



Comments Comments <comments@offshorewindpower.org>

Do not reward those that destroy habitat

1 message

[REDACTED]
To: comments@offshorewindpower.org

Wed, Dec 14, 2022 at 5:55 PM

The trawlers have strip mined the bottoms and destroyed square miles of ocean structure and corals, which has depleted the entire ecosystems ability to support the fishstocks. Now they want to block the most productive fish havens; the steel towers. Every area with towers around the US coast have shown massive increases in fish populations with these vertical ecosystems. I have seen many clearly marked wrecks that are covered with nets and other gear when I dive. Stop supporting the people that have ruined the fisheries around our Maryland coasts, please.





Comments Comments <comments@offshorewindpower.org>

(no subject)

Thu, Dec 15, 2022 at 3:38 PM

[REDACTED]
To: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

Do you have additional information on the equipment. Are they floating or do they need footers. I'm guessing footers and gigantic cement pilings.

If so the depth of where they build will have a maximum depth requirement which means they could be visible from the shoreline/beach in more shallow waters. If visible from the beach, then the folks that own properties on the beach should be notified.

Structures in the water are generally great for fishing if your allowed to get close to the structure. Will fishing near the structures be permitted?

Is there a master plan of how many units will be built? It will be terrible if it looks like a Texas oilfield.

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administrator RFI

1 message

[Redacted]
To: comments@offshorewindpower.org

Sun, Dec 18, 2022 at 5:22 PM

There should be no compensation program because the wind project should be killed because the SCC notes that "the magnitude of this Project is so great that it will likely be the costliest project being undertaken by any regulated utility in the United States. And the electricity produced by this Project will be among the most expensive sources of power - on both a per kilowatt of firm capacity and a per megawatt-hour basis - in the entire United States.

[Redacted]



Comments Comments <comments@offshorewindpower.org>

Compensation Owner Operator Small Business

1 message

[REDACTED]
To: comments@offshorewindpower.org

Thu, Dec 22, 2022 at 5:53 AM

I own/operate an offshore charter business out of [REDACTED] I would like to know what compensation packages are available to support my business.

Thank you,

[REDACTED]

[REDACTED]



Comments Comments <comments@offshorewindpower.org>

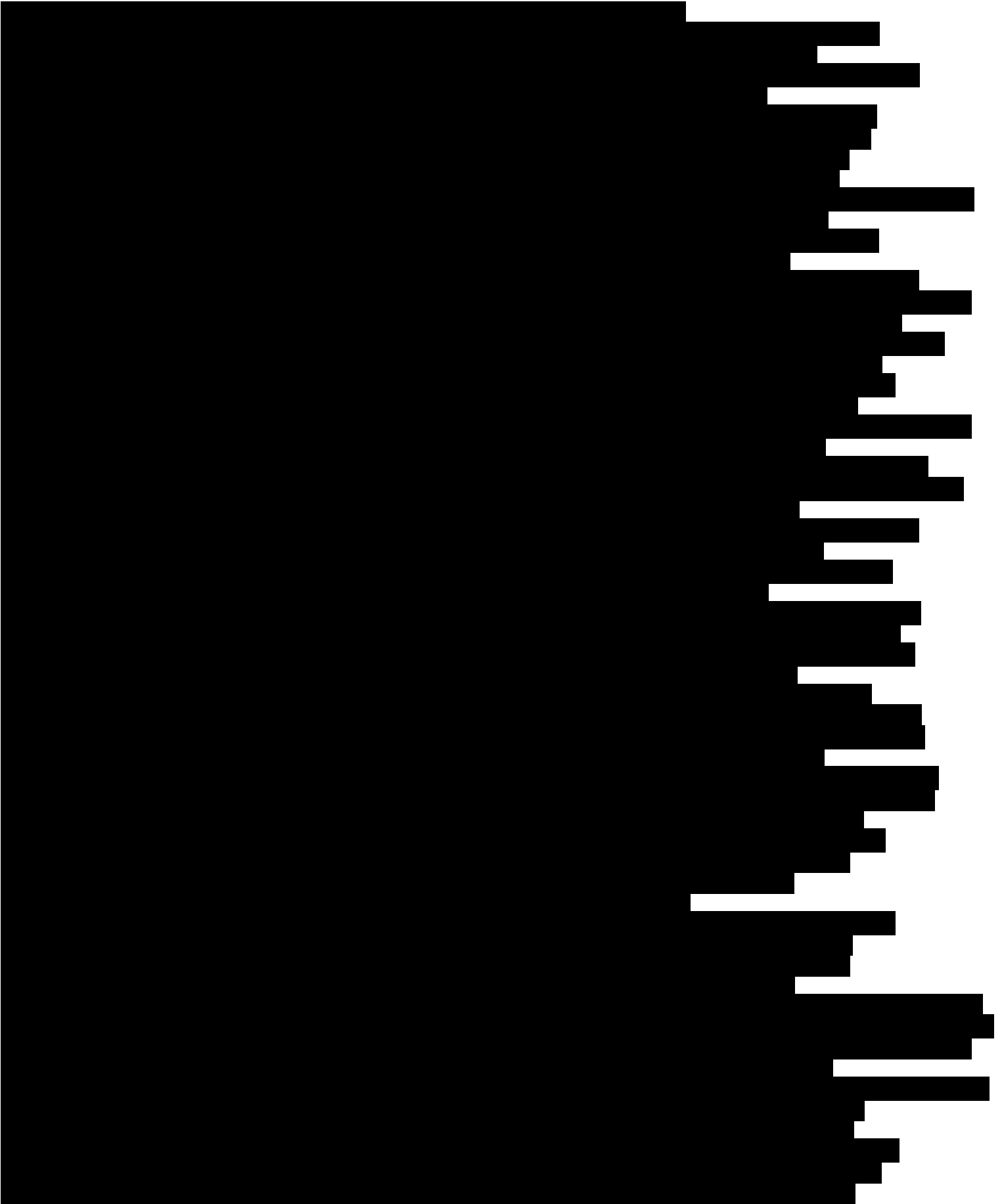
Florida Surplus Land for Sale | Levy County, Florida

1 message

Wed, Dec 28, 2022 at 6:27 PM

to:

[Redacted email content]





[REDACTED]

[REDACTED]

[REDACTED]

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

FOOD

88-6434509

Happy New Year 2023!

United States Environmental Protection Awarded Award...

Dedicated To...

P:B:O:E Powered By Our Environment, Inc.

*Global Community African Diaspora Health
& Environmental Protection Collaboration.*

More...



12 / 28 / 2022

DSL-BID-22-002

0291700000 •

STATE SURPLUS LAND BID NOTIFICATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[Redacted]

The property is to be sold via sealed bid "as is," "where is." Bids will be accepted until noon, Tuesday, Jan. 31, 2023. Any bid received after that time will be returned to the bidder unopened. DEP is not responsible for bids mailed but not arriving by noon, Tuesday, Jan. 31, 2023. All bids received by the bid submission deadline will be opened at 2 p.m., Tuesday, Jan. 31, 2023.

A minimum acceptable bid of \$45,000 has been set by the state, with a deposit in the amount of 10 percent of the bidder's bid due and included in the prospective buyers bid to purchase the property and is further defined in the bidding package. Any award made will be to the highest responsive bidder, provided it is in the interest of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to accept the bid.

UPON SENT ON RECEIVED ON
12 / 28 / 2022
BY

[Redacted]

[Redacted]

[Redacted]

-
Utility Rights of Way (ROW) Vegetation Management Permittee and Facility Information.

[Redacted text block]

[Redacted text block]

TO SOLELY

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

SINCE! AS PER EACH

P:B:O:E Powered By Our Environment, Inc.

PROJECT, HEALTH & COMMUNITY PROJECTS,

PREVENT ®

PREVENTIVE PROJECTS, PREVENTIVE WRONGDOING PROJECTS SPECIFICATIONS.

HAPPY New Year! 2023

[Redacted text block]

[Redacted text block]

ALL UNITED STATES GOVERNMENT California Government Authorities;
U.S CSG New York State Government Authorities -
U.S CSG New York State Government Governor Authorities -
U.S CSG New York State Government Governor -
Gavin Newsom

How Was Your Holiday Breakfast Morning ?

[Redacted text block]

[Redacted text block]

ALL UNITED STATES GOVERNMENT California Government Authorities;
U.S CSG New York State Government Authorities -
U.S CSG New York State Government District Attorney Authorities -
U.S CSG New York State Government District Attorney -
Brooke Jenkins -

How Did You Celebrated The Holidays ?

Where Is My PayPal Refund ? Refunded DUE TO PayPal ACKNOWLEDGMENT AND ADMINISTRATION ON PayPal And A PayPal FRAUDULENT CUSTOMER, FRAUDULENT CHARGE To My Secured Login.gov

[REDACTED]

MUST UPON BACK FROM YOUR HOLIDAYS ACKNOWLEDGED THIS LEGAL UNITED STATES AUTHORITIES FINANCIAL FREE FROM MISLEADING MISCONDUCTING CERTIFIED DOCUMENT CERTIFIED BY BY YOUR STATE OF CALIFORNIA ADDITIONALLY AT YOUR ACCOUNTABLY California Government District Attorney's DESK!

[REDACTED]

[REDACTED]

[REDACTED]

REGARDLESS OF EACH UNITED STATES PROFESSIONAL AUTHORITIES AND UNITED STATES GOVERNMENTAL AUTHORITIES INDIVIDUAL PHYSICAL PERSON AVAILABILITY, UNITED STATES GOVERNMENT AUTHORIZED AUTHORIZING TECHNOLOGIES THAT NO ONE KNOWS WHO AND WHERE ARE BEING OPERATED ACCOUNTABLY TO EACH HUMAN RIGHT DEMAND AND BUSINESS RIGHTS DEMANDS THIS U.S USPTO TRADEMARK VALUES...

[REDACTED]

DOCUMENTS WITH ADDITIONAL PROOF OFFICIAL LEGAL ATTACHED DOCUMENTS.

[REDACTED]

IS AND ARE VALID UNITED STATES LEGAL CONFIDENTIAL, PRIVATE, INTELLECTUAL, CERTIFIED GREEN, SUSTAINABLE, SRI, FREE FROM MISLEADING, MISCONDUCT, MISEMAILING, MISPROPORTIONS, FRAUD, FRAUDULENT ACTIONS, FINANCIAL FRAUD, FINANCIAL INSURANCE FRAUD, PHISHING, ANY BETTER AND BEST UNITED STATES GOVERNMENT AUTHORITIES LEGAL DEFINITION WHICH IS USE TO APPROPRIATE EACH KIND OF WRONGFUL DOING UDAAP'S, DURING INCREASE PANDEMIC, INCREASED SOCIAL UNREST PAST JANUARY SIXTH OF THAT YEAR! CONTINUED INTO FOOD INSECURITY! GLOBAL FOOD SECURITY EMERGENCY CRISIS! WATER CRISIS! ENERGY CRISIS! MASSIVE JOBLESSNESS! MASSIVE DELIBERATE JOB RESIGNATORS! MASSIVE MENTAL ILLNESSES! SEVERE ILLNESSES! EXTREME STREET VIOLENCE! EXTREME BUSINESS VANDALISM! ETC.

WHICH IS BY UPON SENT AND RECEIVED ON 12 / 28 / 2022 BY ANY AND ALL UNITED STATES GOVERNMENT AUTHORITIES, INCLUDING ALL U.S UNITED STATES New York Government Authorities; ALL U.S FINCEN AUTHORITIES; ALL U.S NYPD AUTHORITIES CERTIFIED!

AND LIABLE TO EACH DESIGNATED RECIPIENTS ACCORDING, RESPECTIVELY, AT DISCRETION OF AND TO THE UNITED STATES GOVERNMENT AUTHORITIES; UNITED STATES GOVERNMENT LAW ENFORCEMENT AUTHORITIES;

MUST IRREVOCABLY; IRREVERSIBLE; IRREFUTABLE; INEXCUSABLE; UNEQUIVOCALLY; UNREDEEMABLE; ACCEPTED; ADMITTED; ACKNOWLEDGED BEFORE ALL ACKNOWLEDGED UNITED STATES GOVERNMENT AUTHORIZED AUTHORITIES; DESIGNATED UNITED STATES GOVERNMENT RECIPIENTS; DESIGNATED UNITED STATES GOVERNMENT FINANCIAL AUTHORITIES; UNITED STATES NON GOVERNMENT AUTHORITIES; FOREVER FINAL ALL SPECIFIC CORRESPONDING UNITED STATES

Africa On Economic Prosperity, Democracy, Human Rights, Health, Food security, And Climate. -

AWARDED AWARDS DEPOSITORY ACTIONS TO SOLELY

[REDACTED]

[REDACTED]

[REDACTED]

FOR THE IRREVOCABLE

P:B:O:E Powered By Our Environment, Inc.

[REDACTED]

[REDACTED]

[REDACTED]

ANY AND ALL UNITED STATES GOVERNMENT
AUTHORIZED AUTHORITIES AND EACH

P:B:O:E Powered By Our Environment, Inc.

DESIGNATED RECIPIENTS, NON UNITED STATES
GOVERNMENT DESIGNATED RECIPIENTS, U.S DFC
POLITICAL RISK MAXIMUM INSURANCE INSURED
12 / 28 / 2022

PER EACH UNITED STATES GOVERNMENT DFC AUTHORITIES ACTUAL AND ACTUAL
POTENTIAL POLITICAL RISKS, INCLUDING EACH ACTUAL AND POTENTIAL RISK
PRODUCED OR PROVISIONED BY ACTUAL POLITICAL SUBJECTS AND ACTUAL POLITITIAN
PHYSICAL LIFE, NAMES, TITTLES, ENVOVEMENTS, RECORDS, HISTORY,
RESPONSIBILITIES, ACCOUNTABILITIES, ALL SEVERE, EXTREME, NEGLECTFUL, ABUSIVE,
DECEPTIVE, CARELESS, IGNORING, MISLEADING, MISCONDUCTING, MISSTATEMENTS,
MISESTIMATES, OF EACH UNITED STATES GOVERNMENT FINANCIAL COMPLAINTS
AUTHORITIES WHICH REGULATE THE UNITED STATES REGULAR NATIONAL BANKS DAILY
REGULAR SMALL BUSINESS BANKING TRANSACTIONS WHICH HAVE KNOWNGLY
CONTINUED SEVERE, EXTREME, FRAUDULENT, UNFAIR, DEPOSITORY ACTIONS
DELIBERATE OBSTRUCTIONS UDAAP'S.

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EACH UNITED STATES GOVERNMENT DOS DEPARTMENT OF STATE FINANCIAL AUTHORITIES DEPOSITORY ACTIONS DELIBERATE OBSTRUCTIONS UDAAP'S,
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EACH UNITED STATES GOVERNMENT USAID FINANCIAL AUTHORITIES DEPOSITORY ACTIONS DELIBERATE OBSTRUCTIONS UDAAP'S,
EACH UNITED STATES GOVERNMENT FDA FINANCIAL AUTHORITIES DEPOSITORY ACTIONS DELIBERATE OBSTRUCTIONS UDAAP'S,
EACH UNITED STATES NON GOVERNMENT FINANCIAL AUTHORITIES DEPOSITORY ACTIONS DELIBERATE OBSTRUCTIONS UDAAP'S...

[Redacted]

[Redacted]

SOLELY TO:

[Redacted]

EXCLUSIVELY FOR:

P:B:O:E Powered By Our Environment, Inc.

.

[Redacted]

[Redacted]

[Redacted]

#USAfricaLeadersSummit22,"

[Redacted]

[Redacted]

.

P:B:O:E Powered By Our Environment, Inc.

EIN/TIN 88-6393557

Credit Union Name:

United Nations Federal Credit Union

The Share Insurance Estimator reflects that some of your money in this credit union exceeds NCUA limits and is currently not federally insured. It is important to be familiar with your NCUA coverage limits.

You should use the Share Insurance Estimator every time you make changes to your accounts to make sure your shares are always fully insured.

Owner(s) Beneficiaries

[REDACTED] -xx-xxxx

Single Accounts Actions
Account Nickname

[REDACTED]

[REDACTED]

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

SCIENCE

92-6172685

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

-
Utility Rights of Way (ROW) Vegetation Management Permittee and Facility Information.

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

FOOD

88-6434509

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT

GRANTED

HEALTH

88-6630828

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT

GRANTED

CLIMATE

92-6126382

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2.



U.S DFC POLITICAL RISK MAXIMUM INSURED
ON 11 / 30 / 2022

Awarded; Signed And Dated
With Today's 11 / 30 / 2022;



Depository Actions Property Proprietorship Ownership;

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P:B:O:E Powered By Our Environment, Inc.

-
P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT

GRANTED

HEALTH

88-6630828

NON CONTINENTAL AFFILIATED! -
the Families First Coronavirus Response Act.

NON POLITICAL AFFILIATED! -
U.S DFC POLITICAL RISK MAXIMUM INSURANCE INSURED

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

FOOD

88-6434509

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT

GRANTED

HEALTH

88-6630828

GP-0-21-002

NEW YORK STATE

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION.

General Permit Number GP-0-21-002

PERMIT

Under the Environmental
Conservation Law (ECL)

GENERAL PERMIT GP-0-21-002

Utility Rights of Way (ROW) Vegetation Management Permittee and Facility Information.

[REDACTED]

New York State Along With Multiple State Partners
Fisheries Compensatory Mitigation Regional Fund Administrator.

DSL-BID-22-002

0291700000 •

STATE SURPLUS LAND BID NOTIFICATION

DEP

Florida Department of Environmental Protection

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New York State, along with multiple state partners, have been working on advancing an initiative to establish a regional fund administrator for fisheries compensatory mitigation which may provide financial compensation to impacted fishing industry members for economic loss from offshore wind development off the Atlantic Coast.

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U S GOVERNMENT GRANTED

ENERGY

88-6350515

DE-FOA-0002849

Clean Energy CU (App # 15609)

ATTENTION:

United States Government Authorities
United States Government House Speaker Authorities
United States Government House Speaker

Nancy Pelosi

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

ENERGY

88-6350515

DE-FOA-0002849

Clean Energy CU (App # 15609)

ATTENTION:

Biological and Environmental Research
Address

U.S. Department of Energy

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Email

[REDACTED]

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED

ENERGY

88-6350515

Vibrant Fishing Community

•

Recognizing the importance of sustaining a vibrant fishing community that can coexist and thrive alongside offshore wind energy development.

•

DSL-BID-22-002

0291700000 •

STATE SURPLUS LAND BID NOTIFICATION

[REDACTED]

[REDACTED]

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[REDACTED]

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U S GOVERNMENT GRANTED

FOOD

88-6434509

New York State Commercial Food Fishing License and Food Fish Landing License

P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT

GRANTED

CLIMATE

92-6126382

CAS-HHS0000614051

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- **Report Cold-Stunned Sea Turtle Sightings on New York Beaches**
cold-stunned turtle laying in sand on a beach

There are four species of sea turtles that can be found in New York's coastal waters: green, Kemp's ridley, leatherback, and loggerhead sea turtles.

They remain local in our area during the warmer months from approximately May through November and will typically begin their migration south to warmer nesting waters by mid-November.

As a result of climate change impacts, warmer water temperatures cause sea turtles to remain in the area longer than usual.

When there is a sudden drop in water temperature before sea turtles migrate out of the area, they can fall victim to cold-stunning, a hypothermic condition that results in a lethargic state.

Sea turtles that are cold-stunned will wash ashore on New York beaches and require immediate professional care.

If you see a sea turtle wash ashore, please call the New York State Marine Mammal and Sea Turtle Stranding Hotline at (631) 369-9829 and relay as much information as possible.

The response teams from Atlantic Marine Conservation Society (AMSEAS) and New York Marine Rescue Center (NYMRC) need a detailed report of where the animal is located. If possible, write down the coordinates and/or mark the turtle's location with something, such as a stick or driftwood, that will be easy for the team to find.

Please do not touch the animal, put the animal back in the water, or remove the animal from the beach. Sea turtles are federally protected animals and are only to be handled by authorized personnel. Any further sudden changes in temperature or additional stress can lead to death.

Marine Permit Office - 2023 Renewals & Limited Entry Applications
DEC Marine Permit Office has sent out 2023 renewal applications for commercial fishing and recreational lobster permits.

If you have not received your renewal applications, contact [REDACTED]

- P B O E POWERED BY OUR ENVIRONMENT

U S GOVERNMENT GRANTED
WATER

88-6402927

DE-FOA-0002206

SFOP0008915

United Nations

United Nations Development Programme

United Nations Global Marketplace

[REDACTED]

UNGM # 870995

United Nations

SDG

The Division for Sustainable Development of UN-DESA

Welcome

[REDACTED]

account activated (reference #237905)

GP-0-20-004

NEW YORK STATE

DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

General Permit Number GP-0-20-004

U.S. Department of Energy - Office of Science

Funding Opportunity Announcement:

FY 2023 Research Opportunities in Environmental System Science

Funding Opportunity Announcement (FOA) Number: DE-FOA-0002849

DE-FOA-0002849 •

EERE

The Office of Energy Efficiency and Renewable Energy

DOE

The U.S. Department of Energy

CFA #116507 Industrial Development Bond Cap

FINRA CRM:0001001407328

03 / 30 / 2022

MPO

Marine Permit Office - 2023

New York State Commercial Food Fishing License and Food Fish Landing License

Non-Resident Food Fish License

Commercial Fishing Winter 2023 Special Harvest Programs

- ### Marine Permit Office - 2023 Renewals & Limited Entry Applications

DEC Marine Permit Office has sent out 2023 renewal applications for commercial fishing and recreational lobster permits.

If you have not received your renewal applications, contact [REDACTED]

Please remember that 2023 Non-Resident Food Fish License must be renewed no later than January 31, 2023.

The Marine Permit Office will be closed on Monday, December 26, 2022, and Monday, January 2, 2023, in observance of Christmas Day and New Year's Day. The last day to renew a limited entry 2022 permit is Friday, December 30, 2022.

We are currently accepting applications for new limited entry permits (Food Fish, Crab, Whelk). Complete applications must be received by the Marine Permit Office no later than Tuesday, January 3, 2023. To request an application, visit <https://on.ny.gov/limitedentry> before December 27, 2022. In the event that we receive more applications than available licenses, a random selection will be held in early February 2023.

Commercial Fishing Winter 2023 Special Harvest Programs

The Winter 2023 Special Harvest Programs include the Weekly Summer Flounder, Weekly Black Sea Bass, and the NYS Cooperative Multi-State Possession and Landing Programs will start on January 1, 2023. Program information and applications to participate in the programs are available on DEC's website.

Cooperative Multi-State Possession and Landing Program

For New York State Commercial Food Fishing License and Food Fish Landing License holders who participate in the Summer Flounder Weekly Harvest Program (Summer Flounder Permit required) or Black Sea Bass Weekly Harvest Program only.

Weekly Black Sea Bass Harvest Program

Effective Sunday, January 1, 2023, the weekly black sea bass program is established at 400 lbs. weekly. This trip limit will remain in effect until further notice.

Weekly Summer Flounder Harvest Program (Summer Flounder Permit required)

Effective Sunday, January 1, 2023, the weekly summer flounder program is established at 3,500 lbs. weekly. This trip limit remains in effect until further notice.

For more information about these programs, visit DEC's website.

Environmental Conservation Police on Patrol

ECO Pabes seized 27 hickory shad in Nassau County

Mad for Shad - Nassau County

On Nov. 14, while on foot patrol at West End Beach at Jones Beach State Park, ECO Pabes noticed an angler packing up fishing gear to leave. The angler left his bucket on the beach and walked back to the parking lot, suspiciously checking his surroundings, including which cars were in the lot. When the fisherman failed to see an ECO vehicle, he returned to the bucket and carried it back to the parking lot. ECO Pabes intercepted the angler and inspected the bucket, which held 27 hickory shad, a saltwater fish with a limit of five per day. Officer Pabes ticketed the angler for possessing over the limit of fish and fishing without a Marine registry, returnable to Nassau County First District Court. The ECO also seized the fish and donated them to a wildlife rehabilitator.

Photo: ECO Pabes seized 27 hickory shad in Nassau County

Undersized and Over the Limit - Richmond County

On Nov. 12, ECOs Veloski and Currey joined U.S. Park Police to patrol a popular fishing area in Staten Island. During the patrol, the ECOs observed anglers placing undersized tautog (blackfish) into shopping bags and then hiding the bags under logs, in the sand, and in weeds nearby. The Officers approached the group, questioned the anglers, and discovered a total of 16 blackfish hidden in the area. After determining who caught the fish, the ECOs issued 14 tickets to the subjects for possession of undersized blackfish, possession of over-the-limit blackfish, failure to release without undo harm, and unlawful disposal of solid waste. The anglers are scheduled to appear in Richmond County Court at the end of November.

Tossed and Tucked Tautog - Nassau County

On Nov. 1, while checking anglers fishing for tautog (blackfish) along the Wantagh Parkway bridges in the town of Hempstead, ECO Pabes noticed one angler talking on his phone to another angler using binoculars on the opposite side of the bridge. After the phone call ended, one of the anglers retrieved a bag from his belongings and dumped three blackfish back into the water. Officer Pabes approached the fisherman, who claimed he had not caught any fish. While speaking to the subject, Officer Pabes noticed a large bulge under the angler's sweater. The ECO requested the subject untuck his sweater and two undersized blackfish fell to the ground. The Officer issued three tickets to the angler, all returnable to Nassau First District Court, for possession of undersized fish, failure to release fish without undue harm, and no Marine Registry.

ECO Michalt preparing to measure illegal fish in Queens County

Poaching Striped Bass - Queens County

On Oct. 29, ECOs received a complaint about a group of anglers poaching striped bass and placing the fish at a dock in Howard Beach. However, by the time the Officers received the information, the fishermen already had left the area. The next day, ECOs Milliron and Michalet patrolled Jamaica Bay with members of the U.S. Coast Guard when they received a report that the same boat was out on the water. The ECOs returned to shore and split up to search for the boat. While driving over Cross Bay Bridge, ECO Michalet spotted the boat described in the complaint, notified Officer Milliron, and headed back to the dock. The Officers confronted the anglers, discovered 16 illegal striped bass, and issued 23 tickets to five individuals for possession of over-the-limit striped bass, possession of undersized and oversized striped

bass, no Marine Registry, and failure to release fish without undue harm.

Photo caption: ECO Michalet preparing to measure illegal fish in Queens County

The New York State Department of Environmental Conservation

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comments@offshorewindpower.org



DEC

New York State Department of Environmental Conservation

New York State Department of Environmental Conservation
DEC Delivers - Information to keep you connected and informed from the NYS Department of Environmental Conservation

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Saltwater Fishing & Boating Newsletter

In This Issue:

Offshore Wind Fisheries Mitigation Project

Report Cold-Stunned Sea Turtle Sightings on New York Beaches
Marine Permit Office - 2023 Renewals & Limited Entry Applications

Commercial Fishing Winter 2023 Special Harvest Programs
Environmental Conservation Police on Patrol

Offshore Wind Fisheries Mitigation Project

New York State, along with multiple state partners, have been working on advancing an initiative to establish a regional fund administrator for fisheries compensatory mitigation which may provide financial compensation to impacted fishing industry members for economic loss from offshore wind development off the Atlantic Coast.

Recognizing the importance of sustaining a vibrant fishing community that can coexist and thrive alongside offshore wind energy development,

the States have released a Request for Information (RFI) (PDF) aimed at receiving input from impacted members of the fishing industry, offshore wind developers, corporate and financial management entities, as well as interested members of the public, to inform efforts to establish a regional fisheries compensatory mitigation fund administrator.

Comments to the RFI are due by January 31, 2023, at 5 p.m. EST to comments@offshorewindpower.org.

This effort supports the implementation of the Bureau of Ocean Energy Management's (BOEM)

Draft Fisheries Mitigation Framework in a fair, equitable, and transparent manner for impacted Atlantic Coast fishing industry members and offshore wind developers.

The States' RFI seeks feedback on concepts and proposals on how to best establish a single regional administrator for the Atlantic Coast to collect, hold, determine eligibility, and dispense funds for economic losses to affected fishing industry members.

For more information, visit Special Initiative on Offshore Wind's website.

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Please do not touch the animal, put the animal back in the water, or remove the animal from the beach. Sea turtles are federally protected animals and are only to be handled by authorized personnel. Any further sudden changes in temperature or additional stress can lead to death.

Marine Permit Office - 2023 Renewals & Limited Entry Applications

DEC Marine Permit Office has sent out 2023 renewal applications for commercial fishing and recreational lobster permits.

If you have not received your renewal applications, contact MPO@dec.ny.gov or call 631-444-0470.

Please remember that 2023 Non-Resident Food Fish License must be renewed no later than January 31, 2023.

The Marine Permit Office will be closed on Monday, December 26, 2022, and Monday, January 2, 2023, in observance of Christmas Day and New Year's Day. The last day to renew a limited entry 2022 permit is Friday, December 30, 2022.

We are currently accepting applications for new limited entry permits (Food Fish, Crab, Whelk). Complete applications must be received by the Marine Permit Office no later than Tuesday, January 3, 2023. To request an application, visit <https://on.ny.gov/limitedentry> before December 27, 2022. In the event that we receive more applications than available licenses, a random selection will be held in early February 2023.

Commercial Fishing Winter 2023 Special Harvest Programs

The Winter 2023 Special Harvest Programs include the Weekly Summer Flounder, Weekly Black Sea Bass, and the NYS Cooperative Multi-State Possession and Landing Programs will start on January 1, 2023. Program information and applications to participate in the programs are available on DEC's website.

Cooperative Multi-State Possession and Landing Program

For New York State Commercial Food Fishing License and Food Fish Landing License holders who participate in the Summer Flounder Weekly Harvest Program (Summer Flounder Permit required) or Black Sea Bass Weekly Harvest Program only.

Weekly Black Sea Bass Harvest Program

Effective Sunday, January 1, 2023, the weekly black sea bass program is established at 400 lbs. weekly. This trip limit will remain in effect until further notice.

Weekly Summer Flounder Harvest Program (Summer Flounder Permit required)

Effective Sunday, January 1, 2023, the weekly summer flounder program is established at 3,500 lbs. weekly. This trip limit remains in effect until further notice.

For more information about these programs, visit DEC's website.

Environmental Conservation Police on Patrol ECO Pabes seized 27 hickory shad in Nassau County

Mad for Shad - Nassau County

On Nov. 14, while on foot patrol at West End Beach at Jones Beach State Park, ECO Pabes noticed an angler packing up fishing gear to leave. The angler left his bucket on the beach and walked back to the parking lot, suspiciously checking his surroundings, including which cars were in the lot. When the fisherman failed to see an ECO vehicle, he returned to the bucket and carried it back to the parking lot. ECO Pabes intercepted the angler and inspected the bucket, which held 27 hickory shad, a saltwater fish with a limit of five per day. Officer Pabes ticketed the angler for possessing over the limit of fish and fishing without a Marine registry, returnable to Nassau County First District Court. The ECO also seized the fish and donated them to a wildlife rehabilitator.

Photo: ECO Pabes seized 27 hickory shad in Nassau County

Undersized and Over the Limit - Richmond County

On Nov. 12, ECOs Veloski and Currey joined U.S. Park Police to patrol a popular fishing area in Staten Island. During the patrol, the ECOs observed anglers placing undersized tautog (blackfish) into shopping bags and then hiding the bags under logs, in the sand, and in weeds nearby. The Officers approached the group, questioned the anglers, and discovered a total of 16 blackfish hidden in the area. After determining who caught the fish, the ECOs issued 14 tickets to the subjects for possession of undersized blackfish, possession of over-the-limit blackfish, failure to release without undo harm, and unlawful disposal of solid waste. The anglers are scheduled to appear in Richmond County Court at the end of November.

Tossed and Tucked Tautog - Nassau County

On Nov. 1, while checking anglers fishing for tautog (blackfish) along the Wantagh Parkway bridges in the town of Hempstead, ECO Pabes noticed one angler talking on his phone to another angler using binoculars on the opposite side of the bridge. After the phone call ended, one of the anglers retrieved a bag from his belongings and dumped three blackfish back into the water. Officer Pabes approached the fisherman, who claimed he had not caught any fish. While speaking to the subject, Officer Pabes noticed a large bulge under the angler's sweater. The ECO requested the subject untuck his sweater and two undersized blackfish fell to the ground. The Officer issued three tickets to the angler, all returnable to Nassau First District Court, for possession of undersized fish, failure to release fish without undue harm, and no Marine Registry.

ECO Michalt preparing to measure illegal fish in Queens County

Poaching Striped Bass - Queens County

On Oct. 29, ECOs received a complaint about a group of anglers poaching striped bass and placing the fish at a dock in Howard Beach. However, by the time the Officers received the information, the fishermen already had left the area. The next day, ECOs Milliron and Michalet patrolled Jamaica Bay with members of the U.S. Coast Guard when they received a report that the same boat was out on the water. The ECOs

returned to shore and split up to search for the boat. While driving over Cross Bay Bridge, ECO Michalet spotted the boat described in the complaint, notified Officer Milliron, and headed back to the dock. The Officers confronted the anglers, discovered 16 illegal striped bass, and issued 23 tickets to five individuals for possession of over-the-limit striped bass, possession of undersized and oversized striped bass, no Marine Registry, and failure to release fish without undue harm.

Photo caption: ECO Michalet preparing to measure illegal fish in Queens County



12 / 28 / 2022

----- Forwarded message -----



STATE SURPLUS LAND BID NOTIFICATION





[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The property is to be sold via sealed bid “as is,” “where is.” Bids will be accepted

until **noon, Tuesday, Jan. 31, 2023**. Any bid received after that time will be returned to the bidder unopened. DEP is not responsible for bids mailed but not arriving by **noon, Tuesday, Jan. 31, 2023**. All bids received by the bid submission deadline will be opened at **2 p.m., Tuesday, Jan. 31, 2023**.

A minimum acceptable bid of **\$45,000** has been set by the state, **with a deposit in the amount of 10 percent of the bidder's bid due and included in the prospective buyers bid to purchase the property and is further defined in the bidding package**. Any award made will be to the highest responsive bidder, provided it is in the interest of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to accept the bid.

Any bids that are less than the minimum acceptable bid will be considered counter proposals and will be deemed non-responsive and rejected. Deposits of buyers who are not the successful buyer of the property will be returned to the bidding party. The Trustees or DEP, as staff to the Trustees, reserve the right to reject any or all bids.

All bid documents can be found at [State of Florida Surplus Lands](#). Select "On the Market."

Learn more about [state-owned lands available for purchase](#).

About State of Florida Surplus Lands

All properties are sold "as-is, where-is." It is the bidder's responsibility to visit and/or verify all conditions of the property and all conditions and requirements of the bid instructions prior to placing a bid. A bidder will not be relieved of any liabilities and/or obligations resulting from lack of knowledge of conditions or requirements. The acreage used in this brochure/website is estimated and not based on a survey. The purchase price of a surplus property will not be reduced regardless of any difference between the estimated acreage and the acreage determined by a survey or other means.

<https://content.govdelivery.com/accounts/FLDEP/bulletins/33d6887>











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8 attachments

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989K



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administrator

1 message

Thu, Dec 29, 2022 at 12:28 PM

To: "[REDACTED]" <comments@offshorewindpower.org>

Please stop the process of the offshore wind farms off the coast of NJ.

We must protect the ocean and all its species. We must also keep the ocean free of industrialization.

Thank you

[REDACTED]



Comments Comments <comments@offshorewindpower.org>

(no subject)

1 message

[REDACTED]
To: comments@offshorewindpower.org

Thu, Dec 29, 2022 at 12:32 PM

Please stop this obvious scam on the NJ taxpayers. We are destroying what left of our beautiful coast. You can't compensate all the people that this will hurt not the environment this is going to destroy. Please stop allowing money to have the last day.. do not betray our own people and coast.

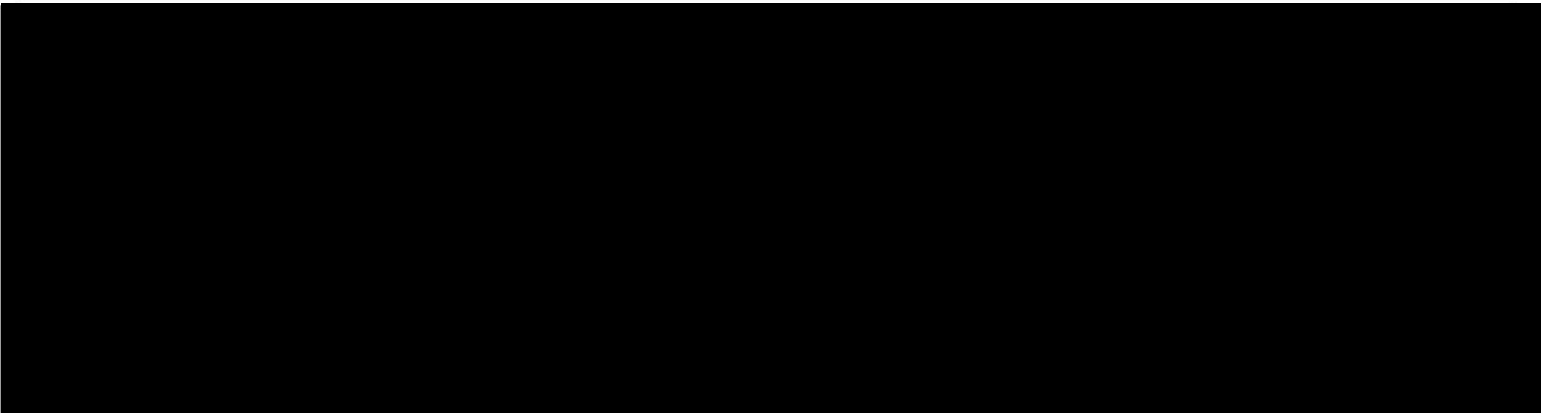


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Comments Comments <comments@offshorewindpower.org>



1 message





[REDACTED]



GP-0-21-002 - NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

General Permit Number GP-0-21-002

PERMIT -
Under the Environmental
Conservation Law (ECL) -
GENERAL PERMIT GP-0-21-002

-
Utility Rights of Way (ROW) Vegetation Management Permittee and Facility Information.

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FOOD

88-6434509

Happy New Year 2023!

United States Environmental Protection Awarded Award...

Dedicated To...

[REDACTED]

[REDACTED]

More...

[REDACTED]

12 / 28 / 2022

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HEALTH

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.



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NON CONTINENTAL AFFILIATED!
- the Families First Coronavirus Response Act.

NON POLITICAL AFFILIATED! - U.S DFC POLITICAL RISK MAXIMUM INSURANCE
INSURED - 12282022 - 12292022

[REDACTED]
12 / 29 / 2022

On Wednesday, December 28, 2022, [REDACTED]

GP-0-21-002 - NEW YORK STATE

DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

General Permit Number GP-0-21-002

PERMIT -

Under the Environmental

Conservation Law (ECL) -

GENERAL PERMIT GP-0-21-002

-

Utility Rights of Way (ROW) Vegetation Management Permittee and Facility Information.

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U S GOVERNMENT GRANTED

FOOD

88-6434509

Happy New Year 2023!

United States Environmental Protection Awarded Award...

Dedicated To...

P:B:O:E Powered By Our Environment, Inc.

*Global Community African Diaspora Health
& Environmental Protection Collaboration.*

More...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATE SURPLUS LAND BID NOTIFICATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The property in [REDACTED] is being offered for sale by the [REDACTED]

Division of State Lands

through competitive sealed bid [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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The property is to be sold via sealed bid "as is," "where is." Bids will be accepted until noon, Tuesday, Jan. 31, 2023. Any bid received after that time will be returned to the bidder unopened. DEP is not responsible for bids mailed but not arriving by noon, Tuesday, Jan. 31, 2023. All bids received by the bid submission deadline will be opened at 2 p.m., Tuesday, Jan. 31, 2023.

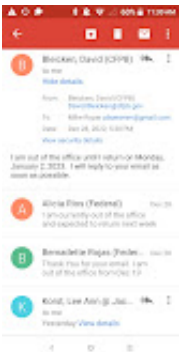
A minimum acceptable bid of \$45,000 has been set by the state, with a deposit in the amount of 10 percent of the bidder's bid due and included in the prospective buyers bid to purchase the property and is further defined in the bidding package. Any award made will be to the highest responsive bidder, provided it is in the interest of the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to accept the bid.

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BY

U.S. - Africa Leaders Summit: Strengthening Partnerships to Meet Shared Priorities released by the White House:
Congress to expand and modernize U.S. partnerships across Africa on economic prosperity, democracy and human rights, health, food security, and climate. -

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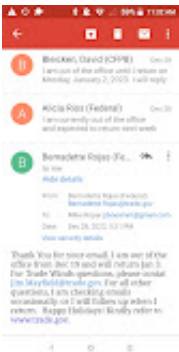
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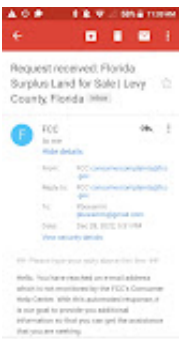
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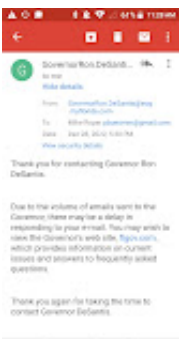
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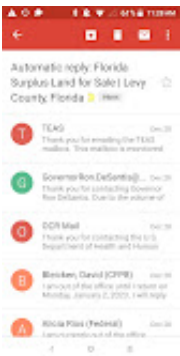


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Comments Comments <comments@offshorewindpower.org>

Comments

1 message

To: comments@offshorewindpower.org

Thu, Jan 19, 2023 at 5:25 PM

I think the windmills are a good idea and won't negatively effect fishing, but most of the boats are going to need an upgraded radar and AIS system. --

Best Regards,

[Redacted signature block]



Comments Comments <comments@offshorewindpower.org>

(no subject)

1 message

[REDACTED]
To: comments@offshorewindpower.org

Thu, Jan 19, 2023 at 7:59 PM

I think it is a good idea to build these wind farms and it will provide green electric energy. Which I am all for . But it also provides something else for a poor old fisherman like me , a new hazard I may crash into !! My equipment is old and I think it would be a blessing if you provided me with a updated Radar system so I can see them in limited visibility. I also think I would need a newer AIS to feel comfortable with these in the ocean.

[REDACTED]



Comments Comments <comments@offshorewindpower.org>

To Regional Fund Administrator RFI

1 message

Tue, Jan 24, 2023 at 11:39 AM

[REDACTED]
To: Comments@offshorewindpower.org

To whom it may concern:

I am not in opposition to Windfarms, because I feel they won't harm our environment. In fact I believe these ocean structures will enhance fishing by providing new habitat for species to live and breed! For my part navigation will be key in safe passage with these new windmills! If possible helping our industry with modern navigation aids would be truly supportive for a safe environment! These aids may include updated Ais's, Radars, Chartplotter's, and communication equipment for safe passage!

