



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE

Habitat Conservation Division

James J. Howard Marine

Sciences Laboratory

74 Magruder Road

Highlands, NJ 07732

June 25, 2010

Ms. Erin C. Trager  
Projects and Coordination Branch  
Minerals Management Service  
Office of Offshore Alternative Energy Programs  
381 Elden Street, Mail Stop 4090  
Herndon, VA 20170



RE: Docket No. MMS-2010-OMM-0017  
Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS)  
Offshore Delaware – Request for Interest

Dear Ms. Trager:

We have reviewed the Request for Interest (RFI) for the leasing on OCS lands offshore of the State of Delaware published in the Federal Register on April 26, 2010. We have coordinated our review with the Mid-Atlantic Fisheries Management Council (MAFMC). The MAFMC is responsible for management of fisheries in federal waters which occur predominantly off the mid-Atlantic coast. States with voting representation on the Council include New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. We offer the following comments on the RFI:

### **Fishing Grounds**

Portions of the proposed lease sale area have been identified as important sport and commercial fishing grounds for a variety of species including striped bass (*Morone saxatilis*), mackerel (*Scomber scombrus*), weakfish (*Cynoscion regalis*), red hake (*Urophycis chuss*), whiting (*Merluccius bilinearis*), black sea bass (*Centropristis striata*), false albacore (*Euthynnus alletteratus*), bonito (*Sarda sarda*), skipjack tuna (*Katsuwonus pelamis*), bluefin tuna (*Thunnus thynnus*), bluefish (*Pomatomus saltatrix*), summer flounder (*Paralichthys dentatus*), tautog (*Tautoga onitis*), menhaden (*Brevoortia tyrannus*) and surf clam (*Spisula solidissima*) (Long and Figley 1981).

A portion of the area identified in the RFI includes an important and highly valued recreational fishing area known as the "Old Grounds." The Old Grounds is known for its rocky bottom and corals. It is heavily used by recreational fisherman and commercial fishing charter boats fishing for winter flounder (*Pseudopleuronectes americanus*), summer flounder (fluke), black sea bass, tautog and red hake (ling) (MAFMC 2010, DNREC 2010). Fishing reports from a numbers of sources including the States of Delaware and New Jersey, bassbarn.com, delawarebayfishing.com, fishlewes.com, njangler.com and tidalfish.com all report use of the area by recreational fisherman and charter boats catching winter flounder, black sea bass and other species. Freeman and Walford (1974) indicate that the Old Grounds is



also fishing grounds for bluefish, bonito, dogfish (*Squalus acanthias*), menhaden, and Atlantic cod (*Gadus morhua*).

This valuable fishing ground is located offshore of the Indian River Inlet between the following coordinates:

Latitude: 038-38-20 to 038-32-00

Longitude: 074-52-00 to 074-47-00

These coordinates appear to correspond to MMS lease block 6424 on the Delaware RFI. As shown on the attached maps, to the east and north of the Old Grounds are several of areas identified by the State of New Jersey as commercial and recreational fishing grounds (Long and Figley 1982). These areas identified as Mussel Bed, Inside Mud Hole, Middle Mud Hole, and Triple Wrecks and Outer Mud Hole. They are also shown on the Angler's Guide to the United States Atlantic Coast, Section IV (Freeman and Walford 1974). Mussel Bed and the Mud Holes appear to be located in Blocks 6374, 6375 and possibly 6425.

We recommend that the area within the above coordinates (Old Grounds), and those shown as fishing grounds on the attached maps including the Mussel Bed, Inside Mud Hole, Middle Mud Hole, Outer Mud Hole and Triple Wrecks be removed from the potential lease area in order to preserve these important fishing grounds and to prevent user conflicts.

