/

David E. Frulla
Shaun M. Gehan
Andrew E. Minkiewicz

Counsel for the Fisheries Survival Fund