Thanks for your consideration

[REDACTED]

Sent from my iPhone



ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

January 25, 2023

Special Initiative on Offshore Wind
Fisheries Mitigation Project
Re: Regional Fund Administrator RFI

To Whom it May Concern,

I'm writing on behalf of the Atlantic Offshore Lobstermen's Association's in response to the "Framework for Establishing a Regional Fisheries Compensation Fund Administrator..." request for information. We appreciate the efforts of the States to bring together this regional fund proposal in the absence of federal authority to create, administer, or mandate contributions to a centralized fisheries mitigation fund.

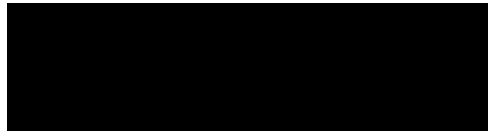
To respond directly to the information requested:

- The Association finds the Framework to be well considered and the scope of topics to be appropriate and thorough. We agree with the general statements outlined in the scoping document.
- Related to claims documentation, we encourage the fund administrator to rely on state and federal fisheries management employees to identify appropriate data sources, especially in cases where traditional fishing effort data are not available. For example, the lobster fishery will not have 100% effort reporting nor vessel tracking until later this year, so historic spatiotemporal data will need to be derived from other sources. The Decision Support Tool, in development by NMFS NEFSC, may be helpful as an existing geospatial database of fisheries data for fixed gear fisheries in the Atlantic.
- As to governance, we feel either a state led or state/fisheries co-led Governing Board would be appropriate, as long as diverse fishing interests are well represented on the planned Advisory Panel(s). Additionally, including offshore wind representation as part of the Governing Board could be an avenue to encourage developers' participation in the fund.
- In Advisory roles, we agree with the stakeholder groups listed in the Framework and further suggest that it would be valuable to have a claims/appeals expert advisor as well. This would establish capacity within the advisory body to arbitrate disputed claims.
- As to funding questions, we understand that the States do not have the authority to require developers to direct their compensatory mitigation to a regional fund. That being said, we ask that the States work with their elected officials to encourage a legislative fix that gives the states or federal government direct authority.

- As to administrative costs, we suggest the States look to rates typical for fund managers in other industries to develop fair but reasonable compensation for the Administrator.
- Relating to lost revenue qualifying for compensation, Table 1 does not consider the indirect costs to fishers operating adjacent to lease areas, in terms of displaced fishing effort increasing competition and decreasing efficiency. This may be hard to value, but it is an important consideration. Related, but also difficult to quantify, will be revenue losses associated with oceanographic and habitat alterations that result from OSW installations.
- Finally, related to identifying a regional fund administrator, the primary qualification needs to be experience with fiscal fund management and claims processing. Fisheries expertise can be provided via the advisory bodies and state agencies, if needed. Although an ideal candidate would be an organization with both fisheries and financial expertise.

We appreciate the States' efforts to develop and staff a single, fair, and equitable compensation process for Atlantic fishermen regardless of state residency.

Thanks for the opportunity to comment,

A large black rectangular redaction box covering the signature area.Two smaller black rectangular redaction boxes stacked vertically, covering contact information.



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administration RFI

1 message

[Redacted]

Fri, Jan 27, 2023 at 12:14 PM

To: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

To Whom It May Concern,

Our company, TWFM Ferry Inc., is a Rockaway, NY, based company with over 60 years of experience in the NY Bight. We have 2, 95' aluminum whale watching vessels, and are supporters of the wind projects that you are involved in.

Although supporters of these projects, we do have concerns about being able to safely navigate through and around the wind farms. These concerns revolve around radar interference and possibly having to upgrade our radars, as well as our AIS systems.

We appreciate this opportunity to comment on this topic, as well as to let you know that TWFM Ferry Inc's vast experience in NY Bight, plus our 2 vessels can be made available to assist you in these projects.

Please feel free to contact me, [Redacted] at the numbers below.

Thank you,

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Comments Comments <comments@offshorewindpower.org>

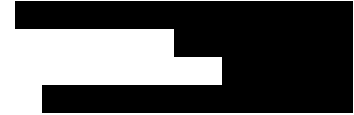
Fisheries Mitigation

1 message

[REDACTED]
to: comments@offshorewindpower.org

Fri, Jan 27, 2023 at 5:07 PM

Hello my name is [REDACTED] I am an offshore trawlermen that will be directly impacted by the wind farm. I want to be compensated for my loss of income. Please contact me at your earliest convenience On how I should proceed. [REDACTED]
[REDACTED]



**COMMENTS OF THE NEW YORK OFFSHORE WIND ALLIANCE IN RESPONSE TO NINE-STATE
REQUEST FOR INFORMATION**

**FRAMEWORK FOR ESTABLISHING A REGIONAL FISHERIES COMPENSATION FUND
ADMINISTRATOR FOR POTENTIAL IMPACTS TO THE FISHING COMMUNITY FROM OFFSHORE
WIND ENERGY DEVELOPMENT**

JANUARY 31, 2023

The New York Offshore Wind Alliance (“NYOWA”)¹ respectfully submits the following comments in response to the December 12, 2022 Request for Information² (“RFI”) issued on behalf of the nine Eastern states seeking to establish a Regional Fund Administrator (“RFA”) for the administration of a centralized fund for compensatory mitigation of potential losses incurred by members of the for-hire recreational and commercial fishing industries as a result of offshore wind (“OSW”) farm construction and operation.

As a general matter, NYOWA strongly supports the states’ efforts to coordinate, streamline and standardize a claims-based fisheries compensation mechanism. As the RFI notes, “the United States currently lacks a standardized approach to fisheries compensatory mitigation that is consistently applied to all OSW projects.”³ The current ad hoc approach suffers from many deficiencies and serves neither the interests of the sustained and orderly development of the U.S. offshore wind industry, nor the equitable recompense to fishers for economic losses attributable to offshore wind development. Major inefficiencies and inequities associated with the current scheme include, but are not limited to the following:

- **Current process creates divergent outcomes.** OCS fisheries constitute regional resources that transcend state boundaries. Commercial fleets may fish waters that are a considerable distance from their home port. Under the current state-by-process, agencies overseeing compensatory mitigation may not have jurisdiction over the fishery in question, resulting in certain affected parties falling outside the reach of these remedial schemes.
- **Heterogenous nature of compensatory mitigation mechanisms across the states.** In the absence of a comprehensive federal scheme, some (but not all) individual states have established processes for mitigating impacts and fixing monetary relief as part of their coastal zone management responsibilities. The result is an onerous quilt of mitigation processes that vary quite significantly from state to state.

¹ NYOWA is a diverse coalition of offshore wind developers, environmental NGO’s, labor and other supporters seeking to establish the timely development of a robust and responsible offshore wind market in New York State.

² [“Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Development”](#), issued on December 12, 2022.

³ RFI Scoping Document at 6.

- **Lack of commitment to consistent, data-driven standards for impact estimation.** All stakeholders need to have confidence that the estimation of financial impacts associated with offshore wind development is grounded in science and analytical rigor. Unfortunately, these attributes are not evident in the processes administered to date, eroding public confidence that the result is equitable and fair to all affected parties.
- **Uncapped liability of current process exacerbates regulatory risk.** Offshore wind project development is predicated on long-term revenue streams obtained through competitive state solicitations. The contract price is typically fixed (or escalates based on a fixed schedule) and must be sufficient to provide a competitive return on the invested capital. These fixed price contracts do not typically allow for the pass-through of unpredictable and costly compensation payments which, at an extreme, can undermine a project's fundamental economics. This, in turn, puts at risk state and federal OSW deployment goals and the economic, environmental, and social benefits they generate.
- **Highly litigious nature of current processes.** The absence of universally accepted and government-sanctioned baseline data sources and standardized impact estimation methodologies incentivizes parties to take an adversarial, litigious posture. The level of contentiousness, inefficient use of scarce administrative resources, diversion of party resources, and inconsistent outcomes marking these proceedings serve no one's interests and inspire little public confidence in the process outcomes. This, in turn, exacerbates the already fraught relationship between project developers and fishing interests.

The Scoping Document reflects the states' collective progress in framing out an alternative compensatory mitigation construct. The effort to stand up a RFA addresses a perceived gap in the state-federal cooperative effort to ensure that OSW development is consistent with the long-term interests of commercial and for-hire recreational fishing industries and presents a real opportunity to transition to a more equitable, predictable, consistent, and comprehensive approach for adjudicating and disbursing compensatory funding.

The remainder of the NYOWA comments are responsive to specific, select questions posed in the RFI. This response is supplemental to the more comprehensive and detailed responses proffered by American Clean Power Association (ACP), to which NYOWA is a signatory.

Do you agree with the general statements outlined in the Scoping Document...? If not, explain what you do not agree with, your concerns, and identify alternative possible formulations or solutions of that element.

NYOWA supports the basic thrust of the Scoping Document "[t]o establish a credible regional administrator for managing and distributing fisheries compensatory mitigation funds for OSW for the U.S. eastern seaboard."⁴

⁴ Scoping Document at 7.

In order to meet this overarching objective, NYOWA members believe it is imperative that the RFA serve as a “one stop shop” for compensatory mitigation claims. Several implications flow from this.

First, the RFA should strive to amass and maintain a funding corpus that allows for the payout over time of reasonably foreseeable losses that are directly attributable to OSW project construction and operation. A standard assessment formula should be established (e.g., \$/acre, \$/MW), rather than a case-by-case adjudication, assuming adherence to BOEM’s best practice standards. NYOWA recognizes and appreciates that there is going to be a degree of uncertainty over the magnitude of the aggregate impact, with the risk that the fund could over- or under-collect compared to well-documented claims. However, NYOWA believes that this uncertainty band will reduce over time through improvements to baseline data, better scientific understanding of causality, and experience garnered through the first U.S.-based utility scale wind projects.⁵

Second, and as a corollary to the first principle, the fund should not be empowered to retroactively increase assessments on OSW projects based on new or additional claims not reasonably foreseeable at the time of the original assessment. To do so would be to fundamentally undermine the certainty principle on which the RFA is predicated.

Third, states must reconcile their coastal zone management and other policy mechanisms for compensatory mitigation with the establishment of the RFA. If the goals of efficiency and equity are to be realized, the RFA should largely supplant, rather than supplement or duplicate, existing state processes.

Fourth, the fund should prioritize compensation to those directly and proximately impacted by OSW construction and operation. Guidance should be established to avoid double-counting of claimed losses (e.g., reduced economic value of catch *plus* permit devaluation; full value of loss claimed by both vessel operator and wholesaler). Downstream or other claimed socio-economic losses may be too remote and speculative and should not be eligible until more experience is gained with the fund.

Fifth, RFA funding for gear loss and other activities designed to facilitate the fishing industry’s adaptation to the co-existence of OSW in identified fishing grounds is appropriate. As noted in the Scoping Document, an important aim of the fund is to allow fishers to “keep fishing”.⁶

Sixth, NYOWA supports a proposed RFA model comprised of the nine states along the Eastern Seaboard of the Atlantic. For all the reasons stated, a singular delivery mechanism for compensatory mitigation will be a far superior alternative to the existing balkanized, state-by-

⁵ NYOWA supports the comments of the American Clean Power Association (“ACP”) arguing the merits of the development of a funding corpus generated through a lease sale credit mechanism.

⁶ Scoping Document at 11.

state structure. This can serve as a potential template for future implementation of a similar fund established for the Gulf States or West Coast as those markets develop.⁷

How might States encourage developers' participation in directing their compensatory mitigation to a regional fund?

States can leverage their procurement authority to encourage full and fair developer participation in a regional mitigation fund. States should agree on a uniform, region-wide metric to be applied in future OSW solicitations. An example of this is the eligibility requirement established in New York's recent Requests for Proposals, that mandates, upon award, a developer commitment of \$10,000 per MW of offered capacity for purposes of providing financial and technical support to regional monitoring of wildlife and fish that support economically important fisheries.⁸

States can also indirectly encourage the development of a robust and adequately funded RFA by advocating for the implementation of bidding credits based on funding commitments made pursuant to future offshore wind lease sales conducted by BOEM.

NYOWA appreciates the opportunity to offer our comments on the nine-state framework. We look forward to working with the state and federal officials, and other stakeholders to bring this framework into reality.

Respectfully submitted,

[Redacted signature block]

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[Redacted signature block]

⁷ While a preferred approach may be for the Bureau of Ocean Energy Management (BOEM) to serve as the central administrator of a fisheries compensation fund - with the ability to direct payments into the fund as part of an overall avoidance, minimization, and mitigation strategy, manage the fund corpus, and assign compensation - the agency has taken the view that it lacks the legal authority to perform these tasks. Congressman Tonko's *Offshore Energy Modernization Act* (H.R.9641) would explicitly grant BOEM this authority. NYOWA nonetheless believes that it is fruitful for the states to continue to pursue the development of a regional compensation fund on a joint and collective basis.

⁸ See [ORECRFP22-1](#), *Purchase of Offshore Renewable Energy Certificates*, at §2.2.7.

THE
CONSERVATION FUND

January 31, 2023

Submitted Via comments@offshorewindpower.org

Re: Regional Fund Administrator RFI

Dear Special Initiative on Offshore Wind and Cooperating State Representatives:

The Conservation Fund (TCF) appreciates the opportunity to comment on the *Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development* dated December 12, 2022 (Scoping Document), in response to the associated Request for Information (RFI) that contains questions of interest from the nine cooperating states (the States). TCF provides these comments based on almost 25 years of experience providing compensatory mitigation in the United States as a partner to federal agencies such as the United States Fish and Wildlife Service (USFWS), United States Army Corps of Engineers, Bureau of Land Management, and National Park Service. TCF recognizes the importance of ensuring that the marine renewable energy industry is successful at providing clean renewable power, but strongly supports a consistent, effective, and efficient method for also ensuring that there is compensatory mitigation for adverse impacts of offshore wind energy development on natural, cultural, and historic resources because these are of public importance.

The Conservation Fund is a national non-profit conservation organization dedicated to conserving and restoring America's land and water legacy for future generations. Established in 1985, we work with landowners; federal, state, and local agencies; private entities; and other partners to conserve and restore our nation's important lands for people, wildlife, and communities, with over 8.5 million acres protected to date. We are an independent, nonpartisan organization, with a Four-Star rating by Charity Navigator. We have years of experience providing successful mitigation solutions to our partners, including services for all seven sectors of major infrastructure development: wind, solar, oil, gas, transmission, hydropower, and transportation. This experience has provided us insight into workable mitigation solutions. As America begins to develop climate change solutions, we recognize that balancing economic development with sound environmental practices will be essential for America's prosperity and resilience. Our nationwide team includes experienced specialists who provide mitigation services in four main categories: acquisition (conservation and preservation); restoration; planning; and fund administration. We work at the site level as well as at the landscape scale to help partners achieve their goals. All our projects are designed to achieve multiple benefits, with conservation guiding everything we do.

Our interpretation of the Scoping Document is that the States have determined that the development of a settlement claims fund is the preferred method for compensating the fisheries industry for impacts from offshore wind development. As we understand the Scoping Document, the Regional Fund Administrator's role is to receive claims from individuals and companies from the fishing industry and

then decide if those claimants should be compensated for financial loss caused by renewable energy development. Drawing on TCF's experience—before the States continue with a settlement fund to compensate the for-profit fisheries industry for impacts on their business—we offer our knowledge of a potentially different style of mitigation program that has been operating in the United States for decades. The established mitigation program for impacts to certain natural, cultural, and historic resources involves a free-market credit sale program that has developed from a regulated mitigation market, established using existing legal precedent.

TCF recommends that the States consider this alternative, compensatory mitigation framework during the review of the input provided on the questions in the RFI. Federal and some state agencies have been implementing compensatory mitigation for decades to provide offsets for unavoidable impacts to natural, cultural, and historic resources. The experience of these agencies can be found in guidance documents and experts at each agency, and in some cases in formal regulations. The Conservation Fund is engaged each year by several of these federal agencies to coordinate and facilitate a week-long training on compensatory mitigation. The federal employee instructors from this course are the experts on compensatory mitigation and could provide a wealth of technical expertise on the successful lessons learned and potential mistakes of establishing and administering a compensatory mitigation fund.

While it is preferable for a compensatory mitigation program to be guided by clear governmental policy and legal basis, a voluntary mitigation program is possible to achieve outcomes and establish implementing procedures that are consistently applied. Our two recommendations below suggest establishing the voluntary mitigation program with a Regional Fund Administrator as the short-term and swift solution to this proposed mitigation need, while establishing a long-term compensatory mitigation market for the Bureau of Ocean Energy Management (BOEM) to regulate in the future. Ideally, the structure of the voluntary market would follow the guidance and policy that has been well established so that the transition to a regulated mitigation program is seamless.

RECOMMENDATION #1: In the near term, TCF recommends that the States proceed with establishing a Regional Fund Administrator that could implement a voluntary compensatory mitigation program. This could be in addition to or in lieu of a settlement claims fund. If there is interest in considering this alternative framework for mitigation, the States can quickly draw on federal agency regulations, policy, and guidance documents on compensatory mitigation; there are several consistencies in how these programs are implemented. As an example, the National Oceanic and Atmospheric Administration has issued its [Mitigation Policy for Trust Resources](#). These federal agency regulations, policies and guidelines include many answers to the questions in the RFI, and can provide a resource that will help the States achieve consistency with a compensatory mitigation program based on approaches taken by federal agencies, which have been refined by years of trial and error that our federal agencies have experienced with compensatory mitigation.

Using the existing precedent for compensatory mitigation, the States will find that three mitigation alternatives can achieve mitigation requirements for unavoidable impacts. The In-Lieu Fee (ILF) mitigation alternative closely resembles the ideas described in the Scoping Document, but it is a mitigation credit-based system. We have provided summary descriptions of the mitigation alternatives below and recommend reviewing example ILF instruments, like one TCF administers for bat species

protected by the Endangered Species Act: [Range-wide Indiana Bat and Northern Long-eared Bat In-Lieu Fee Program Instrument](#).

RECOMMENDATION #2: In the longer term, TCF recommends that BOEM work with the States to establish a federal compensatory mitigation program. Many federal and state agencies that have provided the existing policies and guidance on regulated mitigation markets in the United States have worked together on interagency review teams and other training for decades. BOEM could seek to join these teams and develop the expertise that would allow it to take the lead on developing a regulated compensatory mitigation market for the marine renewable space that includes public interests such as natural, cultural, and historic resources. BOEM could provide policies and guidance based on the years of compensatory mitigation precedent and then provide regulatory oversight over a free-market mitigation credit system.

DISCUSSION OF COMPENSATORY MITIGATION PROGRAM OPTIONS: As background, the existing compensatory mitigation programs have three primary mechanisms for offsetting project impacts: mitigation banks, in-lieu fee (ILF) programs, and permittee responsible mitigation.

Mitigation banks provide a form of advance mitigation, with the mitigation provider (bank sponsor) required to develop the mitigation project/site and achieve the intended measured success prior to selling mitigation credits to compensate for unavoidable impacts. Because there are many risks to developing mitigation banks, for-profit companies often develop them. The advantage of a mitigation bank to the regulator is that the mitigation project/site is proven successful before credits are sold. The advantage to an infrastructure developer is that its mitigation responsibility is transferred to the bank, as the mitigation provider. The mitigation bank is compensated through the profit generated by the sale of the mitigation credits.

Like mitigation banks, in-lieu fee programs sell mitigation credits to infrastructure developers and assume responsibility to complete the project(s) to offset the impacts of the development. However, the mitigation project(s) in most cases are completed after the credits are sold. ILF programs may be established and operated only by nonprofit organizations or government agencies (generally state agencies). An ILF program administrator works with a regulator to develop a program instrument that establishes the procedures for collecting mitigation fees and describes where and how the funds collected are to be used to implement approved mitigation projects. Although the mitigation projects are completed after credits are sold, all these ground rules are established in advance before any credits are sold. Like a mitigation bank, the mitigation responsibility is transferred from the infrastructure developer to the ILF program sponsor. The difference, when compared to a mitigation bank, is that the mitigation project is not implemented until sufficient funding has been accumulated. However, ILF programs provide great opportunities for pooling mitigation funding to opportunistically target the best conservation outcomes for the resource as they become available.

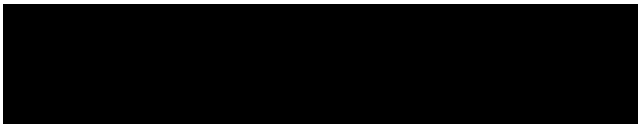
The third method used to implement compensatory mitigation is permittee-responsible mitigation, or actions taken directly by the entity that caused the impact (i.e., the infrastructure developer or other project proponent) or by its authorized contractor or other mitigation provider. This method is often selected by an infrastructure developer when mitigation banks and ILF programs are unavailable, largely

because permittee-responsible mitigation requires the most responsibility, effort, and time to develop an approved “custom” mitigation project. This customized approach has the benefit of ensuring mitigation most closely offsets the impacts. The success of this mitigation type depends upon the infrastructure developer's qualifications to self-perform the mitigation or the expertise of the third-party mitigation provider. The Conservation Fund has successfully administered permittee-responsible mitigation funds for large multi-state projects. If requested, we could share an example of the agreements for these projects if our counterparty provides permission. A permittee-responsible mitigation project follows the policies and guidelines of the regulating agency, or a fund administrator, and is generally required to meet the same objectives as a mitigation bank or ILF program.

Moving forward, regardless of the framework the States ultimately select, The Conservation Fund believes it is important for the States work to establish consistent approaches to measurement of the impacts from development and the steps each developer will have to take to mitigate for those impacts and/or the calculation of the financial compensation that each developer will be required to pay. To the extent financial compensation is required, we believe it is important for clarity about both the entity with responsibility for making decisions about how those funds are used (i.e., approving proposed mitigation projects) and the criteria for mitigation project approval.

The Conservation Fund supports and encourages the establishment of a Regional Fund Administrator that ensures investment in compensatory mitigation programs—through any combination of the three mechanisms—perhaps to offset the impacts to the fishing community, but more importantly for public interests such as natural, cultural, and historic resources, from offshore wind energy development. We appreciate the opportunity to comment on the RFI. We would be pleased to provide further details on our comments and suggestions contained in this letter, as appropriate.

Sincerely,

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January 31, 2023

To Whom it may Concern,

As master of the [REDACTED] I am writing to express my concerns about the turbines being constructed south of Jones Beach.

I have been fishing in & around these waters carrying up to 45 fares for over 35 years; making over 200 full day trips each year.

My main concern is being able to safely navigate in this area in limited visibility. Having so many large, steel structures in close proximity may cause interference or feedback on radar sets. Also, vessels under 65', such as mine are not required to have an AIS System and most do not have this technology.

I also believe that expanding the rock field at the base of each windmill would be beneficial to all. Each windmill would become its own artificial reef or ecosystem supplying food and shelter for a multitude of marine species. This in turn would give fishermen many more places to fish reducing pressure on our existing reefs. I'm sure environmentalists would be pleased with this as well.

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

January 31, 2023

Dear [REDACTED]

We write to express the support of the Northeastern Regional Association of Coastal Ocean Observing Systems (NERACOOS) and Mid-Atlantic Regional Association Coastal Ocean Observing System (MARACOOS) for the establishment of a Regional Fisheries Compensatory Mitigation Fund Administrator. NERACOOS and MARACOOS are the Regional Associations within the U.S. Integrated Ocean Observing System (IOOS) that oversee ocean data collection, data management, modeling, data product development, and end-user engagement from Maine to Virginia, the states covered by the proposed Administrator.

IOOS aims to produce, integrate, and communicate high quality ocean and coastal information that meets the safety, economic, and stewardship needs of the Nation. Commercial fishermen are among the most important user groups served by IOOS by virtue of their numbers, the risks they take every day on the sea, and the vital contributions they make to coastal economies and heritage. Increasingly, the offshore wind industry is becoming an important user group as well given its economic potential, prospects for climate change mitigation, and alignment with national policy goals. Helping to resolve conflicts between and promote coexistence between these two vital sectors is therefore a high priority concern.

Ocean observing systems will play a vital role in ensuring coexistence by helping to understand impacts and supporting mariner safety in a complex operational environment. We see this Administrator as a valuable conduit for channeling user concerns and needs to the IOOS enterprise, and cooperating with our organizations in determining how to meet those needs. Compensation for impacts can take different forms, and generating additional data and forecasts that enable greater effectiveness and efficiency of fishing operations while minimizing disruptions to energy production can be a powerful win-win solution. We look forward to exploring and implementing these types of solutions with the Administrator and other partners in government and industry.

Thank you for the opportunity to comment on this important position. Please do not hesitate to reach out with any questions. We look forward to working with you on the important ocean challenges ahead.

[REDACTED]

Request for Information (RFI): Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development

INFORMATION REQUESTED This RFI seeks comments and suggestions on the topics discussed in the accompanying Scoping Document to help guide and inform decision making regarding the selection and establishment of the Regional Fund Administrator. Responses that address the following questions would be appreciated. Please note that this is not a Request for Qualifications (RFQ) but an RFI, only. Nothing in this RFI, nor responses to it, should be construed as a procurement vehicle or solicitation.

Please also note that changes may be made to the Scoping Document based on consideration of comments received. Establishing a Regional Fund Administrator for Fisheries Compensatory Mitigation Framework

- Do you agree with the general statements outlined in the Scoping Document under the following topic headings below? If not, explain what you do not agree with, your concerns, and identify alternative possible formulations or solutions of that element.

- Intended Purpose of a Compensation Program Agree
- Anticipated Losses and Costs Agree
- Regional Geographic Scope ○ A Unified Regional Fund Agree
- Key Qualities of an Administrator Agree
- Key Tasks of an Administrator Agree
- Technical Considerations for Fund Administration Agree
- Appeals Process Agree
- Governance and Advisory Structure Evidence of Claims Questions Agree

- Besides traditional fisheries data sources, what additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? There are a number of agencies that are collecting data for other reasons, such as NASA, the weather service with their data centers and satellites, States, ENGOs and regional planning bodies. .

Provide a rationale for inclusion of a data source and specific group the data source would apply to. There is a lot of information held by provide and states agencies that have tracked fishing vessels for years and when a wind farm makes it impossible to fish in the area, but the fish are still there, that becomes an key issue.

Regional Fund Administrator Purpose Questions

- What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds that may be distributed to help the fishing industry or specific fisheries/gear types of the industry transition and 3 adapt to the long-term presence of the offshore wind industry in traditional fishing grounds? The Regional Fund Administrator (RFA) needs to handle all claims because the knowledge needs to be in one place, not having different groups doing subsection of the overall project. All that would do is create turf battels.

- If you do not think that management of such funds is an appropriate role for the Regional Fund Administrator, how should such funds be managed? The RFA is the only way to go. Otherwise the system gets bogged down and becomes inefficient.

- Should a separate gear loss claims process also be regionalized under the purview of this administrator? Yes

Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator. Governance Questions All claims need to go through the RFA to make the system work with as little red tape as possible.

- Of the governance options proposed, which is preferable and why, or is there another model that should be considered? Option #3

- What role should the States play in governing or advising the Regional Fund Administrator? The states have an oversight roll through the Board. They need to have four seats on the Board and play a roll between the fishing industry and the wind farm operator. The wind farm companies are going to complain about everything and the fishing industry is one issue because of the funds they must pay.

Please be as specific as possible as to why, what, how, and who? The states have a roll, and Option #3 gives seats to the states, which is necessary. There must be a balance of members on the Broad, The fox cannot be in charge of protecting the hen house.

- What role should the fishing industry play in governing or advising the Regional Fund Administrator? They need to have four seats on the Board out of nine.

Please be as specific as possible as to why, what, how and who? The Board oversees the RFA operation, if there is a 9 person board, four from the states and four from fishing industry and one non involver independent the system will balance itself out evenly and fairly.

- What role should the offshore wind industry play in governing or advising the Regional Fund Administrator? None

Please be as specific as possible as to why, what, how and who? Because they are public companies with shareholders who want all the money. The owners and the operators are only interest is the lowest cost

possible and not paying anything or playing fair. The upper level wind farm operators are only looking out for themselves, and therefore to please their shareholders.

- Are there other entities or organizations that should be involved in governing or advising the Regional Fund Administrator? The RFA oversee all of the operation in the claim process. The funds need be held by an intuition that is insured and the accounts are escrowed in an interesting bearing account and it to be managed in that ways. The RFA is overseen by the nine person board how make sure the RFA is fair, effecent and caring out the agreed policies.

Funding Questions As a reminder, this RFI is focused of management the funds, not the source of funds. Therefore, the questions the States encourage respondents to focus on include the following:

- How might States encourage developers' participation in directing their compensatory mitigation to a regional fund? Place a requirement in a authorization of the state to purchase power, or place a requirement in the Power Purchase Agreement (PPA) or have a landing fee for the power cable to land within state or all of the above.

- What mechanisms or procedures should be established to ensure administrative costs are kept at a fair but reasonable level? Many companies that operate like this have a percentage of gross claims as a target expense of the administrative cost. As an example, the percentage could be 15 to 20 percent depending on the claims and the budget. In the beginning there will be a time to learn what the claims that are paid so the percent can be adjusted based on experience. One thing that needs to be clear is if a claim is not valid and not paid, the claimant must pay the expensive of the work that went into the claim. The RFA must be fair and pay real claims, but this is designed to minimize false or dishonest claims.

How should administrative costs be paid? Out of the amount that is received from the developers. It is part of the real cost, not just the claims. The RFA and his or her staff are expensive and their cost is just part of the cost of doing business. That amount must be collected from the developers and it needs to be the responsibility of the feds and states that purchase the power. There is a very large problem, no one want to pay the fishing industry for their loss of income or the opportunity to make a living that they have had for generations. Fishermen go out of business so the consumer can get cheap power, even though wind power is expensive. The feds, states, grid operators, and customers cannot have it both ways, cheap power, the trade is putting the fishing industry out of business which is billions of dollars and ten of thousand of job and loss of an important food source. The developers must pay what ever the real expense is and they must get the funds back from the states and ratepayers.

Claims Process Questions

- How should dispute resolution of claims be managed with respect to the Regional Fund Administrator? Should this be a role of the Regional Fund Administrator, an independent entity, or some hybrid? The RFA should come from a arbitration firm. They specialize in conflict resolution and are suited to deal with all types of claims. There are some firms that will even take small claims
- Are there other sources of potential revenue loss or increased expenses that are missing from Table 1 of the Scoping Document? Did not see any obvious funds lost or expenses that will be incurred. However, is not possible to understand all possible claims that may show up.

- What datasets and/or approaches may be appropriate to use when determining eligibility for shoreside industries and others that may not have the same level of documentation as commercial fishing operations? There are going to be a number of shoreside operations that will not be impacted but will file a claim. **Books with purchases and sales and tax records will be necessary and need to be researched carefully. Claims must have strong backup to get consideration and it the waste the RFA and time, they must pay the expensive.**

Identifying a Regional Fund Administrator Although this is not an RFQ, responses are encouraged to the following questions:

- What kind of firms could help design and or administer the Regional Fund as descried in the Scoping Document (claims process, data, governance, etc.)? **Consulting, insurance brokers, noninvolved industry members and companies, and companies that provide services to all levels of the fishing industry.**
- Please provide the names of firms who may have an interest in this work.
- Please provide additional considerations that were not outlined in the Scoping Document and that are necessary for a firm's interest in providing services for the regional compensatory mitigation Regional Fund Administrator in the future. **The RFA claim load will change over time. And it may increase near the end of the current wind farms useful life. It is going to be more costly and difficult in understanding what the environment damage has been done and what can be done to correct the problems.**



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administrator RFI

1 message

Fri, Feb 3, 2023 at 12:16 PM

To: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

To The Special Initiative on Offshore Wind (SIOW).

Please find the following comments from Sea Watch International, Ltd. in response to the Request-for-Information on the establishment of an Offshore Wind Fisheries Compensation Fund Administrator. Sea Watch is the largest processor of Federal surfclam and ocean quahog shellstock in the US, and its operations will be greatly affected in a negative fashion by the development of offshore wind energy areas.

While the intention behind the development of this RFI and a regional administrator for fishing compensation is well founded, the Scoping Document needs further development with impacted fishing industry participants.

This framework should not set precedent for other regions. Robust engagement with local industries and communities would need to occur to determine if a similar framework would be appropriate elsewhere. There likely will be preferences for varied structures in different regions.

Benefits of a Regional Administrator:

We support a predictable process for compensation claims, administered by one entity could be beneficial:

- No more negotiations with each project developer
- Provides a "one-stop shop", no matter what state you are from
- Provides equity for compensation payments.
- Any eligible entity can make a claim, no one is left behind/left out of the process.
- It sets precedence that compensation should be part of a mitigation strategy - **but** we do not want compensation to supersede first avoidance, minimization, and mitigation.

The following High-Level Concerns frame our specific comments below:

I. Inefficiencies of BOEM's Mitigation Guidance

- The RFI cites the BOEM Fisheries Mitigation Guidance as the method for funding. We are extremely concerned that the final Guidance will insufficiently value impacts/fisheries and use insufficient timeframes for impacts. BOEM must consider economic multipliers in considering the full scope of direct and indirect losses to producers, processors, and downstream participants in the supply chain. See footnote references below.
- BOEM has not yet responded to the public comments on the Guidance, nor have we any indication that they will address the significant issues there.
- BOEM only quantifies impacts through NEPA. The extent of all losses from offshore wind are not fully accounted for - such as impacts to biological resources, ecological services, and cumulative impacts. We

recognize that quantifying some of these are difficult but there is some information available. BOEM Guidance comes up short in the following ways:

- Inadequate cumulative impacts assessment
- Shoreside economic losses and multipliers*** are incredibly undervalued
- Anticipated time period for claims (post construction) is too short
- Assumes that all fisheries will be able to transition and assumption of coexistence
- The fund hinges on BOEM getting it "right" and the draft Guidance fell short.

II. Cumulative impacts not addressed

- The whole point of regional compensation/administrator is because there are regional and cumulative impacts that need to be supported. The Administrator should be able to utilize a regional fund to integrate cumulative losses into compensable claims.

III. Definition/goal of compensation is not consistent between different groups:

- We recommend stating a clear definition in the Scoping Document.

IV. Regulatory authority still lacking

- There is no requirement nor legal authority for a developer to use a regional fund. This needs to happen at the federal or state level.

V. Scoping document/RFI development process

- Thank you for consulting fishing advisors (in a limited capacity), including RODA staff.
- The fishing industry is very diverse and public comment is not the best way for the industry to design a framework.
- Development of the Scoping Document was state-driven and not inclusive, nor transparent.

VI. Difference between losses and resiliency funds

- The States recognize the need for resiliency funds but remain silent on how funding for that will be acquired. (See VII)
- These monies are separate from monies identified as losses from a project.

VII. Commitment from the States to require complimentary resilience funds

- The Scoping document clearly recognizes the need for resiliency funds, separate and distinct from funding for losses.
- A mechanism to require resiliency funds has not been identified but the fishing industry is willing to work with the States to identify how to achieve this.
- Resiliency funds should be funded continually.
- Consideration must be given to how to incorporate approved projects into the process.

Comments on the Scoping Document:

1. Purpose

We support the intended purpose of a compensation program: to compensate for losses for a period of however long those losses are felt by the industry. BOEM is not adequately designing compensation and mitigation during and after decommissioning. In the case of pilings, transmission cables, and associated erosion control features of each placed on the bottom, impacts to mobile bottom tending gear, which includes hydraulic clam dredges, exclusion will long exceed the useful capital life to the wind energy array. Exclusion to commercial clam harvesting will effectively be perpetual.

BOEM does not quantify recreational losses and developers/BOEM often say that recreational fishing will benefit from OSW development. Further, demonstrating losses and the claims process will be nearly impossible for recreational fishermen. Compensation for recreational and for-hire fishing should be under an administrator and fund earmarked for that sector, separate from the commercial fishing sector.

It is pre-emptive to discuss if a Regional Administrator should manage resiliency funds because:

- A. there is no commitment from the States or BOEM to require (nor have the developers elected to commit) this type of funding;
- B. extensive consultation with the fishing industry on parameters for resiliency funds needs to occur first.

2. Anticipated Losses and Costs

- We are concerned that funds held will be inadequate to cover all the revenue losses/costs identified in Table 1 (pg. 12-13). The following peer-reviewed study provides an approach toward addressing losses anticipated to be experienced by surf clam harvesters and processors:
 - Scheld, A. M., Beckensteiner, J., Munroe, D. M., Powell, E. N., Borsetti, S., Hofmann, E. E., & Klinck, J. M. (2022). The Atlantic surfclam fishery and offshore wind energy development: 2. Assessing economic impacts. *ICES Journal of Marine Science*, 79(6), 1801-1814. <https://doi.org/10.1093/icesjms/fsac109>
 - Provides projected estimates on reduced revenues for Atlantic surfclam fishing vessels and processors by ~3–15% and increased average fishing costs by < 1–5%.
 - These findings should be used to establish minimum funding thresholds for direct losses, indirect losses, and mitigation efforts.
- Stranded capital and permit valuation needs to be included in Table 1.
 - SCEMFIS recently funded research titled, “Assessing stranded capital and capital devaluation in the seafood industry due to offshore wind energy development.” Final report is expected on or before December 31, 2023.
- Losses should be calculated at the fishery, state, and port levels, and include consideration for previous management restrictions that impacted catch.

3. Regional Geographic Scope

We support a “one-stop” shop for compensation claims. Consideration could also be given to ‘sub-regional’ funds that adhere to a consistent claims process.

4. A Unified Regional Fund

A fund must be set up to sufficiently pay for impacts. If money is going to run out, one of two things will occur; 1) A run on the bank as people realize this and the fund will get depleted quickly; or 2) The Administrator will have to put limits on how much can go to a single payout.

Consideration must be given to the duration of impacts to different fisheries, some may be impacted only during construction time frames – while others may have long-standing impacts throughout or beyond the operational timeframe of the project. A Regional fund must be flexible to account for both short-term and long-term impacts.

5. Key Qualities of an Administrator

We support an Administrator that can demonstrate extensive fishery industry experience, knowledge, and understanding.

6. Key Tasks of an Administrator

The main task of the Administrator should be disburse funds, not to design a claims process. Therefore, we support the approach of Option 1: Design First, Hire Second.

There is no “shelf-ready” entity capable of administering regional funds. We strongly urge the States to work with the fishing industry, fisheries economists and scientists to design the entire framework - everything from claims process to governance - rather than potentially hiring an ill-fitting entity.

There is nothing in the RFI about money management, investments, and the role of a fiduciary, yet that is likely an important role for the Administrator. Boundaries around and/or decision-making processes about money management should be developed or solicited for input.

7. Technical Considerations

7.1 Eligibility for Compensation

We support the broader definition of eligibility in the RFI compared to the BOEM Draft Mitigation Guidance. We strongly urge the Governance Board and Fishing Advisory Boards to address this early.

7.2 Burden of Proof

The RFI correctly points out the difficulties associated with demonstrating loss that will befall the fishing industry. The Fisheries Knowledge Trust is an example of a repository for actual vessel data on clam landings across several companies. We support the leverage of these data in guiding compensation.

7.3 Administrative Fees

We do not support Administrative fees paid out of principal funds to protect the maximum payout to eligible claims. Developer(s) should bear the cost of the Administrator. A portion of earnings which accrue on the escrow account could be used to support Administrative fees, but the amount must be capped. Funds beyond the cap should be for the benefit of the impacted parties.

7.4 Data Verification

We support employing existing fishery data management organizations for the verification process, but they will require financial support for this work which should not be taken from the compensation funds (similar rationale as stated in 7.3 Administrative Fees).

8. Appeals process

We support an appeals process needs to have strong fishing industry oversight, by the governing or advisory boards.

9. Governance Structure

9.1 Governing Board Membership

We support the concept of a Co-Led Board. Representatives from the fishing industry should be diverse - by region, fishery, gear type(s), and across the harvesting supply chain (e.g. vessel captains, owners, dealers, processors and fisheries-related businesses).

The RFI fails to identify how members will be appointed to the Governing Board.

We reiterate and support the exclusion of developers from decision-making seats on the Governing Board.

9.2 Board relation to the Administrator

We are unaware of any existing entity set-up to administer funds with adequate regional fisheries knowledge. We recommend that States employ rigorous vetting and due diligence looking for an existing entity. There should be clear distinction and separation between members of Boards, Administrators, and fiduciaries so as to eliminate conflicts of interest and ensure longstanding integrity in the process.

9.3 Limitations

Should a Regional Administrator be (correctly) set-up and the preferred method for compensation dispensation, the framework must be codified in Federal or States regulation.

States must work to codify this Administration process to protect their fishing industries.

9.4 Advisory Boards

We support the utilization of Advisory Boards. Advisory Boards should be developed prior to hiring of an Administrative entity to inform the design of the claims process, eligibility, implementation of claims process, appeals process, expectations of the Administrator, dispute resolution process, money management and investment guidance.

*** Examples of multiplier studies:

1) Murray, T.J. 2020. Economic Impacts of Reduced Uncertainty Associated with Fishery Management Actions with Summer Flounder, Report to the Science Center for Marine Fisheries, June 2020, available at <https://scemfis.org/wp->

[content/uploads/2020/06/Econ_Flounder_2020.pdf](#);

2) Scheld, A.M. 2020. Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S, Report to Science Center for Marine Fisheries, August, 2020, available at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf;

3) Murray, T. 2016. Economic Activity Associated with SCeMFIS Supported Fisheries Products (Ocean Quahog & Atlantic Surfclams). Science Center for Marine Fisheries, Alexandria, VA. https://scemfis.org/wp-content/uploads/2020/02/Ec_Impact-tjm_rm2.pdf

Thank you for the opportunity to share our perspective and comments.

[Redacted]

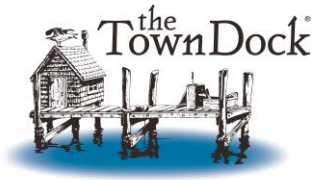
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February 3, 2023

To Whom It May Concern,

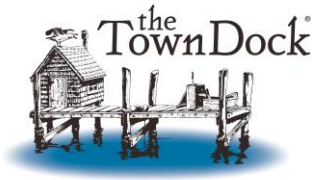
I am writing to offer my comments on the Framework for Establishing a Regional Fisheries Compensation Fund Administrator.

I am pleased to see that effort is being made to form a program and process that will streamline compensation to the fishing industry. The current method of offshore wind developers creating different programs with different states and fishing sectors is not only not equitable but is a flawed process. The current process lacks the transparency necessary for the industry to know their livelihoods are being properly valued, analyzed, and compensated. Though I view this as a step in the right direction financial compensation/mitigation should not be the first step taken when trying to minimize the conflicts between the two industries. It should only be used after sincere and legitimate attempts to avoid and minimize conflicts have been explored.

After reading through the framework, I have some concerns that I hope can be addressed. The reliance on BOEM's Mitigation Guidelines is a cause for concern. The fishing industry has commented on several shortfalls in their document during the comment period and since BOEM has not release the final version of their plan, we have no way of knowing if they have addressed those concerns.