#### **Magnuson-Stevens Fishery Conservation and Management Act (MSA)**

The potential lease area has been designated as essential fish habitat (EFH) for more than 30 federally managed species of fish and shellfish covered by 10 fishery management plans (FMPs), under the auspices of the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, South Atlantic Fishery Management Council or NMFS. Managed species for which EFH has been designated in the potential lease area include: Atlantic butterfish (*Peprilus triacanthus*), Atlantic cod, Atlantic mackerel, Atlantic sea herring (*Clupea harengus*), bluefish, black sea bass, cobia (*Rachycentron canadum*), king mackerel (*Scomberomorus cavalla*), monkfish (*Lophius americanus*), red hake, silver hake (whiting), scup (*Stenotomus chrysops*), Spanish mackerel (*Scomberomorus maculatus*), spiny dogfish, summer flounder, windowpane flounder (*Scophthalmus aquosus*), winter flounder, witch flounder (*Glyptocephalus cynoglossus*), yellowtail flounder (*Limanda ferruginea*), winter skate (*Leucoraja ocellata*), little skate (*Leucoraja erinacea*), clearnose skate (*Raja eglanteria*), surf clam and ocean quahog (*Artica islandica*). EFH for highly migratory species designated in the area includes: swordfish (*Xiphias gladius*), bluefin tuna, skipjack tuna, Atlantic angel shark (*Squatina dumerili*), Atlantic sharpnose shark (*Rhizoprionodon terraenovae*), blue shark (*Prionace glauca*), dusky shark (*Carcharhinus obscurus*), sandbar shark (*Carcharhinus plumbeus*), sand tiger shark (*Odontaspis taurus*), scalloped hammerhead shark (*Sphyrna lewini*), shortfin mako shark (*Isurus oxyrinchus*) and tiger shark (*Galeocerdo cuvieri*).

The lower and middle portions of the Delaware Bay have been designated as a Habitat Area of Particular Concern (HAPC) for sandbar sharks due to the presence of important pupping and nursery habitat. Also, it should be noted that dusky shark and sand tiger shark have been designated as Species of Concern by NOAA. Species of Concern are those species about which NOAA's National Marine Fisheries Service (NMFS) has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the Endangered Species Act.

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) mandates Federal agencies to consult with NMFS on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. The EFH regulations, 50 CFR Section 600.920, outline that consultation procedure. The EFH final rule published in the Federal Register on January 17, 2002 defines an adverse effect as;

“any impact which reduce the quality and/or quantity of EFH.” The rule further states that:

An adverse affect may include direct or indirect physical, chemical or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystems components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from action occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The required contents of an EFH assessment include: 1) a description of the action; 2) an analysis of the potential adverse effects of the action on EFH and the managed species; 3) the Corps’s conclusions regarding the effects of the action on EFH; 4) proposed mitigation, if applicable. Other information that should be contained in the EFH assessment, if appropriate, includes: 1) the results of on-site inspections to evaluate the habitat and site-specific effects; 2) the views of recognized experts on the habitat or the species that may be affected; 3) a review of pertinent literature and related information; and 5) an analysis of alternatives to the action that could avoid or minimize the adverse effects on EFH.

We look forward to continued coordination with MMS on the development of the required EFH assessment documents. Should you have any questions regarding the information presented about EFH or the EFH consultation process, please contact Karen Greene of the Habitat Conservation Division at 732 872-3023 or [karen.greene@noaa.gov](mailto:karen.greene@noaa.gov).

#### **NMFS Listed Species**

Federally endangered North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) are found seasonally in the waters off of Delaware included in the RFI. North Atlantic right whales are likely to occur in the identified waters between November 1 and April 30. Humpback whales feed during the spring, summer, and fall over a range that encompasses the eastern coast of the United States and individuals may be found off the coast of Delaware year round. Fin whales may also be present off the coast of Delaware year round. Sei (*Balaenoptera borealis*) and sperm (*Physeter macrocephalus*) whales may also be present in the deeper offshore waters included in the RFI.

Listed sea turtles are also found seasonally in the waters off of Delaware identified in the RFI, typically between April and November. The species that are likely to be present include threatened loggerhead (*Caretta caretta*) sea turtles as well as endangered Kemp’s ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*) and green (*Chelonia mydas*) sea turtles.

#### **Section 7 Consultation**

The construction and operation of a wind farm off the coast of Delaware may affect fish populations, marine mammals and sea turtles. Under Section 7(a) (2) of the ESA, each Federal agency is required to insure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered or threatened species. Consultation would be necessary for any permits, authorizations, leases, easements or right of ways issued by the US Army Corps of Engineers or the Minerals Management Service.

### **Technical Assistance for Candidate Species**

Candidate species are those petitioned species that are actively being considered for listing as endangered or threatened under the ESA, as well as those species for which NMFS has initiated an ESA status review that it has announced in the *Federal Register*.

