

Empire Wind 1
Case 21-T-0366
Appendix CC
Fisheries Management Plan

REV1

Empire Wind 1 Project

Case #21-T-0366

Fisheries Management Plan

Prepared for:



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Attachments

Attachment 1 – Fishing Conflict Prevention/Hazard Notification Claim Procedure and Application

Attachment 2 – Notice of Appeal Form

ACRONYMS AND ABBREVIATIONS

BOEM	Bureau of Ocean Energy Management
CAR	corrective action reporting
Con Edison	Consolidated Edison Company of New York, Inc
Certificate	Certificate of Environmental Compatibility and Public Need
DEIS	Draft Environmental Impact Statement
DPS	New York State Department of Public Service
Empire	Empire Offshore Wind LLC
EM&CP	Environmental Management and Construction Plan
EW1	Empire Wind 1
FMP	Fisheries Management Plan
HVAC	high voltage alternating current
kV	Kilovolt
km	Kilometer
Lease Area	Renewable Energy Lease Area OCS-A 0512
mi	Mile
MRR	materials receiving report
NCR	non-confirming reporting
nm	nautical mile
NYS	New York State
NYSERDA	New York State Energy Research and Development Authority
NYISO	New York Independent System Operator, Inc.
NYSDOS	New York State Department of State
POI	point of interconnection
PSL	Public Service Law
SBMT	South Brooklyn Marine Terminal

1. INTRODUCTION

Empire Offshore Wind LLC (Empire) plans to construct and operate the Empire Wind 1 (EW 1) Project as one of two separate offshore wind projects, both to be located within the Bureau of Ocean Energy Management (BOEM) designated Renewable Energy Lease Area OCS-A 0512 (Lease Area). The transmission system for the EW 1 Project will connect the offshore wind farm to the point of interconnection (POI) and will include 230-kilovolt (kV) export and 345-kV interconnection lines traversing a total of approximately 17.5 miles (mi) (15.2 nautical miles [nm] or 28.2 kilometers [km]) within the State of New York. This Plan applies to the electric transmission system for the EW 1 Project within the State of New York, which is subject to Article VII of the New York Public Service Law (PSL) (the Project). The Project will interconnect to the New York State Transmission System operated by the New York Independent System Operator, Inc. (NYISO) at the Gowanus 345-kV Substation (the point of interconnection, or POI). The Gowanus 345-kV Substation is owned by the Consolidated Edison Company of New York, Inc. (Con Edison). The Project's onshore facilities, including the onshore cable route, onshore substation, and the POI, are located entirely within Brooklyn, Kings County, New York.

The Article VII components of the EW 1 Project which this Plan applies to include:

- Two three-core 230-kV high-voltage alternating-current (HVAC) submarine export cables located within an approximately 15.1-nm (27.9-km)-long submarine export cable corridor from the boundary of New York State waters 3 nm (5.6 km) offshore to the cable landfall in Brooklyn, New York.
- A 0.2-mi (0.3-km)-long onshore cable route and substation including:
 - Two three-core 230-kV HVAC EW 1 onshore export cables buried underground from the cable landfall transition joint bays to the onshore substation
 - An onshore substation located at the South Brooklyn Marine Terminal (SBMT), which will increase the voltage to 345 kV for the onshore interconnection cables
 - Two 345-kV cable circuits, each with three single-core HVAC onshore interconnection cables, buried underground from the onshore substation to the POI.

1.1 Purpose

This Fisheries Management Plan (FMP) describes Empire's communication with the fishing community and the fisheries compensation plan responsibilities for the portion of the Project within New York State (NYS) waters. While there is no significant commercial fishing activity along the submarine export cable route within NYS waters, a fishing claims procedure and a compensation plan have been developed in case of the possibility of encounters and conflicts. The FMP is intended to verify compliance with the Certificate of Environmental Compatibility and Public Need (Certificate).