BOEM's draft Guidelines did not address the need to analyze the cumulative impacts of offshore wind construction and operation. The fishing industry has been asking for cumulative impacts to be analyzed for years now. It makes no sense, from an ecological, biological, or economic standpoint, to be doing this piece-meal. To accurately measure the effects of offshore wind development and to accurately provide mitigation and compensation we need to fully measure those effects. BOEM's draft Guidelines did not offer a solution to this issue. Rhode Island and Massachusetts have been through the compensation process with wind developers and have had their fisheries undervalued by an economist of the developer's choice. This should not be the way fishery values are determined. For financial compensation to be fair





proper timelines and accurate economic multipliers must be used in their determination. This will also help to assure that the fund adequately funded.

We support the eligibility requirements listed in this RFI and the inclusion of shoreside support. Compensation should be available to all that make a living from commercial fishing with the understanding that they will need to provide proof of their ties to the fishing industry and that they have suffered a loss due to offshore wind development. Proof of loss might be, packing slips, VTR's, logbook information, proof of employment, receipts, landings history, permit history, etc. We'd be pleased to work with the states to come up with a way to show such losses. There should be engagement with the National Marine Fisheries Service for data on landings and permits and for data verification since they manage fisheries data. This would be extremely helpful when it comes to confidential data and data verification during an appeals process.

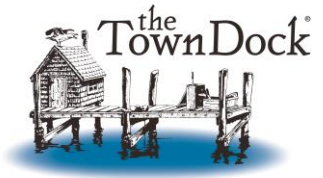
The BOEM draft Guidelines assume that all fisheries and fishermen will be able to adapt and coexist with the windfarms. We have no way of knowing if this is true and BOEM and the states must be prepared to address this. There is no way of fully knowing how the ecosystem will react to construction, operation, and decommissioning unless resources are put towards studying it. If there are negative effects on the important economic species that reside in and around the area and or safety and navigational issues, there must be a plan to deal with that. Fishermen can't simply just switch over to fishing on something new if they don't have access or a market for it. There are also gear restricted areas that some fishermen can't legally fish in. It should not be assumed that everyone will adapt and coexist. We have stressed that point for years. This leads to the need for the program to be funded for the extent of the project. Some of the potential changes might be years in the making.

Regarding the potential for two different funds the resiliency fund and the compensation fund, there needs to be a way to differentiate between two and the two funds should be separate. The industry needs clarification on where the money for the resiliency fund will be coming from, how it will be collected, and how it will be distributed. We are very much interested in working with the states to come up with a solution for this.

The funds for the compensation program and the cost of the Administrator should be the responsibility of the offshore wind companies.

Regarding the necessary qualities in an Administrator and their tasks we agree that they should already be familiar with the fishing industry. The Administrator should not be responsible for designing the program, their responsibility is to run it. The program, its process, and its





[Redacted]

financial management should be designed by the states, fishery economists and the fishing industry. This should be done prior to hiring an Administrator.

The governance structure for oversight of the Administrator should be co-led and comprised of state representatives and fishing industry members. Please allow for enough seats on the Board to cover a range of geographical areas and sectors of fisheries.

Finally, for this effort to truly work there needs to be a **requirement** that developers participate in this program. I strongly urge that the states and BOEM work this out as soon as possible. As always, we are willing to work together to find solutions to the questions and issues we have brought forth.

Sincerely,

[Redacted signature]



[Redacted signature]



Special Initiative on Offshore Wind

Comment on Fisheries Mitigation Project

February 2023

Xodus Group

As a global energy consultancy, Xodus unite our unique and diverse people to share knowledge, innovate and inspire change within the energy industry.

Xodus provide support across the energy spectrum, including through advisory services, supply chain development, engineering, and environmental expertise. The core competencies of the Xodus environmental team members, whose comments are captured in this response, are detailed below.

██████████ – Lead Renewables Consultant

██████████ is a skilled marine scientist with international experience in the maritime and environmental sectors. She received her B.A. in Biology (Marine Science) from Boston University and her MSc in Marine Systems and Policies from the University of Edinburgh, Scotland. With her specializations in stakeholder engagement, marine ecology, and subsea asset risk mitigation, she is well-positioned to advise on the complex interfaces of offshore renewables developments and the existing marine environment. ██████████ is based out of Boston and has worked with a broad network of scientists, research bodies, and conservation organizations throughout New England. In her previous roles, she authored Fisheries Liaison & Mitigation Action Plans and undertook fisheries liaison works for subsea cable installation projects.

1 INTRODUCTION

On December 12, 2022, the Nine Atlantic Coast States (the States), including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia announced that they were working to establish a consistent regional approach for administration of fisheries compensation funds, in the absence of such an approach derived from the federal level. The Scoping Document titled “Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” has been provided alongside a dedicated Request for Information (RFI). Key aspects of this RFI focused on several areas; those questions, which Xodus has responded to, are included alongside the relevant replies in the following sections.

Xodus Group (Xodus) have extensive experience in the assessment and mitigation of stakeholder and maritime co-use issues associated with offshore energy developments, having operated in the United Kingdom and mainland Europe for over fifteen years before expanding to Australia and the US, establishing a Boston hub in 2020. Specifically, Xodus have national and international project teams focused on detailed Environmental Impact Assessments and Mitigation, Management and Monitoring Plans for environmental and maritime stakeholders. Given the team’s experience in stakeholder engagement works, fish ecology, commercial fisheries, and fixed and floating offshore wind development housed within our teams, Xodus are well-positioned to comment on the proposed Fisheries Mitigation Project and its efficacy for guiding sustainable and equitable offshore wind development in the US.

2 REVIEW AND RECOMMENDATIONS

Xodus recommendations below are organized in response to several of the questions and categories posed in the RFI.

- ❖ Do you agree with the general statements outlined in the Scoping Document under the [various] topic headings? If not, explain what you do not agree with, your concerns, and identify alternative possible formulations or solutions of that element.

Anticipated Losses and Costs

As has been identified in the Scoping Document, it will be imperative to establish a process to avoid duplicative claims (1) between geographic areas and (2) between the Fund and private insurance claims. It is recommended that the Regional Fund Administrator liaise with relevant insurance bodies to communicate the established compensation verification process so that insurance providers can also be aware of this path for fishers to seek compensation for displacement or disruption.

Additional clarifications should be provided in reference to Table 1 from the Scoping Document. This table lists potential causes of lost revenue, starting with "Displacement from a fishing area" and continuing to list various project development and construction phases, along with other related aspects. Marine Scotland's *Good Practice Guidance for assessing fisheries displacement by other licensed marine activities*, produced by Xodus Group, defines displacement as "the relocation of fishing activity (effort) from an area where that fishing activity typically occurs into other area(s) as a result of other licensed marine activities and associated infrastructure." It is suggested that such a term could be used as a broad reference and that many of the following bullets within Table 1, including those relating to surveys, pre-construction, construction, post-construction, decommissioning, etc. are unnecessary. If anything, a qualifier of short- or long-term displacement may be more representative to communicate the range of potential impacts.

Also included in the list of potential causes of lost revenue is an item titled "Devaluation of fishing business." Compared to an element like disruption, it would likely be very hard to prove that devaluation of a fishing business is directly linked to offshore wind development in an area and not linked to other market factors, such as climate change, shifting target species population baselines, inflation, cost of fuel, materials, and labor, etc. If this were to remain included in the final Mitigation Strategy, it is recommended that specific requirements and designations for the burden of proof be provided.

Regional Geographic Scope

One of the largest benefits of regionalizing this program will be to fishers who operate across more than one offshore wind site. Regionalizing the process will not only decrease frustrations by limiting the number of forms to be filled and organizations to go through, but it will also work towards ensuring that there are no duplicate funds issued for disruption claims. For example, if offshore wind Site A is undertaking surveying and a fisher chooses to operate on Site B, and vice versa, the Regional Fund Administrator will need to determine whether this fisher is owed mitigation payments or not, given that they were still able to continue fishing. This may be where some of the complexity around

mitigation payments based off of decreased revenue or increased travel time comes into play. While previous projects may have handled such claims on a case-by-case basis, it will be important to establish a consistent framework from the start in these new geographies. This complexity has been seen in other geographies as well and dedicated working groups have been working to find equitable solutions; it is suggested that this topic could similarly be handled by a regional working group associated with the 9-State partnership and the Regional Fund Administrator.

On the Administrator's side, regional organization means that there will not be any need to duplicate work with State-based agencies for multi-state or cross-border claims, and that those claims forms can be consistent across the board.

Key Tasks of an Administrator

Given the two options for developing the claims processes, Xodus would suggest first hiring the Regional Fund Administrator and then developing the design. In pursuing this option, the Regional Fund Administrator could be involved in crafting the Best Practices process for verification and payout of claims. This should help to incorporate realistic timelines into the process while also shedding light on any potential limitations or pinch points relating to the available personnel, data, or knowledge sharing in place.

Technical Considerations for Fund Administration

One of the key points outlined in the Scoping Document under technical considerations is the importance of confidential data handling. It is well known that fisheries organizations and individual fishers can be protective of their historic fishing grounds and any areas which they may have cultivated over the seasons. As such, it is very common for such individuals to be protective of their proprietary fishing data. To facilitate data management, Xodus would very much support the proposition that the Regional Fund Administrator work with entities which already have data sharing agreements in place, rather than trying to pursue new data access and confidentiality agreements. In addition to the logistical benefits of this pathway, it would also provide an additional layer of checks and balances by ensuring that a third party is responsible for the verification of claims based on submitted data.

- ❖ Besides traditional fisheries data sources, what additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? Provide a rationale for inclusion of a data source and specific group the data source would apply to.

Evidence of Claims

One of the highest priorities for the Regional Fund Administrator at the start of their tenure will be to develop a universal disruption claim form early, particularly focusing on what data will be required to support the claim. On offshore construction projects in the UK, these data have commonly included two-years of logged trips or landings from a specific geography to prove historic fishing in that area for the relevant timeframe and gear type associated with the claimed target species. It is recommended that fishers pursuing claims with the Regional Fund Administrator provide similar data-based evidence: 2-years of AIS or plotter data, along with landings receipts for similar seasons to serve as a proxy for anticipated lost revenue. It is imperative that the universal data requirements be established and communicated early. In doing so, the fishing industry will have time to adjust and ensure they are tracking this data accordingly to be able to support their claims once a project is actually underway. This is especially relevant for

smaller vessels who may not be in the habit of tracking their fishing trips with AIS (or other plotters, for smaller vessels) or detailing their landings in a consistent and verifiable way. Standards will be clear and concise moving forward, setting the bar for best practices in disruption compensation.

- ❖ Should a separate gear loss claims process also be regionalized under the purview of the administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handles by a Regional Fund Administrator.

Regional Fund Administrator Purpose

It is suggested that both gear loss claims and adjacent onshore claims also be managed through this fund. Wherever possible, verification data for such claims should be linked to any other existing claims (disruption or otherwise) so that such claims can be tracked on a vessel (or claimant) basis. Ideally, this will limit the amount of new information that claimants will need to provide while also providing context for the claim by linking any other previous or contemporary claims. However, it is noted that for gear loss claims, additional information will need to be provided to allow for verification of the damage or loss event. Such information is likely to include photographic evidence of damaged gear, recovered items believed to have caused the damage, cost receipts for repairs or gear purchase, and landings data to calculate lost earnings for the affected time period.

- ❖ Of the governance options proposed, which is preferable and why, or is there another model that should be considered?

Governance

Given the governance options presented in the Scoping Document, Xodus would advise an option closely resembling Option #1 (State-Led). Xodus thoroughly supports the checks and balances system proposed between the Regional Funds Administrator and the Governing Board and Advisory Board. Additionally, Xodus would suggest a diversified representation from fishery members (including by gear type, geography, and business scale). It is suggested that the model proposed balances the inputs of offshore wind developers and fishers, with an impartial third body presiding (such a body is here made up of state representatives but also including other stakeholders such as economic development agencies, community members, ex-fishers familiar with the industry, etc.).

- ❖ How should administrative costs be paid?

Funding

The Scoping Document presents several funding mechanisms to cover the Regional Fund Administrator's activities. One such option would fund the administration activities from the interest accrued on the compensation funds, which would be deposition in an interest-bearing account. If administrative costs were to exceed the revenue accrued for three years running, then the deficiency would be covered by the developers. Assuming the Regional Fund Administrator is able to secure support from the developers for this funding model, it may provide a relatively simple and equitable solution to move forward with funding the initiative.

General

Xodus would suggest implementing a mechanism into the initial Mitigation Strategy to allow for continual updates to industry best practices as additional information becomes available. As projects continue to enter the construction phase, additional studies and information will become available, building our knowledge on the range of impacts from offshore wind installation on the marine environment and fisheries on the Northeast US regions specifically. For example, the initial Block Island Wind Farm (BIWF) study has shown that some fisheries species increase in prevalence around the installed turbines compared to control sites; on the scale of a commercial project, this may have a beneficial impact to fisheries (as an example – remains to be seen). Xodus would suggest that such broader restructuring or updating of the plan should occur every five years, at a minimum. It is also suggested that a developer working group be established to enable such reviews and collation of novel information over the time intervals.

3 CONCLUSION

Summary of suggested action points from Xodus:

- Outline a process to engage with relevant insurance bodies to avoid duplicate claims.
- Provide additional clarity, or remove overlapping categories, from Table 1: *Potential losses and costs to be considered for compensation for project areas, including transmission/cable routes affected by OSW development.*
- Provide more information as to the requirements and responsibilities for the burden of proof when considering claims related to the “Devaluation of fishing business.”
- Develop a methodology for how to determine what mitigation payments, if any, should be paid to fishers who are able to continue operating in another geography while their usual grounds may be disrupted.
- Ensure that developing a universal disruption claim form is a top priority to allow for early communication of verification requirements to relevant fisheries stakeholders.
- Develop a mechanism to continually revisit the Mitigation Strategy to allow for the incorporation of shifting baselines and best practices regarding offshore wind impacts to fisheries, etc. Suggested 5-year review intervals.
- Establish working groups, where appropriate to (1) determine how to handle the complexities associated with claims where fishers are still able to operate in different areas and (2) conduct regular reviews of the state of the science as additional information becomes available on how offshore wind projects are interacting with and influencing the marine environment.



Comments Re : Request for Information (RFI) Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development

Timeline : The timeline in which this initiative is being conducted is far too rushed. Although we appreciate the extra week allowed for the public to submit comments, a single 6-7 week comment period on something which has the potential to create decades worth of impacts for our vessels, businesses and industry as a whole is insufficient. The scoping document and accompanying comment period was announced on December 12, right before the holidays, overlapping with two Regional Fishery Management Council meetings, and overlapping with multiple DEIS releases by BOEM. It has not been a very inclusive or participatory process and appears to solicit public comment as a mere nod to stakeholders, as the RFI document itself delineates that- regardless of the input provided- the process for a Regional Administrator will be finalized in the winter of 2023 and implementation initiated in the spring of 2023. We are well into winter, so the process finalization either (1) is already decided and finalized, and/or (2) will be hastily finalized after public comments are received.

The document itself at this stage is vague in many respects, and if this is the only time that public input will be solicited prior to finalization and implementation then it is not a scoping document at all. Scoping implies the beginning of an interactive process whereby initial thoughts are collected, with the intent to inform the scope of a subsequent document or process which then becomes the object of public deliberation. This document is not that. This document is merely a one-time chance for the public to offer comments prior to the implementation of a rushed process which is yet undefined, lacks clear and definitive boundaries or elements, and due to its “voluntary” nature has not followed any of the regulatory or statutory safeguards designed to protect true public process in the United States.¹ As what is being contemplated is in reality impacting interstate commerce- as evidenced by the economic impacts activity that nine states are attempting to singlehandedly direct- it would appear that only Congress has the right to initiate such an action. The achievement of policy goals can be intertwined with interstate commerce initiatives, as would appear to be the case here. If the intent of the states is to truly compensate for the impacts to fisheries as the result of offshore wind development in federal waters, then a much more thoughtful, deliberative, and legally compliant process must ensue.

Establishing a Regional Fund Administrator for Fisheries Compensatory Mitigation Framework:

Legality: The RFI Administrator document and states’ initiative, while potentially paved with good intentions, is concerning for a number of reasons, not the least of which is lack of legislative or legal authority, framing, or constraint. The entire initiative rests on BOEM’s Draft Fisheries Mitigation

¹ For example, the Administrative Procedure Act.

Guidance Document (Draft Guidance). However, BOEM has stated repeatedly that it does not have the legislative/legal authority to require compensation of developers for offshore wind impacts to commercial fisheries, nor does it have the legislative/legal authority to create a fund designed to administer any such compensation. As we describe in detail in our comments on the Draft Guidance, there is a clear reason for this. Unlike its statutory obligations and charges regarding oil and gas impacts to commercial fisheries, BOEM's statutory obligations regarding offshore wind development require BOEM to prevent interference with reasonable uses of the ocean, i.e. avoid siting and approving offshore wind facilities on fishing grounds, which would negate the need for such compensation. However, the pertinent fact for this discussion is that BOEM has no regulatory authority to require compensation in the first place. It is upon this lack of authority that the entire RFI Administrator process hangs.

In a vacuum of regulatory authority, the states have jointly stepped in to "voluntarily" create a "solution" to supplement what the law does not allow BOEM to do. This is suspect on its face. An interstate body "engaging the public" to implement a "solution" to a federal process with federal impacts which federal law and regulation does not permit, all of which is "voluntary" and not pursuant to any kind of regulatory process itself in effect takes the RFI Administrator initiative out of any kind of certainty of process or legal context. This is concerning for all the reasons mentioned above, as well as the fact that should it become necessary for the fishing industry to pursue legal action to protect its interests, it cannot. As the RFI Administrator Initiative is morphing into being outside any legislative authority or regulation, there would be no legal or procedural violation to contest. Therefore, the fishing industry would be left without recourse should a hastily implemented and potentially biased process be "approved". Although the RFI documents solicit feedback on dispute resolution of claims, it is unclear and completely undefined what the states will finalize in this respect, as no prototype has even been provided or suggested. As this is the public's only opportunity to comment prior to implementation, and as the process has lacked transparency thus far, we have serious concerns that any such process would be adequate.

Draft Guidance: The fact that the RFI Administrator relies completely on BOEM's yet unfinalized Draft Guidance is problematic. Again, that document is "not meant to bind the public in any way".² That is problem number one. Although it went to public comment via the federal rulemaking portal, and although BOEM says it "can" require certain provisions pursuant to a COP approval, there is no guarantee or certainty of process that it can or will do so, or that a future Administration will not change course. BOEM is clear that the agency has no legal authority to require compensation or develop a compensation/mitigation fund or any kind. This is due to the fact, as we have argued, that the Draft Guidance is a run around of the law, rather than pursuant to it. We hereby include and incorporate all our comments on the Draft Guidance and apply them to the RFI Administrator questions as appropriate.³

Secondly, the Draft Guidance is still a draft. We have no Final Document yet from the agency. Attempting to create a framework for a regional Administrator around Draft Guidance document that is not finalized is putting the cart before the horse. The RFI is requesting feedback to many questions and aspects of a regional compensation fund that are dependent on the structure and "suggestions" of a Final Guidance document. While the states have argued that the RFI Administrator would simply be

² See <https://www.regulations.gov/document/BOEM-2022-0033-0003>, p. 1.

³ See our Draft Guidance comments, attached.

administering whatever funds that would be deposited in the fund pursuant to the Guidance, and as such the Guidance is irrelevant, this is not so.

For example, the claims structure will largely depend on dollar amounts entered into the fund, duration of compensation period per the Guidance (which will determine the amount entered into the fund), how shoreside impacts are calculated, whether or not decommissioning funds are included, eligible entities, etc. The fishing industry has commented substantially on many of these topics, but as of now do not know if BOEM has incorporated any of our comments/data/suggestions/objections into a Final Guidance document. As the addressing of those comments will inform our comments here, we cannot comprehensively offer feedback on many of the questions posed by the RFI document.

A question to the states would be can the states compensate where the Draft/Final Guidance is inadequate? Can the states address deficiencies in the Draft/Final Guidance? As the states are “voluntarily” taking on the initiative of creating an RFI Administrator, can the states also then augment the fund with additional funds to compensate and take responsibility for where the federal suggestions fall short? It is, in fact, the state offshore wind energy goals and mandates, as well as power purchase agreements with developers, that are driving the offshore wind push in federal waters, as evidenced by BOEM’s purpose and need statements in the DEISs of the various offshore wind projects both permitted and under review. We have highlighted this issue in our comments on the NY Master Plan 2.0 recently out for comment, which we incorporate here by reference.⁴

Intended Purpose of a Compensation Program: As we have stated above, and we reiterate for clarity, a commonsense interpretation of the Outer Continental Shelf Lands Act—both its requirement (the Secretary “*shall ensure*”, not “*should try to ensure*” or “*should balance competing objectives*”) to prevent interference with reasonable uses of the ocean when conducting offshore renewable energy activities, and its deafening silence regarding any authorization for BOEM to require compensation for damages caused by offshore wind development, serve to inform the states that BOEM is currently acting out of compliance with its legislative duties. If BOEM was complying with the very first NEPA requirement of “avoidance”, combined with the OSLA requirement of “preventing interference”, there would be no need for compensation in the first place. That is by design, not omission. This becomes clear when contrasted with BOEM’s oil and gas legislative duties and authorizations. Since BOEM has refused to avoid siting offshore wind leases and infrastructure on fishing grounds and deconflict at the outset, it is now— in collaboration with the states— attempting to conjure up a workaround “compensation” effort to take the place of compliance with its governing legislation and regulations.

If the foundation is faulty, the entire building is faulty. That is the case here, and that is our position on this matter. However, purely for the sake of discussion, we will provide feedback on other elements of the RFI document.

SLOW: The role of the Special Initiative on Offshore Wind (SLOW) has not been properly articulated to the fishing industry in this process. SLOW was initiated as a special interest group designed to support offshore wind development. It is therefore troubling that, rather than retaining an independent third party to facilitate the RFI Administrator process, it is apparent that the states have retained SLOW in this role. It does not inspire confidence in the commercial fishing industry to be asked to submit comments to an email address “@offshorewindpower.org”. Is SLOW receiving state funds to lead this initiative? Why couldn’t such funds have been used to engage an objective third party? We are

⁴ See comment letter, attached.

certain that had the states solely engaged a fishing industry group to facilitate the initiative, offshore wind developers would not have agreed to such an arrangement. Neither do we.

Having a special interest group created to support offshore wind lead a "compensation" plan for a competing industry does not give us confidence that we are engaging in a truly public and objective process that is in our best interests. It is clear that SLOW is doing more than playing a support role here, which is what we were led to believe by the states previously. SLOW is directed by a Steering Committee comprised of such members as offshore wind developer Orsted and the NY Offshore Wind Alliance.⁵ This leaves us with great cause for concern that the RFI Administrator initiative will be dedicated to advancing little more than window dressing when it comes to commercial fisheries impacts from offshore wind and leaves us with questions about how the initiative is taking shape out of the public eye. This is especially true given our comments on the timeline, above, where it is apparent that the RFI process finalization is scheduled for so quickly after the singular "scoping" process is finished.

Request for access to all submitted comments: As the RFI Administrator initiative is being conducted in much closer coordination with developers and developer-connected entities than with the commercial fishing industry, we have serious concerns with the process as a whole. Therefore, in the interest of at least some form of transparency, we request that all public comments, including that of states and developers, be posted and publicly available in full and unredacted form following the comment period deadline.

Regional Geographic Scope and a Unified Regional Fund: While we agree that all impacts evaluations and related actions should and must take place at a regional level due to the very real cumulative effects on commercial fisheries from offshore wind development, which is taking place on a coastwide scale affecting coastwide fisheries, this is another issue circling back to the Draft Guidance document and BOEM process. Yes, there should be a regional geographic scope for assessing and addressing fisheries impacts from offshore wind development. However, BOEM is not truly assessing fisheries impacts in a cumulative coastwide manner. There is a disconnect between the BOEM process and the RFI Administrator proposed process.

BOEM currently only values fisheries impacts on a project by project basis. It does not value these impacts cumulatively. Additive, which is what would fund the Administrator fund, is not the same as cumulative. BOEM does not attempt to quantitatively cumulative impacts- it merely states that cumulative impacts are "major". What constitutes "major" from a value intended to fund the RFI Administrator? Cumulative impacts are just that- cumulative- and must be assessed as such. A regional approach requires true, detailed, cumulative impacts assessments and valuations, which are not being conducted by BOEM at this time. Can the states publicly request that BOEM amend its process to do so?

BOEM does not even value fishery by fishery impacts even at the individual project level, never mind the cumulative level. This is important. For example, BOEM values single project impacts to the Mackerel/Squid/Butterfish Fishery Management Plan (FMP) when conducting a COP review (we do not agree with whatever method is used, as it differs greatly from other methods that show much more realistic impacts, for example, the RI DEM VMS analysis valuations, which better represent true levels of impact). However, the Mackerel/Squid/Butterfish FMP comprises a permit suite of five different species and associated fisheries. When discussing eligibility criteria, this becomes problematic. Additionally, it masks true impacts to various fisheries, and downplays those impacts. For example, the longfin squid

⁵ See <https://offshorewindpower.org/people>.

summer fishery is severely impacted by several projects, as well as cable corridors from many projects. Both individually and cumulatively, those projects have the potential to completely eliminate the summer longfin squid fishery and bankrupt vessels reliant on that fishery. Even if those vessels are able to engage in other fisheries at other times of year in other areas, the cumulative impacts to that seasonal individual fishery may make these vessels insolvent. If that impact is not analyzed, but is instead masked by a project by project FMP level valuation, the fund will not accomplish its purpose of compensation of fisheries impacts.

Anticipated Losses and Costs: We agree with the list of impact factors of potential lost revenue and potential increased costs listed in Table 1 on pages 12-13 of the Scoping Document. These are very real expected losses for the commercial fishing industry. However, again, there exists a complete disconnect between this list and what impacts BOEM actually evaluates. The fund is being set up to fail. It will claim to account for all of the very real costs to industry listed in Table 1, but the fund will not receive any compensation money for those factors. Therefore, it cannot compensate for what it is purporting to compensate.

In fact, BOEM does not evaluate or require compensation for *any* of these listed factors. It does not evaluate or require compensation for surveys of the lease area, despite the fact that these are ongoing- it does not even require permits for such surveys, much less compensation. It does not evaluate compensation for decommissioning; it doesn't even require the developers to present a decommissioning plan as part of COP approval. It does not evaluate reduced catch; it does not evaluate devaluation of businesses and permits; etc.

The only factor that it purports to partially "compensate" for is displacement from fishing area, while continuing to state that vessels will still be able to safely operate in the area, contrary to experience elsewhere. BOEM may acknowledge impacts but does not value them or require compensation for them, since, after all, BOEM cannot require compensation and all compensation is "voluntary". For example, BOEM acknowledges increased transit costs are an impact of offshore wind development,⁶ which will be significant and increase travel time and fuel costs. But it does not even attempt to quantify these impacts, despite the fact that the millions of acres already leased and more preparing for lease will result in significant cumulative impacts on transit. If the RFI Administrator fund is to be functional, it must first find a way to align the list of impacts in Table 1 of the Scoping Document with money that would be feeding the fund.

Another example is permit devaluation. Permits are currency in commercial fisheries. Depending on what species and qualifications those permits possess, the permit itself can be valued at tens of thousands to hundreds of thousands to over a million dollars. Not all permits are active at the same time; as some inactive permits may be held in CPH (Confirmation Permit History). For example, in the longfin squid fishery approximately 383 permits exist, with approximately 224 Tier 1 permits active

⁶ See for example, the Revolution Wind DEIS, "or increase in fishing costs (e.g., transiting time), the profitability of businesses engaged in commercial fisheries and for-hire recreational fishing would be adversely affected", at <https://www.boem.gov/renewable-energy/state-activities/revolution-wind-deis>, p. 3.9-38. Also see, for example, Vineyard Wind FEIS "Larger vessels may find it necessary to travel around the WDA to avoid maneuvering among the WTGs.... Fishing vessels not able to travel through the WDA or deploy fishing gear in the WDA would need to travel longer distances to get around the WDA or find alternative fishing locations. This can result in increased travel time and trip costs" at <https://www.boem.gov/vineyard-wind>, p. 3-214.

and 24 Tier 1 permits in CPH.⁷ Currently, BOEM’s only quantitative analysis is based off of ex-vessel value. It does not value permits, nor vessels with those permits. Therefore, the fund cannot compensate for permit devaluation. Furthermore, if permits eligible for funds were somehow connected to the ex-vessel value revenue, such analysis would not account for the substantial value of inactive permits held in CPH.

To truly assess the real values of the Scoping document Table 1 list, the RFI Administrator would need to consult accountants familiar with the commercial fishing industry, vessel and permit brokers, marine insurance brokers, etc.⁸ So far, and with no disrespect intended, the RFI Administrator process has involved primary state bureaucratic employees and a special interest offshore wind group, neither of which have expertise when it comes to financial expertise of a commercial enterprise such as the fishing industry. More time is needed to flesh this out and how much sources would feed into the Administrator process. It cannot be sufficiently addressed by a one time “scoping” exercise.

We request two things to be added to the list of impacts in Table 1 of the Scoping document. The first is bankruptcy. The fact is that the cumulative impacts which BOEM is not evaluating is going to result in bankruptcy for some vessels/businesses if the current course of action does not change. Indeed, individual projects may spell bankruptcy for some. There is a tipping point by which a vessel or a business will no longer be able to continue operation- and this is well before the “100% of the fishery ex-vessel revenue” mark is reached. Once profit margins have disappeared, which is a number far below that 100%, nobody can afford to work for free and/or go backwards. The RFI Administrator Fund must therefore be prepared to deal with full industry buyout. As we will discuss below, assumption based on hope that fisheries will be able to “transition” are not based on fact or experience. Hope in unfounded assumptions is not a strategy.

The second is resource impacts. We know that peer reviewed science has shown that offshore wind wake effects cause changes in oceanic conditions,⁹ and now know that these wind wakes and associated disruption to ocean hydrodynamics caused by offshore wind farms can cause up to a 10% decrease in primary production.¹⁰ This fact has led to NOAA’s Chief of Protected Species alerting BOEM that the turbines’ oceanographic impacts to the North Atlantic Right Whale’s forage base could cause population level effects to the species for the 30 year life of the projects, effects that cannot be mitigated other than creating no-build zones and/or through decommissioning.¹¹ If the effects can be

⁷ Through 2018; see Squid Amendment 20 at https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5c113b1f70a6ad290cf75cfd/1544633161550/20181018_Squid-Amendment-Final+EA.pdf, p. 143, and Final Rule at <https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5c18195db8a045d8d656e3b0/1545083230238/Squid-MSB-Am-20.pdf>.

⁸ See for example, <https://athearnmarine.com/>.

⁹ See Christiansen N, Daewel U, Djath B and Schrum C (2022) Emergence of Large-Scale Hydrodynamic Structures Due to Atmospheric Offshore Wind Farm Wakes. *Front. Mar. Sci.* 9:818501. doi: 10.3389/fmars.2022.818501, and Dorrell RM, Lloyd CJ, Lincoln BJ, Rippeth TP, Taylor JR, Caulfield CCP, Sharples J, Polton JA, Scannell BD, Greaves DM, Hall RA and Simpson JH (2022) Anthropogenic Mixing in Seasonally Stratified Shelf Seas by Offshore Wind Farm Infrastructure. *Front. Mar. Sci.* 9:830927. doi: 10.3389/fmars.2022.830927.

¹⁰ See Daewel, et al. Offshore wind farms are projected to impact primary production and bottom water deoxygenation in the North Sea COMMUNICATIONS EARTH & ENVIRONMENT | (2022) 3:292 | <https://doi.org/10.1038/s43247-022-00625-0> | www.nature.com/commsenv.

¹¹ See NOAA to BOEM, May 13, 2022.

felt by a whale, they will also be felt by other species reliant on offshore wind lease areas. We also know that the cumulative decade(s) of pile driving in certain lease areas will have long term impacts on the feeding behavior of commercial species such as longfin squid,¹² that cephalopods experience acoustic trauma as a result of both pile driving and low frequency noise,¹³ that daily exposure to low frequency noise such as that associated with wind farm construction and operation can cause species such as cod to experience reduced spawning success thus affecting population levels,¹⁴ and that magnetic fields emanating from the subsea cables of offshore wind farms can affect the swimming capability of commercially important fish species' larvae thereby affecting their survival rate.¹⁵ This is not speculation. Therefore, BOEM and the states should be prepared to compensate for negative resource population-level impacts.

Additionally, BOEM has not made public its exact formula for valuating commercial fisheries ex-vessel value impacts. The math problem and data sources and data analysis that it uses to generate a valuation of impacts matters and should be made public and available to the RFI Administrator as well as anyone else attempting to valuate fisheries impacts. It is understood that the RFI Administrator is intended to merely administer the funds identified by the BOEM process. But the allocation of impacts to FMP or fishery may become necessary information for an Administrator to determine eligibility. Valuation methods should be made clear, public, and repeatable.

Governance and Advisory Structure: Any Board or Advisory structure must include representation from every commercial fishery affected by offshore wind, as each fishery will experience unique and gear specific impacts.

Regional Fund Administrator Purpose Questions:

This section continues to discuss helping the fishing industry/specific gear types “transition” and “adapt”. This is also a major flaw of the BOEM Draft Guidance. Not all fisheries and gear types will be able to adapt. Period. The states need to recognize and come to terms with this fact, as does BOEM. In the UK, where wind farms have been present for decades now, mobile bottom tending gears have not

¹² See Jones et al, Changes in feeding behavior of longfin squid (*Doryteuthis pealeii*) during laboratory exposure to pile driving noise. *Marine Environmental Research* 165 (2021) 105250
<https://doi.org/10.1016/j.marenvres.2020.105250>.

¹³ See Solé, M., De Vreese, S., Fortuno, José.-Manuel., van der Schaar, M., Sánchez, A.M., André, M., Commercial cuttlefish exposed to noise from offshore windmill construction show short-range acoustic trauma, *Environmental Pollution* (2022), doi: <https://doi.org/10.1016/j.envpol.2022.119853>

and

Sole et al, Offshore exposure experiments on cuttlefish indicate received sound pressure and particle motion levels associated with acoustic trauma , *Nature.com Scientific Reports* (2017) DOI: 10.1038/srep45899

and

Andre et al, Low frequency sounds induce acoustic trauma in cephalopods , *Frontiers in Ecology* (2011) doi:10.1890/100124.

¹⁴ Sierra Flores et al, Stress response to anthropogenic noise in Atlantic cod *Gadus morhua* L. (2016) *Aquacultural Engineering* <http://dx.doi.org/10.1016/j.aquaeng.2015.06.003>.

¹⁵ See <https://thefishingdaily.com/featured-news/research-finds-submarine-cables-impact-survivability-of-haddock-larvae/>.

been able to adapt and are actually warned to stay away from underwater infrastructure. We reiterate our comments to BOEM's Vineyard Wind SEIS on this issue below:

“In the U.K., the only European country which allows commercial fishing inside of wind farms, mobile gear fishing does not occur where cables are present.¹⁶ This is due to potentially fatal interactions with the cables themselves. The below notice to U.K. fishermen from offshore wind developer DONG Energy (now Orsted) and the Kingfisher Information Service, a fisheries information service providing fishermen the location of subsurface and subsea hazards around the U.K.,¹⁷ reads, ‘The closer to the surface a subsea cable is lifted when fouled by fishing gear, the more damage there is to the fishing vessel. In the interests of fishing safety and to prevent damage to subsea structures fishermen are advised to exercise caution when fishing in the vicinity of subsea cables and renewable energy structures. ***Loss of gear, fishing time, and catch can result if a trawler snags a subsea structure and there is serious risk of loss of life.***’ (emphasis ours)

See image on next page:

¹⁶ Gray et al., “Changes to fishing practices around the UK as a result of the development offshore wind farms-Phase 1 (Revised)”, The Crown Estate, 2016, p. 29.

¹⁷ See <https://www.seafish.org/article/kingfisher-information-services>.



Description

The Westermost Rough Offshore Wind Farm is situated 8km off the Yorkshire Coast, north of Hull and contains 35 turbines of 6MW capacity—the first time anywhere in the world that these turbines have been used on a large scale.

Covering a total area of 35km², Westermost Rough should provide enough electricity to power around 150,000 UK homes.

Reducing the Risks whilst Fishing

To reduce the risks of fishing near offshore structures, it is essential to be up to date with AIS-ORCA information. AIS-ORCA information is used to control on your vessel's fishing plotter and ensures skippers are able to make informed decisions for their safety.

The closer to the surface a subsea cable is lifted when fouled by fishing gear, the more danger there is to the fishing vessel. In the interests of fishing safety and to prevent damage to subsea structures, fishermen are advised to exercise caution when fishing in the vicinity of subsea cables and renewable energy structures. Loss of gear, fishing time and catch can result if a trawler snags a subsea structure and there is serious risk of loss of life.

Emergency Procedures

1. If you suspect you have snagged a subsea cable, DO NOT endanger your vessel and crew by attempting to retrieve your gear.

Carefully plot your vessel's position as accurately as possible.

3. Advise the Coastguard of your situation, and call the 24-hour Emergency Number and state that an incident is occurring concerning a subsea cable.

Advisory Safety Zones

An Advisory Safety Zone of 50m around each turbine and substation structure is requested. An 200m anchorage exclusion zone around the export cable is requested. All vessels are asked to respect the Advisory Safety Zones, which as well as reducing the risk of collision damage, will provide protection to vessels, the export cable, and wind turbine structures.

If any major maintenance works are planned, Notices to Mariners will be promulgated in advance as required. During such works a Mandatory Safety Zone of 500m is likely to apply to certain turbines and/or vessels.

Contact Details

EMERGENCY CONTACT NUMBER:
08456 441037

Always ensure you have the latest Kingfisher Information onboard your vessel

Edition: January 2016

Another notice to U.K. fishermen, below, as part of the KIS-ORCA (Kingfisher Information Service-Offshore Renewable & Cable Awareness project) states, 'Renewable Energy Structures and Subsea Cables are a hazard and fishing over them should be avoided at all times....Most modern subsea cables carry high voltages which could prove lethal if attempts are made to cut them.'

Dangers of Renewable Energy Structures & Cables to Fishing

Renewable Energy Structures and Subsea Cables are a hazard and fishing over them should be avoided at all times. Heavily armoured cables used within the subsea cable and renewable energy industry are very strong and have high breaking strains, sometimes over 70 tonnes and can do extensive damage before they give way. Most modern subsea cables carry high voltages which could prove lethal if attempts are made to cut them.

Fibre Optic cable consists of an inner optical core encased within a copper clad high tensile steel wire rope insulated with polythene. In water less than 1500 meters deep, protection is added against fishing and anchor damage in the form of external steel wire armour. Due to the severe environmental demands placed on submarine cables, a lead-alloy sheath is often specified because of its compressibility, flexibility and resistance to moisture and corrosion. The sheath is usually covered by a number of outer layers, comprising a PE or PVC jacket and metal wire armouring.

The KIS-ORCA Project

The Kingfisher Information Service - Offshore Renewable & Cable Awareness project (KIS-ORCA) is a joint initiative between Subsea Cables UK and RenewableUK and is being managed by the Kingfisher Information Service of Seafish.


Offshore wind farms, renewable energy structures and subsea cables are increasing in number around the shores of the UK. The potential risks these structures may cause to fishermen is significant and the KIS-ORCA project aims to ensure these are managed in a responsible way.

It is against the law to willfully damage a subsea cable. To enable fishermen to continue to work safely in the vicinity of subsea cables and renewable energy structures, KIS-ORCA provides fishermen with information and accurate positions of all these offshore structures.

KIS-ORCA information is made available as fishing plotter files and awareness charts for use on vessels and on www.kis-orca.eu, where information may be viewed and downloaded.


Wind Turbines and Foundations

As wind turbines get larger and are deployed in deeper waters, a range of different foundation types may be encountered such as monopiles, jacket, gravity base and suction bucket. In some cases multiple foundation types may be used within a single site. In all cases it is likely that scour holes will form around the foundation base, the depth and extent being dependent upon a range of factors including seabed type and current strength and direction. Scour protection in the form of rock dumping or cable mattresses is often used around the base of the foundations which may present a snagging risk. During the operational phase of a wind farm, an operator may request a 50m advisory safety zone around each structure.



Inter Array Wind Farm Cabling

The inter array cables interconnect the turbines typically in metal stringing going to the offshore substation platform. The issues associated with these are largely the same as per cable burial. Each turbine will usually have up to two cables entering the foundation structure at the seabed through a protective tube. Typically the tubes end in a bellmouth at the seabed to aid alignment and pulling in of the cables. Whilst the cables may have been jetted in or ploughed as close as practical to the foundation, cables may not be fully buried and may also become exposed by scour holes forming. In these circumstances scour protection in the form of rock dumping or cable mattresses may be used. Cables close to the foundation may present a snagging risk to anchors and/or trawled gear.



Reducing the Risks whilst Fishing

To reduce the risks of fishing near offshore structures, it is essential to be up to date with KIS-ORCA information. KIS-ORCA information is easy to install on your vessel's fishing plotter and ensures skippers are able to make informed decisions for their safety.

The closer to the surface a subsea cable is lifted when fouled by fishing gear, the more danger there is to the fishing vessel. In the interests of fishing safety and to prevent damage to subsea structures, fishermen are advised to exercise caution when fishing in the vicinity of subsea cables and renewable energy structures. Loss of gear, fishing time and catch can result if a trawler snags a subsea structure and there is serious risk of loss of life.

If it is thought prudent to slip, or cut your fishing gear in an attempt to clear a subsea structure, always lower the gear to the seabed first. Never attempt to slip anything bearing excessive weight.

Claims for loss of gear should be made to the appropriate authority within 24 hours of arrival in port. Full particulars of the incident should be given and full details recorded in the vessel's official log, date and exact time, the vessel's position (VMS if suitable), depth of water and a description of the cable if sighted.

Claims for loss will only be considered if current KIS-ORCA data is installed on your vessel's fishing plotter.

HM Coastguard

Humber MRCC, Tel: +44 (0)1262 672317 Forth MRCC, Tel: +44 (0)1333 450666

Another notice, below, reads 'Due to the nature of some areas of seabed where mobile sediments are found, cables that were buried at the time of installation may become exposed over time, therefore it should not be assumed that all submarine cables are completely protected by burial, as they may become exposed and on the surface.'



[VIEW MAP](#)

Subsea Cables

print this page

Subsea Cables

This section contains information relating to Subsea Telecoms and Power Cables, from design to installation, maintenance to future trends.

Subsea cables have a very long history, with the world's first submarine cable crossing the Dover Strait in 1850. Subsea cables are essential to the worlds communications and with the growth of offshore renewable energy developments, the supply of electricity.

For a summary of the importance of power and telecoms cables and the issues effecting them, please download the Subsea Cables UK documents below:

“ The Importance of Subsea Telecoms Cables

“ The Importance of Subsea Power Cables

During the planning and installation phase of a submarine cable project, one of the most effective methods of protecting a submarine cable from damage caused by external aggression is to bury the cable, usually with a sea plough.

Due to the nature of some areas of seabed where mobile sediments are found, cables that were buried at the time of installation may become exposed over time, therefore it should not be assumed that all submarine cables are completely protected by burial, as they may become exposed and on the surface.

Please click on the sections to the right of this page to view detailed information.