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) occur in the coastal waters identified in the RFI. In 2006, NMFS initiated a status review for Atlantic sturgeon to determine if listing as threatened or endangered under the ESA is warranted. The Status Review Report was published on February 23, 2007. NMFS is currently considering the information presented in the Status Review Report to determine if any listing action pursuant to the ESA is warranted at this time. If it is determined that listing is warranted, a final rule listing the species could be published within a year from the date of publication of the proposed rule. Currently, NMFS expects to publish a finding as to whether any listing action is appropriate by the Fall of 2010. As a candidate species, Atlantic sturgeon receive no substantive or procedural protection under the ESA; however, NMFS recommends that project proponents consider implementing conservation actions to limit the potential for adverse effects on Atlantic sturgeon from any proposed project. Please note that once a species is proposed for listing, the conference provisions of the ESA apply (see 50 CFR 402.10). As the listing status for this species may change, NMFS recommends that the project proponent obtain updated status information from NMFS prior to the submittal of any applications.

### **Marine Mammals**

Several species of marine mammals are common residents or occasional visitors to the waters identified in the RFI. All marine mammals receive protection under the Marine Mammal Protection Act (MMPA) of 1972, as amended. The MMPA prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. NMFS may issue permits under MMPA Section 104 (16 U.S.C. 1374) to persons that authorize the taking or importing of specific species of marine mammals. As previously indicated, several marine mammals are likely to occur in the project area and thus could be affected by a proposed offshore wind project. It is recommended that any project proponent discuss permitting needs with NMFS' Office of Protected Resources Permits, Conservation, & Education Division (301-713-2289). Information on the MMPA permitting process can also be found online at: <https://apps.nmfs.noaa.gov/questionnaire/questionnaire.cfm>.

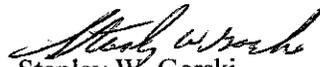
We encourage MMS and any potential applicants to work with NMFS as project plans become more developed to identify and evaluate the potential for impacts to the species under NMFS' jurisdiction. Informal discussions can greatly facilitate consultation. If any applicant intends to conduct biological surveys at the project site, we encourage coordination with NMFS Northeast Fisheries Science Center (NEFSC). Please contact Dr. Richard Merrick at NMFS NEFSC (508-495-2291) to discuss any planned biological surveys. Should you have any questions regarding the information presented on listed species or about the ESA Section 7 process, please contact Julie Crocker of NMFS Protected Resources Division at (978)282-8480 or [julie.crocker@noaa.gov](mailto:julie.crocker@noaa.gov).

### **Conclusion**

We recognize that the MMS is aware of their obligations regarding consultation with NMFS under the MSA, ESA and MMPA. We look forward to continued coordination on these issues throughout the leasing process and through the development of the required National Environmental Policy Act (NEPA) documents. We hope to be able to meet with MMS in the near future to discuss how these required consultations fit into MMS's leasing and NEPA process. If you have any questions or need additional

information, please contact Karen Greene at 732 872-3023 ([karen.greene@noaa.gov](mailto:karen.greene@noaa.gov)) or Stan Gorski at 732 872-3037 ([stanley.w.gorski@noaa.gov](mailto:stanley.w.gorski@noaa.gov)) of the Habitat Conservation Division or Julie Crocker at 978 282-8480 ([julie.crocker@noaa.gov](mailto:julie.crocker@noaa.gov))

Sincerely,

  
Stanley W. Gorski  
Field Offices Supervisor

cf: PRD – J. Crocker  
MAFMC- T. Hoff  
NEFMC  
ACOE - Phila. District, L. Slavitter

