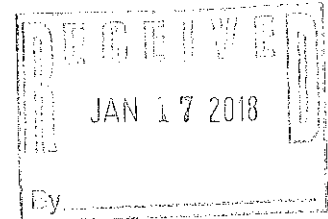


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January 17, 2018

The Trustees of the Freeholders and Commonalty of the Town of East Hampton  
267 Bluff Rd.  
Amagansett, N.Y. 11930

Members of the Board,

Please find attached a stakeholder's position statement regarding Deepwater Wind's proposed 90MW offshore wind farm project known as South Fork Wind.

As you know, Deepwater Wind is proposing to land their project's export power cable at Beach Lane in the hamlet of Wainscott after passing under a section of beach that is owned by the Trustees. As proposed, this project would require the granting of an easement by the Trustees and the developer has recently offered the Trustees a benefit package to facilitate that easement.

As the attached statement will explain, the proposed project's 138,000 volt export power cable, regardless of where it is landed, raises serious concerns for those who are engaged in the nearshore fisheries that operate in close proximity to that cable. In addition to the attached statement, the Trustees have hosted numerous public meetings where the verbal testimonies of several of our stakeholders have been heard along with the testimonies of others who also have concerns regarding the potential impact of DW's project.

It is our sincere hope that the Trustees will give our position the utmost consideration in formulating their position in regards to Deepwater Wind's proposal.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gary Cobb". The signature is written in a cursive style with a long, sweeping underline.

Gary Cobb, as agent for the stakeholders listed within

# **Stakeholders Position Statement**

## **Re: Deepwater Wind's South Fork Wind Project**

Prepared by request for

**The Trustees of the Freeholders and Commonalty  
of the  
Town of East Hampton**

By  
Gary Cobb, as agent for the listed stakeholders

# Table of Contents

Contents	Pg. 1
Introduction	Pg. 2
<ul style="list-style-type: none"><li>• The Project</li><li>• The Stakeholders</li></ul>	
The Stakeholders Position	Pg. 3
Discussion of claims	Pg. 4 -13
Conclusion	Pg. 14

## **Introduction**

### The Stakeholders

The list of stakeholders who have taken the position that is the subject of this document includes but is not limited to the following individuals:

**Paul Lester, Daniel Lester, Nathaniel Miller, James Bennett, Scott Daniels, Douglas Rigby, Andy Rigby, Edward McCloskey, L.J.Arceri, Wayne Fenelon, Thomas Walcot, Brian Pardini, Stuart Heath, Mitchell Fulcher Jr., Brian Gosman, Asa Gosman, Richard Lester, Robert Lester, Patrick Sullivan, Bruce Hulse, Stephen Gauger, Michael Havens, Emma Havens, Charles Niggles, Claire Lester-Olszewski, Alfred Schaffer, William Schultz, Mitchell Lester, Brentford Bennett, Nick Havens, Kevin Miller, Anthony Scaffedi, William Carmen, Diane Lester, Kelly Lester**

### The Project

The South Fork Wind Farm (SFWF) is a planned offshore wind farm, located 30 miles east of Montauk, that will consist of approximately 15 wind turbines and a subsea transmission system that will deliver energy to the Long Island Power Authority's (LIPA) grid at LIPA's Buell Lane, East Hampton substation. The developer of the project, Deepwater Wind (DW), has proposed that the project's 18 inch diameter, 138,000 volt, export cable will be jet plowed into approximately 50 miles of federal and New York State (NYS) controlled sea floor, from its origin on the Outer Continental Shelf (OCS), near Cox Ledge, before being installed in an approximately 2,000 ft. long x 24 in. diameter plastic conduit that is to be horizontally directionally drilled (HDD) under an area of beach owned by the East Hampton Town (EHT) Trustees before ultimately being landed in an EHT road right-of-way at Beach Lane in the hamlet of Wainscott.