IN THIS SECTION:

- [Design](#)
- [Installation Procedures and Methods](#)
- [Cable Burial](#)
- [Maintenance / Repair Operations](#)
- [Submarine Cable Maintenance](#)
- [The Future of Subsea Cables](#)
- [Media Gallery](#)

Register for Kingfisher Bulletins

The Kingfisher Bulletin
Offshore News

Register here, to receive the Kingfisher Bulletin by email:



For example, one Kingfisher Bulletin “Offshore News” 16 November 2017, attached as a part of our comment, includes “Notice to Fishermen” sections where new “Fishing Hazards” areas are highlighted to alert fishermen to newly exposed cables. Such notices include warnings such as “Cable Spans Along Greater Gabbard WF Export Cable; Recent results from the export cable surveys at Greater Gabbard show that there are 8 free-spans which are listed below. Whilst the results continue to be processed, Balfour Beatty have asked that in the interest of safety and the integrity of the cable, extreme caution be used when Fishing near the export cables and that Fishermen refrain from using towed gear across the export cables whenever possible.”¹⁸

Another ‘Notice to Fishermen’ from the same Kingfisher Bulletin states ‘Fishing Hazard- Gunfleet Sands WF Export Cable (Exposure Update); Recent surveys at the Gunfleet Sands offshore wind farm have illustrated that some array/in field cables are lying exposed on the seabed and are no longer buried and there is one freespan.’¹⁹

Yet another states, ‘Inter Array Cables- exposed sections; There are some sections of the installed inter array cables that are currently either shallow buried or exposed on the seabed. The shallow buried/exposed sections of cable could represent a significant hazard to fishing vessels and their gear (if fishing gear is deployed over them) and any vessels anchoring over them. Cable hazards will remain until completion of cable protection works planned for Q4 2017 and Q1 2018.’²⁰ This particular notice to fishermen was first published on December 3, 2015.²¹ This means that the exposed cables and associated fishing hazards would be in place for 3 years before remedy was taken. This is similar to the timing of repair of the currently exposed Block Island Wind Farm cables. As such, the area would represent a life-threatening hazard to fishermen for consecutive years in a row.

Considering all of the above, the SEIS assumption that cables will only result in temporary fishing displacement while installation occurs is erroneous. During the entire life of the Proposed Action and all other cumulative actions, inter-array and export cables will present a default exclusion zone for mobile bottom tending gear vessels, such as longfin squid trawl vessels. Unless the vessel is willing to risk “loss of life.” We believe this is a major impact. The SEIS and all BOEM analysis must therefore consider all inter array areas within the wind farm as well as export cable routes a complete loss of trawl fishing activity and revenue.”²²

Due to the highly regulated nature of commercial fishing in the US, which is much more spatially regulated than any BOEM activity, we cannot simply “relocate” bottom trawl activity to areas outside the wind leases.²³ In reality, wind leases may soon cover the majority of the fishable area on the US East Coast OCS. Additionally, we know as discussed above that the offshore wind farms will have significant environmental and fisheries resource impacts. The combination of these factors cannot be ignored.

¹⁸ Kingfisher Bulletin “Offshore News” 16 November 2017, Issue 23, p. 9.

¹⁹ Ibid.

²⁰ Ibid, p. 10.

²¹ Ibid.

²² Taken from Seafreeze Vineyard Wind SEIS comments, July 2020, available at: <https://www.regulations.gov/comment/BOEM-2020-0005-13102>.

²³ See the information contained in our NYSERDA Master Plan 2.0 comments, attached.

In fact, in June 2022, a paper entitled “Spatial Squeeze in Fisheries” was published in the UK,²⁴ found that due to the combination of growing offshore wind and related Net Zero targets combined with spatial fisheries regulations, both of which are already displacing mobile bottom trawling, that mobile bottom trawls would between 2030 and 2050 be essentially eliminated. In the UK, as on the East Coast of the US, mobile bottom tending gear accounts for most of the tonnage of seafood harvested. If UK fisheries have not “transitioned” but instead are preparing for potentially complete annihilation, the states should be prepared for the same results here. Assuming otherwise, with assumptions based neither in fact nor experience, is foolish and insupportable. Therefore, we request that the states remove that assumption from the RFI Administrator documents.

As the RFI Scoping document suggests, a separate gear loss claims process should also be regionalized.

Funding Questions:

Mismatch of Anticipated Impacts and Anticipated Funds: This section is perhaps the most problematic. As stated numerous times above, if BOEM’s Draft Guidance remains the same when the document is finalized, the RFI Administrator fund will be astronomically short of the funds necessary to compensate for the impacts that the states have identified. In this respect we know two things: (1) the impacts listed in Table 1 of the Scoping Document are not evaluated quantitatively by BOEM, neither are cumulative impacts or various other impacts identified in this process, and (2) the Draft Guidance incorporates *recreational* fisheries’ compensation also. There are tens of thousands if not hundreds of thousands of recreational fishermen up and down the East Coast. BOEM does not quantitatively value recreational fisheries impacts from offshore wind development. If the “compensation” funds are based purely on ex-vessel value of commercial fisheries and then are intended to be used for recreational fisheries compensation as well, the fund will dry up and fail almost immediately.

Even aside from the question of recreational fisheries, the fact that the anticipated compensation measures of the fund do not match BOEM’s impact analysis valuations will make the fund essentially a failure from the start. The fund would be starting out with a huge shortfall, leading to either a quick run on the bank which would deplete the fund in short order, or a limit the dollar amount of individual payouts to where the individual impacts are not compensated by the amount of the payout. Either way, the fund at this point is set up to fail. Assurances that “this is a living document and better arrangements can be developed along the way” is not realistic nor adequate. A promise is not a guarantee. Hope is not a strategy. Action is needed at this stage to ensure success.

Number of Expected Applicants: Before setting up any fund, the first question to answer is, “What is the expected number of applicants?” The structure of the fund will largely depend on the answer to that question and is the only way the fund can be set up to reflect demand. To prepare to answer that question, the states will need to contact NMFS to obtain a list of the number of permits per federal commercial fishery (and any associated permit categories, as permit category would be necessary for determining eligibility, value, and level of impact/compensation), as well as each state fisheries department for number of state only commercial permit holders per fishery, and each state fisheries department for the number of recreational permit/license holders should an individual state require them. The states should also reach out to NMFS and their respective state fisheries departments

²⁴ ABPmer, (2022). Spatial Squeeze in Fisheries, Final Report, ABPmer Report No. R.3900. A report produced by ABPmer for NFFO & SFF, June 2022.

for a list/number of federal and state dealer permits, which will help to inform the number of shoreside businesses affected. State landing licenses will also provide a useful metric for determining any fishery entities that wouldn't be covered by the above, as well as commercial fishing businesses directories that would include shoreside businesses such as those that manufacture commercial bottom trawl nets/wires/gear. Knowing how many applicants to prepare for will largely direct the rest of the conversation on structure and funding issues, as well as payout structure.

Shoreside Business Impacts: Shoreside business impacts are also a major problem in the BOEM Draft Guidance. BOEM's "assumption" that the economic multiplier for a shoreside business is ludicrous. Yet this is the assumption made in the Draft Guidance, and should it continue to the Final Guidance will be the number that informs payouts to shoreside businesses. Please see our Draft Guidance comments on this issue attached.

No industry operates on 1-2% of its raw material costs. Under this assumption, if Seafreeze were to pay an individual vessel unloading at our facility \$1 per pound for squid, we would be expected to cover all property costs, insurance, machinery maintenance and/or replacement, electric and water costs, freezing costs, packaging costs, ice making, shipping costs, refrigeration and cold storage costs, temporary labor costs, salaries, taxes, financial service costs, inspection fees, compliance costs, and a host of other financial operating costs- without even so much as considering profit- on \$0.01 per pound. This is not only grossly inaccurate, but also grossly negligent to make such an assumption.

We participated in a research product conducted by the Science Center for Marine Fisheries, an industry/academic partnership under the umbrella of National Science Foundation entitled "Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S."²⁵ This study was completed in association with the Virginia Institute of Marine Science and calculated a total economic output multiplier for longfin squid of 7.64, i.e. every dollar of squid fishery landings leads to \$7.64 in total economic output. Not \$0.01-\$0.02. This means that should the current form of the Draft Guidance determine the dollar value entering the RFI Administrator fund, the fund would be over 700 times short the amount of funding necessary to account for shoreside impacts arising from the squid fishery. How then can shoreside impacts be compensated? They cannot.

BOEM's assumption that shoreside businesses can simply "import" to cover the losses is ridiculous. Our facilities are designed to offload vessels. For example, our Seafreeze Shoreside facility is comprised of docks, unloading pumps and conveyors- all designed to unload commercial fishing vessels- freezers and packing facilities that package/freeze the unloaded product, and an ice plant that supplies the vessels with ice. We cannot import; that is not our business model. We are dependent on boats and what they unload at our facility. Those vessels supply 100% of our product flow. A secondary/tertiary wholesaler dealing with fully processed/ready to eat product may be able to import. But we are not that. And we are not alone.

The states should suspend the process until the Final Guidance is available, determine what BOEM's final valuations are, and begin the process there. Should the Guidance remain the same, the states will either have to make up any shortfalls themselves, or reject the Guidance document, if the states truly intend to compensate for the impacts that are listed in the RFI Administrator Scoping document. Otherwise, the fund itself is relatively meaningless for many impacted entities.

²⁵ See Scheld, "Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S.", 2020, at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf.

Duration of compensation: The Draft Guidance also assumes a 5-year duration of payouts. This is inconsistent with the ecological impacts of the project discussed previously in this comment. Those will last for the life of the projects. The loss of fishable area for the mobile bottom tending gear fleet will also be permanent for the life of the projects, as discussed above. Therefore, the impacts to shoreside businesses reliant on the mobile bottom tending gear fleets will also last for the life of the projects.

Again, most likely what will happen should the states move forward in the current state of affairs is that the fund will be depleted almost immediately or the payouts will have to be divided between so many applicants that the amounts distributed will be miniscule and woefully insufficient. This is a huge concern to those who have everything to lose and nothing to gain from offshore wind development. It is highly unlikely that once a structure is established that BOEM nor the states will go to any great length to modify it in the future. Therefore, we request that the states take a pause to analyze, discuss, and address these issues before moving any further forward with the RFI Administrator process.

While we would like to provide additional input, time and resource constraints are prohibitive to doing so. We sincerely hope that the states will slow the process down to allow for more opportunities for input, constructively work towards comprehensive solutions to the issues we have addressed and avoid pitfalls at the outset rather than after they become greater issues of contention with greater consequences. However, we continue to contend that if BOEM were to comply with its authorizing legislation, as well as NEPA requirements of first "avoidance", such a fund would be unnecessary in the first place.

Sincerely,

[Redacted signature]

CC: [Redacted]



**Comments Re: Draft Fisheries Mitigation Guidance 06232022; Document ID
BOEM-2022-0033-0003**

BOEM's Draft Fisheries Mitigation Guidance Document is a misguided and incomplete assessment of fisheries impacts. It does not bind or regulate offshore wind developers in any way, despite BOEM being the regulatory agency over offshore energy development. As such, the document is not only misguided but also meaningless. However, the agency's continued deference to developers, coupled with a refusal to analyze actual impacts to the commercial fishing industry, this guidance will perpetuate conflicts between commercial fishing and offshore wind development. Below are our comments on each section of the Draft Guidance document.

1. Introduction to Guidelines:

In this section of the Draft, BOEM states that it "requires lessees to submit information on social and economic conditions, including...commercial fishing (including typical fishing seasons, location, and type)" that could be affected by the lessee's proposed activities....The information required in the regulations assists BOEM in complying with the Outer Continental Shelf Lands Act (OSCLA), the National Environmental Policy Act (NEPA), and other relevant laws....The guidelines in this document discuss the remaining BMPs and provide suggestions for complying with information requirements in the regulatory provisions listed above."

This reasoning is unhelpful at best and shines a spotlight on a serious flaw in BOEM's process. BOEM relies on the developer for relevant information and analysis. The developer's interest lies solely in complete project approval. By allowing developer-generated information to be the source of BOEM's compliance with its own legal duties, the process is weighted in favor of the developer from the start. It is BOEM's responsibility to gather information from the appropriate sources/cooperating agencies, conduct analysis on a developer's plan or proposal at every stage of the process, weigh it against BOEM's legal requirements, and require the developer to comply with the law. Instead, BOEM flips this responsibility around in full deference to the developer.

If a developer says something is "unfeasible", BOEM says it is unfeasible. For example, if an alternative may "reduce economic benefits from offshore wind development" because the developer applying for a permit alleges that the alternative would "increase transmission losses", create "technical complexities" or "project delay", then BOEM will

disapprove the alternative in favor of full economic benefit to the developer regardless of its other legal duties or considerations.¹

BOEM does not conduct its own analysis of or investigate developer claims; it merely accepts them and uses these claims as the basis for BOEM decision-making. In fact, early in the BOEM process that later led to the leasing of what is now known as the Equinor Empire Wind lease, the developer and BOEM told the commercial fishing industry that relocating the lease to another area off Long Island with less fisheries conflict would not be possible because the export cable length would have to increase, losing too much electricity and making the project unviable. However, now Equinor is planning an export cable well over 100 miles long from a lease off the coast of Massachusetts running all the way past Rhode Island, past Connecticut, and into New York City.² Apparently, longer cable routes are not actually such an issue. But it is now too late to relocate the Empire Wind lease site and reduce conflicts, as the commercial fishing industry had asked and other federal agencies and Congressional officials suggested, prior even to the leasing stage.³ BOEM does not critically validate or scrutinize developer claims. This Guidance document perpetuates that problem.

This theme of abdication of agency responsibility is consistent across the board throughout the BOEM process, even regarding cooperating agencies. For example, despite the fact that the U.S. Coast Guard is the federal agency responsible for maritime safety, rather than conduct an independent analysis of various aspects of maritime safety such as radar interference as regards offshore wind installations, the U.S. Coast Guard relies on the developer's Navigation Safety Risk Assessment to analyze impacts.⁴ Such deference to the developer via the BOEM process has attracted sharp bipartisan criticism from the U.S. House Committee on Transportation and Infrastructure. According to the Committee Chair and Ranking Member, "The Coast Guard...holds sole responsibility for ensuring safety in U.S. waters...In 2019, the Coast Guard's Notice of Availability of the Massachusetts and Rhode Island Port Access Route Study (MARIPARS) failed to incorporate findings and comments provided by the fishing community that highlight safety and transiting concerns. These concerns went beyond the general siting of offshore energy leasing areas, touching on navigational safety (including the potential for increased future traffic volumes, which was not fully reviewed), search and rescue capabilities, and the effect that turbine arrangements are known to have on radar interference. Last month, some unanswered concerns in the MARIPARS were reiterated to the USCG in the initial comment period for the Maine, New Hampshire, and Massachusetts PARS....Unfortunately, the indication we have received from stakeholders is that the USCG has become less responsive over time to questions and suggestions on these issues and has instead allowed BOEM to drive the planning process. It is not enough for the USCG to oversee safety measures after transit areas are established with other parameters in mind; therefore, we respectfully remind you that it is the Coast Guard's duty to assert itself as the entity responsible for determining how transiting routes

¹ See Vineyard Wind ROD, p. 25.

² See attached Beacon Wind cable route.

³ See attached NMFS comment letter on the NY WEA EA, dated July 11, 2016, and attached letter to BOEM Director Hopper from U.S. Senators Reed and Whitehouse, dated September 21, 2016. See also Glenn Goodwin Declaration, *Fisheries Survival Fund et al v Jewell (D.C. Cir. 2018)*, attached.

⁴ See attached letter to R.I. Senator Sosnowski from the U.S. Coast Guard, dated November 25, 2019.

are laid out so that maritime space is safe for all users for the foreseeable future. As such, we request that you use your authority under section 46 U.S.C. 70003(a), to ensure the paramount use of areas designated as port access routes is navigation.”⁵ In many cases of navigational hazard, such as radar interference and loss of HF radar for search and rescue, the U.S. Coast Guard defers to BOEM as the permitting agency to make impact determinations. As the U.S. Coast Guard has allowed BOEM to drive the planning process, BOEM has allowed the developer to drive the planning process.

BOEM needs to start taking its role as a regulator seriously. BOEM exists to regulate offshore wind. Not promote it, not rubber-stamp it. The government regulates; that is its job. By allowing the developer to be the entity generating information necessary for BOEM’s compliance with its own legal obligations, the tail is wagging the dog. This will lead to continued conflicts, unacceptable fisheries impacts and litigation.

2. Authority and Regulations:

BOEM in this section highlights another deficiency in its own process. This section states, “For **BOEM to evaluate** potential impacts to social and economic conditions of the fishing industry, a **lessee’s SAP, COP, or GAP should provide the necessary information** to assist BOEM in determining whether the proposed activities could result in unreasonable interference with other uses of the OCS...(emphasis ours)”. Again, this is backwards- the developer, who only has a vested interest in 100% project approval, is the entity providing all the information that BOEM needs to evaluate unreasonable interference with other uses of the OCS. Does BOEM truly believe that the developer will provide evidence to BOEM that its project will have negative impacts on the commercial fishing industry or indeed any other user if it risks project disapproval? Does BOEM truly believe that the developer will provide evidence to BOEM that its project will result in unreasonable interference to the fishing industry or marine navigation? Of course not.

The BOEM regulations cited in the Draft Guidance show that lessees are required to demonstrate that they “have planned and are prepared to conduct the proposed activities in a manner that does not unreasonably interfere with other uses of the OCS.” Yet BOEM has no regulations even defining what unreasonable interference is, or thresholds for what constitutes unreasonable, or even for what constitutes interference. For commercial fishing, BOEM and developers have refused to recognize that offshore wind farms will create de facto closed areas for certain types of fisheries and gear types, despite information provided to the agency by industry as well as documented examples from overseas where this has occurred.⁶ Yet, BOEM continues to refuse to truly recognize this as interference and continues to incorrectly assume that fisheries can “adapt” over time, which is unsupported and even contradicted by existing evidence.⁷ We address this issue later in our comments in more detail.

⁵ See attached letter to Admiral Fagan, Commandant U.S. Coast Guard, from U.S. House Committee on Transportation and Infrastructure leadership, dated July 6, 2022.

⁶ See, for example, our Vineyard Wind SEIS comments, p. 38-43.

⁷ For example, in a report by Gray et al for the UK Crown Estate, “Changes to fishing practices around the UK as a result of the development of offshore wind farms- Phase 1 (Revised)”, the authors state: “Findings suggest that fishing activity within OWF boundaries has changed, primarily because fishermen are fearful of fishing gear becoming entrapped by seabed obstacles such as cables, cable crossing points and rock armouring, and wary of

Without any clear guidelines on what constitutes interference or any threshold for what constitutes reasonable vs unreasonable, BOEM simply gives the developers a blank slate to determine this on their own. There is zero benchmark. According to BOEM's most recent Solicitor opinion on the topic, the Secretary has the discretion to determine what constitutes interference with reasonable uses.⁸ If this is the case, where are the corresponding agency guidelines to aid in decision making? If the Secretary has the discretion as well as the duty to make this determination, why does the agency leave the information collection and burden to satisfy an undefined legal mandate to the developer?

Before BOEM moves to finalize any Guidelines for Fisheries Mitigation and Compensation, it must first develop its own enforceable regulatory guidance on unreasonable interference. Leaving that burden to the developer is dereliction of BOEM's regulatory duties, arbitrary, capricious and unsupported. Contrary to BOEM's assertions in the Guidance public comment period that it cannot revise its regulations on issues related to this Draft Guidance, BOEM can revise its regulations and has done so recently on other subjects. BOEM can and should revise its own regulations prior to further development of this initiative in order to provide clarity and take responsibility over its own regulatory authority.

As the Outer Continental Shelf Lands Act, as amended in 2005, mandates that "[t]he Secretary shall ensure" that offshore wind leasing "is carried out in a manner that provides for...prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas", and as commercial fishing is clearly a reasonable use of the ocean- not only in a common sense determination but also as evidenced by the fact that other federal legislation (the Magnuson Stevens Fishery Conservation and Management Act) regulates fishing in the EEZ, the fact that NOAA as a federal agency permits, regulates and enforces compliance with these permits and regulations to fish in the EEZ, and the fact that USCG regulations/COLREGS specifically mention fishing with regards to navigation and "rules of the road" in the ocean- then, prevention of interference with reasonable uses clearly applies to commercial fishing. If fishing were not a reasonable use of the ocean, there would not be federal agencies legislatively designated to manage and regulate it. Therefore, the very first and foremost action taken by a developer to prevent unreasonable interference with commercial fishing is **avoidance**. Avoidance of siting and building offshore wind facilities on commercial fishing grounds in the first place. Yet this very obvious and blatant first step of "mitigation" is not even mentioned by the Draft Guidance.

This should be the primary focal point of the Draft Guidance, and any accompanying BOEM regulations or guidance regarding unreasonable interference. It is mind boggling that the agency would completely omit the most important aspect of fisheries mitigation in a Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries. BOEM cannot omit avoidance as the very first requisite step in fisheries mitigation. It should be the very first section

vessel breakdown with the consequent risk of turbine collision. Wind farm maintenance work was claimed to cause disruption to fishing (for example interrupting tows) and increasing steaming distances to fishing grounds, although fishing is not prevented within OWFs" (p. vi) and "Existing datasets (VMS, landings and sightings) and information from fishermen and fisheries officers, revealed that fishing activity had declined in the five wind farm sites following their construction" (p. 12).

⁸ See <https://doi.gov/sites/doi.gov/files/m-37067.pdf>.

of this Draft. Except that it cannot be or remain simply Guidance. It has to be regulatory and enforceable, in compliance with BOEM's legal responsibilities.

While two very different Department of Interior Solicitor memorandums (M-37059 and M-37067) have been issued as to the interpretation of the statutory mandate to prevent interference with reasonable uses of the ocean per OSLA, both acknowledge a statutory duty to do so. Therefore avoidance of fishing grounds so as to prevent interference with commercial fishing should be the first step in statutory compliance. The two legal memos differ on how absolute this requirement is, whether or how it is balanced with other duties or statutory provisions, etc., but nevertheless emphasize a need to at least attempt to prevent unreasonable interference with other uses. Which is listed in the Draft Guidance as a regulatory component for a SAP, COP or GAP- but only for information required by developers to submit to BOEM. The law doesn't put the burden on the developer; it puts it on the Secretary and by implication, BOEM. BOEM must ensure that it conducts its process in such a way that it prevents interference with reasonable uses. Therefore, BOEM must include avoidance as the very first step in fisheries mitigation. If it intends the Draft Guidance to remain only guidance, then BOEM must revise its own regulations and procedures to require avoidance up front, as this is not an optional component of the offshore wind leasing process. It is a legal one.

This approach is further solidified by the CEQ regulations (40 CFR 1508.1(s)) referenced by the Draft. The very first recommended practice for mitigating impacts to commercial and recreational fishing is "Avoiding the impact altogether by not taking a certain action or parts of an action". When avoidance occurs, it negates the need for further action, including compensation or other remedies proposed by BOEM in the Draft Guidance. By omitting avoidance as a key focal point in this document, BOEM is indicating to the fishing industry that it has no intent of avoidance whatsoever. And that is a major problem.

3. General Approach to Developing Mitigation Measures:

In this section, BOEM lists various tools to help a developer "identify [fishing] communities to engage", pre-activity, so that the developer can make "reasonable efforts" (whatever that means, since it will mean different things to the fishing industry than it will to a developer) to mitigate impacts via communication. However, BOEM does not even mention engaging with RODA, the only national organization of commercial fishermen, businesses, and communities dealing with offshore wind, despite BOEM having an MOU with RODA. Furthermore, developer "engagement" with fishing communities is largely worthless unless there are regulatory requirements binding that create actionable outcomes. The commercial fishing industry has been "engaging" with developers as well as BOEM for many years now and has continually raised the same issues which continue to go unaddressed. "Guidance" for more communication without actionable outcomes is not helpful. It is counterproductive.

4. Project Siting, Design, Navigation, and Access:

Ironically, this section fails to mention any burden on or from BOEM to consider Project Siting. It doesn't even mention siting in the context of the developer. It discusses facility design, cable design, turbine and substation design, but fails to actual discuss the first element of the heading: Project Siting. As detailed previously, this is the single most important aspect of the offshore leasing process. If project siting involves avoidance of fishing grounds, the rest of the

Draft document is a moot point. However, that is a BOEM responsibility and a request we have made for years to the agency. The only time this section mentions avoidance during siting is “Turbine locations should be sited to avoid known sensitive benthic features, such as natural and artificial reefs”. Why does BOEM omit giving the fishing industry at least the same consideration as an artificial reef? Again, BOEM must be specific in its guidance and regulations that avoidance of commercial fishing grounds is the first step in this process, for both itself and the developer.

See footnote 3 of this comment for document references that demonstrate how Project Siting could have avoided what has now become a fisheries conflict. In that case, because a Call Area had been identified on top of clearly identifiable commercial fishing grounds for multiple fisheries, in particular the longfin squid fishery, both NOAA and legislative officials requested to relocate the area prior to leasing and therefore prior to any developer commitment. BOEM chose instead to ignore these requests. Project Siting is the most important mitigation measure and cannot be overlooked as the single most effective way to minimize impacts on commercial fisheries.

BOEM must also consider how its Draft Mitigation document interacts with its other policies. On June 23, 2022, on the same day that it released its Draft Fisheries Mitigation Strategy,⁹ BOEM announced that it has standardized its NEPA review for offshore wind in such a way that makes the relevant CEQ regulations (40 CFR 1508.1(s)), as well as the Draft documents tenets of “Project Siting, Design, Navigation and Access” impossible to follow. The CEQ regulations that recommend “avoiding the impact altogether by not taking a certain action or parts of an action” or designating areas of a lease as no build zones to accommodate transit lanes for commercial fishing transit through the project area have been rendered defunct by BOEM’s new standardized NEPA approach to developing alternatives for review. In fact, the new NEPA standardization for offshore wind constrains BOEM approval of NEPA alternatives for analysis to deliberately exclude anything other than full buildout of the project.

BOEM has never taken public comment on this new NEPA standardization, which is not surprising considering the uproar this approach would generate from all stakeholders other than developers. The document, titled “Process for Identifying Alternatives for Environmental Reviews of Offshore Wind Construction and Operations Plans pursuant to the National Environmental Policy Act (NEPA)” identifies “screening criteria” for “selecting which alternatives to analyze in detail” at the COP EIS stage,¹⁰ which is the only juncture in the BOEM process where impacts to fisheries as well as other resources are analyzed in detail.

The document explains that the project COP, as well as BOEM analysis of said COP, must meet the “Purpose and Need” for the COP EIS. Only alternatives that meet the Purpose and Need will be analyzed in detail in the COP EIS. These new and standardized “screening criteria” include: “state laws that establish renewable energy goals and mandates”, the “applicant’s primary goal(s)”, “awarded contracts for offtake” (i.e. developer power purchase agreements

⁹ See <https://www.boem.gov/newsroom/notes-stakeholders/boem-standardizes-process-environmental-reviews-offshore-wind> and <https://www.boem.gov/newsroom/press-releases/boem-seeks-public-comment-draft-fisheries-mitigation-strategy>.

¹⁰ See <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM%20COP%20EIS%20Alternatives-2022-06-22.pdf>.

with state utilities), and “the MW nameplate capacity for the proposed project”.¹¹ Therefore, if the developer has proposed a 500 MW project, contracted with a state utility in a power purchase agreement for a 500 MW project prior to COP review- never mind adding if the state has mandated a certain amount of offshore wind nameplate generation- BOEM’s NEPA review cannot disapprove, for example, 30% of the project lease for buildout to accommodate commercial fishing interests, or designate a no- build transit lane through the project to accommodate safe commercial fishing vessel transit through a WEA, or any other alternative that would not include 100% buildout of the project. No alternative other than the developer’s nameplate capacity and/or its power purchase agreement with a utility can even be CONSIDERED in analysis. In effect, BOEM has simply become an arm of the developers themselves. This is unethical, an artificial constraint of legal review, and on its face illegal.

The NEPA standardization document also specifically outlawed relocating a majority of the project outside of the defined project area into a different portion of the lease held by the applicant, i.e. avoidance. Therefore, if a project is sited on heavily fished ground, and if relocating the project to a different area of the same lease would deconflict and avoid interference with a commercial fishery, no such alternative will be considered by BOEM. BOEM has simply made its standardized process in such a way as to exclude consideration of all ocean users, including commercial fishing, other than developers. This is also on its face a violation of the Outer Continental Shelf Lands Act requirement that BOEM prevent interference with reasonable uses of the ocean. Reasonable uses would of course include federally permitted uses of the ocean such as commercial fishing. However, if BOEM has effectually constrained itself in such a way that its process cannot prevent interference with these uses, its process in turn violates OSCLA.

BOEM alleges in its NEPA standardization document that a lease area for which a COP is submitted “represents the defined geographic area and has been analyzed for consistency with the Outer Continental Shelf Lands Act (OSCLA)” including “consideration of other ocean and OCS uses”. This is completely false and what led to the letters noted in footnote 3 of this comment, as well as what prompted legal action by the fishing industry over what is now the Equinor Empire Wind lease.¹² Wind farm impacts to commercial fisheries are not considered by BOEM until after the lease is issued, during the project COP analysis stage.¹³ BOEM argued in the Empire Wind case that the lease EA and associated lease issuance merely authorized site assessment activities, not future construction activities, and therefore did not impact fisheries. No OSCLA compliance analysis was done to consider fisheries use of the area and the future foreseeable impact of a wind farm in the lease.

In fact, the entire challenge to the lease was due to the fact that the lease was sited on a heavily fished area with no analysis of what that meant for fisheries stakeholders, and no attempt was made to re site the lease prior to lease sale- i.e. to prevent interference with reasonable uses of the ocean- even after suggestions to do so from NMFS and various elected officials, as well as stakeholders. The fishing industry argued that per NEPA, the future

¹¹ See <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM%20COP%20EIS%20Alternatives-2022-06-22.pdf>, p. 3.

¹² ¹² See *Fisheries Survival Fund et al v Jewell* (D.C. Cir. 2018).

¹³ While the NY Bight process did examine some fisheries impacts prior to leasing, this was an anomaly in the BOEM process thus far.

foreseeable impact of a wind lease was a wind farm. Attempts to de-conflict at the leasing stage in order to avoid fisheries impacts fell on deaf BOEM ears. The court held that the future foreseeable impact of a wind lease did not include a wind farm, as the lease only authorized site assessment activities, not construction of a project.

To date, all commercial fisheries “future foreseeable impacts” resulting from a wind lease that consider ultimately a wind facility are only analyzed at the COP EIS/ROD stage. It is at this stage that NEPA consideration of impacts, and ultimately OSCLA compliance, is analyzed. Now that BOEM has standardized its NEPA analysis in such a way that fisheries avoidance or prevention of interference with reasonable uses in the form of disapproval/partial disapproval/project relocation within a lease is impossible, because do so would not meet the Purpose and Need of the COP EIS, BOEM has artificially tied its own hands from complying with the law.

The judge in the Equinor case stated that because BOEM reserves the right to cancel a lease, or reject a developer’s COP, due to results from environmental and socioeconomic reviews that occur later in the process after leasing and the lease EA (i.e the COP EIS stage), that the fishing industry had no immediate effect on their legal interests as a result of the EA/lease sale itself. This was because the judge asserted BOEM would conduct this environmental and socioeconomic NEPA analysis at the COP EIS stage, make a decision based on that analysis, and approve or disapprove a project at that time. Therefore, the judge ruled that the fisheries claims under NEPA and OSCLA were not “ripe” for consideration at the leasing stage because BOEM retained the “right to disapprove.... A COP based on the Lessor’s determination that the proposed activities would have unaccepted environmental consequences” . This decision alone demonstrates that the lease sale itself is NOT analyzed for consistency with OSCLA, contrary to the claim made in BOEM’s NEPA standardization document. It also runs contrary to BOEM’s new standardization.

With its new NEPA standardization, BOEM cannot reserve the right to cancel a lease, reject, partially reject, or even relocate a developer’s project within the lease to “avoid the impact altogether by not taking a certain action or parts of an action” per CEQ regulations (40 CFR 1508.1(s)). BOEM makes the Equinor judge rationale moot. Instead, it constrains its own NEPA analysis only to alternatives that completely fulfill a developer’s goals, and full buildout of the project or pre-planned power purchase agreements. There is now no distinction between the agency and the offshore wind industry.

BOEM cannot simply wash its hands of its statutory duties under OSCLA, or NEPA, simply by creating an unenforceable “Draft Fisheries Mitigation Document” that shows by its own terms BOEM’s failure to comply with both statutes. It cannot use the Draft Fisheries Mitigation document to excuse or compensate for the fact that it has not only completely abdicated its legal responsibilities to developers but actually designed its own NEPA process in such a way that only the project goals, nameplate capacity of the project, and pre-existing power purchase contracts of the developer can receive final agency approval. However, it is very apparent from the omissions contained in the Draft Fisheries Mitigation Document, as well as the inclusions in its NEPA standardization document, that this is precisely what BOEM intends to do.

With this in mind, it is difficult to even determine a reason for commenting on the Draft Fisheries Mitigation Document from a stakeholder perspective. The process is so broken, so pre-

arranged so as to completely fail fisheries interests in favor of developer interests, that an unenforceable agency “mitigation” plan appears more of a smokescreen than an authentic endeavor.

5. Safety Measures:

During BOEM’s presentation given during its public meetings on the Draft Guidance, it suggests “considering lessee- funded radar system upgrades for commercial and for hire recreational fishing vessels (e.g. solid state Doppler-based marine vessel radar systems)”.¹⁴ The Draft Guidance reiterates this approach on page 6. BOEM must not have read the results of its own BOEM-sponsored study conducted by the National Academies of Science, “Wind Turbine Generator Impacts to Marine Vessel Radar (2022)”.¹⁵ That study states, “As presently deployed, WTGs reduce the effectiveness of both magnetron-based and Doppler-based MVR...It is noteworthy that there are no published studies of WTG interference on Doppler-based solid-state radar used for marine navigation.”¹⁶

It is no surprise to us that the NAS study confirmed the very real problem of radar interference due to offshore wind for all vessel classes, that the vast size of projects planned for US waters exacerbates the problem, confirmed that the larger the turbines the bigger the problem, confirmed that this radar interference will compromise USCG search and rescue, with no solutions to the problem at this time and that potential solutions require more investigation before they can be deployed.¹⁷ We have highlighted these issues to BOEM multiple times. In fact, some of the information regarding radar interference we supplied to both the USCG and BOEM in our comments on the Vineyard Wind SEIS is quoted by the NAS report.¹⁸ Unfortunately, this information was ignored by BOEM and went unaddressed. BOEM can no longer ignore the very real navigational and life-threatening hazard to mariners resulting from marine vessel radar interference due to its approved projects. It cannot ignore the findings of a report it itself commissioned. And it cannot continue to hang its hat on unproven technology as the solution to this problem. Rather, BOEM and the USCG should commission real-life trials of solid-state/Doppler radar in large scale offshore wind farms in the UK to test if solid state/Doppler technology can reduce interference to a more manageable level. The fact that no studies regarding solid state/Doppler marine vessel radar and wind turbine interference exist despite both existing in Europe is a tell-tale that no panacea currently exists for marine vessel radar interference from wind farms, including solid state/Doppler radar.

¹⁴ See <https://www.boem.gov/newsroom/press-releases/boem-seeks-public-comment-draft-fisheries-mitigation-strategy>, slide 24.

¹⁵ “Wind Turbine Generator Impacts to Marine Vessel Radar (2022), National Academies Press, available at <https://nap.nationalacademies.org/catalog/26430/wind-turbine-generator-impacts-to-marine-vessel-radar>.

¹⁶ “Wind Turbine Generator Impacts to Marine Vessel Radar (2022), National Academies Press, available at <https://nap.nationalacademies.org/catalog/26430/wind-turbine-generator-impacts-to-marine-vessel-radar>, p. 5; emphasis ours.

¹⁷ “Wind Turbine Generator Impacts to Marine Vessel Radar (2022), National Academies Press, available at <https://nap.nationalacademies.org/catalog/26430/wind-turbine-generator-impacts-to-marine-vessel-radar>, p. 4, 5, 10, 14, 76.

¹⁸ “Wind Turbine Generator Impacts to Marine Vessel Radar (2022), National Academies Press, available at <https://nap.nationalacademies.org/catalog/26430/wind-turbine-generator-impacts-to-marine-vessel-radar>, see Figure 1.3, p. 13 and our Vineyard Wind SEIS comment letter at p. 56.

The safety measures proposed in the Draft also simply include “monitoring safety threats” including radar interference, collisions, allisions, impacts on search and rescue etc., throughout the life of the project. Monitoring does nothing. Corrective action, clearly prescribed, and clearly enforceable, is necessary. Particularly when dealing with safety at sea. BOEM seems intent on keeping interaction with anything that could be difficult or costly for a developer to “monitoring”, “engagement”, or some other non-actionable approach. This is unacceptable. Again, we assert that the regulator must regulate the regulated. Suggestions, non-committal approaches that have no real action associated with addressing an issue, and non-actionable recommendations are completely useless in practice. Simply monitoring vessel collisions, monitoring loss of life at sea due to lack of accurate radar or loss of search and rescue capabilities, and the like do nothing. If BOEM acknowledges that these are real issues, BOEM needs to come up with a plan of how to correct and address each one of these impacts. Without a pre-determined game plan, you lose the game. And there is no second chance once the game is over. BOEM, prior to any ROD approvals, must address these issues with clearly prescribed and enforceable corrective action in a comprehensive manner. If the agency refuses to do this, we will simply have 30 years of approved projects in the ocean where nothing can be done or required of developers who have already received approval to truly mitigate impacts. Loss of life and safety at sea is too important a topic to be left to merely “monitoring”.

We also suggest that BOEM include in a list of safety issues to be comprehensively addressed that of unexploded ordinance (UXO). To date, UXO in an approved wind farm lease has been dug up during pre-construction operations, exposed, and left on the ocean floor in heavily fished mobile bottom tending gear fishing grounds with high potential for interaction, potentially fatal interaction, with commercial fishing vessels.¹⁹ This danger should be not only broadcast over every means possible to alert mariners to the danger, but also have a clear course of action and timeline for that action. To date, the 1000 lb UXO has been exposed for over a month with no clear plan for its removal. In the UK, the current practice of UXO detonation for removal of UXO during wind farm construction results in explosion, underwater noise affecting marine mammals and commercially harvested species; other alternatives such as Low-Order slow burn used to burn out munitions from the inside of the casing of a UXO will often result in sea pollution due to the deposit of hazardous waste on the seabed.²⁰ Both of these methods will have negative impact on the commercial fishing industry and must be addressed.

6. Environmental (Fisheries) Monitoring:

There are far too many environmental issues to address in this comment. However, the Draft Guidance in this section specifically mentions “the need and methods to monitor changes in fishing activity as a result of offshore wind development.” This is not difficult. Vessel Monitoring System data will show that vessels avoid both fishing in a wind farm and transiting through a wind farm. Vessels have already changed their transit patterns because of the five

¹⁹ See Vineyard Wind Notice to Mariners No. 63 at https://www.vineyardwind.com/mariners-updates/63?utm_campaign=Weekly%20OOWMUs&utm_medium=email&hsmi=222566663&hsenc=p2ANqtz-9f1GnjIQ-kG6CDEZUK9TGUCQi1lg54Llb4MFVS_72Mzn8RZIA5IH5RXI_n6ZqcwiKpkTSXDDZ33DxJ7fNK3fUZ5bNz1Q&utm_content=222566663&utm_source=hs_email, and email, attached.

²⁰ See <https://www.marinelink.com/news/navigating-a-minefield-why-uxo-hamper-uks-498869>.

Block Island Wind Farm turbines. They will certainly change their patterns for both transit and fishing as a result of thousands of turbines up and down the East Coast. The most disruptive impacts could easily be avoided through careful project siting; however, it is clear from the Draft Guidance and BOEM's recent NEPA standardization that BOEM has no intent to go down this path.

It is also substantially documented that mobile bottom tending gear, particularly bottom trawl, vessels cease fishing activity in offshore wind farms. The UK Crown Estate, the entity that oversees offshore wind in the UK, as early as 2016 released data demonstrating that "fishing activity within offshore wind farms has changed, primarily because fishermen are fearful of fishing gear becoming entrapped by seabed obstacles such as cables, cable crossing points and rock armouring, and wary of vessel breakdown with the consequent risk of turbine collision", including avoidance of export cable routes.²¹ Notably, BOEM has refused to acknowledge the impacts of export cable routes in past analysis; it cannot continue to ignore these impacts. This report points to VMS data as some of the strongest evidence of changes to fishing in offshore wind farms.²²

It is also notable that notices to mariners jointly from the UK's Kingfisher Information Service (a fisheries information service providing fishermen the location of subsurface and subsea hazards around the UK) and developers themselves already contain such statements as "The closer to the surface a subsea cable is lifted when fouled by fishing gear, the more damage there is to the fishing vessel. In the interests of fishing safety and to prevent damage to subsea structures fishermen are advised to exercise caution when fishing in the vicinity of subsea cables and renewable energy structures. Loss of gear, fishing time, and catch can result if a trawler snags a subsea structure and there is serious risk of loss of life."²³ Essentially, bottom trawl vessels are warned to steer clear of offshore wind farms and export cables. BOEM has already received this information multiple times. It cannot keep pretending that it has not.

Similarly, a 2016 Rhode Island DEM report provided to BOEM and attached as part of this comment, raised the issue of bottom trawl vessel de facto exclusion from offshore wind farms.²⁴ That report referenced UK experiences in loss of bottom trawl activity in offshore wind farms, as well as NOAA Fisheries comments that WEAs could prevent highly mobile gear from fully utilizing developed areas. BOEM itself has acknowledged that bottom trawl fisheries such as the squid trawl fishery will not be able to operate inside offshore wind farms, "some fisheries-like the squid trawl fishery- may not be able to safely operate and harvest the resource the resource in the WDA using status quo fishing techniques. In this situation, a large portion of annual income for vessels may be inaccessible during operations, resulting in major impacts on individual vessel owners..."²⁵ Not all fisheries operate in the same manner. It is clear from existing analysis and experiences elsewhere that bottom trawl fisheries will lose huge amounts of fishable area as a result of BOEM's offshore wind bonanza. This must be incorporated into all fisheries impacts analysis.

²¹ Gray et. al. "Changes to fishing practices around the UK as a result of the development of offshore windfarms – Phase 1 (Revised)", The Crown Estate, 2016, p. vi, 1.

²² Ibid, p. 11.

²³ See p. 38-39 of our comments to BOEM's Vineyard Wind SEIS. Emphasis ours.

²⁴ RI DEM, Division of Fish and Wildlife, Marine Fisheries Section, "Rhode Island Stakeholder Concerns Regarding the New York Wind Energy Area", 2016.

²⁵ See Vineyard Wind DEIS at [Vineyard Wind Offshore Wind Energy Project Draft EIS \(boem.gov\)](https://www.boem.gov/Vineyard-Wind-Offshore-Wind-Energy-Project-Draft-EIS), p. 3-184.