This FMP is designed to fulfill the requirements of the Certificate Condition Y16, which states:

Y16. The Certificate Holder must submit a Fisheries Compensation Plan for Project activities in New York State waters as part of Fisheries Management Plan in the EM&CP for the applicable Segment. The Fisheries Compensation Plan shall include:

- a. A narrative overview of the claim process, including summary of the initial decision-making process;*
 - i. This narrative will include more details on the Fishing Conflict Prevention/Hazard Notification Claim Procedure, which covers claims for:*
 - 1. commercial fisheries gear losses during all phases of the Project, including fisheries and benthic monitoring efforts, scientific study, survey, construction, operation, maintenance, and/or decommissioning for the life of the Project (up to 100% value of gear); and*
 - 2. a reimbursement process for any temporary displacement, or temporary impairment to fishing following gear loss, of commercial fishing directly resulting from the Project's fisheries and benthic monitoring efforts, scientific study, survey, construction and maintenance activities, including any necessary cable reburial activities, and decommissioning activities (up to 50% of lost gross revenue).*
 - ii. As will be detailed further in the Fisheries Compensation Plan: (1) a claimant may take advantage of both types of claims for a single event, and (2) in the event a claim is denied initially, the claimant will be informed why.*
 - iii. The Fisheries Compensation Plan will not preclude the Certificate Holder from delegating the claims process to a third-party administrator and will conform to BOEM's Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf, to the extent practicable.*
 - iv. The Fisheries Compensation Plan will identify the methods by which the Certificate Holder will notify potential claimants of the claims process and how the Fisheries Compensation Plan corresponds with the Mariner Notification and Public Input Process as required by this Certificate.*
- b. A narrative overview of the process for claimants to appeal any decision regarding their claims to an independent third-party arbitrator, including the ability of a claimant who is successful on appeal to seek reimbursement for any lost revenue associated with the appeal process; and*

- i. Certificate Holder will inform any claimant when a third-party arbitrator has been assigned to their appeal. The third-party arbiter will be unbiased (i.e. individuals not employed by the Certificate Holder). He or she will be a practicing or retired attorney, current or former judge, arbitrator and/or mediator. In all cases, the third-party arbiter will have knowledge of the offshore environment and general knowledge of various offshore activities including but not limited to fishing, shipping, surveying and offshore construction. Appeals will be provided to the third-party arbiter with the Notice of Appeal and the claimant's complete claim. No new information will be considered on appeal.*
- c. A statement that the number of claims submitted by persons or entities pursuant to sections (i) (1) and (2) of this section and adjudicated by the Certificate Holder shall not be limited.*
- d. The Certificate Holder shall file with the Secretary a summary of all claims filed and/or settled on an annual basis, including the claim type the impacted fishing activity, date of the incident, claim filing date, date closed, value requested, and value paid;*
- e. The Certificate Holder must notify DPS Staff, NYSAGM, NYSDEC, and NYSDOS via electronic mail within 30 days of any resolution (i.e., denial or award) of a fisheries compensation claim. The notification must include the claim, claim type, species impacted, and the fishing activity disrupted and/or displaced and the resolution;*
- f. The Certificate Holder shall not require any fisherman, as a condition of filing a claim, to waive their right to seek resolution of such claim within a court of competent jurisdiction in the event the claim is not resolved through the Fisheries Compensation Plan process;*
- g. The Certificate Holder must not require any fisherman settling a fisheries compensation claim to sign a Non-Disclosure Agreement nor require waiver of any claims beyond the loss event initially claimed; and*
- h. Following resolution of a successful claim under Condition Y16 that involves a repeatable incident, Certificate Holder will circulate appropriate internal messaging, including, as appropriate, to its contractors, to reduce likelihood of such recurrence.*

2. COMMUNICATION

Communication with the fishing community will be conducted through several channels and will be facilitated by various personnel. Some of these methods include posting notices and updates to a Project Website, distributing a Notice to Mariners through the United States Coast Guard, and conducting outreach and consultations with local mariners.

