UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

Sarah W. Cooksey
Administrator
Delaware Coastal Management Program
Department of Natural Resources & Environmental Control
89 Kings Highway
Dover, DE 19901

FEB - 3 2011

Dear Ms. Cooksey:

Thank you for the Delaware Coastal Management Program's (DCMP's) October 12, 2010, request that changes to the DCMP's Program Document be incorporated into the federally-approved DCMP. You requested that changes to the DCMP's Program Document described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request on October 18, 2010, and OCRM's decision deadline was extended until February 4, 2011. OCRM approves the changes to the DCMP as described below and in the enclosure.

CHANGES APPROVED and MODIFIED

The changes approved to the DCMP include:

1. State procedures for federal consistency reviews;

2. Revisions to the listings of federal licenses or permits under the *Outer Continental Shelf Lands Act* (OCSLA) and *Federal Power Act* (FPA) subject to review;

3. A geographic location description for the review of OCSLA and FPA authorizations for alternative energy projects in Federal waters; and

4. Geographic location descriptions for the review of federal authorizations in interstate waters for dredging and dredged material disposal (in New Jersey and Pennsylvania) under the *Clean Water Act* (CWA) § 404, offshore alternative energy development (in New Jersey and Maryland) under CWA § 404 and the *Rivers and Harbors Act* § 10, and the placement or manipulation of fill material for the purpose of introducing non-native shellfish (in Maryland and Virginia) under CWA § 404 and Rivers and Harbors Act § 10

Please see the enclosed Table of Approved Program Changes incorporated into the Delaware CMP including the specific geographic location descriptions (GLDs).

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The Table of Approved Program Changes includes modifications and clarifications made to the Request for Concurrence in response to comments and discussions with the Department of Interior's Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). Those modifications and clarifications are summarized below:

1. Certain de minimis activities are exempt. Meteorological data collection facilities proposed for federal waters within the GLD do not require federal consistency review for the associated OCSLA authorizations. These facilities are defined as meteorological towers or buoys installed to measure wind speeds, collect oceanographic data and other relevant data necessary for analysis of a potential commercial alternative energy facility.

2. Certain test facilities are not exempt. The scope of federal consistency review for offshore alternative energy facilities in federal waters within the GLD includes the installation and operation of facilities to test renewable energy generating technologies.

3. The proposed GLD in federal waters for authorizations conducted under the OCSLSA and FPA only pertain to alternative energy projects. Delaware has not specified a GLD for the review of authorizations for oil and gas under the OCSLA.

4. Delaware has reduced the area of the GLD originally proposed for alternative energy development in federal waters. The southern boundary of the GLD will be the BOEMRE administrative boundary between Maryland and Virginia. The northern boundary in New Jersey and the eastern boundary (the contiguous zone) will remain unchanged. The "Geographical Location" text on page 7 of the October 2010 submittal is modified to read-

> *Federal waters 3-24 nautical miles off the coasts of New Jersey, Delaware and Maryland. Beginning off New Jersey's coast at Hereford Inlet (BOEMRE lease blocks 7126-7136) extending south encompassing off shore areas of southern New Jersey, Delaware and Maryland, and terminating at the BOEMRE administrative boundary between Maryland and Virginia.*

(Note that Figure 2 on page 10 of the request for concurrence erroneously depicts the area offshore of New Jersey subject to review.)

PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received comments on this RPC submission from BOEMRE and Mr. Jeremy Firestone, a professor at the University of Delaware.

The comments pertained to whether Delaware had shown that the GLD for the review of alternative energy projects was based on reasonably foreseeable effects, particularly in regards to effects on avian species, and whether the scope of the proposed program changes required approval under the program amendment process.

In order to review federal authorizations occurring in federal waters or other states, a state must provide a GLD of the area where the activities occur. As part of its Request for Concurrence, a

state must show that there are reasonably foreseeable effects from the specified activities within those areas on uses or resources of the State's coastal zone. A GLD does not need to delineate the boundary of where effects are reasonably foreseeable and where they are not; it only needs to be shown that within the area described that effects are reasonably foreseeable.

Delaware has based its findings of coastal effects from offshore alternative energy projects on potential migration disruptions to avian species, acoustic and electromagnetic disturbances to marine species; the effects of exclusion zones on commercial and sport fishing; interference with electronic communications; and increased navigational risks due to the rerouting of vessel traffic. Although the alleged impacts to avian species was challenged by BOEMRE as not being supported by European studies, no comments were received in regards to the other effects asserted by Delaware.

It is also noted that the choice of the seaward distance of 24 nautical miles for the GLD is consistent with the area of potential environmental effects described in the BOEMRE Preliminary Environmental Impact Statement (October 2007) developed for its offshore alternative energy program. In the mid-Atlantic that distance conforms to the 100-meter depth that is generally acknowledged as a practical limitation for locating these devices.

OCRM finds that Delaware has demonstrated reasonably foreseeable effects for the specified federal license or permits for the area within the GLD. OCRM disagrees with comments that the State is making a substantial change to the program in regards to uses subject to the management program. Under the CZMA, states are required to have comprehensive programs including planning processes for the siting of energy facilities. In regards to alternative energy facilities, this program change is providing additional detail to the program in regards to the review of energy facility siting. Nothing in the proposed submission would require a change to or bring into question the Approval Findings for the DCMP which might trigger the amendment process. In addition, under the existing DCMP, alternative energy projects are not a new use and the State could review such uses.

If you have any questions pertaining to this program change, please contact Elisa Chae-Banaja at (301) 325-3674.