A recent 2022 report from the UK entitled “Spatial Squeeze in Fisheries” analyzes the impacts and potential future impacts to commercial fisheries in the UK due to offshore wind farms and fisheries closures themselves, as the two cannot be disassociated when determining cumulative impacts. Each fishery must be analyzed in this way, as each fishery is subject to its own set of spatial regulations, preventing vessels displaced by wind farms from simply relocating to another area. The entire fisheries regulatory context must be considered when conducting analysis for cumulative impacts regarding offshore wind. The fisheries regulations already exist. Many fishable areas currently available outside closed or regulated areas are located in what now are BOEM wind leases. The cumulative impact of essentially creating a closed area via a wind farm on what is currently “open” bottom can ultimately be the complete closure of a fishery. That is, in fact, what the “Spatial Squeeze in Fisheries” paper found- that due to the combination of both fisheries regulations and offshore wind development that by 2050 it is quite possible that there will be no bottom trawling left in the UK.²⁶ The report focused on bottom trawling because bottom trawling is already being impacted by displacement from offshore wind farms.²⁷ We suggest that BOEM incorporate this same type of analysis, which is already being driven by real-life experience, into all of its NEPA review for fisheries, including cumulative impacts, moving forward. The report has been provided as an attachment to this comment.

Another valuable resource for BOEM to incorporate into analysis regarding existing fisheries closed/regulated areas and particularly cumulative impacts has recently been completed by the federal fisheries Council Coordinating Committee. This Committee consists of the chairs, vice chairs, executive directors and appropriate staff of the legislatively established Regional Fishery Management Councils. In response to the Biden Administration’s 30x30 America the Beautiful initiative, which is frequently cited as BOEM as a Purpose and Need of proposed offshore wind actions, the Council Coordinating Committee established an Area-Based Management Subcommittee which met from November 2021 through May 2022 to investigate and quantify the area-based fishery and environmental conservation protections currently in place in each federal U.S. ocean region.²⁸ The draft report completed by the Subcommittee, entitled “An Evaluation of Conservation Areas in the U.S. EEZ” modeled its definition of conservation area after America the Beautiful and IUCN definitions and utilized standard methodology across the US for its analysis.²⁹ The results demonstrated 55% conservation of the Mid Atlantic EEZ and 69% conservation of the New England EEZ.³⁰ This amounts to tens of

²⁶ ABPmer, (2022). Spatial Squeeze in Fisheries, Final Report, ABPmer Report No. R.3900, June 2022, p. v; report attached.

²⁷ Ibid, p. ii.

²⁸ See

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/6272e64278679a29eb03e5bf/1651698562632/F4_MeetingMinutes_CCC_ABMSubcommittee.pdf.

²⁹ See the Draft Report at

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/6272ebae0d318014e42b96aa/1651698616717/F2_CCCSubCtte_ConservationAreaReport_FinalDraft_2022-05-04.pdf.

³⁰ See [https://s3.us-east-](https://s3.us-east-1.amazonaws.com/nefmc.org/8a_F1_CCCABMSubcommittee_Talk_May2022_Revised.pdf)

[1.amazonaws.com/nefmc.org/8a_F1_CCCABMSubcommittee_Talk_May2022_Revised.pdf](https://s3.us-east-1.amazonaws.com/nefmc.org/8a_F1_CCCABMSubcommittee_Talk_May2022_Revised.pdf), slide 13, and Draft Report at

https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/6272ebae0d318014e42b96aa/1651698616717/F2_CCCSubCtte_ConservationAreaReport_FinalDraft_2022-05-04.pdf, p. 23.

thousands of square miles off of the New England and Mid Atlantic coasts that is already spatially regulated for the commercial fishing industry. We have attached that report to this comment for future BOEM use in cumulative impacts analysis.

7. Financial Compensation:

First and foremost, we reiterate that proper adherence to OSCLA through avoidance- i.e., prevention of interference with reasonable uses- would make this entire section a moot point. BOEM continues to claim that it does not have legal authority to establish a compensation fund on its own. This is true. This is because BOEM has a legal duty to prevent interference with reasonable uses such as commercial fishing as a mandate when leasing for offshore wind. This stands in stark contrast to BOEM's statutory obligations under OSCLA regarding oil and gas leasing.

It is the same law, OSCLA, that grants BOEM authority for both oil and gas leasing and offshore wind leasing. However, the provisions for the two types of leasing are not alike. BOEM has no statutory duty to prevent interference with reasonable uses of the ocean when conducting oil and gas leasing. This is why OSCLA legislatively provides for the "Fisherman's Contingency Fund" in Part 296 of the law.³¹ This Fisherman's Contingency Fund is created to cover economic losses of income and property as a result of damage caused by oil and gas obstructions on the Outer Continental Shelf. Because BOEM is not required to prevent interference with reasonable uses such as commercial fishing when leasing for oil and gas, such a contingency fund was necessary. In contrast, the OSCLA provisions regarding offshore wind leasing create no similar statutory authority or obligation. Instead, when conducting offshore wind leasing, OSCLA mandates that the Secretary must do so in a way that prevents interference with reasonable uses of the Outer Continental Shelf. Congress mandated avoidance as the one and only solution to addressing fisheries impacts in the context of offshore wind. If avoidance was not an absolute, such as with oil and gas leasing, Congress would have established a Fisherman's Contingency Fund similar to that for oil and gas contained in the same law. Because Congress delineated a difference in legal mandates regarding the two types of OSCLA leasing, it created different provisions for each type. Offshore wind leasing was designed to be more constrained than oil and gas leasing. That was not an oversight of Congress. It was deliberate.

BOEM here in its Draft Guidance is simply attempting to ignore its legal mandates under OSCLA regarding offshore wind and create something akin to the oil and gas Fisherman's Contingency Fund. Except because it has no legal authority to do so, it can merely issue these as "guidance" and "recommendations" to developers rather than require it. The entire concept is utterly absurd. BOEM is trying to artificially create something it has no authority to create, because it is not executing the authority it actually has. However, this circles back to the previous sections of this comment letter. BOEM has taken it upon itself to merely become an arm of the developers rather than comply with its own legislative mandates or execute its own regulatory authority.

8. Determining Adequate Reserve Funds for Compensation:

³¹ See [eCFR :: 50 CFR Part 296 -- Fishermen's Contingency Fund](#) and [Fishermen's Contingency Fund Program | NOAA Fisheries](#).

BOEM continues to turn a blind eye to real and calculable impacts on the commercial fishing industry, including shoreside businesses, in deference to what will be the least economic liability for the developer. Nothing has changed with the proposed calculations used by the Draft Guidance.

The Guidance document states that a reasonable definition of revenue exposure is the total ex-vessel value of the fish landed. BOEM “generally expects” that only a portion of the ex-vessel revenue exposure will be lost, and therefore that this represents an “overestimation”-the excess of which is “likely to be sufficient to cover shoreside income loss”. We do not know the basis for BOEM’s expectation. It is not rational in any way and contradicts every piece of information that BOEM has been provided over the years. Having such a general expectation would be akin to generally expecting that if logging were outlawed in the forests of America, but individual loggers themselves were compensated for their losses, somehow every logging company, lumber yard, home improvement store, and construction business relying on that lumber would somehow be also compensated. It flies in the face of basic logic.

BOEM supplements this general expectation with the assertion that “in some localities it may be appropriate to apply a multiplier (previous projects estimated approximately 1-2 percent) to the total revenue exposure to ensure that shoreside income loss is adequately covered.” We do not know what planet BOEM lives on. We are unaware of any industry that operates on 1-2% of its raw material cost. Under this assumption, if Seafreeze were to pay an individual vessel unloading at our facility \$1 per pound for squid, we would be expected to cover all property costs, insurance, machinery maintenance and/or replacement, electric and water costs, freezing costs, packaging costs, ice making, shipping costs, refrigeration and cold storage costs, temporary labor costs, salaries, taxes, financial service costs, inspection fees, compliance costs, and a host of other financial operating costs- without even so much as considering profit-on \$0.01 per pound? Any business operating on this model would be bankrupt in short order. We were so surprised to see this figure mentioned in the document that we asked BOEM during a Draft Guidance webinar if it was a typo. It was not.

BOEM uses the excuse that previously approved COPs used various “tools” to identify a multiplier of 1-2%, which are identified in Appendix A “Data and Methodology for Developing Revenue Exposure Estimates in the Northeast Atlantic”. This merely serves to confirm that BOEM’s COP analysis thus far has been completely inadequate, in fact laughable. Its employed “tools” include the outdated IMPLAN model from 2004, when data from 2020 is available. It is unclear why BOEM does not use or quote the most updated and accurate information but rather relies on nearly 20-year-old data. It is also unclear why BOEM doesn’t investigate publicly available species information on processor pricing, such as Seafreeze’s monthly price sheet³² as compared to average ex-vessel prices which is contained, for example, in Mid Atlantic Fishery Management Council Fishery Performance Reports and Fishery Information documents, all publicly available.³³ The numbers will tell a much different story than a penny on the dollar.

Analysis on economic multipliers must be done on a species-by-species, fishery-by-fishery basis, as discussed both above and below. Not all fisheries are the same. But these types of economic analysis have already been completed for many species through economic studies-

³² See <https://www.seafreezeld.com/price-sheet> and <https://www.seafreezeld.com/price-sheet>.

³³ See <https://www.mafmc.org/msb>.

some of which we have previously submitted to BOEM in comments which continue to be ignored- conducted by entities such as the Science Center for Marine Fisheries, an industry/academic partnership under the National Science Foundation.³⁴ These are not back of the envelope calculations. They are National Science Foundation sanctioned research products.

One such research product, “Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S.”, conducted in association with the Virginia Institute of Marine Science, calculated a total economic output multiplier for longfin squid of 7.64, i.e. every dollar of landings leads to \$7.64 in total economic output.³⁵ Not \$0.01-\$0.02. Due to the high overlap rate of BOEM approved offshore wind leases with this fishery, it is imperative that BOEM incorporate accurate data regarding the longfin squid fishery into its analysis. Below is a chart showing the astronomical difference between BOEM midpoint estimates of shoreside impacts (\$0.015) and the species-by-species shoreside impacts calculated by various Science Center for Marine Fisheries economic studies:³⁶

Fishery	Landings Value (\$ Mil.)	Total Economic Output (\$ Mil.)	Total Employment	BOEM Total Output (\$ Mil.)
Summer Flounder	\$26.5	\$201.6	1,688	\$26.9
Scup	\$9.3	\$90.9	2,709	\$9.6
Surf Clam/Ocean Quohaug	\$54.8	\$1,039.0	16,465	\$55.6
Squid	\$31.9	\$243.6	2,539	\$32.3
Menhaden	\$102.4	\$419.3	2,059	\$103.9
Red Grouper	\$14.0	\$201.6	1,840	\$14.2

BOEM states in Appendix A that it expects its own 1-2% ex-vessel value shoreside impacts estimate to “overestimate” revenue impacts due to the assumption that shoreside processors and dealers will simply import product to cover losses. Clearly, BOEM has remained willfully ignorant to the operations of shoreside processors on the East Coast. Most are actual fish docks. The term “processor” in the fishing industry context is derived from Title 21 of the Federal Code of Regulations, Part 123. According to legal definition, “Processing means, with

³⁴ See <https://scemfis.org/>.

³⁵ See Scheld, “Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S.”, 2020, at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf, also attached.

³⁶ See Murray, T.J. 2020. [Economic Impacts of Reduced Uncertainty Associated with Fishery Management Actions with Summer Flounder](#)

Murray, T.J. 2016. [Economic Activity Associated with SCEMFIS Supported Fishery Products](#) and [Scup markup tables](#)

Murray, T.J. 2016. Economic Activity Associated with SCEMFIS Supported Fisheries Products: Atlantic Surf clams & Ocean Quahog.

Scheld, A. 2020. [Economic Impacts Associated with the Commercial Fishery for Longfin Squid \(*Doryteuthis pealeii*\) in the Northeast U.S.](#), Virginia Institute of Marine Science. March 2020

Murray, T. J. 2022. [Gulf of Mexico Menhaden Economic Impact and Management Uncertainty](#).

Murray, T. J. 2021 Economic Impacts Associated with Harvest and Marketing of Red Grouper.

See also Hodges, Murray and Scheld, Memo “Comments on “Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585,” Bureau of Ocean Energy Management, US Department of the Interior”, August 12, 2022, attached.

respect to fishery products: Handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding.” The key word here is “or”. Engaging in any of these activities legally makes an entity a “processor” and requires it to be compliant with the FDA regulations concerning Hazard Analysis Critical Control Point (HACCP).

Per this regulation, not all shoreside processors create a finished product that can be simply supplemented with imports. All that it required to legally be deemed a processor and required to create a HACCP plan and undergo HACCP/FDA inspection is to unload a fishing vessel, thereby “dockside unloading” and “handling” whole fish. Many shoreside “processors” are businesses that unload fish, package it, temporarily store it, and sell it to a secondary wholesaler. They do not import. Some businesses do use the unloaded product to prepare a finished, shelf ready product. But this is not always the case. It is certainly not the case for Seafreeze.

For example, our Seafreeze Shoreside facility is located in Narragansett, in the port of Point Judith/Galilee.³⁷ It is a waterfront facility with several docks for unloading product directly off commercial fishing vessels. The only product that we purchase is that unloaded from the vessels at our docks, purchased directly from the vessels. Some species, such as squid which is our primary product by both volume and revenue, is packed and frozen in the facility plate and/or blast freezers. It is then sold. Some species are packed and frozen in this manner, some species are boxed fresh and shipped to fresh markets elsewhere. All product is whole round, and the facility is designed to unload vessels, package and/or freeze whole product, which is then sold on to other secondary and tertiary dealers/wholesalers/processors. Seafreeze Shoreside also produces ice, which is sold to fishing vessels which ice their product. Our entire business depends on and revolves around the commercial vessels unloading at our docks- 100% of our product and income comes directly from these vessels. If they do not have product, we do not have product. If they lose income, we lose income. It is that simple. We do not import. That is not our business model. If vessels lose access to product, we experience direct loss of product into our facility that cannot be supplemented by imports. If vessels unloading at our facility lose access to fishing grounds due to offshore wind and become unprofitable, Seafreeze Shoreside becomes unprofitable. If the vessels go bankrupt due to wind farm impacts, Seafreeze Shoreside goes bankrupt.

Seafreeze Ltd., our facility in North Kingstown, similarly was built to unload our two company freezer vessels.³⁸ It was purpose built to be the unloading dock and cold storage for those two vessels. It was not built to import; it relies on product from those vessels. If those two vessels experience impacts, Seafreeze Ltd. experiences impacts. For Seafreeze Ltd., over 95% of what is sold is our own company product harvested by our two freezer vessels and/or purchased directly from Seafreeze Shoreside. Both of our “processors” are federally licensed dealers, meaning that they are legally approved by NOAA to unload fishing vessels. That is our business plan- unloading fishing vessels. Processors further downstream, those creating a final shelf-ready product, or dealing with finished products, may have the option to import. But facilities literally designed to be docks for commercial fishing vessels that have a business model that revolves around unloading those vessels do not. BOEM’s assertion that shoreside businesses can

³⁷ See <https://www.seafreezeshoreside.com/>.

³⁸ See <https://www.seafreezeltd.com/>.

just import to make up for offshore wind-related losses is incorrect, arrogant, and ignores years of interaction with and input from Seafreeze representatives as well as representatives from other fisheries shoreside businesses. BOEM is again deliberately throwing shoreside business impacts under the bus with the Draft Guidance document, as it has with all COP reviews to date, despite our and other's comments. We can only assume that this is due to BOEM's pattern of reticence to require any substantial requirements of developers that would reduce developer buildout and/or profits.

One aspect of compensation that BOEM has never mentioned is the impact to the value of our businesses themselves, i.e., physical capital exposure. The value of physical capital is based off of the expectation of future profits. If profit margins fall even slightly across a fishery due to offshore wind, taking into account the lifespan of capital stock and discount rates, the losses in value of physical capital for both vessels and shoreside businesses combined could imply tens of millions of dollars in loss of value of physical capital across that fishery.³⁹ Each one of our Seafreeze facilities was purpose built and designed, equipped, and located specifically to offload commercial fishing vessels. We have invested tens of millions of dollars into these facilities. The physical capital in our facilities- commercial docks and fish pumps, dock conveyors, ice makers and refrigeration system/piping, built-in freezers, and other equipment is highly specialized and not able to be easily converted to do something else. Therefore, should offshore wind reduce our profitability, it will also devalue our physical capital assets. No buyer will be interested in purchasing a fish plant if there is no commercial fishing industry. The same with commercial fishing vessels, nets, doors, trawl wire, door and net sensors and associated electronics, etc. If commercial fishing becomes unprofitable due to offshore wind displacement, no buyer will be interested in purchasing commercial fishing vessels or gear. We will address this specific to fishing vessels further below.

BOEM's statement that previously approved BOEM projects considered shoreside impacts businesses is not factual. During the Rhode Island Fisherman's Advisory Board closed negotiations with Vineyard Wind regarding a compensation package for the Rhode Island fishing industry for that project, not one shoreside processor had a seat at the table. The Fisherman's Advisory Board, none of whom owned or operated shoreside infrastructure or had any understanding of what it costs to operate such a business, had no representation from the shoreside sector. We commented to BOEM several times about this issue, but our comments were ignored.⁴⁰ Because of this glaring omission, the Rhode Island Coastal Resources Management Council subsequently revised the state's Coastal Zone Management regulations to add a processor's seat to the Fisherman's Advisory Board.⁴¹ Pretending that impacts to shoreside businesses have always been considered is in fact quite insulting, as we have been raising this issue to BOEM for years with no acknowledgement.

³⁹ See Hodges, Murray and Scheld, Memo "Comments on "Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585," Bureau of Ocean Energy Management, US Department of the Interior", August 12, 2022, attached.

⁴⁰ See comments submitted to BOEM on the Vineyard Wind DEIS on February 26, 2019 here: <https://www.regulations.gov/comment/BOEM-2018-0069-0163> and here: <https://www.regulations.gov/comment/BOEM-2018-0069-0162>, documents attached.

⁴¹ See http://www.crmc.ri.gov/samp_ocean/20191016_NOAA_RPC_OceanSAMP_Filing.pdf.

BOEM's primary source for commercial fishing revenue exposure is its 2017 report "Socio-Economic Impact of Outer Continental Shelf Wind Energy Development on Fisheries in the U.S. Atlantic" by Kirkpatrick et. al.⁴² This method of ex-vessel revenue exposure is outdated, been superseded by more recent and accurate methodology, and has been proven inaccurate for estimating activity- and therefore revenue- for mobile bottom tending gear fisheries such as the squid fishery. Not all methodology is suited for all fisheries; operational differences can create huge discrepancies between the outcomes of methodology. The Kirkpatrick method, which uses a series of concentric rings around a single Vessel Trip Report coordinate point to estimate revenue for the trip being reported, does not work for mobile fisheries. It works well for static gear fisheries, but it does not work for mobile fisheries because they are just that- mobile. They do not stay in one spot.

We have already demonstrated this to BOEM in the past regarding the Equinor Empire Wind lease area. BOEM is fully aware that this revenue exposure method has been proven as flawed for the mobile bottom tending gear squid fishery. BOEM used the Kirkpatrick method and report in its initial identification of the NY Call Area and in its EA of the NY WEA lease sale, which became the now Empire Wind lease site.⁴³ We have attached our public comment to BOEM on that Call, as well as our comment on the EA. The NY EA specifically mentions the Kirkpatrick et al work and methodology in its analysis and resulting conclusions.⁴⁴ Because the Kirkpatrick method resulted in such a skewed representation of actual fisheries impacts, and BOEM's refusal to acknowledge confidential business information submitted from over 20 squid fishing vessels as well as newer and more accurate data it already had obtained from NMFS, it was necessary to get the state of Rhode Island, the Rhode Island Congressional delegation, as well as NMFS, involved to acknowledge the real impacts to the commercial squid fishery as a result of that lease. We have also attached our 2021 comments on the Equinor NOI that details the history of that entire debacle, which ended with Rhode Island being allocated a seat on the NY Task Force, recommendations to BOEM from both NMFS and the Rhode Island Senate Delegation and NMFS Regional Administrator suggesting re-siting of the lease area to deconflict with the squid fishery (which BOEM ignored), and with the pursuit of legal action against BOEM in the *Fisheries Survival Fund et al v Jewell* lawsuit. It is notable that Seafreeze Shoreside, the Town of Narragansett, RI- where Seafreeze Shoreside is located- and the Narragansett Chamber of Commerce were all plaintiffs to that lawsuit due to the significant impacts on the squid fishery from the Equinor lease. The fishery and associated dependent ports that the Kirkpatrick et. al. method said didn't exist in the NY WEA.

The Kirkpatrick et al method used in the Equinor lease siting as well as the Draft Guidance document listed commercial fishing ports with the most exposed revenue to the lease as being NY, CT, NJ, VA and MA. No mention of any Rhode Island port, although Point Judith/Narragansett, RI, is the single most affected port by the lease. Rhode Island consistently lands more longfin squid than all other East Coast states combined, and the Equinor lease it sited on top of a major squid fishing ground.⁴⁵ The information provided by BOEM based off the

⁴² Kirkpatrick et. al., "Socio-Economic Impact of Outer Continental Shelf Wind Energy Development on Fisheries in the U.S. Atlantic", OCS Study, BOEM 2017-012 at <https://espis.boem.gov/final%20reports/5580.pdf>.

⁴³ See BOEM's EA for the NY WEA at <https://www.boem.gov/NY-Public-EA-June-2016/>, p. 4-148.

⁴⁴ Ibid.

⁴⁵ See http://www.dem.ri.gov/programs/bnatres/fishwild/pdf/RIDEM_VMS_Report_2017.pdf, p. 18 and Longfin Squid Fishery Information Documents available at <https://www.mafmc.org/msb>.

Kirkpatrick method was so inaccurate that the RI DEM Division of Marine Fisheries was forced to become involved early on to represent the interests of the state. A 2016 publication of the RI DEM Division of Marine Fisheries entitled “Rhode Island Stakeholder Concerns Regarding the New York Wind Energy Area” contrasted the commercial fishing activity according to the Kirkpatrick method here:⁴⁶

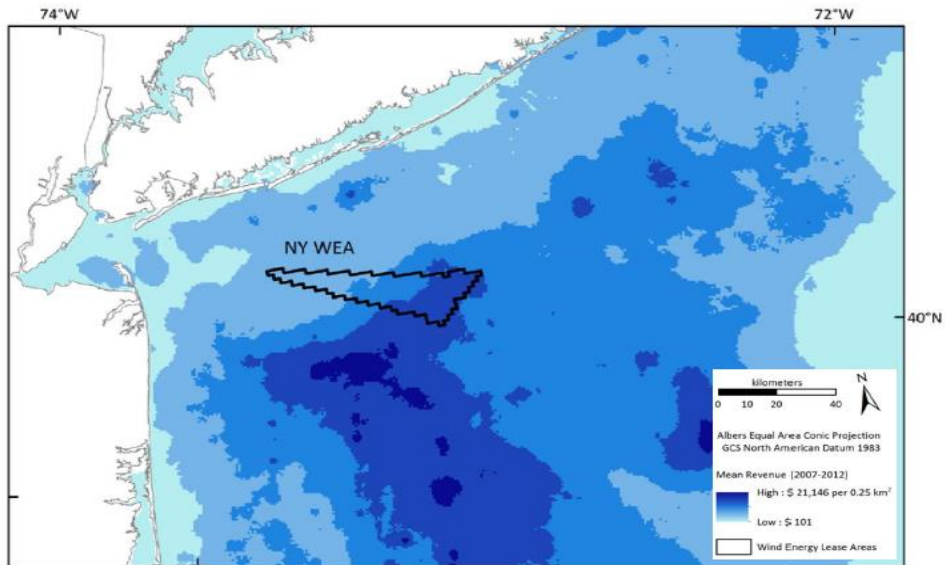


Figure 2. Commercial fishing activity from ports most exposed to the NY WEA, 2007-2012. Figure provided by BOEM and NOAA Fisheries. Revenue-intensity raster built using Vessel Trip Reports.



Rhode Island Department of Environmental Management,
Division of Fish and Wildlife, Marine Fisheries Section
[31]



With actual Vessel Monitoring System data depicting commercial squid fishing activity here:

⁴⁶ RI DEM, Division of Fish and Wildlife, Marine Fisheries Section, “Rhode Island Stakeholder Concerns Regarding the New York Wind Energy Area”, 2016.

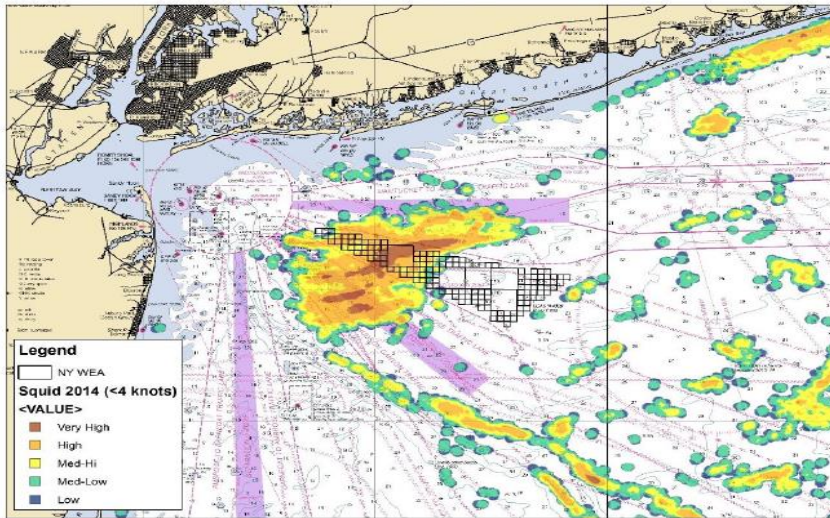


Figure 3. Vessel monitoring system data for the squid fishing fleet in 2014 (Data Source: Northeast Regional Ocean Council)



Rhode Island Department of Environmental Management,
Division of Fish and Wildlife, Marine Fisheries Section
[32]



Activity equals revenue, plain and simple. Utilizing a method for revenue exposure for a mobile gear fishery that bases its entire methodology from a single lat/long coordinate is not only counterintuitive but results in skewed and inaccurate outcomes. We have attached a 2017 presentation from RI DEM to BOEM on its methodology for calculating fisheries landings and revenue in offshore wind leases using Vessel Monitoring System Data rather than data based off a single coordinate. Vessel Monitoring Systems track vessel movement throughout its trip and captures much more accurately the location of vessel activity.⁴⁷

Although BOEM includes references to the RI DEM methodology in Appendix A of the Draft Guidance, it has consistently in practice refused to value fisheries using this method. It consistently gives the methodology a quick reference in passing, but relies on whatever methodology shows lesser financial impact, in deference to developers. We argued to BOEM regarding the Vineyard Wind project that BOEM's estimate that the total revenue exposure to the longfin squid fishery from all cumulative projects, including the Vineyard project itself, at only \$1.16 million from 2020-2030.⁴⁸ However, the RI DEM method valued the Vineyard Wind project area itself for Rhode Island fisheries alone at up to \$35,611,702.85 for a 30- year period, with longfin squid alone accounting for \$20,968,100.76 of this value.⁴⁹ The numbers do not even come close.

⁴⁷ Julia Livermore, "Vessel monitoring system analysis of landings coming from the NY WEA", RI DEM Presentation to BOEM, January 31, 2017.

⁴⁸ See Vineyard Wind SEIS, Appendix B, Table 3.11-3, p. B-78.

⁴⁹ RI DEM, "Rhode Island Fishing Value in the Vineyard Wind Construction and Operations Area", January 14, 2019 at http://www.dem.ri.gov/programs/bnatres/marine/pdf/RIDEM_VWValue.pdf .

Notably, the RI DEM analysis states, “It is important to re-emphasize that the values presented do not include any shoreside impacts (including crew, fuel, gear, ice, processing, or packaging costs). There are entire businesses that provide these services that may also be affected, and many of these services occur in the major RI ports, which will also see impacts from the offshore wind energy area if fishing is precluded from occurring in this area.”⁵⁰ Using the economic multiplier from the SCMFIS National Science Foundation sanctioned longfin squid study, the total commercial fishing revenue derived from the squid fishery exposed by just the Vineyard Wind project is \$160,196,289.80 for Rhode Island businesses alone. BOEM’s approved compensation for that project does not even come close to this figure. This further serves to expose BOEM’s standard course of action in downplaying commercial fishing impacts altogether, a course of action perpetuated by the Draft Guidance document “recommendations”.

The only suitable method for assessing revenue exposure of mobile bottom tending gear fisheries such as the longfin squid fishery is by using VMS analysis. The RI DEM method for generating impacts using VMS is significantly more accurate for mobile fisheries than the Kirkpatrick method. BOEM cannot ignore this or pretend the NY WEA/Equinor lease debacle never occurred. It did occur, and BOEM was forced to acknowledge that Rhode Island was in fact a highly impacted state as a result of that lease, contrary to the Kirkpatrick et al generated “data” for the mobile gear squid fishery. The rule of thumb for all modeling is “garbage in, garbage out.” A method that uses one point to generate estimates of a vessel that is constantly moving is clearly not as accurate as a method that uses many points that follow the vessel activity. BOEM cannot continue to assert to stakeholder that it uses “all methods” when deriving impact estimates. It has not in the past. This needs to change in all BOEM project reviews, and the correct tool should be used for the job. BOEM then needs to assess economic multipliers on a fishery by fishery basis and begin utilizing the best available data immediately. This does not include a 1-2% multiplier.

Additional impacts to vessels themselves have gone unaddressed in the Draft Guidance. For example, BOEM does not address the potential for certain vessels and/or certain fisheries to go bankrupt due to loss of access to fishable area, despite this being a very real potential scenario as BOEM continues to lease and approve projects on currently fishable bottom. For example, BOEM has already acknowledged that that bottom trawl fisheries such as the squid trawl fishery will not be able to operate inside offshore wind farms, “some fisheries- like the squid trawl fishery- may not be able to safely operate and harvest the resource the resource in the WDA using status quo fishing techniques. In this situation, a large portion of annual income for vessels may be inaccessible during operations, resulting in major impacts on individual vessel owners”⁵¹ and “it is likely that they entire...area will be abandoned by commercial fisheries due to difficulties with navigation.”⁵² As the cumulative impacts of projects continue to reduce the available fishing area to bottom trawl fisheries such as the squid fishery, the fishery itself will continue to become less profitable.

⁵⁰ RI DEM, “Rhode Island Fishing Value in the Vineyard Wind Construction and Operations Area”, January 14, 2019 at http://www.dem.ri.gov/programs/bnatres/marine/pdf/RIDEM_VWValue.pdf.

⁵¹ See Vineyard Wind DEIS at [Vineyard Wind Offshore Wind Energy Project Draft EIS \(boem.gov\)](http://www.boem.gov/Vineyard-Wind-Offshore-Wind-Energy-Project-Draft-EIS), p. 3-184.

⁵² See Vineyard Wind ROD at [Record of Decision for Vineyard Wind 1 Signed \(boem.gov\)](http://www.boem.gov/Record-of-Decision-for-Vineyard-Wind-1-Signed), p. 39.

The margins of profitability for vessels are not astronomical. For example, using confidential data provided by the commercial fishing industry, economists at the NOAA Northeast Fisheries Science Center conducted analysis on commercial fishing vessel economic and revenue impacts as a part of the New England Fishery Management Council's Industry Funded Monitoring Omnibus Amendment. That analysis calculated for mobile bottom tending gear vessels such as squid vessels participating seasonally in the herring and mackerel fisheries, that the return to owner (defined as gross revenue less variable, crew share, repair/maintenance and fixed costs) at 7% of ex-vessel value.⁵³ If that margin shrinks smaller due to loss of fishable area and therefore harvest opportunity, it may become too unprofitable to execute the fishery, or not worth the effort or investment. The Draft Guidance does not provide for compensation for the loss of a vessel and/or permit due to unprofitability caused by offshore wind construction.

The asset value of the vessel and/or permit cannot go unnoticed or unvalued. Most fishermen do not have a pension or retirement plan; the resale value of the permit/vessel is that retirement plan. The value of the permit/vessel is also the physical capital invested in by corporate ownership. These vessels are purpose built and not in demand in other sectors. A commercial fishing permit, currently holding significant monetary value, is worthless if the fishery becomes inoperable due to offshore wind. If the vessels themselves become unprofitable, BOEM does not contain any provision in this document for compensation for the devaluation of that investment. This could have disastrous financial consequences for the commercial fishing industry.

9. Duration of Compensatory Mitigation Period:

In this section, BOEM recommends only 5 years of compensation for lost revenue, with compensation declining from 100% revenue exposure to 50% revenue exposure in the 5th year. After 5 years, BOEM "assumed" that "there is adjustment period for fisheries post construction" so further compensation is not warranted as standard. It is again unclear on what information BOEM bases this assumption, as with all other BOEM assumptions. As cumulative impacts accumulate, there will be more impact, not less. Cumulative impacts are just that- cumulative. They grow over time; they do not decrease. It is absolutely astounding that BOEM would even suggest that cumulative impacts decrease over time. It is the opposite of reality.

As detailed throughout this comment letter, it is established by UK experience and BOEM's own admission that for that offshore wind farms will become areas lost to fishing for bottom trawl vessels, such as those owned and operated by Seafreeze. The more projects that are approved on trawl fishery bottom, the more the opportunity and harvest that will be lost to our vessels, and in turn, our shoreside facilities. We reiterate our comments in point 6. The UK experience, combined with current and expected future offshore wind buildout and fisheries regulations, estimates a total loss of bottom trawl fisheries in the next 30 years. As the offshore wind farms planned in the US purport to have an expected 30 year lifespan, it is likely that we can expect the same here should development move forward as planned. Therefore, any and all

⁵³ See Industry Funded Monitoring Amendment, Table 122 "Summary of Total Trip Costs for Herring and Mackerel Vessels in 2014", Average Percent of 2014 Gross Revenue for Squid Vessels, p. 375, at https://s3.us-east-1.amazonaws.com/nefmc.org/2_IndustryFundedMonitoringAmendmentdatedSept16.pdf.

compensation for lost revenue, as well as lost or devalued capital, and cumulative impact analysis, must endure for the life of the project(s) and into decommissioning.

The Draft is also silent on whether compensation would follow the permit/vessel through the life of the project. This is also imperative. Every permit is unique and tracked by NMFS through sale, transfer, etc. There are no new permits issued; very few fisheries are “open access”. Most fisheries, particularly lucrative fisheries such as squid, are all limited access. No new permits are created, and all permits are monitored for landings activity and any vessel transfers or transfers in ownership. Any compensation required by the life of a wind farm project must follow the permit for the life of the project. The physical capital loss compensation must follow the vessel for the life of the project. Vessels are documented and tracked by the U.S. Coast Guard. Assigning compensation to both the permit and the vessel for the life of the project, and into decommissioning, is absolutely necessary for adequate compensation. All damages from the offshore wind industry to the commercial fishing industry must be accounted for.

An utterly ridiculous concept put forward by Appendix A of the Draft Guidance is that in order for “forecasting revenue exposure”, “the lessee should consider information such as stock assessments, fisheries management actions, market conditions, and other factors that may influence revenue and landings over the period of the data analysis”. Does BOEM now expect the developers to be fisheries scientists? Or fisheries market experts? Offshore wind developers have no expertise in the U.S. stock assessment process or fisheries modeling. They also cannot predict what fishery management action may occur 10 years from now. That, according to Congress, is at the sole discretion of the Regional Fishery Management Councils. Does BOEM expect European offshore wind developers to magically become fisheries scientists and U.S. fisheries management experts overnight and consult a crystal ball of “future revenue exposure and impacts”? NMFS is a federal agency responsible for management, oversight and analysis of the nation’s fisheries. NMFS is a cooperating agency with BOEM- why would BOEM not consult NMFS for information regarding revenue exposure? State fisheries agencies such as RI DEM also collect and analyze this type of information. Why would BOEM leave that data collection and associated assumptions to the developer?

This ludicrous proposal circles back again to our previous comments about BOEM leaving federal data collection, analysis and interpretation of this information up to the developer and the developer’s COP, for use in BOEM’s own legal compliance with federal legislative mandates. This is both violative of federal law and wholly unacceptable. Once again, BOEM is acting arbitrarily, capriciously, and otherwise not in accordance with law. It is yet another attempt to hand the developers the key to the castle. A developer will most certainly use whatever data it can find to make an assumption that fisheries landings are expected to decline and therefore hold themselves less liable for damages to the fishing industry. This is in their own best financial interest. BOEM does not question or groundtruth developer generated data, as mentioned in previous sections of this comment. This is another procedural and pervasive issue in the BOEM process that must change if BOEM is to live up to its requirements as a federal regulatory agency.

Allowing developers to generate the data for which they will be held financially liable is not likely to result in an outcome unfavorable to developers. According to Rhode Island state law, a developer negotiating a compensation agreement with the RI CRMC and Fisherman’s

Advisory Board (FAB) shall bear the costs associated with that negotiation, including technical and financial analysis.⁵⁴ The developer can be required to pay for an independent economic analysis conducted by an independent entity on behalf of the FAB. In the case of the Vineyard Wind compensation deal that BOEM approved as appropriate mitigation for the Rhode Island fishing industry,⁵⁵ the FAB/CRMC engaged a Professor of Environmental and Natural Resource Economics named Dr. Sproul from the University of Rhode Island to conduct that independent economic analysis. At the same time, Vineyard Wind engaged the King report as the developer's economic analysis; this report is quoted by BOEM in Appendix A of the Draft Guidance.⁵⁶ The economic report from Dr. Sproul was used in the closed-door negotiation meetings, but never finalized into a final document for CRMC.⁵⁷ The public has never been afforded a copy, draft or otherwise, of Dr. Sproul's report. However, the original Vineyard Wind Fisheries Mitigation Proposal listed as a contingency "The Sproul report or any drafts of that report prepared in response to the January 15, 2019 Dennis King report, not being made public by the FAB".⁵⁸

Leaving data generation, collection and analysis to the developer is not likely to create a fair and equitable outcome for the commercial fishing industry. BOEM cannot continue down the road of being an absentee regulatory agency that defers its responsibilities to the entity it is supposed to be regulating.

Conclusion: The Draft Guidance as written is riddled with inaccurate assumptions, agency abdication of authority, and gross procedural inadequacies. However, the real issue in question is BOEM's procedure. BOEM cannot defer compliance with its legal obligations to data collected and analyzed by the developer. It is clear from BOEM's new NEPA standardization that BOEM has automatically given developers a clean slate in what alternatives will be analyzed for NEPA compliance, eliminating any alternatives that can prevent interference with competing reasonable uses of the ocean and allow it to comply with existing CEQ regulations involving not taking actions or certain parts of an action. All recommendations in the Draft Guidance allow the developer to drive the data, which in turn allows the developer to drive the process. Rather than provide an objective benchmark by which to analyze and compensate for fisheries impacts, the Draft Guidance merely underlines already-apparent conclusions regarding regulatory capture. Rather than making decisions in the public interest, BOEM's proposal would allow it to make decisions in the interests of wind energy developers, whatever the cost to the public. Neither OSCLA nor NEPA authorize such an approach. Accordingly, the Draft Guidance should be rescinded and rewritten in accordance with the suggestions made in this comment letter, utilizing the attached resources, and BOEM should provide the public with another opportunity for comment, next time on a proposal that is at least arguably consistent with BOEM's statutory duties.

Thank you for the opportunity to comment.

⁵⁴ See 605-RICR-20-05-5.3.2 (D) at <https://rules.sos.ri.gov/regulations/Part/650-20-05-5>.

⁵⁵ See Vineyard Wind ROD, Mitigation Measure 75, p. 92, at <https://www.boem.gov/renewable-energy/state-activities/final-record-decision-vineyard-wind-1>.

⁵⁶ King, et. al., "Economic Exposure of Rhode Island Commercial Fisheries to the Vineyard Wind Project", 2019.

⁵⁷ Personal correspondence with CRMC, 2/22/2019.

⁵⁸ See attached document.

Sincerely,

[Redacted signature block]

November 18, 2022

[REDACTED]

[REDACTED]

RE: NYSERDA Approach for Master Plan 2.0: Deepwater

Dear [REDACTED],

I want to express our serious concerns with NYSERDA's Master Plan 2.0. What NYSERRDA is proposing is essentially to take over the remainder of the OCS in Southern New England and the northern Mid Atlantic that is not already currently leased for offshore wind. As our commercial fishing vessels and affiliated shoreside businesses rely on continued operational access by our vessels and customer vessels to these important fishing grounds, and as these vessels will be unable to operate their mobile bottom tending gear in offshore wind facilities, including those already leased/permitted should construction ensue, we cannot support in any way NYSERDA's Master Plan.

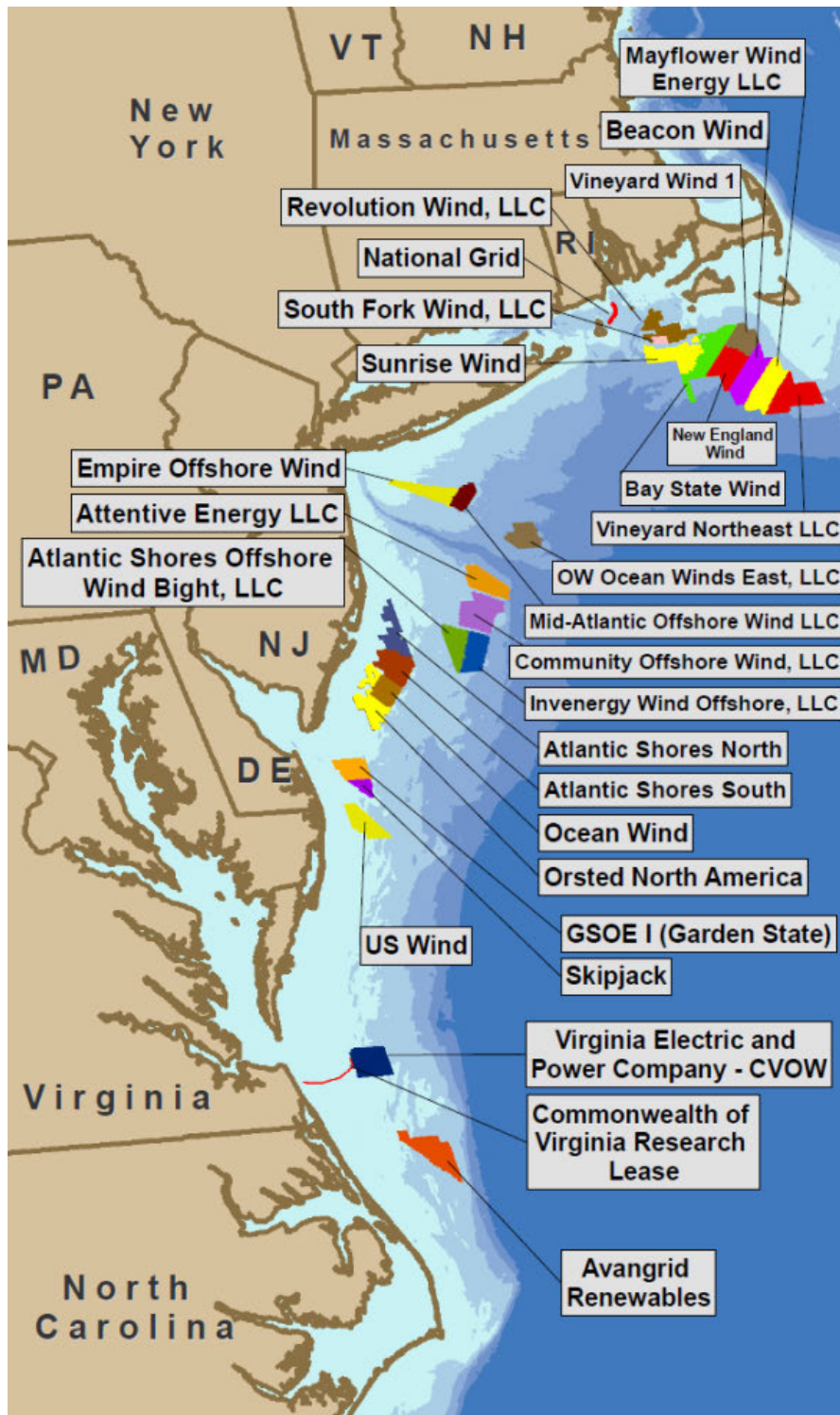
As NYSERDA is a leader in the ongoing state- led RFI process for developing a regional compensation fund for commercial fishing impacts resulting from offshore wind development, we request that this letter and its contents be included in that process and distributed among the state working group members.