## **The Stakeholders Position**

As external economic stakeholders in the proposed DW SFW project who are engaged in or profit from various aspects of New York State's (NYS) and East Hampton Town's (EHT) historically significant and long standing nearshore fisheries and as Public Service Electric & Gas Long Island (PSEGLI) ratepayers, we stand unanimously opposed to the project based on the following claims:

- A highly questionable need for any new grid connected energy generation resources to meet the current or foreseeable future demands of PSEGLI customers.
- A failure by the developer to adhere to the Bureau of Energy Management's (BOEM) best management practices (BMP) regarding the development and implementation of a local Fisheries Communication and Outreach Plan.
- A lack of data regarding the potential impacts that the proposed project's export cable might have on nearshore fish populations that represent a substantial portion of income for our local Baymen, their associates, the wholesale, retail and restaurant markets that they supply and also for NYS's commercial and recreational fishing industries as a whole.

## Discussion of 1st claim

- A highly questionable need for any new grid connected energy generation resources to meet the current or foreseeable future demands of PSEGLI customers.

On June 24th, 2015, PSEGLI, as agent of and acting on behalf of LIPA, issued a request for proposals (2015 RFP) to acquire up to 169 MW of Load Reduction and/or Power Production resources to meet the expected peak load requirements until at least 2022 in the South Fork, and until 2030 in the east of Buell subarea in Long Island. Successful bidders of Power Production resources would enter a 20-year power purchase agreement (PPA) with the Long Island Power Authority (LIPA). (ref. <https://www.psegliny.com/page.cfm/AboutUs/Proposals/SouthFork>).

DW's SFW project was included in the winning proposal and LIPA approved a 20 year PPA with DW on January 25, 2017.

Subsequent to LIPA approving the PPA the New York Independent System Operator (NYISO), a not-for-profit corporation responsible for operating NYS's bulk electricity grid, reported in their 2016 Comprehensive Reliability Plan, issued in April 2017, that " no new resources need to be added, meaning that the bulk power system is expected to be capable of meeting peak electrical demand even if a contingency event occurs, such as the loss of a large generator." (ref. NYISO, Power Trends, New York's Evolving Electric Grid, 2017, pg. 22).

Referring to that report PSEG's own 2017 Integrated Resource Plan (IRP) reported that "The zone K, NYISO peak load forecast for 2030 has declined by over 24% (i.e. 1,699 MWs) when comparing the 2013 forecast to the 2017 forecast." indicating that the 2013 projections were in fact inaccurate and that peak demand was expected to continue on a downward trend. (ref. pg. 4)

The New York State Coastal Management Program's (NYSCMP), Policy 27, Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location, mandates that "A determination of public need for energy is the first step in the process for siting new facilities. The directives for determining this need are contained primarily in Article 6 of the New York State Energy Law. That Article requires the preparation of a State Energy Plan. With respect to transmission lines and the siting of major electric generating facilities, Articles 7 and 10 of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for providing additional electric capacity." (ref. pg. 40)

EHT's own Local Waterfront Revitalization Plan (LWRP), Section XI, POLICY 27, explains that "A determination of public need for energy is the first step in the process for siting new facilities" (ref.pg.XI-1).

## Summary

The DW SFW project proposal and subsequent PPA with LIPA resulted from a 2015 PSEG RFP that was based on circa 2013 data that projected a need for new peak load resources to meet future demand on the South Fork. It has since been determined that the 2013 projections were in fact inaccurate and that peak demand was expected to continue on a downward trend in the 5 year period prior to the planned commissioning (2017-2022) and throughout the the first half (2022-2032) of the wind farms 20 year expected life span. These facts at best make a current public need for the DW SFW project highly questionable.

## Discussion of 2nd claim

- A failure by the developer to adhere to the Bureau of Energy Management's (BOEM) best management practices (BMP) regarding the development and implementation of a local Fisheries Communication and Outreach Plan.

Under the National Environmental Policy Act (NEPA), the U.S. Department of the Interior (US DOI), Bureau of Ocean Energy Management (BOEM), is required to assess the potential environmental and socioeconomic impacts of offshore wind energy development. To accomplish that goal BOEM developed 5 best management practices (BMP) for offshore wind developers aimed at reducing potential conflicts between fishing and wind projects.