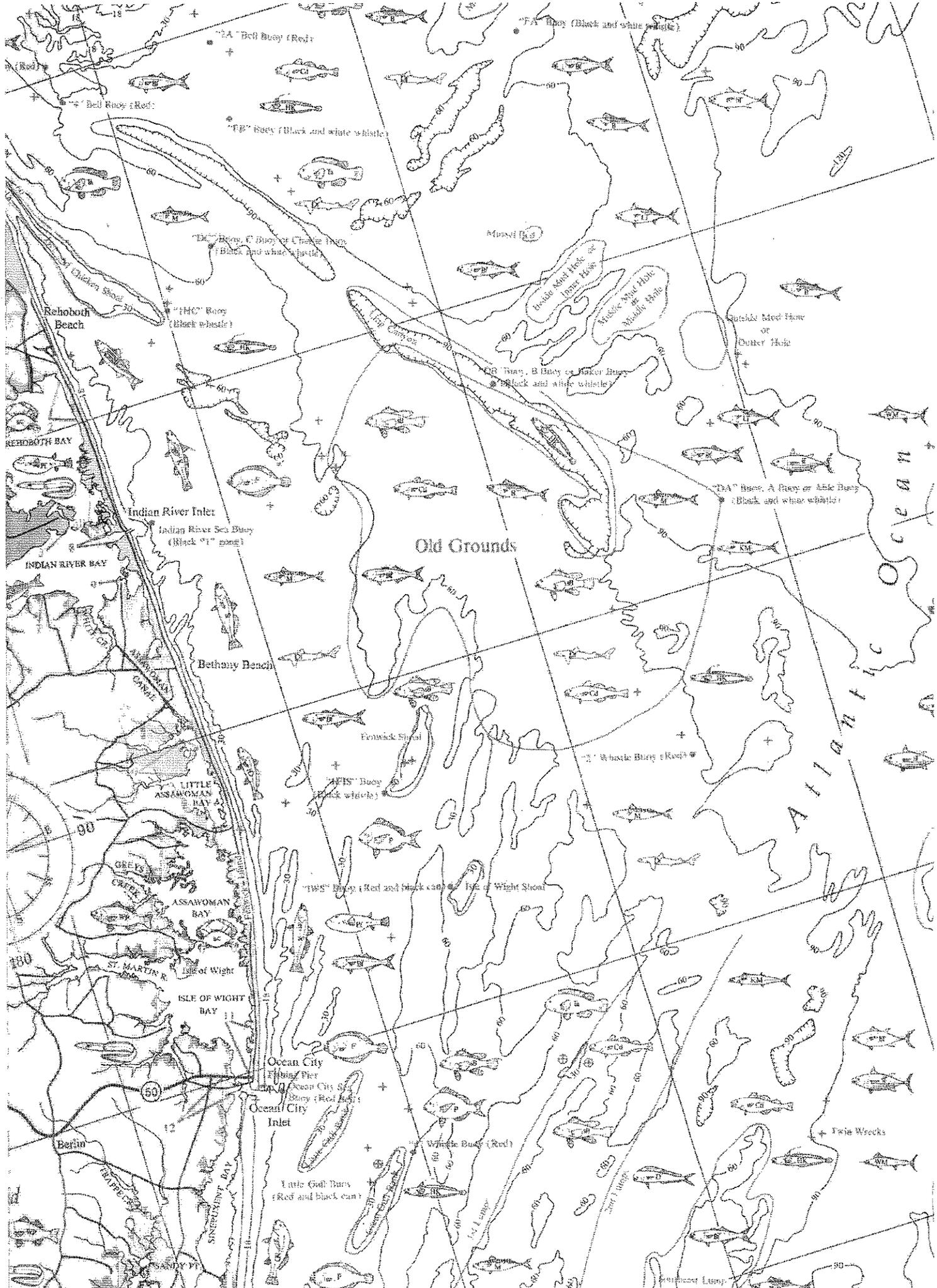
## Literature Cited

Freeman, B.L. and L.A. Walford. 1974. Angler's guide to the United States Atlantic Coast fish, fishing grounds and fishing facilities. Section IV. Delaware Bay to False Cape, Virginia. United States Department of Commerce. National Oceanic and Atmospheric Administration. National Marine Fisheries Service. Seattle, WA. U.S. GPO Stock No. 0320-00072.

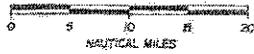
Long, D. and W. Figley. 1981. New Jersey's Recreational and Commercial Ocean Fishing Grounds. New Jersey Department of Environmental Protection. Division of Fish and Wildlife. Marine Fisheries Administration. Bureau of Marine Fisheries. Technical Series 82-1. Trenton, NJ

MAFMC. 2010. Letter from Richard Robins, Chairman, Mid-Atlantic Fisheries Management Council to Stan Gorski, NMFS Habitat Conservation Division dated June 17, 2010.

DNREC. 2010. Delaware Department of Natural Resources and Environmental Control. Division of Fish and Wildlife. Fishing Reports. [www.fw.delaware.gov/Fisheries/Pages/FishingReport.aspx](http://www.fw.delaware.gov/Fisheries/Pages/FishingReport.aspx).



**NEW JERSEY'S SPECIFIC  
SPORT AND COMMERCIAL  
FISHING GROUNDS**



WRECK ○ BUOY ⊕  
 DEPTH CONTOURS ARE IN FATHOMS  
 1 FATHOM = 6 FEET  
 1 FATHOM = 1.83 METERS

THIS CHART IS DESIGNED FOR NAVIGATION, REFER TO NOAA CHARTS 12500, 12300