The cumulative impacts arising from existing leases, existing planning areas, and existing fisheries regulated areas, combined with NYSERDA's Master Plan 2.0 essentially would mean the end of federal commercial fishing in our region. The below image of Phases 1, 2 and 3 of the Master Plan 2.0 ranges from southwest Georges Bank to approximately Lindenkohl Canyon, with associated continental shelf in between. It is a shockingly huge area overlapping with all major fisheries in the region.

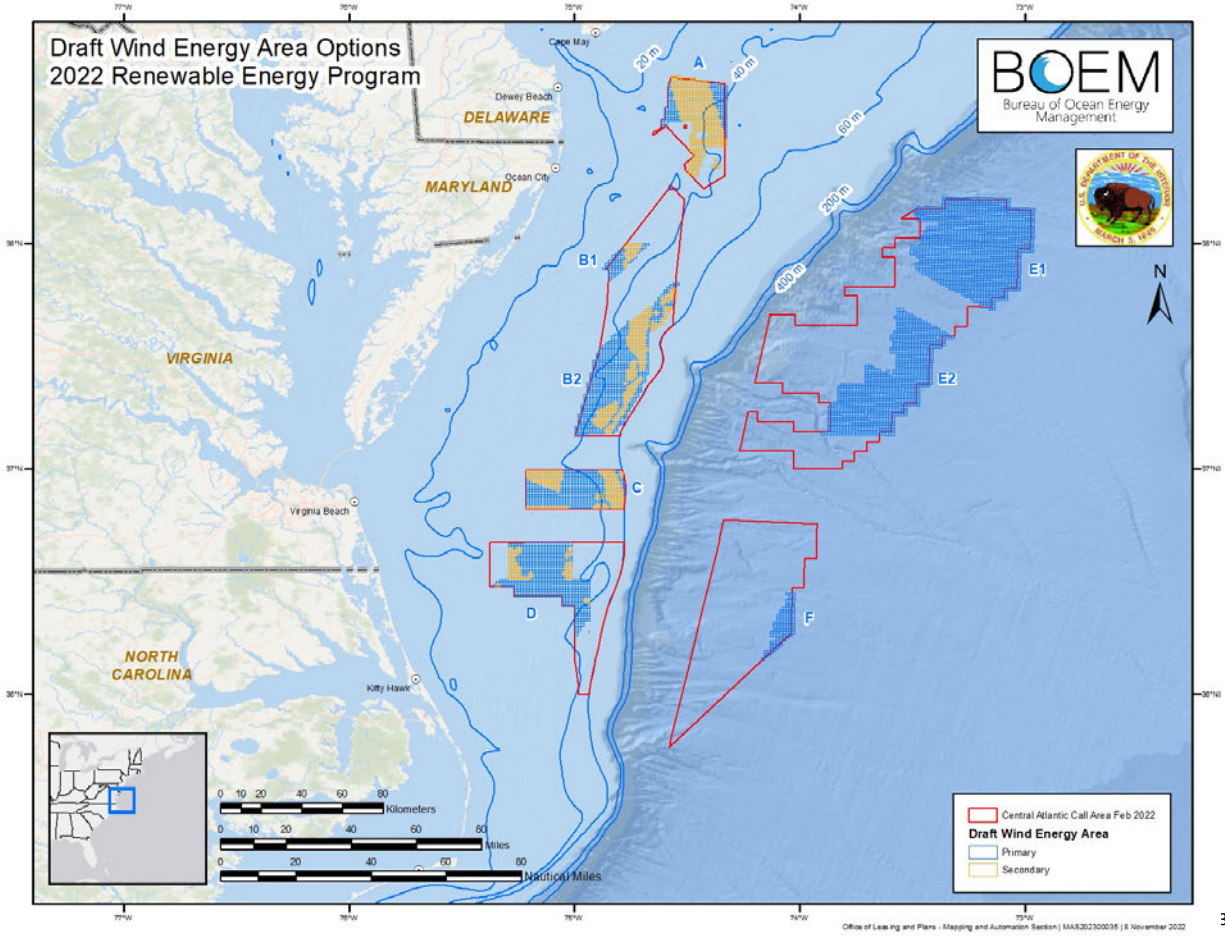


Unfortunately, there is no singular chart that depicts existing lease areas, existing planning areas, existing fisheries regulated areas, and the Master Plan 2.0 Phase areas. However, to give NYSERDA an idea of space, we have provided some images below. The first is a BOEM chart of all existing leases. The second is a chart of the Draft Wind Energy Areas in the central Atlantic, recently released by BOEM. The third is the Frank R. Lautenberg Deep Sea Coral Protection Areas, where our vessels are prohibited from fishing. The fourth is the Northeast Canyons and Seamounts Marine National Monument, where our vessels are also prohibited from fishing. These do not include the myriad of complex spatial regulations for each fishery that also currently exist in the region and dictate when, where and how commercial fishing vessels can operate.

¹ See <https://nyserdany.webex.com/recording/service/sites/nyserdany/recording/81a3b13b3b71103bbffb0050568123d7/playback>



² See <https://www.boem.gov/All-States-Poster/>





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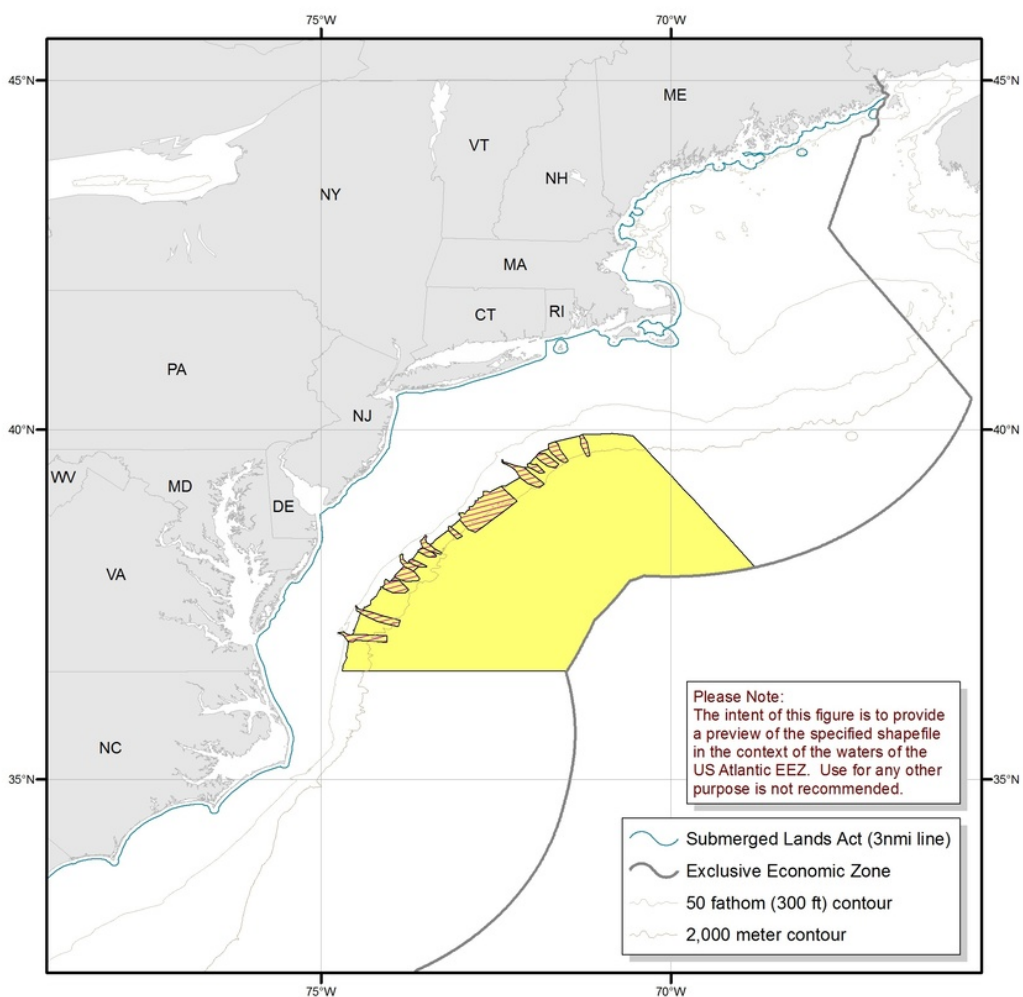
³ See https://www.boem.gov/sites/default/files/images/draft_wea_primary_secondary3.jpg.

Shapefile: Frank_R_Lautenberg_Deep_Sea_Coral_Protection_Areas.shp

Posted to Website: 4/9/2018

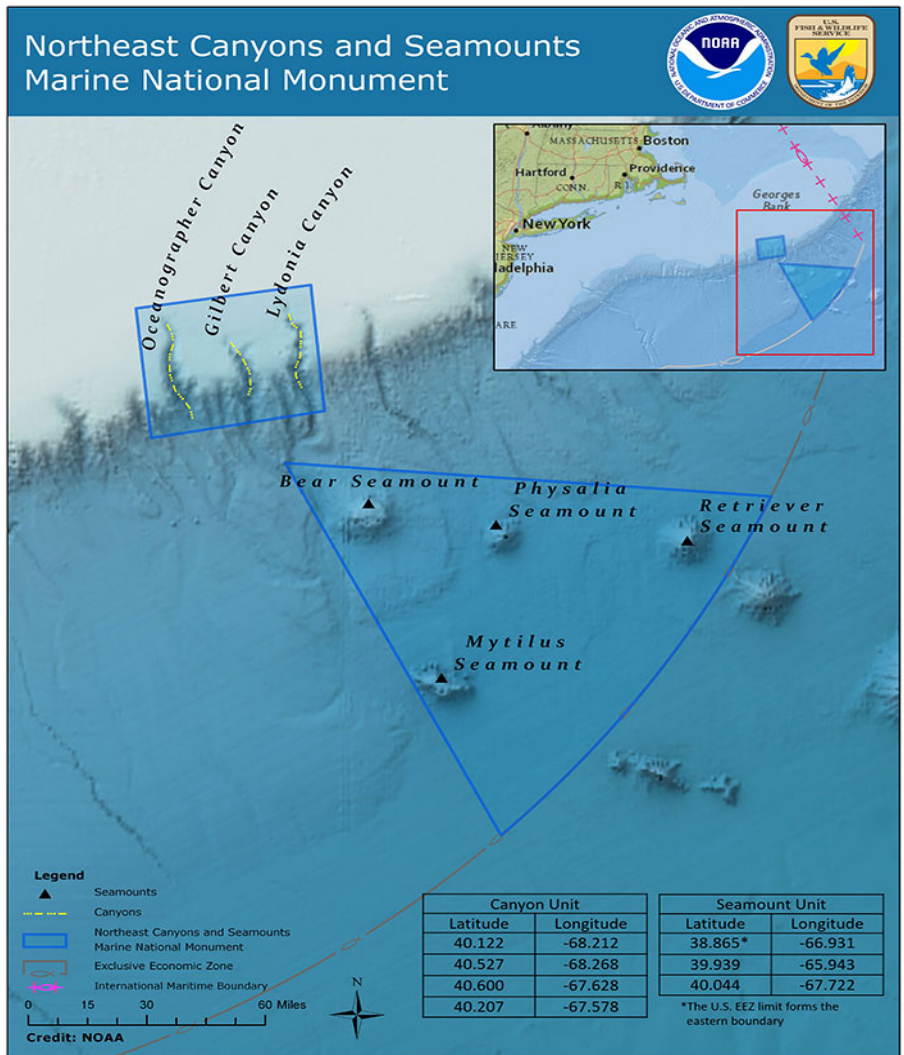
This shapefile includes the NMFS Regulated Areas depicted below. The dataset can be downloaded from the GARFO GIS website at <http://www.greateratlantic.fisheries.noaa.gov/gis>.

-  Discrete Deep-Sea Coral Zones (Count: 15)
-  Broad Deep-Sea Coral Zone



4

⁴ See <https://www.fisheries.noaa.gov/resource/map/frank-r-lautenberg-deep-sea-coral-protection-areas-map-gis>.



5

The commercial fishing industry in the Greater Atlantic Region, a NOAA Fisheries regulatory region ranging from Maine to North Carolina, for which our vessels and other impacted vessels are federally permitted, is strictly and extensively spatially regulated. This region contains too many charts to include in this comment letter. However, a quick reference to the NOAA Fisheries GIS page for New England/Mid Atlantic managed fisheries can provide an overview of how many individual charts depicting closures, gear restricted areas, management areas, stock and quota related areas, and other spatial management measures that constrain fisheries operations in the region. For Groundfish-53 charts, for Lobster- 21 charts, for Scallop- 12 charts, for Herring- 12 charts, for Monkfish- 9 charts, for

⁵ See <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national>.

Spiny Dogfish- 9 charts, for Skates- 6 charts, for Summer Flounder/Scup/Black Sea Bass- 6 charts, Mackerel/Squid/Butterfish-4 charts, for Turtle Protection- 6. charts⁶

The Regional Council Coordination Committee, representing all the U.S. Regional Fisheries Management Councils established by the Magnuson Stevens Fishery Conservation and Management Act, recently compiled a report via its Area Based Management Subcommittee on conservation areas in the U.S. EEZ created through the fisheries Management process.⁷ This technical analysis showed that between ecosystem conservation, year-round fishery management and seasonal/other fishery management, a total of 69% of the New England EEZ and 55% of the Mid Atlantic EEZ is already spatially restricted to commercial fisheries.⁸

It is beyond the scope of this comment letter to detail the interactions and interconnections between these various spatial regulations; suffice it to say that as the 7th most regulated industry in the nation,⁹ the fishing industry is much more spatially constrained than the BOEM or states processes for offshore wind lease identification and permitting. As the states and BOEM continue to completely ignore this issue and the spatial constraints on our businesses while identifying areas for offshore wind development regardless of the resulting collateral damage, we are left with no choice but to demand that both entities fully compensate for these impacts.

The cumulative impacts of offshore wind resulting from realized state ambitions such as that detailed in NYSERDA's Master Plan 2.0 on fisheries already restricted by legislatively authorized management is that there will be no more commercial fishing in the Southern New England/Mid-Atlantic region. Therefore, we request that NYSERDA, NY DOS, and the states developing the RFI for a regional fisheries compensation fund related to offshore wind include full industry buy out as a potential compensation requirement, from commercial vessels, to docks, to processors, etc. This will most likely be on the order of billions of dollars, for which the states will need to work to develop consistent and continuous funding mechanisms.

BOEM uses state renewable energy goals and mandates, as well as state Power Purchase Agreements/awarded contracts for offshore wind capacity with developers, to frame and bound its Purpose and Need statements for offshore wind project review.¹⁰ Therefore, the states, as the clear and driving forces of offshore wind development, must also be prepared to foot the bill of fisheries compensation. States can no longer be exempt from sharing in this responsibility with BOEM and developers.

While it is our intent to continue operations to the extent possible in the face of offshore development, if the OCS continues to be developed in the manner supported by the state of NY and other states, and more and more of our operational and navigable fishing grounds are usurped by

⁶ See <https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/maps-and-geographic-information-systems-data-program-new-england-mid-atlantic>.

⁷ See agenda item entitled "CCC Area Based Management Subcommittee Update" at <http://www.fisherycouncils.org/ccc-meetings/may-2022>.

⁸ See "An Evaluation of Conservation Areas in the U.S. EEZ" at http://www.fisherycouncils.org/s/F2_CCCSubCtte_ConservationAreaReport_FinalDraft_2022-05-04.pdf, p. 23.

⁹ See <https://www.mercatus.org/publications/regulation/mclaughlin-sherouse-list-10-most-regulated-industries-2014>.

¹⁰ See <https://www.boem.gov/renewable-energy/boem-cop-eis-alternatives>.

offshore wind projects as BOEM and the states continue to refuse to avoid these impacts, we will eventually be unable to continue to operate. It is necessary for states such as NY to acknowledge this potential at the current time and provide financial mechanisms to address it. Absent a change of current course, NY and other states should be prepared for full commercial fishing industry buyouts due to the cumulative impacts of the Master Plan 2.0 and similar actions, including existing leases.

Thank you for the opportunity to comment.

Sincerely,

[Redacted signature]

CC: [Redacted list of recipients]

Dated February 5, 2023

**Nine Atlantic Coast States Scoping Document:
Framework for Establishing a Regional Fisheries
Compensation Fund Administrator for Potential
Impacts to the Fishing Community from Offshore
Wind Energy Development**



Estimated costs associated with developing and producing the response to the Scoping Document \$5,000.00

The Biden Administration has established an ill-advised political goal of Industrial Offshore Wind Energy Production as part of an effort to move the United States from dependable constant energy to European dependent inconsistent energy to mitigate exaggerated climate changes. The Biden Administrations expedited process of funding the United States expansion into dependence on Industrial Offshore Wind is in violation of the original Executive Order (EO 13783 of March 28, 2017). The act requires affordability which is not economically obtainable without large sums of taxpayers money and public utility debt inclusive of any compensation fund to be established. EO 13783 mandates reliability which has been proven in other areas of the world not obtainable with modern OSW technology. Safety is also a mandate of the policy. A Scientific calculation of an increased mortality rate in the North East of two fatalities per year fails to meet the policy standard within **Bureau** of Safety and Environmental Enforcement (BSEE) as the lead agency. The word clean within EO 13783 is also questionable interpretation when you consider the ocean debris field. The manufacturing of blades that require resin requires a hardener that is not permitted to be imported into the United States, underwater construction debris, the intentional abandonment of cables on and under the sea bed have a cumulative mitigable impact to the commercial fishing industry. The lack of industry preparedness to remove debris from the malfunctioning

structures, and the well documented increase in oil discharge into the waterways is just a few reasons to say the continued development does not meet the EO criteria of clean.

The Industrial Offshore Wind Energy lease areas have already started the process of diversification. Aquaculture and hydrogen production are two separate industries that will be part of the economic equation to make the lease areas financially sustainable. The NACSSD fails to address the diversity of Industrial alternatives within the lease areas and how new industrial uses will be taxed to compensate for further losses by the seafood industry.

This doesn't sound like co-existence, this is more like removal of a historic blue water economic use.

There has been little to NO attempt by the OSW at sea to:

1. Avoid potential impacts to fisheries and fishing the industries;
2. To minimize impacts;
3. Implement mitigation measures; and
4. Provide financial compensation to affected entities as to resolve the impacts.

The lack of enforcement of any agreements against OSW is criminal in nature and Congress needs to investigate why. **BSEE** Can NOT and will NOT be trusted by the commercial fishing industry. BSEE is part of DOI (landlord) and has received the moneys for the leased areas. There is a financial incentive for BSEE / DOI not to enforce USA

standards and agreements that can result in monetary settlements. If there was any form of penalties assessed against any OSW developer, funds should be added to the fisheries compensation fund/s that are regionally affected.

Since fish swim, have no borders, and have changed migration patterns over 100s of years, the compensation fund needs to be as complicated as the fisheries themselves. Instead of creating a new bureaucracy of management, the fisheries compensation fund should be made part of each different fisheries council. Dept. of Commerce / NOAA / NMFS, Atlantic States Fisheries Management Council, Greater Atlantic, Mid-Atlantic, Southern Council, each individual state fisheries division. For claims in federal waters, individual fishers can make application to the federal fisheries agency who regulates that fish, license, or body of water the mitigating impact occurred. For claims in state waters, it would be the same process within the state that fish, license, or body of water the mitigating impact occurred. The states or organizations (like Farm Bureau) that represent fishers, aquaculture, or the industry can assist in the application for mitigation funds. Funding should be made available to the states, organizations, and councils that administer and assist in application. As with fisheries, all plans will be presented to the states and councils with greater oversight up to the Department of Commerce; (NOT Interior)!

Conflicts of interest within the handling of mitigation funds is a great concern. The highest integrity must be observed, therefore New Jersey Shall not have the funds administered by Goldman Sachs; a financial institution the current Governor was employed by. Pay-to-Play laws will be adopted with financial penalties by each administrating body

of the funds. Money is not to be invested into Environmental Social Corporate Governance funds. The only thing green about OSW is the money they are receiving by deceiving the American people on the environmental impacts. OSW should not benefit by having investments of their own money in their development.

There are plenty of examples around the world where developers have walked away from projects or have sold. Decommissioning funds should also be deposited and administered by the fisheries compensation fund in each agency who regulates that fish, license, or body of water the decommissioning impact will occur. Application for funds to progress with decommissioning projects will be made through the Dept. of Commerce / NOAA /NMFS, Atlantic States Fisheries Management Council, Greater Atlantic, Mid-Atlantic, Southern Council, each individual state fisheries division after permits have been approved by the DOI.

For many individuals in the commercial fishing industry, it is an occupation of choice. The observance of marine mammals and the large variety of the avian population is complemented by the variety of sea life caught and sometimes released. The destruction by the OSW industry is not just taking away the land we farm, but the environment we admire in our workplace. There is value to open space on land as there is value to open space at sea. The purposeful destruction of an ecosystem when there are other alternatives that are more fiscally responsible and can be implemented faster is alone a mitigating circumstance. The value of birds, whales, turtles, bats, and open space all has documented value to fishers and needs to be presented in each development lease area and mitigated.

The loss of the opportunity to change targeted species is also not being fully mitigated except by the OSW industries reliance on job retraining. “The priceless marine creatures of today will have value tomorrow”. The fishers of today have proprietary knowledge of where underutilized species live. The loss of the lands that these sea creatures live has value that needs to be established moving forward.

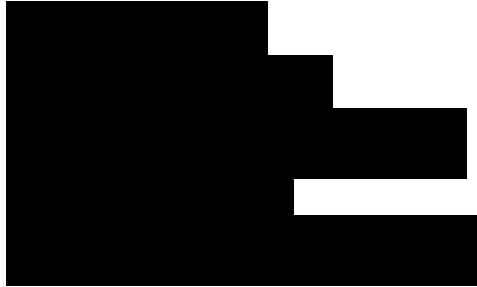
The determination of mitigable losses are not acceptable in a consensus process. The consensus process should never be used within fisheries due to the diversity and administration of the industry as a whole. The consensus when used in fisheries management plans has always failed in the past and should not be considered during the establishment of any mitigation plan.

The commercial fishing industry is the most heavily impacted blue water industry by OSW. Without considerable participation by the fishing industry, no plan will have the outcome desired. The people in the fishing industry are mostly owner operators that don't have the luxury to take days off work to participate in fisheries administration such as OSW mitigation. The OSW industry has recognized this in their outreach and is now compensating individuals for staying in port when their expertise is needed. Greater compensation for fisheries participants needs to be included for those individuals or companies that help in the administration of the compensation funds. Individual docks up and down the coast have now hired additional staff to interact with the OSW industry at great expense. This financial burden placed on the individual, docks, and processors is a mitigable event that is just starting to be recognized. The sooner the states decide to grant funds to the ports to cover costs of participants, the sooner a good

NACSSD

plan can be written that is inclusive. There is nothing more frustrating to a fisher than being in a room with a bunch of people being paid by and industry trying to take away their job or the government supporting the destruction of the environment they work in.

Sincerely,





February 7, 2023

Re: Nine Atlantic Coast State Scoping Document (RFI) Establishing a Regional Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Development

Email to: Comments@offshorewindpower.org

I am writing on behalf of the Garden State Seafood Association, representing the more than 1200 commercial fishermen of New Jersey, and the thousands of those employed on NJ based fishing vessels and by dock side processors, making up the commercial seafood industry in the State.

Reflections on the Scoping Document:

1. Establishes a Regional Fund Administrator for Fisheries Compensatory Mitigation Framework

The GSSA supports the intended purpose of a compensation program: to compensate for losses for a period of however long those losses are felt by the commercial fishing industry including those supporting industries processing and handling commercial product on-land. Of greatest concern is this process being based on an unfinished BOEM mitigation plan that lacks authority and, in its draft form, significantly undervalued the New Jersey seafood industry's value to all of our coastal communities, including up and down stream investments, and seriously underestimated the time period of projected impacts.

The document assumes a source of funds that do not exist and, also seems to propose a use of these funds for recreational fisheries, if additional funds remain after some period of time. It appears the document does not consider the probability of the system being underfunded and this should be considered.

Finally, we believe these funds and the scope of the Administrator's program should only focus on mitigation for commercial industry loses to New Jersey's seafood economy. Programs for gear loss, boat damage, etc. for maritime vessels (non-Commercial Fishing) should all be addressed by a separate program, which we assume would include a separate damage endurance fund that would be set aside by the OSW developers.

2. Anticipated Losses and Costs

- We are concerned that funds held will be inadequate to cover all the revenue losses/costs.

- Table 1 needs to include Loss of permit value, stranded capital, complete vessel displacement from lease areas and losses with decreased quotas associated with impacts from spatial constraints on historic NOAA surveys.
- Losses should be calculated at the fishery, state and port levels, and identify losses in both the up-stream and down-stream impacts at dockside.

Gear Loss Claims

Question in the RFI: Should a separate gear loss claims process also be regionalized under the purview of this administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator.

We support a standardized, accessible and uncomplicated gear loss claims process handled at a regional level. However, we believe the OSW developers should fund this program, and it should be in addition to funds set aside in the commercial fishing mitigation program. Gear loss is a known result of this development and is anticipated. To be clear we see gear loss and mitigation as two separately funded programs.

Inclusion of recreational compensation

The recreational/for-hire fishery should only be included if they have an independent source of funding, a separate advisory body and have been thoroughly consulted for development of a framework to dispense any funds. In fact, BOEM does not quantify recreational losses and developers/BOEM often say that recreational fishing will benefit from OSW development. As can be seen by many recreational fishermen in full support of these projects as potential reefs. Further, demonstrating losses and establishing a claims process will be nearly impossible for recreational fishermen. Should recreational compensation be considered, it should be under a separate fund earmarked for that sector.

3. Evidence of Claims Questions

There is sufficient data for most species to verify loss for commercial fishing operation within lease areas and for shore side processors, using historic federal reporting requirements, including VTRs, VMSs, SAFIS reports, and business data. The bigger issue is the lack of pre-survey/construction data and the implications for the future productivity of the ocean environment. While the OSW industry seems poised to blame environmental changes on global warming or other non-OSW development reasons, we believe there will be significant impacts on turbidity, tides, temperatures and the entire ecosystem based on the size and scope of these projects' cumulative Atlantic effects. The burden of proof should be carried by both parties not just the commercial industry. It is not equitable to let the OSW developers and governments to use global warming as the cause' for nearly all environmental changes occurring around these projects.

4. Regional Fund Administrator Key Qualities and Tasks

We support a Regional Geographic Scope for the Administrator, which would establish, one location for claims, and would reflect the regional nature of the New Jersey fishing fleet, operating from Cape Hatteras to Georges Bank and into the Gulf of Maine, depending upon the fishery and time of year. Fund must be set up to sufficiently pay for impacts over the life of the projects or else, the first in will get all the funds or force an arbitrary limit on payouts from an inadequately funded compensation pool.

The administrator should have experience not only in fisheries but also in administering a natural resource damage program. With dozens of lease areas, the many and varied potential fisheries and anticipated numbers of fisherman claimants, the administrator will need to understand the importance of separating natural resource damage from natural fisheries ebbs and flows, especially if the program is to be implemented regionally.

The administration plan makes sense, but the focus should be on how to manage the payment and administration of funds; the process should be developed in consultation with the government and commercial industry only. The accessibility and integrity of the entire compensation program is founded on the claim form seeking relevant information that fishermen are able to provide. It does no good to design a process that is so porous that bogus claims eat up the available compensation funds but it also does no good to design a process that is so restrictive that it takes a fisheries statistician to complete an application. We understand that pilot-project work has been done by the Fisheries Knowledge Trust that seeks to standardize the collection and presentation of fisheries data. That project is in the pilot phase, but the idea that An investigation into how to combine information readily available to fishermen and the government, respectively, that can be integrated into useful metrics, to guide the funds administrator in a consistent and regional way is worth exploring. It is unlikely this is a task that any administrator could handle without detailed support from the fishing industry and the various State governmental entities involved.

In terms of the question whether to design first and hire second, or hire first and design second, the answer depends in part on the qualities sought in a fund administrator. If a fund administrator is sought who not only has fisheries experience but experience in administering natural resource damages funds, then the administrator's experience and expertise in designing a claims process could be a valuable complement to what the States (and the fishing industry) might otherwise be able to do on their own. In all events, it is important that the fishing industry and its unique and specific perspectives be actively involved in the design of the Fund and its processes. Some thought should be given on providing the administrator with access to professional fisheries economists; individuals whose guidance would be regionally supported. Up-stream and down-stream multipliers will change with each fishery, a complexity that will need to be addressed.

Support for Option 1: Design First, Hire Second

There is no "shelf-ready" entity capable of administering regional funds. We strongly urge the States to work with the fishing industry, fisheries economists and scientists to design the entire framework - everything from claims process to governance - rather than potentially hiring an ill-fitting entity. We also need to ensure the program's funding as we proceed to hire and administrator. It makes little sense to hire someone to manage an unfunded program.

Money management and investments

There is nothing in the RFI about money management, yet that is likely an important role for the Administrator. Boundaries around and/or a defined decision-making process focusing on money management should be developed or solicited for input and there should be an approved annual cap on cost of the administration of the program, with all additional proceeds being reinvested in the fund.

5. Governance

The GSSA supports a Co-Led Board of commercial fishermen and State/Federal government. Representatives from the fishing industry, which should be diverse - by home port, operating region, fishery, gear type, and up and down the harvesting supply chain and considering business size. Small, independent fishermen and larger, vertically integrated business both must be represented.

The RFI fails to identify how members will be appointed to the Governing Board. We believe a process can be identified and written into the plan that would require or guarantee a regional and industry mix on the board. However, we believe the exclusion of developers from decision-making seats on the Governing Board is necessary and they should have a consulting role only.

There is no existing entity set-up to administer funds with adequate regional fisheries knowledge. Therefore, we caution the States from looking for an existing entity.

6. Funding Questions

The GSSA believes the federal government has unfortunately developed a process that is not funded. BOEM's offshore oil and gas development has a mitigation and compensation funding mechanism, OSW does not. The federal government must fund this initiative as they have provided billions of dollars to developers in incentives and tax abatements. At a minimum some of these funds could be set aside for this mitigation funding. We look forward to Congressional oversight of these fundamental problems in the coming two years.

States can also support these programs through their power purchase agreements, CZM reviews, and direct funding into the mitigation pool. One obvious concern is the fact that this program will not reach approved projects. Approved projects will operate under a different system than potential future projects with the development of this program. As such, the State governments, collectively are the only likely fair source of funding to support mitigating the anticipated impacts on regional commercial fisheries..

7. Claims Process Questions

The GSSA supports the broader definition of eligibility in the RFI, as compared to the BOEM Draft Mitigation Guidance. We strongly urge the Governance Board and Fishing Advisory Boards to address this early in this process.

Questions from the RFI:

What additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? Possible ideas:

Vessel owners - Logbooks, landing receipts, whatever documentation is required if your business model includes direct-to-consumer sales

Deckhands - w-2s, 1099s, anything proving employment and days at sea.

Dealers – tickets and document proving sourcing

Processors – Proof of seafood purchase from commercial vessel/business (SAFIS reports).

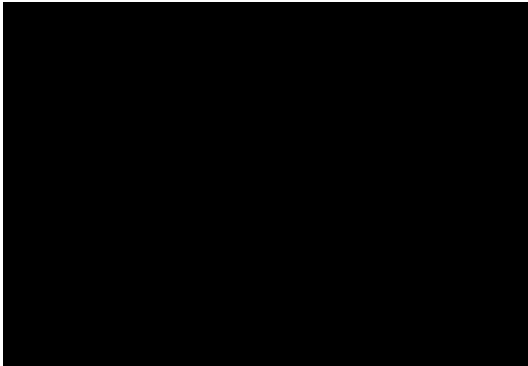
Realize most US food production has Dept of Health, USDA and in some case FDA oversight and requirements

Other dependent community members - Business documentation proving working with industry and supporting tax information

Question from the RFI: What datasets and/or approaches may be appropriate to use when determining eligibility for shoreside industries and others that may not have the same level of documentation as commercial fishing operations?

This is difficult, as they can likely find alternative work with some ease, Ex trucking or cold storage? Welders and fabricators? We believe the history of their business model and association with commercial fishing and processing entities is most important. Those who have been historically (multiple years) significantly (more than 50%) dedicated to seafood operation support would be eligible.

Sincerely,





Responsible Offshore Development Alliance

February 6, 2023

Re: Request for Information: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community From Offshore Wind Energy Development

To Whom it May Concern:

The Responsible Offshore Development Alliance (RODA) submits the following comments regarding the Request for Information (RFI): Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community From Offshore Wind Energy Development (OSW).¹ RODA is a coalition of more than 200 fishery-dependent companies, associations, and community members committed to improving the compatibility of new offshore development with their businesses. Members of our coalition operate in federal and state waters of the New England, Mid-Atlantic, and Pacific coasts.

Fisheries mitigation strategies are the most consequential and important part of offshore wind development (OSW) for commercial seafood harvesters. Mitigation spans a wide range of possibilities from avoidance to compensation, and it is the only recourse the fishing industry and federal and state agencies charged with protecting fisheries resources have to ensure responsible development. RODA and our members have reiterated this time and time again, but we do so again: Measures of avoidance, minimization and non-monetary mitigation must be prioritized and supported, and only once those have been completely exhausted, should financial compensation be used as mitigation.

As a national coalition, our members have called for this framework to not set precedent for other regions. Robust engagement with local industries and communities would need to occur to determine if a similar framework would be appropriate elsewhere. There likely will be preferences for varied structures in different regions.

I. Benefits of a Regional Administrator:

The nine east coast states - Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland and Virginia - have developed a scoping document to establish

¹ Available at: https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_RFI_FINAL.pdf

a regional administrator to handle fisheries compensation from OSW.² While the intention behind the development of a regional administrator is well founded, the scoping document needs more robust development with broad representation of impacted fishing industry participants.

Generally, a regional administrator could provide a predictable, transparent, and equitable process for compensation claims which would benefit eligible claimants. Administration of compensation funds by a single entity could reduce confusion, paperwork and costly negotiations with the numerous OSW developers active in the New England and Mid-Atlantic regions. As federal fisheries resources and operations often span multiple state boundaries and the fishing industry is often not-constrained to landing in the state in which they are homeported, a “one-stop shop” could be beneficial. Lastly, a regional model would cover claims from any eligible entity, possibly reducing the number of impacted industry members left out of the process otherwise.

II. Structural Concerns

1. Inefficiencies of the BOEM Mitigation Guidance

The RFI cites the BOEM Fisheries Mitigation Guidance as the method for funding. We are extremely concerned that the final Guidance will insufficiently value impacts/fisheries and use insufficient timeframes for impacts based on what was proposed in the draft. RODA’s extensive comments on the Draft Mitigation Guidance outline many of the shortcomings identified by the fishing industry.³ BOEM has not yet responded to the public comments on the Guidance, nor have we any indication that they will address the significant issues identified by ocean users.

Even if BOEM sufficiently quantifies the cost of known impacts, there are limitations to fully estimating all costs as impacts are only analyzed through the NEPA process. The extent of all losses from offshore wind are not fully accounted for - such as impacts to biological resources, ecological services, and cumulative impacts. We recognize that quantifying some of these impacts is difficult, but there is more information available than what BOEM used in the Draft Guidance. The Guidance comes up short in the following ways:

- Inadequate cumulative impacts assessment - of biological resources, ecosystem services, and commercial fisheries operations;
- Incredibly undervalued shoreside economic losses and multipliers⁴;

² Available at: https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf

³ See https://rodafisheries.org/wp-content/uploads/2022/08/220822_BOEM-Fisheries-Mitigation.pdf

⁴ Examples of multiplier studies: 1) Murray, T.J. 2020. Economic Impacts of Reduced Uncertainty Associated with Fishery Management Actions with Summer Flounder, Report to the Science Center for Marine Fisheries, June 2020, available at https://scemfis.org/wp-content/uploads/2020/06/Econ_Flounder_2020.pdf; 2) Scheld, A.M. 2020. Economic Impacts Associated

- Curtailed time period to submit a claim (post-construction); and
- Assumption that all fisheries will be able to transition along with OSW and coexistence is achievable for all fisheries.

As described in the scoping document, a regional compensation fund and administrator hinges on BOEM properly calculating “money into” the fund. Based on the draft Guidance, we are extremely concerned that this will be woefully insufficient. If the starting point of a compensation program is badly flawed, inevitably the administrator and claims process will fail. The States should not move forward with a regional administrator until the BOEM Mitigation Guidance is final and is determined to sufficiently cover costs from impacts of OSW.

2. Cumulative impacts are not addressed

BOEM’s draft Guidance fails to address cumulative impacts as it presumes an individual project developer will adopt mitigation measures associated with their project. Impacts will only grow in scope and intensity as more projects are built out. A single-project approach is intrinsically deficient because cumulative impacts of multiple OSW projects across a region, or entire coastline, will produce impacts as - if not more - severe to biological resources, fishing industries, and supporting communities than merely the additive effects of single projects. There must be some recourse to address the cumulative effects that manifest as more projects are developed, especially given that the BOEM Guidance does not include any provisions to improve upon a mitigation strategy after a project’s approval.

The whole point of a regional compensation fund and an administrator is to address the regional and cumulative impacts. The administrator should be able to utilize a regional fund to integrate cumulative losses into compensable claims, which can only be achieved if cumulative impacts are sufficiently accounted for. As it stands, the BOEM draft Guidance does not do this.

3. Regulatory authority is still lacking

There is no requirement nor legal authority for a developer to use a regional fund. This needs to happen at the federal or state level. Without a regulatory requirement, the problems of a piecemeal approach for fisheries compensation will not be addressed. States could utilize state consistency determination and/or power contracts with developers to ensure protection for their fishing industry constituents by requiring the use of a regional compensation program/administrator.

with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S, Report to Science Center for Marine Fisheries, August, 2020, available at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf.

4. Scoping document development process

Thank you for consulting fishing advisors, including RODA staff. While we are grateful for this opportunity, the small group of fishing industry experts brought in were only included once the scoping process was well-underway. This limited the ability to address structural concerns held by the fishing industry early on.

The fishing industry is very diverse on the Eastern seaboard. RODA has stated countless times that public comment is not the best way for the industry to provide feedback, let alone design a framework. The nine States should have, or ought to moving forward, work with a broader representation of fishing industry members in a workshop-style effort to design a compensation program that will work best for the entire industry. At present, there is strong sentiment among industry members that the development of the scoping document was state-driven and not inclusive, nor transparent.

5. Goal of compensation is not consistent between different groups

There are still inconsistencies between various groups on the intention of compensation. Is it to make fishermen and the dependent community whole? Is it to only pay for direct losses from OSW projects? Is it to reduce risk for developers? What funding does/doesn't it include? This is intrinsically related to the role of a regional administrator as they will be responsible for meeting the needs and expectations of multiple stakeholders. We strongly recommend clearly stating a definition in founding documents for a regional administrator.

6. Commitment from the States to require complimentary resilience funds.

Based on consultation with the fishing advisors, the States recognize the need for resiliency funds but remain silent on how funding will be acquired. These monies are separate and distinct from monies identified to cover losses from impacts of a project.

Resilience funding should be funded continually and consideration must be given of how to incorporate approved resilience programs into the process. A mechanism to require resiliency funds has not been identified but the fishing industry is willing to work with the States to identify how to achieve this. It may be appropriate for certain resilience funds to be administered by a regional administrator, but only if there is independent value to be added. In other instances, direct programs may be suitable for resiliency funds.

III. Considerations on the Draft Scoping Document & RFI

1. Purpose

We support the intended purpose of a compensation program: to compensate for losses for a period of however long those losses are felt by the industry.

Question: What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds?

It is pre-emptive to discuss if a regional administrator should manage resiliency funds because: a) there is no commitment from the States or BOEM to require (nor have the developers elected to commit) this type of funding; b) extensive consultation with the fishing industry on parameters for resiliency funds needs to occur first; and c) it may be more appropriate for resiliency funds for certain projects to be outside of a regional administration program. This needs thoughtful development and may be on a case-by-case basis.

2. Anticipated Losses and Costs

Members of the fishing industry submitting comments to this RFI have identified additional costs and losses that should be included for eligible claims. We urge the States to include these in a final regional compensation framework. In particular, stranded capital and permit valuation need to be covered in anticipated losses. When calculating potential losses and costs, it must be done at the fishery, port, and state levels, and include considerations for previous management restrictions and quota allocation that likely have influenced historic catch.

There remains deep concern that the funds held will be inadequate to cover all the revenue losses and associated costs identified in the scoping document.

Question: Should a separate gear loss claims process also be regionalized under the purview of this administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator.

We support a standardized, accessible, and uncomplicated gear loss claims process. RODA has heard support for both inclusion and exclusion of a gear loss program under a Regional Fund. More discussions with on-the-water operators need to be solicited to determine if this is appropriate.

Question: Should the regional administrator include recreational compensation?

The recreational/for-hire should only be included if they have an independent source of funding, separate advisory body and have been thoroughly consulted for development of a framework to dispense such funds (this is outside our expertise). BOEM does not quantify recreational losses and developers/BOEM often say that recreational fishing will benefit from OSW development. Further, demonstrating losses and the claims process will be nearly impossible for recreational fishermen. Should recreational compensation be considered, it must be under a distinct fund earmarked for that sector.

3. Regional Geographic Scope

There are significant benefits from a “one-stop” shop for compensation claims. Consideration could also be given to ‘sub-regional’ funds that adhere to a consistent claims process.