Sincerely,

John King, Chief
Coastal Programs Division

Enclosure:
Table: 2011 Approved Changes to the Delaware Coastal Management Program

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Effective in State
MODIFIED:		
Procedures for Federal Consistency Reviews. Text is added to description of procedures for federal consistency reviews in Section 3.0 of the Program Document-- "Applicants are encouraged to provide an electronic copy of the application package AND a paper copy."	Program Document, Section 3.0.	Date on which public notice of OCRM approval is published.
Federal Licenses and Permits Subject to Review The description of federal licenses and permits subject to review in Section 3.2 of the Program Document is modified in regards to authorizations under the *Outer Continental Shelf Lands Act* (OCSLA) and those under the *Federal Power Act*. Geographic location descriptions are provided for those activities occurring in federal waters. The current listing for leases and permits to drill wells and construct pipelines under the OCSLA (43 U.S.C. 1331, et seq.) is revised to include all authorizations under the OCSLA including oil and gas activities, alternative energy activities and alternate uses of existing facilities. Authorizations under the Federal Power Act (16 U.S. C. 792-823, as amended) pertaining to activities on the outer continental shelf including hydrokinetic energy devices are listed. The geographic location description for all federal authorizations pertaining to offshore alternative energy devices under the OCSLA and Federal Power Act are as follows: Federal waters 3-24 nautical miles off the coasts of New Jersey, Delaware and Maryland beginning at Hereford Inlet (NJ)(BOEMRE lease blocks 7126-7136), extending south encompassing offshore areas of southern New Jersey, Delaware and Maryland, and terminating at the BOEMRE administrative boundary between Maryland and Virginia.	Program Document, section 3.2.	Date on which public notice of OCRM approval is published.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Effective in State
Note that the proposed extension of review to federal waters offshore of Virginia has been deleted and that Delaware has revised its proposal to exclude meteorological data collection facilities. Authorizations for the testing of alternative energy devices are subject to review.		
Procedures for Federal Interstate Consistency Reviews. The text of Section 4.0 of the Program Document is modified describing procedures for interstate consistency reviews. The text of Section 4.0 of the Program Document describes activities and the geographic location descriptions for activities subject to interstate consistency review. Those activities are: 4.5.1 Dredging and Dredged Material Disposal 4.5.2 Offshore Alternative Energy Development 4.5.3 Introduction of Non-native Shellfish See below for detailed descriptions of activities, geographic location descriptions and modifications made in response to comments on the submission. Note that the geographic location description for the review of Offshore Alternative Energy Development under Section 4.5.2 has been modified with the deletion of waters offshore of Virginia.	Program Document, Section 4.0.	Date on which public notice of OCRM approval is published.
Dredging and Dredged Material Disposal in Interstate Waters Section 4.5.1 has been added to the Program Document to include interstate geographic location descriptions for federal authorizations issued under the Section 9 and 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act pertaining to dredging and dredged material disposal in the Delaware River and Bay. For activities involving the dredging, filling, mining and excavation of 50,000 or more cubic yards, excluding beach nourishment projects, interstate areas subject to review include those within:	Program Document, Section 4.5.1 – 4.5.2.	Date on which public notice of OCRM approval is published.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Effective in State
• New Jersey occurring below the high tide line of the Delaware River from the Commodore Barry Bridge south to the Delaware state line; and/or below the high tide line of the Delaware River and Bay from Artificial Island to Cape May; and • Pennsylvania occurring below the high tide line of the Delaware River from the Commodore Barry Bridge south to Delaware state line. For the subsurface discharge of dredged and fill materials, relocation or redistribution of sediments 50,000 or more cubic yards, excluding beach nourishment projects, activities subject to interstate consistency review include those in: • New Jersey below the high tide line of the Delaware River from the Commodore Barry Bridge south to the Delaware state line; below the high tide line of the Delaware River and Bay from Artificial Island to Cape May, NJ; and/or confined upland disposal facilities with the capacity to handle at least 50,000 cubic yards of dredged material that discharge directly into Delaware River or Bay. • Pennsylvania occurring below the high tide line of the Delaware River from the Commodore Barry Bridge south to Delaware state line; and/or confined upland disposal facilities with the capacity to handle at least 50,000 cubic yards of dredged material that discharge directly into Delaware River.		
Offshore Alternative Energy Development in Interstate Waters Section 4.5.2 has been added to the Program Document to include interstate geographic location descriptions for federal authorizations under Sections 9 and 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act pertaining to the offshore alternative energy development. In response to comments, Delaware has deleted from the proposed geographic description the state waters of Virginia and excluded meteorological data collection facilities from the scope of review. The State has clarified that the testing of alternative energy devices is included within the proposed review.	Program Document, Section 4.5.2.	Date on which public notice of OCRM approval is published

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Effective in State
The approved interstate geographic location descriptions for alternative energy facilities are for those occurring in: • New Jersey within the Delaware River and Bay from Artificial Island to Cape May and state ocean waters from 0-3 nautical miles extending from Hereford Inlet south to the tip of Cape May; • Maryland within state ocean waters from 0-3 nautical miles.		
Federal Authorizations for the Placement or Manipulation of Substrate within Interstate Waters for the Introduction of Nonnative Shellfish. Section 4.5.3 has been added to the Program Document to include activities authorized under Sections 9 and 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act which pertain to the placement or manipulation of substrate within interstate waters for the purpose of introducing non-native shellfish. The geographic location of these activities subject to review include those areas in: • New Jersey occurring within Delaware River and Bay from Artificial Island to Cape May; • Maryland and Virginia occurring within the Chesapeake Bay.	Program Document, Section 4.5.3	Date on which public notice of OCRM approval is published