Empire employs a Fisheries Liaison Officer to serve as the primary point of contact between the

Project and the commercial and recreational fishing fleets and communities. A Marine Affairs Manager, or stand-in from the Marine Logistics or Technical Environmental Affairs team, will also serve as a primary point of contact between the Project and the maritime transportation sector, while also supporting the Fisheries Liaison Officer with fisheries issues and engagements. Several independent third-party Fishing Industry Representatives will assist and support the communication of questions and concerns and disseminate project updates, news and information.

Additional information regarding communication with the fishing community can be found in **Appendix AA – Mariner Notification and Public Input Processes**. Noted means of outreach and communication within **Appendix AA** will be utilized to notify potential claimants of the claims process as described in Section 3 of this Plan CC Y16(a)(iv)). This Plan and associated forms will be available via the Project website as well.

3. FISHERIES COMPENSATION PLAN

Empire recognizes the possibility of offshore wind activity and commercial fishing gear encounters, conflicts, and the potential of lost fishing time and/or access. However, with proper communication and training, there will be limited gear interactions and/or lost fishing time in connection with the installation and operation of the Project. In the event there is gear loss, damage, or lost fishing time and/or access caused by or resulting from developer activities throughout the life of the Project, Empire has developed a claims procedure as found in **Attachment 1 – Fishing Conflict Prevention/Hazard Notification Claim Procedure and Application**.

Per CC Y16(a)(i), there are two types of claims covered by this Plan and the attached application.

1. commercial fisheries gear losses during all phases of the Project, including fisheries and benthic monitoring efforts, scientific study, survey, construction, operation, maintenance, and/or decommissioning for the life of the Project (up to 100% value of gear); and
2. a reimbursement process for any temporary displacement, or temporary impairment to fishing following gear loss, of commercial fishing directly resulting from the Project's fisheries and benthic monitoring efforts, scientific study, survey, construction and maintenance activities, including any necessary cable reburial activities, and decommissioning activities (up to 50% of lost gross revenue).

A claimant may take advantage of both types of claims for a single event (CC Y16(a)(ii)). The number of claims submitted by persons or entities will not be limited (CC Y16(c)).

Should a fisherman experience gear loss, damage, and/or lost fishing time/ access that they believe was a result of Empire's activities throughout the life of the Project, they are advised to complete the attached **Fishing Conflict Prevention/Hazard Notification Claim Procedure and Application (Attachment 1)** and submit it to the Fisheries Liaison for the Project. The Fisheries Liaison should be notified of the incident as soon as safe and practical via cell, text, or email. A complete, legible, executed application form should then be provided within 30 days of the

incident. Fisheries Liaison will be available to assist with the application form.

Claims will be reviewed and processed as quickly as possible by Empire's Fisheries Liaison in consultation with the team of Fishing Industry Representatives. Empire is currently contracted with the following organizations to provide representation to their members and will be invited to participate in claim reviews as an unbiased advisory resource: Massachusetts Lobstermen's Association, Commercial Fisheries Center of Rhode Island, and New Bedford Port Authority. Should any additional Fishing Industry Representatives be contracted by Empire, they will be invited to participate in claim reviews. A written explanation of the decision will be provided to the Claimant within 30 days of receipt of a completed claims application form. If the claim is approved, a check will be provided to the Claimant. In the event a claim is denied initially, the claimant will be informed why (CC Y16(a)(ii)).

Empire will not require any fisherman, as a condition of filing a claim, to waive their right to seek resolution of such claim within a court of competent jurisdiction in the event the claim is not resolved through the Fisheries Compensation Plan process (CC Y16(f)). Empire also will not require any fisherman settling a claim to sign a Non-Disclosure Agreement nor require a waiver of any claims beyond the loss event initially claimed. (CC Y16(g)).

This plan will not preclude the Empire from delegating the claims process to a third-party administrator and will conform to BOEM's Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf, to the extent practicable (CC Y16(a)(iii)).