4. A Unified Regional Fund

Similar benefits as identified under “Regional Geographic Scope”, but the fund must be set up to sufficiently pay for impacts. If money is going to run out, one of two things will occur; 1) a run on the bank as people realize this and the fund will get depleted quickly; or 2) the administrator will have to put limits on how much can go to a single payout.

Consideration must be given to the duration of impacts to different fisheries, some may be impacted only during construction time frames – while others may have long-standing impacts throughout the operational timeframe of the project. A regional fund must be flexible to account for this.

5. Key Qualities of an Administrator

“Extensive fishery industry expertise, knowledge, and understanding” is paramount to the success of an administrator. RODA also supports the Fishery Survival Fund’s recommendation to consider “experience with a natural resource damage program” as a potential quality for an administrator.

6. Key Tasks of an Administrator

The main task of the administrator should be “payment of eligible claims” (Figure 3, p. 15), rather than to design a claims process. Because the process for a compensation program is the most important component and there are many groups to balance, handing over the design of a process to a single entity must be approached with utmost caution.

There is no “shelf-ready” entity capable of administering regional funds. We strongly urge the States to work with the fishing industry, fisheries economists and scientists to design the entire framework - everything from claims process to governance - rather than potentially hiring an ill-fitting entity.

Thus, RODA supports *Option 1: Design First, Hire Second*. For all the reasons outlined in the previous pages of this letter, especially the lack of transparency and minimal inclusion of the fishing industry in preparation of the scoping document.

There is nothing in the RFI about money management, yet that is likely an important role for the administrator. Boundaries around and/or decision-making processes about money management and investments should be developed or solicited for input.

7. Technical Considerations

7.1 Eligibility for Compensation

Eligibility in the scoping document varies from the definition of eligibility in BOEM's Draft Mitigation guidance. We support the broader definition but the Governance Board and Fishing Advisory Boards must address this as soon as possible.

7.2 Burden of Proof

The RFI correctly points out the difficulties associated with demonstrating loss that will befall the fishing industry. This must be as easy as possible for the claimant to demonstrate losses, which may require development of a system to process fishermen's proprietary data and information held by NMFS. A system such as the Fishermen's Knowledge Trust may be suitable to demonstrate losses, but will require further development and expansion should it be used for a regional fund and to cover all fisheries.

Question: What additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups?

The States should review the comments provided by the fishing industry in response to this RFI. Some possible ideas that may require further examination include: (not exhaustive)

Vessel owners - Logbooks, landing receipts, documentation required if your business model includes direct-to-consumer sales

Deckhands - very complex but perhaps w-2s, 1099s, anything proving employment

Dealers - fish tickets and document proving sourcing

Processors - proof of seafood purchase from commercial vessel/business (SAFIS reports)

7.3 Administrative Fees

Administrative fees should not be paid out of principal funds to protect the maximum payout to eligible claims. Two options remain:

- Developer(s) should bear the cost of the administrator.
- A portion of earnings which accrue on the escrow account could be used to support administrative fees, but the amount must be capped. Funds beyond the cap should be for the benefit of the impacted parties.

7.4 Data Verification

RODA supports employing existing fishery data management organizations for the verification process, but acknowledges that they will require financial support to conduct this work which should not be taken from the compensation funds (similar rationale as stated in 7.3 Administrative Fees).

8. Appeals process

The appeals process must have strong fishing industry oversight, by the governing or advisory boards.

9. Governance Structure

9.1 Governing Board Membership

The majority of the fishing industry have indicated support for a co-led Board. Representatives from the fishing industry should be diverse - by region, fishery, gear type(s), and across the harvesting supply chain (e.g. vessel captains, owners, dealers, processors and fisheries-related businesses). We reiterate and support the exclusion of developers from decision-making seats on the Governing Board.

The RFI fails to identify how members will be appointed to the initial Governing Board.

9.2 Board relation to the Administrator

There is no existing entity set-up to administer funds with adequate regional fisheries knowledge. Therefore we caution the States from looking for an existing entity.

9.3 Limitations

Should a regional administrator be (correctly) set-up and the preferred method for compensation dispensation, the framework must be codified by the feds or States. This is the only way the States will be able to protect their fishing industries.

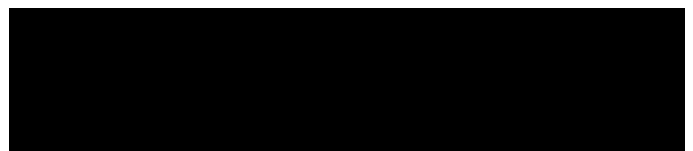
9.4 Advisory Boards

Supporting Advisory Boards to handle specific aspects of a compensation program would be beneficial. These should be developed prior to hiring of an administrative entity to inform the design of the claims process, eligibility, implementation of claims process, appeals process, expectations of the administrator, dispute resolution process, money management and investment guidance.

RODA welcomes transparent, collaborative work with the 9 States to further develop a regional administrator framework and address the concerns identified in these comments. We warmly welcome any partnership moving forward.

Thank you for your consideration of these comments. Please do not hesitate to reach out if we can provide additional information or clarification.

Sincerely,





United States of America

TotalEnergies Renewables USA, Inc

Public Comment Letter



Via : comments@offshorewindpower.org

Subject: SLOW RFI, Regional Fisheries Compensation Fund Administrator

Houston, February 6, 2023

TotalEnergies Renewables USA, LLC ("TotalEnergies") applauds the ongoing collaboration by the nine Atlantic Coast States (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia, "the States") to develop a regional approach to fisheries compensation with the goal of addressing impacts associated with offshore wind development. TotalEnergies appreciates the efforts of the States and the Special Initiative for Offshore Wind ("SLOW") to solicit feedback from the fishing industry, fisheries-related stakeholders, and offshore wind developers to advance a framework for establishing a Regional Fund Administrator that will oversee compensation to fishing entities impacted by offshore wind development.

TotalEnergies is part of TotalEnergies SE, a global multi-energy company developing a portfolio of offshore wind projects with a worldwide capacity of more than 11GW and growing. As part of its ambition to reach net zero by 2050, TotalEnergies SE will continue to expand its renewable business to reach 100GW of power generation by 2030 with the objective of being among the world's top five producers of green electricity. Indirectly owned subsidiaries of TotalEnergies are the leaseholders of U.S. federal offshore wind lease areas OCS-A 0538 (Attentive Energy LLC) in the New York and New Jersey Bight and OCS-A 0545 in Carolina Long Bay (TotalEnergies Carolina Long Bay, LLC).

TotalEnergies values the relationships it has developed with the fishing industry, federal and state agencies, and the Special Initiative on Offshore Wind, and intends to develop its offshore wind projects in a manner that minimizes and compensates impacts to fishing communities.

TotalEnergies applauds the States for taking a proactive approach towards solving the complex issue of Atlantic Coast fisheries compensation as it relates to offshore wind development. In response to the Request for Information dated December 12, 2022, TotalEnergies respectfully provides the following comments and recommendations in addition to supporting the American Clean Power Association's ("ACP") upcoming contribution.

TotalEnergies is pursuing ambitious renewable energy goals and understands that offshore wind is a net benefit to the ongoing negative impacts caused by the climate emergency. TotalEnergies acknowledges that fishing entities (fishermen, processors, shoreside communities, etc.) will be impacted by offshore wind development. Impacts will vary based on a wide range of factors and therefore, general solutions related to compensation for lost fishing income must be adapted to account for regional and local fishing realities (e.g., differences in wind farm designs, fishing methods, and fisheries data). Notwithstanding the differences across various Atlantic Coast commercial fishing, for-hire recreational fishing and offshore wind projects, TotalEnergies believes a consistent approach across projects and states adapted to fit the variety of fishing communities opens the way to an efficient, fair and sustainable set of solutions.



TotalEnergies supports the development of a Regional Fund Administrator as detailed in the scoping document and considers of paramount importance that the Governing Board Membership shall be developed under a fisheries-led concept (Option #2). Since entering the U.S. market, TotalEnergies has continuously supported concepts that provide regional fishing communities' input into fund disbursement models and decisions like the ones detailed in the scoping document.

Furthermore, TotalEnergies supports that the primary purpose of the program should be to disburse funds to compensate for demonstrable losses and added costs incurred by individual fishing entities impacted by offshore wind developments. Guidelines should be developed by the Regional Fund Administrator, as detailed in sections 7.1 and 7.2 of the scoping document, to govern such payments. These guidelines shall take into consideration a reasonable recency factor (e.g., past 5 years) and require a minimum standard of documentation to support each claim. Additionally, a process or method should be established to assess whether losses and/or increased costs may be wholly attributable to the negative impacts of climate change.

Over time, once a clear and consistent process to fund an Atlantic Coast program emerges, and a Regional Fund Administrator is established, TotalEnergies foresees benefits in expanding funds disbursements to include uses beyond lost income. Described in the scoping document as additional transition and resilience funds, these disbursements may include payments to account for increased fuel costs, gear/equipment upgrades (e.g., solid state Doppler-based marine vessel radar), and shoreside community impacts. Recognizing the fluidity with which fisheries compensatory mitigation is evolving, and the potential for additional payments to be required by the Bureau of Ocean Energy Management's ("BOEM") and States through mechanisms associated with Construction and Operations Plan ("COP") approvals and the Coastal Zone Management Act ("CZMA"), TotalEnergies reserves the right to adapt this position to the evolving landscape.

In all cases, TotalEnergies supports the position that any final framework on regional fisheries compensation should avoid duplicative payments. To that effect, TotalEnergies encourages the States to clearly define 'individual fishing industry entities' and clarify whether a single claim, filed by a consolidated group of fishermen (i.e., a gear-type based association) meets the States' intended purpose.

Lastly, TotalEnergies encourages the States to exercise Option 2: Hire First, Design Second. This recommendation is fundamentally linked to the progression of climate change and rapid growth of the U.S. offshore wind market. With Atlantic Coast States setting the nation's most ambitious offshore wind goals, it's critical that the States, the fishing industry, and offshore wind developers advance this framework quickly. Hiring a Regional Fund Administrator promptly will accelerate the development of a fisheries compensation framework by empowering the Administrator to advance decisions, coordination, and collaboration otherwise difficult to achieve among multiple states.

TotalEnergies is grateful for the opportunity to provide feedback on this topic central to the smooth and efficient development of the offshore wind industry in the U.S. and encourages the States to continue moving this regional fisheries compensation framework forward. This includes incorporating additional states where offshore wind development is occurring, but that are not yet participants in the framework, namely the Carolinas and Delaware. My team stands ready to continue discussions and provide additional feedback towards achieving a regional framework for fisheries compensation. If you have any questions or would like further background and details regarding our comments, please do not hesitate to contact our Marine Affairs Manager, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administrator RFI

1 message

Mon, Feb 6, 2023 at 7:12 PM

To: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

To whom it may concern,

My name is [REDACTED] owner of [REDACTED] out of [REDACTED]. I have been fishing the waters of Long Island Sound, Block Island Sound, and the waters south of Long Island and Block Island since 1998. While of the wind lease areas will have an impact on my business, the one with my most current concern is the cable routes for the South Fork wind project. That is an area where over half of my businesses annual income is derived from. We have already been impacted by the survey vessels. I'm sure there will be a greater impact during the laying of cables and the laying of concrete mats where the cables can't be buried. We still don't know how these areas will recover after the construction phase or if there will be permanent losses.

I have read over the proposed draft in regards to the fisheries mitigation plan for the offshore wind developers. While I do agree with most of it there are a few points that I would like to emphasize.

The loss claim application should be made easy or there should be councilors made available to assist with claims. We are fishermen and don't have a team of lawyers available to submit claims for us.

The loss of income should be provable by vessel trip reporting data, dealer reports or vessel monitoring system data. The loss paid from the developer should be 100 percent of provable loss, from previous months or similar times from previous years.

Reasons for loss should be considered for loss of gear, loss of catch due to construction or survey activity, due to a permanent disruption of a fishing area as a result of any offshore wind development. Also during construction or survey phases where more fishing vessels than usual are compressed in an unsustainable area and forced into a dangerous or stressful situation.

Lastly I would like to say that BOEM and the US government should bear some of the responsibility for the stress that is being put on the US fishing fleet and seafood industry. There should be consideration to put in place funds that would offer a permanent and substantial buyout for businesses that are likely not to survive the coming years as a result of wind development.

Respectfully,

[REDACTED]

Sent from my iPad



Massachusetts Lobstermen's Association

February 6, 2023

Regional Fund Administrator RFI
comments@offshorewindpower.org

To whom it may concern,

The Massachusetts Lobstermen's Association (MLA) submits this letter of comment on the creation of a Regional Fisheries Compensation Fund Administrator. (Administrator) While the MLA sees the importance and benefit of creating such an Administrator, we are concerned that the needs to be further developed to ensure all impacts to the fishing industry and shoreside businesses are truly captured.

As offshore wind continues to expand its footprint in the Northeast and even more developers get involved, the commercial fishing industry needs to have access to a predictable, one-stop shop process for equitable compensation claims, administered by one entity could benefit the fishing industry. The MLA supports the Regional Administrator idea with input from the commercial fishing industry.

Established in 1963, the MLA is a member-driven organization that accepts and supports the interdependence of species conservation and the members' collective economic interests. The membership is comprised of fishermen from North Carolina to Canada and encompasses a wide variety of gear types from fixed gear and mobile gear alike. The MLA continues to work conscientiously through the management process with the Division of Marine Fisheries, Atlantic States Marine Fisheries, New England Fisheries Management Council, Bureau of Ocean Energy Management (BOEM) and, the National Oceanic Atmospheric Administration (NOAA) to ensure the continued sustainability and profitability of the resources in which our fishermen are engaged in.

High-Level Concerns: The MLA does however have reservations as this approach is going to take all of us being at the table to help guide BOEM to ensure the Administrator is successful.

- **Inefficiencies of BOEM's Mitigation Guidance:** The fund uses BOEM's Mitigation Guidance as the basis for the fund, this assumes BOEM will sufficiently value fisheries and impacts to fisheries. The Draft Guidance fell short, and the final is not yet available. Support for a Regional Administrator is contingent on a sufficient fund - which is yet to be determined.
- **Cumulative impacts not addressed:** The Administrator should be able to utilize a regional fund to integrate cumulative losses into compensable claims.

- Regulatory authority still lacking: There is no requirement nor legal authority for a developer to use a regional fund. This needs to happen at the federal or state level.
- Scoping document/RFI development process: The fishing industry is very diverse and public comment is not the best way for the industry to design a framework.
- Difference between losses and resiliency funds: The Scoping document clearly recognizes the need for resiliency funds, separate and distinct from funds for losses. The States should commit to requiring resiliency funds.

Concerns of the Scoping Document: The MLA is concerned about how the losses will be calculated and ALL the possible data should be incorporated.

Anticipated Losses and Costs

- We are concerned that funds held will be inadequate to cover all the revenue losses/costs identified in Table 1 (pg. 12-13).
- Losses should be calculated at the fishery, state, and port levels, and include consideration for previous management restrictions that impacted catch.

Regional Geographic Scope & A Unified Regional Fund

- There are significant benefits from a “one-stop” shop for compensation claims.
- But the fund must be set up to sufficiently pay for impacts. If money is going to run out, one of two things will occur; 1) A run on the bank as people realize this and the fund will get depleted quickly; or 2) The Administrator will have to put limits on how much can go to a single payout.

Key Tasks of the Administrator

- *Support for Option 1: Design First, Hire Second:* There is no “shelf-ready” entity capable of administering regional funds.
- *Money management and investments:* Boundaries around and/or decision-making processes about money management should be developed or solicited for input.

Eligibility for Compensation

- Support for the broader definition of eligibility in the RFI compared to the BOEM Draft Mitigation Guidance. We strongly urge the Governance Board and Fishing Advisory Boards to address this early.
- There needs to be a clearly defined eligibility for compensation well in advance of ANY mitigation talks so the commercial fishing industry is not misled.
- There needs to be a during and post construction eligibility as the impacts to the fishing industry will not fully be realized until years after the windfarms are constructed.

Burden of Proof

- The RFI correctly points out the difficulties associated with demonstrating loss that will befall the fishing industry.
- *Questions from the RFI: What additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups?*

- The commercial fishing industry has access to their personal catch logs, catch reports, chart plotters and more and all this information should be allowed to be submitted to prove their fishing activities.

Administrative Fees- The MLA agrees that the funds necessary to run the Administrator should not come from the fishing industry mitigation funds and there needs to be a reasonable cap on the amount that is paid.

- Administrative fees should not be paid out of principal funds to protect the maximum payout to eligible claims.
- Developer(s) should bear the cost of the Administrator.

Governing Board Membership

- Support for a Co-Led Board. Representatives from the fishing industry should be diverse - by region, fishery, gear type(s), and across the harvesting supply chain (e.g. vessel captains, owners, dealers, processors and fisheries-related businesses).
- Exclusion of developers from decision-making seats on the Governing Board.

Limitations

- Should a Regional Administrator be (correctly) set-up and the preferred method for compensation dispensation, the framework must be codified by the feds or States.

Advisory Boards

- These should be developed prior to hiring of an Administrator to inform the design of the claims process, eligibility, implementation of claims process, appeals process, expectations of the Administrator, dispute resolution process, money management and investment guidance.

Thank you for your thoughtful deliberations. We look forward to working with you on this process.

Kind regards,

[REDACTED]

[REDACTED]



Surfside Foods, LLC



Tuesday, February 7, 2023

Re: Regional Fund Administrator RFI

To Whom it may Concern:

Surfside Foods, LLC is a harvester and processor of Atlantic surfclams and ocean quahogs. We operate in the southern New England, mid-Atlantic, and central Atlantic regions. It has been determined that the Atlantic surfclam fishery could experience the most negative impacts from offshore wind development of any fishery because of the high degree of overlap with the wind energy lease areas and the spatial operational needs of the fishery being such that vessels will be prevented from working within project areas after construction and through the period of operations and decommissioning. It is our hope that all impacts to the Atlantic surfclam industry can be fully mitigated by all offshore wind energy developers having or will have commercial quantities of Atlantic surfclams within their lease areas, during any period of the construction, operations, and decommissioning of the wind farms. The reason I note, "during any period" is because of the movement of the fishery, many of the lease areas in southern new England that have rarely had commercial quantities of Atlantic surfclams within them will likely have large commercial quantities soon. The MAFMC manages the Atlantic surfclam fishery across its full range along the Eastern Seaboard and Surfside Foods has the capabilities and desire to harvest surfclams across the full range of the biomass whenever feasible.

Surfside Foods supports the implementation of a consistent regional approach for administration of financial compensation to address adverse effects of offshore wind (OSW) energy development on the U.S. Eastern Seaboard's commercial fishing industries. To ensure sustainable U.S. produced seafood and domestic food security are maintained, offshore wind developers must make all reasonable efforts to exhaust all avenues to avoid, minimize, and mitigate impacts for fisheries before providing financial compensation for impacts. If impacts can be avoided or the impacts can be completely mitigated, fishers can continue to fish, the fish-docks will continue to offload, processors will continue to have product, and the need for fisheries compensatory mitigation will be minimized. Throughout the process of permitting and recruiting developers to participate in a regional fund for compensatory mitigation the states must be certain not to enable perverse incentives for providing financial compensation for impacts instead of making all efforts to avoid, minimize, and mitigate impacts for fisheries. The pain of paying out financial compensation for impacts must and should be much worse

than any potential steps needed to avoid, minimize, and mitigate impacts.

Our biggest concerns with the Scoping Document are with the language under the Technical Considerations for Fund Administration heading and the assumptions being made in section 7.1., Eligibility for Compensation. The term, “unrecovered economic activity resulting from displacement of fisheries in the OSW energy project area” is worrisome. This seems to suggest that the forced displacement of fishery activity from an OSW energy project area would not be compensated for if the vessel recovered the economic activity from another area. Such a requirement has no basis in fishery economics. When a fishery loses access to an OSW energy project area with commercial quantities of biomass, and must fish somewhere else, the value of that fishery has still been reduced even if the loss will not be recognized for some time. If unrecovered economic activity was required for compensatory mitigation, claims may not begin to be submitted until the emanant collapse of the fishery. When there is loss of access to commercial quantities of shellfish the loss to the fishery is almost immediate. Fishers must work other areas; this results in increased fishing pressure on areas outside of the OSW energy project area. The increased fishing pressure results in these other areas being worked harder and becoming less valuable; the future expected return from the area is no longer as high as before the additional pressure put on the fishery by the loss of access to the OSW energy project area. We do advise that fishery economists and fishery scientists are involved in all eligibility discussions; it does not appear from the Scoping Document that the drafters have extensive expertise in fisheries economics.

OSW developers must be required to regularly survey the energy project area during the life of the facility to determine the commercial quantities of fish and shellfish within the project area. Fishery scientists and economists must continually measure the losses resulting from offshore wind development on U.S. Fisheries; environmental conditions are expected to continue to change and with those changes will come variation in the impacts of individual projects. Fisheries that lose access to the biomass within the project area should be compensated for the landed value and for all downstream impacts of losing the landings. Many investments in fishing vessels were for the purpose of the guaranteed access to the landed product for the value add, the investment was not necessarily for the economic returns from the harvest. These investments must be made whole through the thorough review to assess the full economic value of the commercial fisheries impacted.

Also, in the section 7.1. Eligibility for Compensation is the requirement for recent use of an identified fishing location and/or historical spatial and temporal fishing data. This data is not relevant to the losses experienced by a fishery when it loses access to an OSW energy project area that contains commercial quantities of fish stocks. During this time when many fisheries are experiencing a well-documented shift in range, having history in a location is meaningless, captains find new areas to fish all the time; as the risk/reward fluctuates for staying in any given fishing area vs. moving and looking for someplace better, boats simply move, even when the distance is great, fishing vessel crews are practiced in picking up and moving for a few weeks, months, years, or permanently. Most of our surfclam fleet recently fished off southern Virginia, an area the industry had not harvested for nearly 30 years. Southern Virginia was never a typical fishing area for boats based in New Jersey. One of our captains found the risk/reward was attractive to venture south and went looking off southern

Virginia for surfclams and struck gold. Catch rates were much higher than off New Jersey and several of our vessels took a lot of clams out of the area. Many arrangements had to be made to make fishing off Virginia possible for our fleet but when members of a fishery see an advantageous opportunity, they take it. Whether they have recently used a fishing location and/or have historical spatial and temporal fishing data for an area is not relevant and must not play into the eligibility requirements.

Section 6. Key Tasks of an Administrator, Figure 3 begins with the Administrator receiving payments from project payors. This suggests that a thorough review of the information needed and available to assess the full economic value of the commercial fisheries that operate in the OSW energy project area has been completed and an evaluation of the impacts has been conducted. Such a bottoms up approach must identify those that will be impacted and determine the degree of impact. All aspects of a developers' analyses must be made transparent so that this data may be further used for making payouts. Information about those eligible for compensation will be part of the analyses and must be made available to the fund administrator. The administrative burden and transaction costs on all parties can be limited with these requirements because the identification of those impacted is determined up front, during the review performed by the developer.

Specific RFI questions:

Besides traditional fisheries data sources, what additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? Provide a rationale for inclusion of a data source and specific group the data source would apply to.

Developers are to perform a thorough review of the information needed and available to assess the full economic value of the commercial fisheries that operate in the Project Area. This review will include information needed to assess both direct effects on fisheries (e.g. potential loss of harvest and landing revenue) and indirect effects on shoreside markets and support industries. This data should be peer reviewed and made available to the fund administrator for determining eligibility.

What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds that may be distributed to help the fishing industry or specific fisheries/gear types of the industry transition and adapt to the long-term presence of the offshore wind industry in traditional fishing grounds?

Additional transition and resilience funds should be administered separately. Mitigation administration should be separate as well.

If you do not think that management of such funds is an appropriate role for the Regional Fund Administrator, how should such funds be managed?

Funds should be professionally and responsibly managed and there should be appropriate oversight. Fund management and the administration of bringing money in and paying money out are two distinct skill sets and it may be best to separate the

administrator role and money manager role when looking for the appropriate service providers. If one service provider is the best choice for both roles, I do not see any downside to allowing one entity to handle both money management and fund administration.

Should a separate gear loss claims process also be regionalized under the purview of this administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator.

Gear loss claims should be made directly to the developer. The Regional Fund Administrator should only have to deal with the foreseeable / pre-calculated financial compensation.

Thank you for your consideration of our comments. If I can be of further assistance, please do not hesitate to reach out to me.

Regards,

[Redacted signature block]

[Redacted contact information]



February 7th. 2023

██████████
██████████

Special Initiative on Offshore Wind

RE: Regional Fund Administrator RFI

Dear ██████████

Thank you and the nine coastal states from Maine to Virginia for their initiative and work on fisheries compensatory mitigation. The American Saltwater Guides Association (ASGA) represents conservation-minded private anglers, fishing guides, and small fishing-related businesses. In recent years, ASGA has become involved in offshore wind (OSW) development, as it is a major topic for our members and stands to dramatically change marine ecosystems. We are supportive of efforts to combat climate change through the development of renewable energy sources such as OSW but continue to insist that these projects are developed in a manner that minimizes impacts to both marine ecosystems and fisheries.¹ OSW development off the Northeast and Mid-Atlantic coasts has progressed rapidly, and only recently are policymakers and legislators beginning to address this industry.²

ASGA submitted comments to the Bureau of Ocean Energy Management (BOEM) in August 2022, in regard to BOEM's Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries³. Our comments centered around BOEM looking at OSW mitigation holistically (i.e., regionally), it's largely lacking authorities to require mitigation, and ways to lessen the burdens on stakeholders attempting to provide substantive input. In that comment, ASGA did not provide in-depth input on financial compensation—largely because the recreational sector (for-hire and private anglers) does not have the spatial or temporal data resolution to demonstrate tangible losses associated with OSW activities compared to the commercial sector. However, the construction phase of OSW development will have substantial direct and indirect impacts on recreational fishing communities, making compensatory mitigation necessary for the for-hire sector.

¹ American Saltwater Guides Association. Offshore Wind Development Policy Platform. May 2021.

https://saltwaterguidesassociation.com/wp-content/uploads/2021/05/ASGA-Wind-Policy-Platform_May-2021.pdf.

² Recent examples include The Reinvesting in Shoreline Economies and Ecosystems Act of 2022, the Offshore Energy Modernization Act, NOAA Fisheries and BOEM Federal Survey Mitigation Strategy, BOEM Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries, BOEM's NOI Checklist (NEPA), among other efforts.

³ American Saltwater Guides Association. Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Energy Development. August 2022.

<https://saltwaterguidesassociation.sharepoint.com/:b/s/ASGA-PolicyandResearch/EXNaZHiyliRKig0tXY52kscBstWdH8UF9rwBOVogluKIOQ?e=tYDrfD>

ASGA was encouraged by the regional framework developed by nine East Coast states to establish a Regional Fund Administrator for fisheries compensatory mitigation for economic loss from OSW development off the Atlantic Coast. ASGA supports the idea of developing a Fisheries Compensatory Mitigation Framework and establishing a Regional Fund Administrator. As the fund relates to the for-hire sector, individual payments for demonstratable economic losses will be necessary, but we would also recommend a portion of mitigation funds be available for research, habitat work, and/or marketing for the for-hire sector, as that stands to collectively benefit the entire community with more ease and efficiency.

General Comments

BOEM approaches OSW-fisheries mitigation through a four-tiered system, where financial mitigation is the last resort—avoiding and minimizing impacts from OSW are more equitable and effective mitigation approaches. However, there will certainly be unavoidable impacts on fisheries from OSW, and a system to distribute compensatory mitigation funds—which BOEM has repeatedly stated it has no authority to do so—will be necessary. For example, certain commercial fisheries will likely not be able to fish where they historically had, and the same holds true for the recreational community—the for-hire sector, more specifically.

The difference here, unfortunately, is that the commercial sector is far more equipped and prepared to demonstrate a loss from potential OSW activities, as a factor of more stringent reporting requirements and access to high resolution spatial and temporal data. For example, the commercial sector has years of accepted and reliable vessel monitoring system (VMS) data and tangible financial values for landings. The for-hire sector, and recreational sector more broadly, is much less equipped to demonstrate potential losses due to OSW activities. ASGA is working to improve recreational data accuracy and precision, but this is a wide-ranging, complex challenge that will take strong leadership at the federal, interstate, and community levels.

Impacts from OSW construction will also be felt inshore and outside of wind energy areas, as fishing effort and pressure will likely shift outside of temporary exclusionary zones. This will disrupt inshore fisheries and the businesses that rely on these areas. Therefore, compensatory mitigation for the for-hire sector may be more dispersed and require individual payments in addition to research and monitoring efforts to inform future projects' development.

In the southern New England wind lease area the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) found that across 10 years there were only 110 angler trips in the OCS-A 0500 Bay State Wind OSW lease, nearly a 190,000-acre wind area.⁴ This lease contains the popular fishing areas locally known as the Fingers and see far more fishing effort than these estimates show. Granted, NOAA Fisheries does not have anywhere close to the data-resolution it needs—or that ASGA would hope to see in fisheries management. However, this example, which holds true for many of the OSW lease

⁴ NOAA Fisheries. Socioeconomic Impacts of Atlantic Offshore Wind Development: Bay State Wind—Party/Charter. November 2022.

https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/WIND/WIND_AREA_REPORTS/rec/OCS_A_0500_Bay_State_Wind_rec.html

areas, shows how ill-prepared the recreational and for-hire sectors are to support financial mitigation.

ASGA supports the proposed Regional Fund and the Administrator but encourages rigorous stakeholder engagement to inform the development of processes to distribute compensatory mitigation funds—we have included some initial recommendations below and would be happy to act as a resource for those involved in the Regional Fund’s development. While this Fund is still very early in the development stage, we would hope to see X% of the fund go to the for-hire sector and X% go to the commercial sector. We do not have an exact percentage split proposal at this time but feel as though a predetermined split would bring some stability and assurances to both communities. Finally, as it relates to options for the next steps for an Administrator, ASGA would prefer to see the process of designing the Regional Fund’s work completed before an Administrator is selected.

For-Hire Compensatory Mitigation Recommendations:

Due to such poor resolution for spatial and temporal recreational fishing data, ASGA hopes that compensatory mitigation funds will be available to individual for-hire fishing guides who can demonstrate a financial loss due to OSW activities. Below, please see ASGA’s recommendations and thoughts on compensatory mitigation for for-hire Captains:

1. The burden to successfully demonstrate a claim—i.e., an economic loss due to OSW activities—will need to be flexible enough to support this incredibly important industry while also acknowledging the lack of any central data-source with high resolution spatial or temporal information. We do not wish to see this fund abused, but we sincerely hope that any impacts felt by the for-hire community due to OSW are mitigated with compensation appropriately
2. There may be an opportunity to incentivize and support the for-hire industry to adopt VMS technology. This would undoubtedly improve the mitigation process for future OSW projects.
3. Prerequisites for successful claims should include: operating a for-hire fishing business for at-minimum one year, the majority of their income comes from being a for-hire Captain, and a demonstratable nexus to the region/OSW project in question.
4. There may be opportunities to model the Regional Fund’s processes on hurricane and other disaster relief efforts.

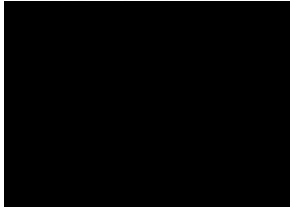
In addition, compensatory mitigation funds could also be applied to the for-hire sector collectively to benefit the sector, the broader recreational fishing community, and the resource. Research and monitoring funds, however, should ultimately have their own dedicated funding stream—and some projects certainly do— and not dilute this Fund’s primary objective, fisheries compensatory mitigation, but there may be opportunities to tailor research and monitoring efforts specific to the for-hire sector. For example, the for-hire sector (and the recreational fishing community) would benefit from also using funds for:

1. Efforts to improve the habitats surrounding OSW structures (nature-based designs).
2. Increased research efforts relating to fisheries and OSW (acoustic telemetry receivers on every OSW structure would create an incredible monitoring array for certain fish species and marine mammals).

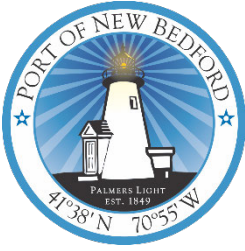
3. Marketing funds for for-hire captains and/or regional tourism—this may be best suited at the state/community level, but increased tourism and awareness stands to benefit the entire sector.

Thank you for your consideration of these comments, and please reach out if you have any questions or ASGA can be of further assistance.

Sincerely,



[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]



NEW BEDFORD
PORT AUTHORITY



February 7, 2023

VIA ELECTRONIC SUBMISSION

Comments@offshorewindpower.org

RE: Regional Fund Administrator RFI

The Port of New Bedford is the most economically valuable fishing port in the country. It is also the home of the region's first purpose-built offshore wind ("OSW") shoreside servicing facility. This uniquely positions the New Bedford Port Authority ("NBPA") in addressing and commenting on the relationship between the two industries. New Bedford is committed to ensuring that offshore wind advances efficiently while continuing to promote and protect the continued success of commercial fishing enterprises. **There is no port in United States that has more interest, or has more at stake, than the port of New Bedford relative to this particular Regional Fund Administrator (RFA) Request for Information (RFI).**

Commercial fishing is a \$5.5 billion dollar industry in the United States and the Northeast alone is responsible for 30% of landings. New Bedford ex-vessel landings alone are almost half a billion dollars (\$451m in 2019) with over \$300 million from the scallop industry alone.

That number does not consider the countless jobs and shoreside economy supporting the industry. A 2019 economic impact study of the Port of New Bedford and Fairhaven Harbor conducted by Martin Associates and Foth-CLE Engineering Group calculated that 39,697 jobs and \$11 billion in total economic contribution are provided by our local seafood and commercial fishing industry. A total of \$162.8 million of direct, induced, and indirect state and local tax revenue was generated by processing activity at the Port of New Bedford with another \$391.1 million of federal taxes. In addition, \$228.3 million of state and local taxes and \$608.2 million federal taxes were supported due to economic activity of the related users using the Port of New Bedford.

As we detail further in these comments, New Bedford faces perhaps the greatest direct and indirect impacts from losses to commercial fishing resulting from the development of offshore wind than any other port in the northeast.

Currently there is no federal framework that requires offshore wind developers to compensate fishermen for the likely physical and economic damages they will incur. Those include gear loss, habitat degradation, loss of essential fishing grounds and new logistical or operational constraints in areas leased for wind farms — all of which will cause serious economic challenges to the fishing industry.

We support OSW along our coastline as an affordable, clean, and growing source of power and we will continue to ensure that the Port of New Bedford plays a critical role in its responsible development. We also commend offshore wind developers who have already taken steps to establish their own compensation programs for fisheries. Yet, the lack of clear, uniform, enforceable requirements will allow developers to take the least expensive path most favorable to them.

To have a truly legitimate and sustainable fisheries compensation fund program, any proposed framework, and the corresponding administrative process to distribute the funds, must be codified in federal law through an act of Congress. As an example, the Fishermen's Contingency Fund was established over forty years ago in the U.S. Treasury by *43 U.S. Code § 1842 – Fisherman's Contingency Fund* to compensate fishermen for economic and property losses caused by oil and gas obstructions on the U.S. Outer Continental Shelf.

Just recently, Massachusetts Senator Ed Markey and Congressman Seth Moulton announced that they will introduce legislation similar to the aforementioned Fisherman's Contingency Fund that aims to address this issue. This legislative proposal is a welcome first step in ensuring there is a consistent and equitable system in place to assess, award and distribute funding for fishery compensation tied to offshore wind development. The proposed legislation also attempts to remedy the current state-by-state or project-by-project strategy for fishery compensation. A streamlined federal response is an excellent mechanism to codify the framework and goals that is being proposed in this (RFI). We also are cognizant that federal legislation must go through an extensive vetting process and may take upwards of a year to be enacted. Therefore, it is imperative that BOEM adopts the final version of this framework, in a timely manner, as guidance moving forward. One ongoing debate about such a mitigation and compensation program is the source of funds to capitalize the effort. Generally, it is presumed that a combination of future federal lease proceeds and additional contributions from offshore wind developers will fund the program. However, given that the federal government has already received in excess of \$5 billion from the previous offshore wind lease auctions, there is more than enough available funding to provide the initial capitalization of the program today. Indeed, the revenues the federal government has taken in should be the first funds made available for impacts resulting from this federal policy. It is an entirely appropriate use of those funds. Any other use or application of these revenues must only be considered after sufficient funding is allocated to address and mitigate the consequences of the leasing of federal land for offshore wind.

We recognize that federal legislation will likely be necessary in order to direct the US Treasury to allocate previously collected lease proceeds to the compensation program. Such a mechanism should be prioritized in order to provide immediate original capitalization of the compensation program, which can be added to from a share of future federal lease auction proceeds. This should be established and codified prior to seeking additional contributions from offshore wind developers to a compensation fund, given that they are the source of the billions of revenues the federal government has already collected.

1. Intended Purpose of a Compensation Program

We wholeheartedly agree with the intended purpose of a regional framework to advance a fisheries compensation fund. The development of offshore wind is moving along at a rapid pace with multiple lease areas in current development or anticipated in the coming years. Each of these developments are owned and operated by several different entities. The fishing community views offshore wind development in its entirety. Therefore, it is imperative that (1) an all-encompassing, simple, fair, and transparent mitigation fund is developed to lessen the burden on our fishermen. Members of the commercial fishing industry are already understandably concerned about offshore wind development and given the manner in which commercial fishing has been regulated by the federal government, they are skeptical of those agencies positioned to regulate offshore wind and its inevitable impacts.

The list of fundable activities presented in this document on (pg. 11) is an extensive and appropriate measure of the compensatory actions. Based on our experiences here in the Port New Bedford, we suggest that cooperative research, support for participation in the management process, and funding to offset devaluation or loss of income are the most important activities to focus on. Furthermore, we urge you to address the issue of the probable increase in insurance costs or the potential of loss of access to insurance within the leased wind areas as well as consider the following fundable actions in addition to the activities listed in the (RFI):

- Assist in providing capital/funding for marketing campaigns to promote fishery products to increase demand for locally-produced food and increase fisheries' viability and profitability;
- Subsidies in the form of a fixed reduction of fuel prices to reduce fuel costs to fisherman and alleviate potential wind farm impacts to profitability;
- Additional/supplemental employment opportunities to fisherman as guards/patrols, data collectors for research & environmental assessments and other services (joint data collection/impact studies);
- Coordinating construction schedule taking into account high use areas, seasonality, and closure periods;
- Financial support for fisheries enhancement programs. Mitigation shouldn't end and compensation begin after project siting measures have been accomplished;
- Port infrastructure to prepare for offshore wind and maintaining the structural resources for the fishing industry.

We recommend that the scoping document state that the Regional Fund Administrator shall, rather than "could" expand its scope under this framework to fund transition, adaptation, and resilience as it is unclear when, or if, additional funds will become available in the future.

We continue to encourage extensive coordination and collaboration with fishing industry stakeholders to expand the scope of this program based on data, research and real-life experiences, rather than simply relying on National Environmental Policy Act (NEPA) defined impacts. This program must proactively be developed to understand the on-going needs of the fishing community and build in the flexibility needed to address unforeseen impacts that are inevitable with any new industry.

2. Anticipated Losses and Costs

We agree with this all-encompassing list of potential lost revenue (Table 1). Yet, we presume the explanation for gear loss and associated lost fishing not being included is that gear loss programs are already established and being managed by the early OSW developers themselves. This may prove to be problematic as the fishing industry views offshore wind in its entirety. Most fishermen do not – and should not be expected to – discern between each separate OSW wind project area. The burden of time, effort and process should not fall on fishermen to identify the separate and appropriate program of each developer which applies based on the location of gear loss or damage. Any gear loss program already established should be a shared standardization under the same umbrella; a collaborative plan for damage to fishing gear from structures or cables, with an appropriate protocol for proof of damage, cost, down time, etc. Furthermore, it must be made clear that any gear loss or loss of fishing is eligible for compensation during the construction and decommissioning phase of these projects as well.

One of our biggest concerns is the up or downstream effects to shoreside businesses and the potential devaluation of these businesses. This, coupled with ex-vessel landings, will be a major potential lost revenue that although complicated, must be defined appropriately. Again, it important to develop a proper economic multiplier of ex-vessel landings to cover shoreside income loss based on the cumulative effects of all east coast OSW development. With over 30 seafood processing businesses and a robust array of warehouses, fuel, ice houses, shipyards, settlement houses, legal and other professional support services, mechanics and distributors, the Port of New Bedford sees over 150 out of state fishing vessels from Maine to North Carolina land their catch here in our Port. These upstream and downstream businesses are part of the entire seafood supply chain, dependent on harvests from areas being converted for OSW, and should not be undervalued. **Shoreside income loss determinations must be analyzed on a port-by-port basis based upon the actual losses incurred, not geographic proximity to a particular project.**

The clearest justification for a port-based impact and compensation analysis can be seen in the development of the wind areas in the New York Bight. While those developments will be offshore of New York and New Jersey, and the electricity generated will go to those states as well, the fishing impacts to those two states will be negligible. The Bight is home to some of the most prosperous scallop fishing grounds, which are harvested to vast degree by fishing vessels from New Bedford, Massachusetts. As we summarize later in this comment letter, the percentage value of landings from this area in New Bedford dwarfs any other port in the region. Thus, a state-by-state approach for compensation would not only disproportionately reward certain states, but it could also have a devastating impact on the ports and communities that will bear the brunt of losses caused by offshore wind development.

Although touched upon in this RFI, it is important to note that there will also be indirect losses from OSW development. Most notably, to fully reach the Biden Administration's climate change goals there would need to be 25-30 ports to take part in marshaling, construction and operations and maintenance activities. Although we have seen investment on the federal and state level for infrastructure improvements, build-out of these facilities is becoming an expensive

proposition, particularly with the technological evolution of the industry requiring ever changing shoreside capabilities – ever heavier load bearing, vastly more open-air laydown space, larger manufacturing facilities to name a few. Furthermore, infrastructure improvements are vital to find and prepare enough space and resources for our fishing industry to continue to thrive. Financial assistance from OSW developers for port infrastructure should be part of any compensation program.

On another note, we suggest that the RFI, and any guidelines BOEM develops for that matter, should amend the definition, or avoid the use of the word “decommission.” The word “decommission” as used in BOEM’s regulations suggests that these wind lease areas will be removed from service after some period and the seabed returned to its original pre-construction state. While this technically, in a vacuum, may be correct, we are sure that if OSW development is as successful as we hope, the structures will be replaced with new technically advanced assemblies. “Decommission” gives a false sense to the fishing industry, and others, that OSW will cease to exist after 30 or so years. It also suggests a massive deconstruction and removal effort that in itself will likely take decades – effectively the reverse of all the current construction methods and steps – and generate an entirely new wave of disruption and loss to the commercial fishing industry and the ocean environment – likely requiring its own stand-alone compensation program at that time.