BMP No. 1, Fisheries Communication and Outreach Plan, requires that "The lessee will develop and implement a local Fisheries Communication and Outreach Plan (Plan) with at least two people responsible for communications between the lessee and the fishing community. These positions include a fisheries liaison (FL), who works for the lessee, and a fisheries representative (FR), who would be nominated by the fishing industry and may be funded by the lessee but is not directly employed by the lessee. The functions of the FL and the FR would be communication planning, identification of communication methods and frequency, outreach meeting facilitation and support, and other tasks, as needed, for engaging and informing local fishermen during all project phases. (ref. OCS Study BOEM 2014-654, pg iii)

BOEM is the designated lead agency for the SFW project.

DW's proposed SFW project's planning phase did not include any FRs from any of the nearshore fisheries that operate within the nearshore project area.

### Summary

DW's failure to include nearshore fisheries representatives (FR) in the planning phase of the SFW project is contrary to the lead agency's (BOEM) BMPs for assessing environmental and socioeconomic impacts of offshore wind development as required by the NEPA.



## Discussion of 3rd claim

- A lack of data regarding the potential impacts that the proposed project's export cable might have on nearshore fish populations that represent a substantial portion of income for our local Baymen, their associates, the wholesale, retail and restaurant markets that they supply and also for NYS's commercial and recreational fishing industries as a whole.

The National Oceanic and Atmospheric Administration (NOAA) has designated the offshore and inshore areas of the proposed export cable route as essential fish habitat (EFH) for numerous species of finfish and shellfish that are economically important to the commercial and recreational fishing industries. EFH was defined by the U.S. Congress in the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity."

The nearshore section of the export cable installation presents a shallow water column that has historically been a productive and economically important source of income for EHT's ocean dory fishery which primarily targets mature Striped Bass, Bluefish and Weakfish.

The ocean dory fishery is no longer practiced anywhere else except on the Outer Banks of North Carolina. This traditional fishing method is a key element of a unique way of life and a cultural as well as an economic resource. The evolution of the inshore fisheries from aboriginal weirs and colonial whaling (the first documented in the United States) to the skilled baymen of today are part of East Hampton's cultural heritage, with generations of local families working the water since colonial times. [ref. EHT Local Waterfront Revitalization Program (LWRP), Policy 10]

DW has neglected to engage any of the stakeholders who are engaged in the ocean dory fishery.

The proposed export cable landing site at Beach Lane, Wainscott is approximately 1,500 feet southwest of the mouth of Georgica Pond, a coastal lagoon, which has historically been one of EHT's most productive and economically important sources for commercial landings of Blue Claw Crab, White Perch, American Eel, Atlantic Silversides and River Herring. All of the named species are migratory and NOAA has listed River Herring (Alewives) as a "species of concern".

In addition to the economically important migratory species of food and shellfish mentioned, the nearshore waters that surround the proposed export cable landing site at Beach Lane also support a variety of commercially valuable migratory bait fish populations that also serve as food for the larger fish who follow them along the coast during their bi-annual migrations. Among these migratory baitfish species are Bay Anchovies, Sand Eels, Mullet, Atlantic Mackerel, Atlantic Needlefish, Blueback Herring, Atlantic Herring, Shad, Scup and juvenile class fishes of the previously mentioned food fish species.

The NYS Department of Environmental Conservation (DEC) and Department of State's (DOS) 2017-2027 Ocean Action Plan (OAP) recognizes that "Winter flounder, river herring, American shad, American lobster and American eel are all species historically abundant in New York waters that are currently experiencing extreme population lows." (ref. Pg. 11) and has defined specific objectives and action items that should be taken to achieve the goal of ensuring the ecological integrity of the ocean ecosystem.