3.1 Appeals Process

Within 30 days after the written decision is issued by Empire's Fisheries Liaison, Claimants who disagree with the decision, or part of the decision, may file a written notice of appeal by sending a Notice of Appeal to Empire's Fisheries Liaison. The Notice of Appeal form is included as **Attachment 2 – Notice of Appeal Form**. All decisions will become final 30 days after the date indicated on the decision unless appealed. Appeals submitted after 30 days from the decision will not be accepted. Certified mail and timestamps for sent email will be used to avoid disputes around this timeframe of issuance of the decision. The notice of appeal must state the reason for the appeal and a statement explaining why the Claimant believes the findings are incorrect. If an appeal is filed, Empire will assign an unbiased (i.e. individuals not employed by Equinor or Empire) professional as an Independent Third-Party Reviewer (ITR) and notify the claimant that an ITR has been assigned (CC Y16(b)(i)). ITRs will be practicing or retired attorneys, current or former judges, arbitrators and/or mediators. In all cases, the ITR will have knowledge of the offshore environment and general knowledge of various offshore activities including but not limited to fishing, shipping, surveying and offshore construction. Appeals will be provided to the ITR with the Notice of Appeal and the Claimant's complete claim. No new information will be considered on appeal (CC Y16(b)(ii)). The ITR will review the issues raised in the Notice of Appeal and issue a written determination. The ITR's decision will be final and not subject to further appeal.

3.2 Regional Fund

In addition to avoidance, minimization, and mitigation measures otherwise specified in New York State Department of State's (NYSDOS) decision letters for the Project, Empire has agreed to work with other offshore wind developers, federal and state regulators to establish a Compensatory Mitigation Fund to compensate fishermen for verifiable claims of negative impacts of a significant nature, including potential economic losses due to the construction, operation, or decommissioning of the Project. This agreement is in accordance with the Final Environmental Impact Statement for the Project (FEIS), Section 3.9 and Appendix H, as well as COP Approval Condition 6.1, and with the anticipated final Fisheries Mitigation Guidance (Guidance) from the Bureau of Ocean Energy Management (BOEM).

Since June 2021, New York State Energy Research and Development Authority (NYSERDA) has been working on a multi-state compensatory mitigation initiative that includes the States of New Jersey, New York, Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Delaware, Maryland, Virginia, and North Carolina and has solicited comments from the states on a framework for a Regional Fisheries Compensatory Mitigation Fund. The states, in turn, have encouraged and assisted BOEM in developing a standardized fisheries mitigation guidance that will encourage developers to compensate fishermen who incur damages from unavoidable impacts of offshore wind projects as a mitigation measure for their projects; notably, BOEM's Guidance on this is near final.

Empire Offshore Wind, LLC supports these regional efforts and will continue to participate and cooperate fully with BOEM, NYSERDA, and the 11 coastal states initiative. In contributing to the Compensatory Mitigation Fund, Empire Offshore Wind, LLC has agreed to:

- a. Utilize and contribute to the Regional Fund outlined above for fisheries mitigation claims once it is established. If the Fund fails to be established, Empire agrees to utilize and contribute to a compensatory mitigation fund acceptable to NYSDOS, through which impacted New York State fishermen are eligible to submit compensation claims to offset demonstrated impacts from the Projects.
- b. As outlined in the FEIS, establish a Navigational Safety Adaptation Fund and a Gear Loss and Damage Compensation program to address fisheries mitigation.

4. FILING AND REPORTING

Empire will file with the Secretary a summary of all claims filed and/or settled on an annual basis, including the claim type the impacted fishing activity, date of the incident, claim filing date, date closed, value requested, and value paid (CC Y16(d)).

Empire will notify DPS Staff, NYS Department of Agriculture and Markets, NYS Department of Environmental Conservation, and NYS Department of State via electronic mail within 30 days of

any resolution (i.e., denial or award) of a fisheries compensation claim. The notification must include the claim, claim type, species impacted, and the fishing activity disrupted and/or displaced and the resolution (CC Y16(e)).

Following resolution of a successful claim that involves a repeatable incident, Empire will circulate appropriate internal messaging, including, as appropriate, to its contractors, to reduce likelihood of such recurrence (CC Y16(h)).

Attachment 1

Fishing Conflict Prevention/Hazard Notification Claim Procedure and Application



Attachment 1 – Fishing Conflict Prevention/Hazard Notification Claim Procedure and Application

Fishing Gear Conflict and Lost Time/Access Claims Procedure

Empire recognizes the possibility of offshore wind activity and commercial fishing gear encounters and conflicts during the construction and operation of its offshore wind facilities. Communication and training will help minimize gear interactions, lost fishing time, and access conflicts. In the event there is gear loss, damage, or lost fishing time or access caused by or resulting from Empire's activities, this claim procedure and application can be used to seek compensation.

Two types of claims are covered by this application. See the associated and corresponding sections of the application below.

Claim Type 1: commercial fisheries gear losses during all phases of the Project, including fisheries and benthic monitoring efforts, scientific study, survey, construction, operation, maintenance, and/or decommissioning for the life of the Project (up to 100% value of gear); and

Claim Type 2: a reimbursement process for any temporary displacement, or temporary impairment to fishing following gear loss, of commercial fishing directly resulting from the Project's fisheries and benthic monitoring efforts, scientific study, survey, construction and maintenance activities, including any necessary cable reburial activities, and decommissioning activities (up to 50% of lost gross revenue).

A claimant may take advantage of both types of claims for a single event, and in the event a claim is denied initially, the claimant will be informed why. The number of claims submitted by persons or entities will not be limited. As a condition of filing a claim, Empire does not require any claimant to waive their right to seek resolution of such claim within a court of competent jurisdiction in the event the claim is not resolved. Empire does not require any fisherman settling a fisheries compensation claim to sign a Non-Disclosure Agreement nor require waiver of any claims beyond the loss event initially claimed.

Filing a Claim

A fisherman who experiences gear loss/damage and/or lost time/access that they believe was a result of Empire's activities throughout the life of the Project (surveys, cable laying, construction vessels, operations, maintenance, decommissioning, etc.) should complete the attached claim application form and submit it to the Empire Fisheries Liaison.

To submit a claim, applicant must:

Contact Empire's Fisheries Liaison and notify him/her of the incident as soon as safe and practical via cell, text, or email. Provide a complete, legible, executed claim application form within 30 days of the

incident. The Fisheries Liaison will be available to assist with the application form. Incomplete applications will not be accepted; application will be returned to applicant noting incomplete information. Submit claim via email to the Fisheries Liaison via the contact information below.

Empire Fisheries Liaison Contact:

Elizabeth Marchetti

Fisheries Manager

emarc@equinor.com

mobile: 401.954.2902

Claim Review

Claims will be reviewed and processed as quickly as possible by Empire's Fisheries Liaison in consultation with the team of Fishing Industry Representatives. Empire reserves the right to request additional information to support review of the claim. Data investigation will include AIS, data, survey/construction vessel daily reports and Offshore Fisheries Liaison Representative and scout /safety daily reports when/if applicable. Empire is currently contracted with the following organizations to provide representation to their members and which will be invited to participate in claim reviews as an unbiased advisory resource: Massachusetts Lobstermen's Association, Commercial Fisheries Center of Rhode Island, and New Bedford Port Authority. Should additional Fishing Industry Representatives be contracted by Empire, they will be invited to participate in claim reviews.

A written explanation of the decision will be provided to the Applicant within 30 days of receipt of a completed claims application form. If the claim is approved, a check will be provided to the Applicant upon completion of review.