The OAP includes short term steps (2 years) that should be taken to accomplish the protection and restoration of sensitive inshore, offshore and estuarine habitats and specifies that "DEC should identify and DOS should designate additional marine areas within state waters (0-3 nm) to be incorporated into the New York Coastal Management Program. Specifically, evaluate habitats considered important for ... species of greatest conservation need (SGCN) like the American eel and river herring that use both offshore and inshore habitats... and use this information to steer potential projects away from these designated habitats." (ref. Pg. 23)

EHT's LWRP addresses the economic importance of our local commercial fishing industry as a whole in Commercial Fishing Policy 10 which highlights that "The commercial fishing industry is one of the few year-round industries in the Town providing permanent employment opportunities at a level sufficient to support a family in an area with a relatively high cost of living. Additionally, the dollars generated by the commercial fishing industry are 100% return, i.e. few of the dollars are exported out of Town for the "cost" of the fishery resources, and most are spent locally. " (ref. pg. IV-1)

The EHT LWRP specifically indicates that EHT's inshore fisheries "... have a significant economic role, and provide a great variety of species for local market. Inshore fishing and shellfishing in the harbors and bays, coastal ponds, and along the ocean beaches, are primarily carried out by small trawlers and by baymen using small boats and traditional fishing methods such as pound traps, seines, handlines, fykes, gill nets, pots, dredges, spears, tongs, and rakes." (ref. pg. IV-2).

NYSCMP, Policy 29, mandates that "The development of offshore uses and resources, including renewable energy resources, shall accommodate New York's long-standing ocean and Great Lakes industries, such as commercial and recreational fishing and maritime commerce, and the ecological functions of habitats important to New York" (ref. pg. 41)

The NYSCMP explains that "New York seeks to accommodate longstanding offshore industries, such as commercial and recreational fishing and maritime commerce, while at the same time ensuring the ecological functioning of habitats important to New York, as the State considers the need for new offshore resource development and uses to occur... Proponents of offshore activities should use available offshore data to identify and reduce the potential effects on New York's coastal resources, activities and uses. Project proponents should consider the compatibility with, and seek to accommodate, the existing presence of resources, activities and uses that are important to the coastal area of New York State." (ref. pg. 41-42)

NYSCMP, Policy 7, Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats, explains that "In order to protect and preserve a significant habitat, land and water uses or development shall not be undertaken if such actions destroy or significantly impair the viability of an area as a habitat" Policy 7 also states that "The range of physical, biological and chemical parameters which should be considered include but are not limited to "Biological parameters, such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, behavioral patterns and migratory patterns" (pg. 16-18)

The New York State Energy Research and Development Authority's (NYSERDA) Report 17-25, New York State Area for Consideration for the Potential Locating of Offshore Wind Energy Areas, indicates that the proposed cable route through the south shore will bisect an area of essential fish habitat (EFH) within the NY offshore wind study area where fish biomass tends to be highest overall throughout all life cycles (ref. pg. 15).

The development of NYSERDA's report included the examination of "potential risks to sensory disturbances of fish, habitat impacts and changes to local fishing practices" (NYSERDA REPORT 17-25, pg. 15)

Ultimately the area that contains the proposed cable route and landing was not included as an area to be considered for offshore wind development by NYSERDA.

DW plans to install the export cable's nearshore conduit via HDD under approximately 2,000 linear feet of nearshore EFH. The HDD will necessitate the installation of a temporary cofferdam in the nearshore zone which will require pile driving into and dredging of the sea bed. The HDD procedure uses bentonite, a fine clay material as a drilling lubricant. Although bentonite is non-toxic, a potential environmental risk associated with conducting HDD under sensitive features occurs when bentonite is released to the surface during construction (referred to as hydrofracture or "frac-out"). Benthic invertebrates, aquatic plants and fish and their eggs can be smothered by the fine particles if bentonite is discharged into a waterway.