Appeals Process

Within 30 days after the written decision is issued by Empire's Fisheries Liaison, Claimants who disagree with the decision, or part of the decision, may file a written notice of appeal by sending a Notice of Appeal to Empire's Fisheries Liaison. The Notice of Appeal form is included as **Attachment 2 – Notice of Appeal Form**. All decisions will become final 30 days after the date indicated on the decision unless appealed. Appeals submitted after 30 days from the decision will not be accepted. The notice of appeal must state the reason for the appeal and a statement explaining why the Claimant believes the findings are incorrect. If an appeal is filed, Empire will assign an unbiased (i.e. individuals not employed by Equinor or Empire) professional as an Independent Third-Party Reviewer (ITR) and notify the claimant that an ITR has been assigned (CC Y16(b)(i)). ITRs will be practicing or retired attorneys, current or former judges, arbitrators and/or mediators. In all cases, the ITR will have knowledge of the offshore environment and general knowledge of various offshore activities including but not limited to fishing, shipping, surveying and offshore construction. Appeals will be provided to the ITR by Empire with the Notice of Appeal, Claimant's complete claim, and the decision being appealed. No new information will be considered on appeal (CC Y16(b)(i)). The ITR will review the

issues raised in the Notice of Appeal and issue a written determination. The ITR's decision will be final and not subject to further appeal.

CLAIM APPLICATION

Claim Information to be Provided by Fisherman

Claimant Contact Information:

Name:

Phone number (Mobile):

Preferred method of correspondence:

Email address:

Mailing address:

Date of incident:

Time of day, weather conditions (optional):

Claim Type 1: Fishing gear loss/ damage

Location of gear loss/damage:

A. Latitude/Longitude

B. Photo of chart plotter/vessel tracks

Gear description - Markings /polyballs, highflyers:

Offshore wind vessels or other vessel activity observed in the area:

When was the last time gear was set and hauled?

Was any of the gear retrieved?

How many gillnets, pots, highflyers, trawl, doors, ground cables, scissor legs, etc. are lost/damaged?

Invoice for replacement gear or gear repair (must be substantially similar to gear that was lost/damaged)

Claim Type 2: Lost fishing time/ access

Description of normal fishing activity / fishing gear configuration

Date/time of loss:

Date of return / resumed activity:

Proof of fish landing history through VTR, sales slip, or similar type of documentation:

By submitting this Application, Applicant authorizes Empire to make whatever reasonable inquiries and investigations it deems necessary to verify my application and request for compensation.

Applicant understands that submitting this Application does not guaranty payment. Applicant further agrees that if this claim is accepted and paid in its entirety, that acceptance of such payment constitutes full, final and complete payment for this particular claim and that neither developer nor any of its affiliates shall have any further outstanding or ongoing obligation with respect to this specific claim and Applicant shall not, directly or indirectly, assert any claim, or commence, join in, prosecute, participate in, or fund any part of, any suit or other proceeding of any kind against developer or any of its affiliates, based upon this specific claim. If a claim is denied in part, Applicant may accept payment for the undisputed part without waiving Applicant's right to appeal the disputed part of the claim. Applicant recognizes that submission of this Application does not affect Applicant's rights concerning matters other than those specifically identified in this specific Application.

I attest, under penalty of perjury, that to the best of my knowledge the information in this Application is true and correct.

Signature:

Date:

Empire Fisheries Liaison Contact:

Elizabeth Marchetti
Fisheries Liaison Officer
emarc@equinor.com
mobile: 401.954.2902

600 Washington Blvd. Suite 800
Stamford, CT 06901

Attachment 2

Notice of Appeal Form



Submit this appeal form to the Fisheries Liaison via the email contact information below.

Empire Fisheries Liaison Contact:

Elizabeth Marchetti

Fisheries Manager

emarc@equinor.com

mobile: 401.954.2902

Empire Wind

<https://www.empirewind.com/>

Notice of Appeal

Claimant Name: _____

Claim Decision Date: _____

Claim Number (assigned by Empire): _____

Date Appeal Submitted: _____

Please state the reason(s) for appeal and explain why you believe the claim findings are incorrect. If appealing damages, please state why you believe the amount paid is incorrect. If Claimant needs additional space, please attach additional pages.

By submitting this Notice of Appeal, Applicant attests under penalty of perjury that, to the best of Applicant's knowledge, the information submitted is true and correct and the appeal is made in good faith.

Printed Name: _____

Date: _____

Signature: _____