The EHT LWRP has identified Georgica Pond as an area of locally significant coastal fish and wildlife habitat (SCFWH) and in addressing fish and wildlife value states "The opening and closing of the barrier beach allows Georgica Pond to function as a marine estuary which provides a spawning ground and nursery area for anadromous fish such as alewives, and maintains salinity for blue claw crab, the most important fishery in the pond. It provides an essential step in the food chain and is thus important to local fish populations. White perch as well as many bait fish, such as silversides, spawn in the pond. The coordination of beach opening with spawning times determines the effectiveness of this system." (ref. Pg. III-49)

In discussing impact assessments the EHT LWRP states that "Synchronizing the opening of the pond to the ocean with spawning times affects local populations of white perch, blue crab and several species of baitfish. It may, however, also open at random in response to coastal storms or high rainfall. In addition, any activity that degrades water quality, increases turbidity, changes water depths, etc. would have a significant impact on fish and wildlife resources." (ref. pg. III-49)

DW has indicated that their nearshore construction activities will be scheduled to occur for between 12 and 24 hours per day "after Labor Day and before Memorial Day" suggesting that no consideration has been given to the traditional mid-April and mid-October opening schedules of nearby Georgica Pond, which are scheduled to accommodate seasonal fish migrations and spawning activities, or the February through June spawning activities of winter flounder which occurs throughout the nearshore zone.

The Oslo and Paris (OSPAR) Commissions 2009 document, Assessment of the environmental impacts of cables, states that "Magnetic fields generated by cables may impair the orientation of fish and marine mammals and affect migratory behaviour. Field studies on fish provided first evidence that operating cables change migration and behaviour of marine animals (Klaustrup, 2006). Marine fish use the earth's magnetic field and field anomalies for orientation especially when migrating (Fricke, 2000). Elasmobranch fish can detect magnetic fields which are weak compared to the earth's magnetic field (Poléo et al., 2001; Gill et al., 2005) (ref. pg. 10).

As reported by the Bureau of Energy Management (BOEM) in an OCS Regulation and Enforcement standards study (OCS Study BOEMRE 2011-09) EFFECTS OF EMFS FROM UNDERSEA CABLES ON ELASMOBRANCHS AND OTHER MARINE SPECIES offshore wind farm export cables have the potential to impair migration of certain fish species. Included in the BOEM EMF study were numerous references to EMF studies that have been conducted in relation to export cables from European wind farms that raise serious concerns for our nearshore fisheries. To wit "Distribution of four species (Baltic herring [Clupea harengus membras], common eel [A. anguilla], Atlantic cod [Gadus morhua], and flounder [Platichthys flesus]) was significantly different between the east and west sides of the cable and the authors attributed this to partial impairment of migration...Common eels appeared to depart the area when they encountered the cable..." (ref. pg.20).

In December of 2015, NIRAS, a consulting firm based in the UK, reported that "Gill and Bartlett (2010) reviewed the current knowledge on the potential effects of EMF on the European eel, salmon and sea trout. They concluded that the EMF from subsea cables may interact with migrating eels and possibly salmon, if their migration routes take them over the cables, particularly in shallow water". (ref. NIRA, Subsea Cable Interactions with the Marine Environment, Expert Review and Recommendations Report, pg. 26).

In October of 2016, WaterProof, a consulting firm based in The Netherlands, completed a desk study on the potential effects of EMFs on the marine environment and concluded that "Sufficient evidence exists in published literature to conclude that marine species can be affected by anthropogenic EMFs. This makes it a human impact that cannot be denied and should be considered in future environmental impact studies. Much is unknown about the effects of EMFs on the marine ecosystem, but considering the vast upcoming increase in offshore wind farms and cables connecting those to the land, further research into the impacts of EMFs on marine life is essential."(ref. Potential effects of electromagnetic fields in the Dutch North Sea Phase 1: Desk Study, pg.4)

On August 6, 2017 the Department of the Interior's (DOI), Bureau of Safety and Environmental Enforcement (BSEE), issued a RFP for an EMF study on the American Eel . The solicitation explained that "The effects of Electromagnetic Field (EMF) emitted from submarine cables on marine organisms are of high concern to commercial and recreational fishermen throughout New England and the mid-Atlantic. While there are some studies, particularly from Europe, that indicate buried alternating current (AC) cables have little to no detectable effects on marine species, there is still concern regarding effects to important U.S. commercial fishery species from transmission cables." (ref. DOI solicitation M17PS00057).

The BOEMRE 2011-09 EMF study also highlighted data gaps and research priorities and recommended that "Regulatory agencies should require that details of the cable design, anticipated cable depth and layout, magnetic permeability of the cable sheathing, and loading (amperes) be provided early in the permitting process to allow complete determination of EMF potentially generated by the cable" (ref. pg.11).

In an article written by Christopher Walsh, that appeared in the East Hampton Star on March 30, 2017, DW's VP for development, Clinton Plummer, was quoted as stating that he believes EMF to be "pseudoscience". Several months later, at the December 11, 2017 EHT Trustees meeting DW's President, Chris Van Beek, stated " I'm a construction guy...we don't like to be stopped by all kinds of science."

DW has provided no data relevant to the EMFs of their 18-inch export cable or any modeling of what effects it might have on any of the species that inhabit our local nearshore zone and are economically important to our local nearshore fisheries.

The National Oceanic and Atmospheric Administration (NOAA) has funded the Atlantic States Marine Fisheries Commission (ASMFC) to work with the Mid-Atlantic Fisheries Management Council (MAFMC) the New England Fisheries Management Council (NEFMC) the Atlantic Coastal Fish Habitat Partnership and The Nature Conservancy to implement a coordinated coast-wide effort to proactively conserve River Herring and address data gaps. (ref. NOAA Fisheries, River Herring Conservation Plan.)

The ASMFC's, Interstate Fishery Management Plan for American Eel, indicates that each state should establish windows of compatibility for activities known or suspected to adversely affect American eel life stages and their habitats.

The only study of fish populations that DW has referred to in regards to the proposed SFW project are ongoing demersal trawl surveys that are being undertaken specifically in the Block Island Wind Farm.

Demersal trawl surveys accomplished on the OCS, approximately 50 miles from the proposed Wainscott cable landing, do not provide any useful fish population data that is relevant to the nearshore fisheries, ASMFC's efforts to conserve River Herring or any data that might prove useful to the Interstate Fishery Plan aimed at managing the American Eel.

## Summary

NOAA, NYS and EHT have all recognized the area of the proposed cable route as EFH necessary to fish for spawning, breeding, feeding or growth to maturity.

NYS DEC and DOS recognize that inshore habitats for American Eel and River Herring need to be evaluated and that potential projects should be steered away from these habitats.

OSPAR, BOEM, BSEE have all recognized that subsea power cables pose potential risks to migratory fish .

Numerous studies regarding the effects of subsea power cable EMF on the marine environment have concluded that further site, project and species specific research into the impacts of EMF on marine life is imperative.

DW 's proposed nearshore construction and operations activities have the potential to interfere with the seasonal migration and spawning activities of several fish species that are important elements of the nearshore fisheries.

DW has neglected to engage any of the stakeholders involved in EHT's nearshore ocean dory fishery.

There is no indication that any site specific or project specific data that is needed to properly assess any potential impacts that DW's project might have on our economically important nearshore fisheries has ever been undertaken nor has DW provided any data that might support a relative modeling.

## **Conclusion**

We believe that it would be irresponsible for any local government agency to support any environmentally invasive project that was based on questionable public need.

We also believe that it would be equally irresponsible for any local government agency to support a project if that project's developer had failed during the planning phase to adhere to the best management practices recommended by the project's lead agency.

More importantly, we believe that it would be indefensible for any local government agency to support a project if that project's developer had failed to provide any site or project specific data that was critical to assessing that project's potential impacts on a fragile marine environment and the livelihoods of those who depend on that environment.

In full consideration of the foregoing treatise we sincerely hope that the Trustees of the Freeholders and Commonalty of The Town of East Hampton will deny granting an easement for the proposed Beach Lane cable landing and any subsequent cable landing proposals that fall within Trustee jurisdiction until such time that relevant site and project specific data, along with proof of an existing public need, have been made available with the results subjected to thorough and qualified independent and public reviews.