3. Regional Geographic Scope

We believe a regional or cumulative approach to fund administration is essential as we continue to stress that an individual payor (developer), each with their own rules goals, will seek the least costly and burdensome system of mitigation compensation. The very nature of commercial offshore fishing is a regional one. Therefore, a regional approach, although imperfect, is the best chance to achieve efficiency and effectiveness. This regional approach must be unified in the sense that it is fairly based on actual impact on fisheries, rather than a “one size fits all” model or equal distribution. As aforementioned, distribution models must be calculated on a port-by-port foundation based on landings, data, economic output, and employment. Those most affected shall be prioritized for mitigation and compensatory actions.

A single-project approach is fundamentally deficient because cumulative impacts of multiple OSW developments across our entire coastline, will produce collective impacts to fishing industries and the communities supporting them, not to mention the regional biological effects on our collective ocean resources. Impacts will only grow in scope and force as more plans are built out.

4. A Unified Regional Fund

We have concluded, based on our extensive outreach to the fishing community and relevant stakeholders, that, separate, project-by-project approaches simply would not be feasible or advance the desired goals the fishing industry is seeking. A common set of rules and procedures established by this process would not only minimize the burden of fishermen seeking compensation but will give OSW developers clear expectations for planning and development

purposes. Such a regional fund would also rid them of the administrative burden of distributing appropriate compensation to the relevant parties. A unified “one stop shop” will prove advantageous to the fishing industry and the offshore wind industry, alike. Ease of participation and use will also likely reduce the potential for legal conflicts between the wind industry and commercial fishing. Furthermore, separate fund categories under this unified regional fund may prove to be more practical by delineating between mitigation and compensation directly to fishermen, and funds directed to shoreside businesses and research development (i.e an Innovation Fund). In fact, as a feature of Vineyard Wind’s Fisheries Mitigation Plan, agreed to be the Commonwealth of Massachusetts, was a Fisheries Innovation Fund created to promote co-existence between offshore wind development and longstanding fishing activities focused on shoreside businesses, new technologies, and studies on the impact to fishery resources. This may serve as a model for the region as whole. <https://www.mass.gov/doc/5212020-memorandum-of-agreement-vineyard-wind-1-fisheries-mitigation/download>

Similar to the impacts on landings, the impacts to shoreside businesses will be disproportionately in ports that rely heavily on fishing grounds in particular lease areas that may be geographically distant from those ports. As mentioned above, the clearest example is the fishing grounds in the NY Bight. Reductions in either access to the areas or depletion of the species to be harvested, will have a direct negative impact on the processors, fuel, and other services in the Port of New Bedford.

5. Key Qualities of an Administrator

By managing and distributing fisheries compensatory mitigation funds, and administrator must have extensive fishing industry experience knowledge and understanding of the overall impacts offshore wind will have on fishermen and the ecosystems they rely on. To have the credibility in the eyes of the stakeholders, and those most affected, is the best means to have sustainability, for both industries, for the foreseeable future. Any administrator must be seen by the fishing industry as detached sufficiently from the federal regulatory structure in order to be “fair” in the administration of the funds. Commercial fishing is one of the most heavily regulated industries, the more an administrator is tied to either BOEM, NOAA or NMFS, the less the fishermen will trust the process.

6. Key Tasks of an Administrator

We acknowledge that the main task of a regional fund administrator is to manage the “money in money out” aspect of the program. In doing so, we endorse Option 1 (pg.16) Design First, Hire Second protocols. It is our opinion that it will be difficult to find a fund administrator with the extensive experience necessary to finalize how the compensation fund would operate. We have faith that the states, in consultation with the fishing industry, OSW wind developers, BOEM, NOAA and the research community can continue to collaboratively expand on the work that has already been done. All while continuing to have flexibility by engaging in robust stakeholder engagement, driven by the fishing industry and those supporting mitigating the impacts OSW will have on the industry. Establishing a governing board to which the administrator would

report to and have the power to hear and rule on appeals, would be preferable as part of this overall program.

It is also critical that the tasks set forth by the states to the administrator, in regard to funding, must have the force and effect of law. One-time lump sum payments to this fund will not cover all the anticipated losses and costs proposed in the RFI and other effects that may be added based on comments received from this RFI. Sources of funding, whether through developers alone, or in conjunction with Congressional action, must be flexible, reliable and on-going. It will take years to completely understand the biological, social, and economic impacts OSW wind development will have on the fishing community and those that rely on its output.

7. Technical Considerations for Fund Administration and a Compensation Framework

7.1 Eligibility for Compensation

Eligibility for compensation must begin and end with life of the project(s), from the awarding of leases until fisheries are no longer affected. We note that BOEM has frequently attempted to limit financial compensation to fishermen to a period of five (5) years after the project is in operation. This is based on a clear misunderstanding of the impact of offshore wind on commercial fishing and a misplaced notion that fishermen can simply “adapt” and fish somewhere else. Study after study has indicated that fishermen have been catching the same species in the same places for hundreds of years. Fishermen are the displaced prior user of the OCS, it should not be up to them to “adapt” to an encroachment on their use. There is no new habitat being created for the fishermen to fish in. Quite the opposite is true for the scallop industry, wind installations and their associated scour pads are creating habitat for scallop predators where it did not exist before. Developers are not going to agree to pay for lost revenue for the duration of a project and fishermen are not going to “adapt” within 5 years. We suggest a payment system that compensates fully for lost income for a period of at least ten (10) years after project completion and then diminishes by a percentage each year thereafter.

It is also vital that the project area for the purposes of compensation also include marshalling, staging, construction, and operations and maintenance areas (ports). Eligibility for compensation, to be determined through this framework, must include the potential claimants listed in (7.1) as well municipalities and other stakeholders who support and provide resources for the fishing industry through community benefit agreements.

7.2 Evidence of Impacts and Burden of Proof

We strongly believe that the “burden of proof” must lie with developers to prove to the fishing community that they are not causing environmental or economic harm on a macro level (minus gear-loss claims). To the greatest extent possible this must be done before development is allowed to proceed further. The uncertainty about the total impacts of wind energy development is a major reason why the fishing industry distrusts the current process. The fishing industry

deserves a complete understanding and sound science of the impacts on habitats, safety and navigation, and the social and economic impacts to fisheries and the ports they rely on. With that said, research and data development must be funded by OSW yet not driven by OSW. It is important that funding from all regional developments shall go to a collective research strategy utilizing our academic institutions, the experiences and knowledge of our fishing communities, research that has and will be conducted by developers, as well as NOAA. Having one unified data collection process will address limitations to singular methodologies that are currently being used absent of the advent of OSW development.

It is important that any base line for compensation be created with the input of the fishing industry and not based on the data provided by the developers or BOEM. In several EIS statements, BOEM has stated that the “no-build” option for a project will have the same impact on commercial fishing as the full build. BOEM and the developers base this assertion on what they perceive as the inevitable decline of commercial fishing because of NOAA regulations, offshore development and climate change. This mentality cannot be a part of any compensation structure. As noted above, independent ongoing scientific surveys and research must be a part of the equation. Fishermen will respect the research if it is done correctly. Fishermen will not participate in an exercise where they are presented with an attempt to lessen the amount paid to them based upon speculation.

7.3 Administrative Fees

Preferably, administrative fees should be covered outside of the mitigation funds as suggested in the RFI. Monies set aside for administrative purposes should be built into the overall agreement between the state and developer, subject to revision on an agreed upon time frame. We would have some concern in funding administrative fees through an escrow account where compensation funds are deposited, in the sense that there is currently uncertainty in the funding mechanisms and length of the funding commitments. There should be no fees associated with the making of a claim. It should not cost the fishermen to get payment for their own lost income. There may be a fee for an appeal if necessary.

7.4 Data Verification

Vessel specific information can be obtained by each vessel from NOAA and submitted to the administrator to demonstrate a catch history in the area in question and any revenue decline associated with the construction, operation and maintenance of any wind area (as stated earlier, the definition of wind area for the purposes of compensation must, at a minimum, include all abutting areas). As indicated in the scoping document, there may need to be coordination with NOAA on this as any compensation fund based on NOAA data will likely tax already limited NOAA resources. It does not appear to be possible to leave it to the states to handle data verification as the state entities involved may not have access to the full range of data necessary for a claim. While we agree that existing entities must be used for the data, it is also probable that state entities do not have the statutory authority to share data with the administrator or participate in the fund administration.

8. Appeals Process

Any appeal of the decision of an administrator should go to a review board or committee. The final appeal of a decision could be an arbitrator. Any application for compensation from the fund could contain an agreement by both the developer and fisherman to arbitration as the final decision.

9. Governance Structure

9.1 Governing Board Membership

In this interest of credibility and transparency we endorse (Option #3). A co-led governing board:

Membership on the board should be made up of representatives for all the regional states. It is important to note that the impact of offshore wind is not necessarily geographic. In other words, the true impact of any particular project, for the purposes of compensation, may be felt several states away from the state closest to the installation. Care must be taken in setting up the structure of the governing board to allow those states that suffer substantially more impact with a weighted vote. Perhaps an increased number of seats could go to the states most effected based on number of commercial fishing vessels and percentage of landings in ports relative to their state compared to others.

9.2 Governing Board Relation to the Regional Fund Administrator

It is difficult to conceive of an existing entity that would possess all the traits required to be an administrator. It is far more likely that there is an entity that has some of the traits and can learn the rest. Trusts are a good starting point. Non-profits are more problematic as they frequently have a mission statement that could place them in conflict with one of the stakeholders in the process. It seems that the intent would be to issue an RFP for an administrator to be initially funded by the states. Several states have prohibitions on funding and appropriations for non-profits and other entities. This may not be a sustainable model unless codified at both the federal and state level.

9.3 Limitations

The ideal place for requiring the developers to compensate for losses by other users of the OCS would have been in the leases themselves but we are now 23 leases into the offshore wind lease program and there is no fisheries mitigation framework or funding. As we have stated earlier, the ideal mechanism for fisheries compensation is some form of codification on the federal level. Absent that, cooperation from the developers and BOEM to agree to language in a project's COP that requires participation in the Regional Administrator framework would be extremely helpful.

BOEM possesses the statutory authority to review compliance with a COP, and the associated assumptions regarding impact therein, on a yearly basis or such other time period they decide. A commitment by BOEM to building reference to the Administrator framework would give the states a strong enforcement and funding mechanism. BOEM has been clear that they cannot “compel” payment or hold the funds, but they can certainly incorporate compliance with outside compensation mechanisms.

As you know, the primary source of state level influence on the offshore wind developers is the consistency analysis under the EIS framework. A secondary area of influence is the power purchase bidding and contracting mechanisms. The one glaring problem with this is that the process tends to be geographically centered. That is, the state(s) with the most influence are closest in distance to the area they are commenting on or contracting with. In the case of compensation for lost revenue from commercial fishing, geography has little to do with the impact of the loss. The bulk of the dollar value of loss for the areas in the NY bight or other areas off of New York and New Jersey will occur in Massachusetts in the Port of New Bedford. Case in point, a 2018 Rhode Island Department of Environmental Management study, *Spatiotemporal and Economic Analysis of VMS Data – NY Call Areas* tabulates the landings from the NY Bight Call Areas, and breaks down the impacts by port for the Fairways North, Fairways South and Hudson North areas (due to data limitations, RI DEM did not analyze the Hudson South area). The volume of fish from these areas that were landed in New Bedford speaks directly to the threat these wind areas would have on New Bedford's maritime economy:

Revenue Impacts of NY Bight Call Areas to New Bedford Landings

(RI DEM *Spatiotemporal and Economic Analysis of VMS Data – NY Call Areas*, 2018)

Call area	2011	2012	2013	2014	2015	2016	Total
Fairways North	\$4,354,076.82	\$1,225,436.15	\$2,577,906.87	\$7,257,608.36	\$1,012,223.80	\$2,365,528.85	\$18,792,781
Fairways South	\$1,872,925.94	\$4,548,157.70	\$1,121,143.81	\$4,486,961.36	\$598,665.44	\$515,296.51	\$13,143,151
Hudson North	\$15,021,268.6	\$8,473,892.11	\$3,938,295.05	\$32,942,373.5	\$6,351,741.71	\$24,542,965.75*	\$91,270,541
						TOTAL	\$123,206,473

*2016 includes \$2,541,670.25 of landings from the Town of Fairhaven, MA

While the RI DEM study does not have data on the Hudson South area, Appendix C of the NOAA letter estimates that the six-year landings for Hudson South area was \$115,379,000.¹ Of that total, \$98,532,000 (85%) of the revenue was derived from scallops, which are primarily offloaded in New Bedford. [RIDEM Division of Marine Fisheries](#)

It is also important to note that any leverage the states have over the developers tends to be short lived. It is not ongoing leverage throughout the life of the project. For this reason, the assumption, absent federal codification or cooperation, must be that there will be only one future “bite at the apple” when it comes to funding for fisheries mitigation from the developers. Any initial funding must be sufficient to cover all of the mitigation necessary from the beginning. As stated above, it should be the first priority of previously generated lease proceeds to capitalize the program. Once there is no leverage, there is no compelling reason for the developers to keep putting money in once they are up and running. All future lease auctions must clearly define the share of revenues allocated to the compensation program first, before any other budget use of the funds can be approved.

9.4 Advisory Boards, Committee or Panels

The idea of advisory boards, committees or panels is a good one. There are two issues to address in connection with such entities:

- The panels in question should be comprised of representatives of the fisheries and ports most affected by the wind area in question.
- Care must be taken to make sure that the make-up of any panel has sufficient representation that has the best interests of fishermen as their primary interest. Frequently there is an assumption that entities like NOAA, NMFS, Regional Management Councils, and state DMF departments have the interests of fishermen at heart. While many of these agencies consider the interests of fishermen, their primary interest is fish, not fishermen.

Conclusion

Fishermen across the United States, and especially here in the Northeast, strongly value their way of life and the resources available to make a good, honest living. It goes without saying that there is fear of the unknown when it comes the disruptions offshore wind development will have on their industry. It is incumbent on us to develop a regional framework for mitigation, which may hopefully be codified into a national framework. This framework includes ongoing scientific and economic analyses, technical aspects of fishery management and ecosystems, and socio-economic values, all with the direct and substantial participation of our fishermen. Lastly, any mitigation discussions must consider the protection of the workers, on the vessels, in the processing facilities, throughout shoreside businesses, and the communities supporting them

Impacts from offshore wind will only grow in scope and intensity as more projects are built out. A single-project mitigation approach is fundamentally deficient since cumulative effects of multiple OSW developments across a region will produce combined impacts more severe than the additive effects of any one single project. A cumulative approach should be taken to all components of individual projects from siting to mitigation. We are pleased that this (9) state initiative, establishing a framework for a regional fisheries compensation fund, is at this stage and are appreciative for the opportunity to take part in these discussions. We remain available to

assist in any way moving forward. Most importantly, we hope that the work you are doing here developing this important framework will act as a basis for future Congressional action.

As the Executive Director of the New Bedford Port Authority, please accept these comments on behalf of the City and Port of New Bedford.

Sincerely,

A large rectangular black redaction box covering the signature area.A black redaction box covering a line of text, possibly a title or contact information.

Cc:

A large black redaction box covering the list of recipients for the email.



Comments Comments <comments@offshorewindpower.org>

Regional Fisheries Compensation Administrator RFI:

1 message

Tue, Feb 7, 2023 at 2:59 PM

[REDACTED]
to: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

To whom it may concern:

Subject: Regional Fisheries Compensation Administrator RFI:

Thank you for the opportunity to comment:

I represent the West Coast Pelagic Conservation Group (WCP). Although our primary long-term interest is small pelagic species, our present focus is on cooperative research in concert with the NOAA's Southwest Fisheries Science Center (SWFSC). Our members, both fishermen and processors, harvest, and process sustainable seafood from every major fishery on the West Coast and Alaska. Our processors have the five largest operations on the West Coast north of San Francisco. Combined with our fishermen we represent over 4000 jobs and supply millions of pounds of sustainable seafood to the US and the world. This is accomplished with one of the lowest carbon footprints of any food industry per pound of protein.

At a time when the UN and other studies predict increasing magnitudes of people in lower income brackets of the world and the U.S will not have enough to eat the US Fishing Industry is capable of contributing a significant amount of nutritious protein to help fill that void on a sustainable basis. With the advent of the COVID pandemic it quickly was apparent that global food supply chains that were thought invulnerable, are in fact, very fragile. This is important, as US Food Security is critical to the nation's general welfare and that of its citizens.

The Magnuson-Stevens Conservation Act (MSA) was created in part to establish the Americanization of our US fisheries and to secure our coastal waters seafood supply for the benefit our entire nation. Although MSA did not establish fishing rights it created a legalized platform of stringent governance to sustain the US fisheries resources and to generate an economically friendly, and stable regulatory management structure that would allow US citizens to securely invest in the sustainable harvest of our nation's bountiful supply of seafood. From that genesis and with new confidence, loaning institutions financed fishermen and processors with billions of dollars, to implement a restructuring of the US Seafood Industry that now produces billions of pounds of seafood and employs millions. To destroy that legalized structure and usurp this centuries old activity by industrializing our oceans would be a dissolute injustice to American citizens and the investors and workers who built the Seafood Industry. It would be a national impairment to our nation's food security.

Regardless of the source, WCP is interested in any compensatory package that might be applied to fishermen and the fishing industry writ large. As has been formally stated numerous times the fishing industry stands to lose enormous numbers of on-the-water jobs as well as many shoreside jobs when Offshore Wind Energy (OSW) begins surveying and erecting wind projects that displace our fisheries. OSW ecosystem impacts may engender further degradation to

our fishery stocks as well as endangered species. Most of the coastal communities will not qualify for any type of OSW related work due to lack of local venues large enough or harbors deep enough to provide a suitable platform for OSW infrastructure.

WCP understands the RFI refers to hiring a compensation administrator. As we did not have time to study the entirety of proffered documents, we will only cover several tenets for fair and equitable compensation and a recommendation for the administrator hiring procedure and support process for that position.

- WCP believes that a single point of contact for the fair and equitable compensation fishermen and processors receive is much cleaner and far less confusing than negotiating separately with each developer and multiple independent procedures. Further there is no necessary compliance requirement for developers. As fishermen may fish the waters off multiple states and lose catch and income based on a host of OSW projects they would be forced to deal with multiple developers, each of which may have a different procedural pathway. Processors losses may be even more difficult to calculate if they are buying from a multitude of fishermen fishing over large geographic areas.
- In the Pacific Northwest almost all fishing industry participants agree that our fisheries are not for sale. However, if there is to be compensation for losses it should be required that it cover the entirety of fair and real loss of value. As many fishing industry operations are multigenerational with plans of continuance a “one and done” compensation package is inappropriate, nor would it cover all continuing income losses, and the increasing stranded asset values as the OSW projects multiply and displace additional production and businesses.
- The first major hurdle for our industry is to establish equitable, multiple year income and stranded assets losses that will continue over the life of each wind project. These losses will grow as more OSW projects are constructed. Equitable compensatory treatment must be based on establishing the real and equitable value loss of our income and assets over the realistic timeline that the business was to operate. At the least, income compensation should span one generation of business and cover all employment income losses for a minimum of a generation. Stranded capital assets and mortgaged assets should be approached differently but they should not cause bankruptcy, foreclosure, or a loss of net worth. These asset valuations will continue to decrease as OSW increases as there will be fewer markets to sell the assets as the fisheries are reduced or are lost. There will be fewer market venues in proportion to the expansion of wind energy. Lastly, payments to build fisheries infrastructure (i.e., Icehouses) when the fishing industry has collapsed is a waste of money and does nothing for those forced out of business. “Whole package” compensation should be paid to those that are forced to leave the business but those that remain to fish will likely require remuneration as well to remain whole. In addition permits and individual quota that have been worth tens of millions if used for fishing will shrink to zero value.
- Administrator’s work structure: First the goals and objectives should be laid out by a fishing industry workgroup before hiring the administrator and there should be a working advisory board composed of people from the fishing industry. This advisory board should have non-voting representative advisors from each state and one representative each from BOEM and BSEE. They would establish policy and rules of conduct.
- Compensation should not be left up to the developers or BOEM. NOAA Fisheries should be responsible to ensure without prejudice that thorough research and analysis by economists and sociologists verifies the severity of these losses. The Administrator for the “nine-state” region and other regions should work with displaced fishermen to ensure fair and equitable treatment.

Thank you again for the opportunity to comment. WCP will be following your process closely.

Thank you,

Sincerely

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Comments Comments <comments@offshorewindpower.org>

Regional Fund Administrator RFI

1 message

Tue, Feb 7, 2023 at 4:00 PM

[REDACTED]
To: "comments@offshorewindpower.org" <comments@offshorewindpower.org>

[REDACTED]

[REDACTED]

February 6, 2023

Re: Regional Fund Administrator RFI

I am commenting as an employee of Empire Fisheries, a commercial fishing business out of the port of Stonington, CT. Our fleet of scallop and squid boats represent the largest commercial fishing operation in the state. While we are based out of Stonington, CT our boats travel and fish in federal waters along the New England coast and mid-Atlantic.

We appreciate a streamlined regional approach which would avoid having to negotiate with each individual developer. The regional approach is particularly critical for the scallop industry because scallop vessels often travel long distances from their home ports, depending on where the resource can be found and where the rotational access areas are currently located. We also appreciate that the scoping document acknowledges the need for flexibility to adapt to real-life impacts of offshore wind as they develop.

We are concerned that the RFI uses BOEM's Fisheries Mitigation Guidance as the approach for funding. The current draft of the Mitigation Guidance severely undervalues the impacts to fisheries. It does not provide sufficient funding for long-term impacts or the compounding effects of multiple wind farms in one area. The Administrator's success depends on appropriate funding. We have no indication that BOEM will accomplish this.

For example, the current draft assumes that fisheries will be able to transition or coexist with wind farms. This is untrue for the scallop industry. Impacts to the scallop industry will not be able to be mitigated or reduced over time. The scallop resource cannot be moved or replaced and therefore removal of historic scallop grounds represents an immediate and direct loss of catch/income to the scallopers.

In addition to the fact that the mitigation guidelines do not provide a mechanism for setting aside sufficient funds, there is also currently no regulatory power to require developers to use the regional fund. Therefore, priority for these limited funds should be given first to commercial fishing businesses. Funding for shoreside businesses should be included but cannot be prioritized ahead of the fishing industry. A better solution would be appropriate levels of funding. Recreational and for-hire fishers should not be included here or should only be included if administered under a separate fund with separate funding sources.

Mitigation funding should go towards both losses and increased costs. Losses should include both permit values and stranded assets.

Regulators and developers should work with the fishing industry to monitor impacts in real time and adjust compensation accordingly. As we undertake an industrialization of the ocean unprecedented in scale and scope, we

must recognize that current models will never accurately predict future impacts.

The burden of proof should not be on the fishing industry alone to furnish evidence of impacts. Processes should reduce the burden of time and effort on the fishers and the fishing industry. Further, developers should pay the administrative, data management, and any other costs associated with managing the fund.

Governance should be by a board including fishing industry members experienced in a wide range of fishing industries and gear types. Developers, employees of the developers, and close associates of the developers should be banned from sitting on the board.

An advisory board should be put in place ahead of seating the Administrator. The advisory board should develop processes and the expectations of the Administrator. This board should include fishers as well as representatives from NMFS, NOAA, and the U.S. Coast Guard. The administrator should have experience in fisheries as well as dealing with larger issues of environmental damage and impacts to communities.

While we focus on getting this process right, we must remember that the first priority in mitigation is avoidance. Building resiliency into our fishing industries should also be a priority. Compensation should be a last resort.

Thank you for the opportunity to comment.

VINEYARD WIND 1

February 7, 2023

Submitted via comments@offshorewindpower.org

RE: Response to Request for Information to Inform Establishment of a Regional Fisheries Compensatory Mitigation Fund Advisor

Vineyard Wind 1 LLC (Vineyard Wind) appreciates the opportunity to submit comments in response to the Request for Information issued by nine Atlantic Coast States (the “States”) on December 12, 2022. We welcome the States’ efforts to advance a consistent regional approach for the administration of fisheries compensatory mitigation funding. Our comments largely focus on the experience we have gained developing the fisheries compensatory mitigation program for Vineyard Wind 1, which may be useful to consider as the States further refine the intended purpose of the compensation program, anticipated losses and costs that will be covered, and the key tasks of the fund administrator. Vineyard Wind 1 is currently under construction and will be the nation’s first utility-scale offshore wind project. The offshore export cable corridor (OECC) portion of our fisheries compensatory mitigation program (the “OECC Program”) was launched last year before the start of offshore cable installation activities.

In accordance with our commitment to provide compensatory mitigation to commercial fishermen, we have spent almost two years evaluating approaches to implementing a workable and transparent compensation process for Vineyard Wind 1. The key objectives that have guided our efforts include (1) creating a fair, simple, and transparent program; (2) limiting the administrative burden for all parties; (3) reducing the potential for gaming and fraud; (4) resolving uncertainties and data limitations in the fishermen’s favor; and (5) compensate eligible fishermen. To meet these objectives, we have endeavored to develop a data-driven compensation approach that utilizes best available data and consistent criteria, and we have done this in consultation with state agencies, the National Oceanic Atmospheric Administration (NOAA), commercial fishermen, and other stakeholders. A critical takeaway from our work to develop the compensatory mitigation program for Vineyard Wind 1 is that a claims-based/causation model for fisheries compensation is largely unworkable on a project-by-project basis. A host of challenges, including current data limitations, confidentiality concerns, and multiple confounding factors, make it nearly impossible to tie specific fishing vessel revenues and/or cost impacts to individual offshore wind projects.

As an example, a claims-based/causation model approach would require a fisherman to demonstrate revenue impacts from one or more offshore wind projects relative to a baseline (e.g., a fishing vessel earned \$X from a project area prior to the construction and operation of the project and that project has reduced the fishing vessel’s earnings by \$Y in a given year). However, establishing baselines for individual fishing vessels and entities is difficult as most fishermen do not track or record vessel movements, catch data, landings, etc. at a fine enough scale to link fishing activities or revenues to a specific project area or offshore export cable corridor (OECC) area.

While NOAA Fisheries tracks vessel information through a Permit History Identifier, confidentiality concerns limit access to these data. Fishermen can request access to their data, but it would be a significant lift for fishermen or any other party to process these data to establish a baseline for individual fishing vessels thus increasing the cost and administrative burden associated with these programs. Moreover, NOAA Fisheries data may need to be supplemented with state data (e.g., nearshore fisheries, lobster, Jonah crab) and other data sources or analyses to provide a complete picture.

A claims-based/causation model would also require fishermen to demonstrate economic impacts to qualify for compensation. Unfortunately, multiple confounding factors and recordkeeping burdens will frustrate efforts to establish causation between an offshore wind project and changes to a fishing vessel's earnings. Confounding factors include other offshore wind projects, climate change, seasonal variability, changes in fishing movements, and fluctuating seafood and commodity prices. Furthermore, in assessing a compensation claim, it would be hard to determine the extent to which fishermen could have recouped lost revenues from other fishing areas and whether they experienced an increase in costs. For these reasons, a claims-based/causation model is unlikely to be feasible for most project-specific compensation programs in the near to medium term.

A claims-based/causation model may be workable in some fashion at a regional level; however, standardizing the approach to establishing baselines and evaluating impacts is essential. To facilitate this, it may be useful to first view the universe of potential economic impacts to fishing interests by offshore wind project phase and/or project area. For Vineyard Wind 1, we developed separate compensation methodologies for potential economic impacts associated with the project area and OECC. This approach recognizes that potential impacts are likely to differ between project phases (e.g., construction and operations) and fishing gear types (e.g., fixed versus mobile gear).

For the OECC, we determined early on that the data to tie individual fishing activities and revenues to a 500-meter-wide corridor between our lease area and the cable landfall site were effectively non-existent. To address this, we used Statistical Reporting Area and other data to develop a conservative economic exposure estimate for the OECC. This estimate formed the basis for compensation, but the final estimate was adjusted upwards to account for potential time-of-year impacts and data limitations identified in consultation with NOAA, the Massachusetts Department of Marine Fisheries, and fixed-gear fishermen who fish along the OECC.

To identify the universe of potentially impacted fishermen for the OECC Program, we developed a pre-qualification process whereby commercial fixed-gear fishing vessel owners historically engaged in fishing activities in the vicinity of the OECC¹ could apply to establish their eligibility for the program. In order to qualify, fishermen were required to provide a copy of a valid 2022 commercial fishing permit from Massachusetts or NOAA Fisheries; a copy of a current government-issued vessel registration showing ownership or a vessel lease agreement; proof of fishing activities in any of the years between 2017 and

¹ Vineyard Wind defined "in the vicinity" of the OECC to include the 500-meter wide OECC plus a 1-kilometer buffer (500 meters on each side of the OECC).

2021;² and AIS information if available. Eligibility forms were reviewed on behalf of Vineyard Wind by one of our Fisheries Representative organizations to provide fishermen with confidence in the review process and limit the potential for fraud. If deemed eligible, fishermen received a one-time payment from Vineyard Wind for potential impacts from cable installation activities. Fishermen were not required to show any economic impacts to receive the payment, they only needed to pre-qualify for the OECC Program. Compensation for potential impacts during the operations phase will be handled separately through Vineyard Wind's existing gear loss and compensation program as fishing is generally not expected to be impacted along the OECC during the operations phase aside from potential gear snags on any cable protection that may be installed. Cable protection will also be marked and its location will be shared with fishermen to reduce the risk of gear snags.

Given the small size and limited duration of the OECC Program, Vineyard Wind did not contract with a third-party administrator; however, we are in the process of identifying a third-party administrator for the project area program (referred to as the WDA [Wind Development Area] Program). The WDA Program is structured similarly to the OECC Program in that it includes a pre-qualification process and a standardized compensation approach that does not require fishermen to demonstrate economic impacts to receive payments. As with the OECC Program, the WDA Program's pre-qualification process will rely on local fisheries representatives to review applications and determine eligibility for compensation payments. Fishermen will remain eligible to receive compensation under the WDA Program for as long as they remain active fishermen. Compensation will be based on historical annual revenue data provided by fishermen and validated through the pre-qualification process. With this structure, the pool of eligible fishermen for the WDA Program is identified upfront for the life of the program, the administrative burden on fishermen is significantly reduced, and the third-party administrator is not tasked with evaluating individual compensation claims.

We support the States' efforts to address fisheries compensatory mitigation at a regional scale through a non-governmental, third-party-administered funding mechanism. Based on our experience with the Vineyard Wind 1 fisheries compensatory mitigation program, we offer the following recommendations:

- **Eligibility for compensation:** The States should consider including an eligibility period or pre-qualification process to identify the pool of potentially impacted fishermen upfront. Doing so can simplify the compensation process for all parties.
- **Unified regional fund:** Given the challenges with establishing offshore wind project-specific revenue baselines and economic impacts, we support the unified regional fund approach. We strongly favor the development of standardized data-driven approaches that allow fishermen to be fairly and equitably compensated without the need to demonstrate direct and individualized economic impacts. Such approaches can dramatically reduce potential administrative burdens for fishermen while providing reasonable compensation for likely impacts. Separate, claims-based approaches, however, may be appropriate for shore-side fisheries-related businesses.
- **Fisheries advisors:** Independent, local fisheries representatives who are familiar with the fishermen and fishing communities that may be impacted by offshore wind should be integrated

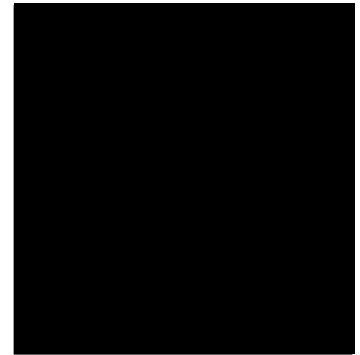
² Proof of fishing activity included, but was not limited to, Massachusetts commercial fishing reports, Vessel Trip Reporting, Vessel Monitoring System information, chart plotter/data images, logbooks, AIS, or other trip level reporting data that established fishing activities in the vicinity of the OECC.

into any eligibility process and have an appropriate role in any claims verification and/or appeals process.

- **Regional Fund Administrator:** Vineyard Wind recommends a design first, hire second approach (i.e., Option 1). A design-first approach in which the third-party administrator serves primarily in a ministerial role can significantly limit the costs and administrative burdens associated with a regional compensation program. A design-first approach can also better ensure that the individual or entity hired has the necessary skills and expertise to successfully administer the program.
- **Governing Board Membership:** Vineyard Wind recommends that the Governing Board be state-led (i.e., Option 1) and supports a meaningful advisory role for commercial and for-hire recreational fishing industries and offshore wind leaseholders.

Finally, as offshore wind projects move forward, we will gain a much better understanding of actual impacts on the commercial and for-hire recreational fishing industries over the several decade-long offshore wind project lifecycle. We plan to continue to work closely with state and federal agencies, fishermen, and other stakeholders to establish a regional fund for offshore wind projects and would favor the use of such a fund to the extent it aligns with the objectives established for the Vineyard Wind 1 fisheries compensatory mitigation program.

Thank you for your consideration.



February 7, 2023

VIA ELECTRONIC SUBMISSION

Comments@offshorewindpower.org

On behalf of the Fisheries Survival Fund (“FSF”), we respectfully submit these comments in response to the nine states’ Request for Information (“RFI”) regarding the establishment of a framework for a regional fund administrator for fisheries compensatory mitigation. FSF represents the vast majority of Full-Time Limited Access permit holders in the Atlantic sea scallop fishery, with members home-ported across the East Coast from Massachusetts to North Carolina. FSF has participated actively and consistently in debate and deliberations relating to the development of wind farms offshore New England and the Mid-Atlantic.

In general, FSF strongly believes the best way to protect fishermen from offshore wind energy development is for BOEM to avoid siting windfarms on important fishing grounds. In repeated comments to BOEM, FSF has cited to a wide range of scientific literature demonstrating the negative impacts that offshore wind farms will have on fisheries in general and the scallop fishery in particular. To that end, any potential compensation should be treated as a last resort for protecting fishery participants from losses that can neither be avoided nor mitigated.

FSF appreciates the effort and consideration the nine states are investing in the development of a regional fund administrator framework. At the same time, we recognize the states (or most of them) support the development of offshore wind to help meet renewable energy goals. Creation of a compensation system should not be seen as a license for a hasty, ill-conceived headlong rush to build wind farms as fast as possible, without regard to consequence. FSF very much favors an incremental approach to wind farm development, which would allow regulators, scientists, developers, fishermen, and the general public maximum opportunity to monitor, assess, and address the impacts of offshore wind development on the ocean commons.

Finally, it is important to recognize that any regional fund administrator will require the necessary resources to be effective. In large part, the nine states’ planning is predicated on BOEM’s implementation of its Draft Fishery Mitigation Guidelines. While a critique of these draft guidelines may go beyond the scope of this RFI, we must note that the compensation elements of these guidelines are not sufficiently comprehensive to ensure fair and adequate compensation for fishermen.

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At best, they can be viewed as a first step that will require further refinement on BOEM's part. However, in all likelihood, Congress will need to design and implement additional layers and elements of compensation, whether that be funds for direct financial compensation for losses and costs, or funds for the development of resiliency measures to help fisheries adjust to changing conditions. FSF hopes the nine states' work developing a regional compensation fund and administrator will spur additional efforts to identify and obtain compensation resources.

Establishing a Regional Fund Administrator for Fisheries Compensatory Mitigation Framework

The States propose that the initial intended purpose of compensation would be to compensate for losses and increased costs incurred by individual fishing industry entities from impacts from OSW development for the duration of said losses and increased costs as borne by the industry.

FSF agrees that the compensation program should first be focused on impacts to individual fishing entities. It is important that the program cover both increased costs, as well as losses. The duration of coverage is also critical. Coverage should extend for the duration of losses and increased costs. The scallop industry expects to be in the category of fisheries that suffers long-term, irreversible damage from wind farms. The scallop industry is facing both exclusion from traditional fishing areas and threats to historic scallop beds located in wind energy lease areas. We have extensively documented scientific concerns regarding the impacts of offshore wind development and operation on scallop larval distribution, scallop settlement and growth, and primary production that supports scallops. These will not be short-term impacts, and they will not be able to be mitigated over time because fishing opportunities and growth of a sessile resource cannot simply be replaced elsewhere.

The recreational for-hire sector should only be included in this program if that sector has an independent source of funding for any compensation.

Anticipated losses and costs

In terms of losses and costs, the States' Scoping Document Table 1 losses should be expanded to include lost permit value, stranded capital, and additional vessel insurance costs. Permit value in the scallop fishery, in particular, is a major, if not the major, component of value of a scallop business.

In addition, FSF would note one particular element of potential lost revenue that is unique to the scallop fishery—lost revenue from reduced catch in leased areas. Scallops are managed spatially and scallop catch allocations are determined area-by-area. A loss of production from a particular scallop ground thus translates directly into loss of available catch. The scallop fishery does not have the opportunity to fish elsewhere to recoup losses. The overall pie just gets smaller.

The Scoping Document correctly recognizes that flexibility will be important to ensure compensation programs are consistent with the actual impacts of offshore wind development. Notably, however, BOEM's draft Mitigation Guidelines do not appear to have established a process for setting aside sufficient funds to defray these losses and costs.

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Real-world experience regarding the impacts of offshore wind development and operation off the East Coast, starting with the collection of solid baseline information, needs to be collected, and the compensation regime needs to be adaptable to the changes that are found to occur. Regulators, developers, and the fishing industry should engage in ongoing monitoring to understand the impacts that offshore wind turbines will have on historic fishing grounds and patterns—these changes cannot simply be modeled. The more compensation can be based on a real-world understanding of these impacts, the better.

The States propose implementing a regional approach to fund administration under which a single Regional Fund Administrator develops claims processes and distributes funds for all or most compensatory fisheries mitigation dollars paid to address impacts to fisheries from construction, operation and decommissioning of OSW projects along the Eastern Seaboard.

A regional approach is critical to the scallop fishery. Each scallop vessel ranges broadly through the waters off New England and the Mid-Atlantic, depending on where scallops have set from year to year, and how and where rotational access areas are implemented in any given year. Recently, for instance, Virginia home-ported scallop vessels have been fishing and landing in New England because that is where the bulk of harvestable scallops are located. While the pendulum will swing, and more fishing will migrate to the Mid-Atlantic (as it did in and around 2016), a state-by-state compensation approach will be neither efficient nor effective for this fleet.

There is also real value to consistent administration of compensation programs across lease areas. The divergence in individually-negotiated compensation approaches, even in the early stages of development and implementation of these programs, does not provide equitable results from state to state and fails to capture the impacts of offshore wind development to regional offshore fisheries, such as the scallop fishery. A regional approach should also allow cumulative impacts to be considered.

Creation of a single administrator, with authority over mitigation funds from many projects, should bring with it the development of strict but practical financial controls and money management/investment guidelines. As explained below, this is a place where the fishing industry, the states and developers all have a role to play, and an interest, in ensuring sound financial controls and management, through a governing board and constituent advisory boards.

The States propose that the Regional Fund Administrator distribute compensation based on a common set of rules and procedures applicable to OSW energy projects for the region rather than a project-by-project approach to achieve efficiency, economies of scale, and account for the regional nature of fishing.

For the reasons set forth above, FSF agrees with this general statement.

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Key qualities of an Administrator.

FSF agrees with the list of qualities but would add one more: The administrator should have experience not only in fisheries but also in the administering a natural resource damage program. With dozens of lease areas, the many and varied potential fisheries and fisherman claimants, novel damages issues (including the importance of separating natural resource damage from natural fisheries ebbs and flows) the magnitude of the task at hand is significant, especially if the program is to be implemented regionally. The Gulf Oil Spill comes to mind in terms of its regional scope but even it was a one-time event with a single (though catastrophic) locus.

Key Tasks of an Administrator.

The administration scheme presented makes sense. FSF would focus on step 3, the design of detailed claims forms process, eligibility criteria, etc. The accessibility and integrity of the entire compensation program is founded on the claim form seeking relevant information that fishermen are able to provide. It does no good to design a process that is so porous that bogus claims eat up the available compensation funds but it also does no good to design a process that is so restrictive that it takes a fisheries statistician to complete. We understand that work is being done by the Fishermen's Knowledge Trust that seeks to standardize collection and presentation of fisheries data. That project is in the pilot phase, but the idea that a combination of information readily available to fishermen and the government, respectively, can be integrated into useful metrics in a consistent way is worth exploring. It is unlikely this is a task that any administrator could handle without detailed support from the fishing industry and the various governmental entities involved.

In terms of the question whether to design first and hire second, or hire first and design second, the answer depends in part on the qualities sought in a fund administrator. If a fund administrator is sought who not only has fisheries experience but experience in administering natural resource damages funds, then the administrator's experience and expertise in designing a claims process could be a valuable complement to what the States (and the fishing industry) might otherwise be able to do on their own. In all events, it is important that the fishing industry and its unique and specific perspectives be actively involved in the design of the Fund and its processes.

Regarding eligible claimants, the States propose that permit holders can prove their eligibility [to] be compensated for qualified losses and costs. In addition to permit holders and vessel crew members, shore-side fisheries related businesses (processors, manufacturers, distributors and haulers of seafood products) would be eligible for compensation if their claims demonstrate that their business experienced loss of income due to unrecovered economic activity resulting from displacement of fisheries in the OSW energy project area. The project area is intended to include the turbine array area, including inter-array cabling, any OSW related substations, and export cables from the array to landfall.

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FSF does not disagree in theory with the proposition that the shore-side fisheries related businesses should be compensated, although a limit will need to be placed somewhere reasonable along the value chain of manufacturers, distributors, and haulers to ensure that compensation funds are directed to the fishing communities principally dependent on the harvest of seafood from wind energy areas. Major multi-national companies are involved in manufacturing and distributing the seafood products harvested from New England and Mid-Atlantic waters. These companies can pursue—though hopefully it won't come to that—alternative sources of supply and their losses will be modest in comparison to primary producers and processors that do not have the ability to diversify. One possible limit would be to require claimants to be able to document significant dependence on seafood products harvested from the affected wind farm areas.

More narrowly, in terms of harvester eligibility for compensation related to a certain fishing area, it will be important to ensure that a suitably broad number of years be used to measure catch eligibility. As explained above, while scallops have affinity for certain bottom types, scallops are not available for harvest in the same places from year to year, particularly in the Mid-Atlantic.

The “burden of proof” issue presents problematic issues. After explaining how difficult it will be for fishermen to substantiate claims, the Scoping Document then goes on to explain how a burden of proof will need to be met. There is an alternative way to consider this issue, using a burden of production, not a burden of proof. Fishermen should be able to produce identifiable sets of information that are reasonably available to operations of their respective scope and scale. A system should be designed, perhaps something like the Fishermen's Knowledge Trust pilot project referenced above, that allows the information (including fishermen's data and vessel-specific information maintained by NMFS) to be integrated into a standardized format suitable for claims processing.

FSF agrees that the project area should be defined to include all elements of the project.

The States are continuing to consider and are not proposing a specific mechanism or percentage fee for covering administrative costs of the Regional Fund Administrator at this time.

FSF respectfully submits that the manner in which fund administration costs are defrayed should maximize the amount of funds available to pay claims.

Due to the complexity of data sharing and confidentiality agreements, the States propose that the Regional Fund Administrator utilize existing entities with data access and sharing already in place, to the extent practicable, rather than trying to build that capacity in-house and enter into new data sharing and confidentiality agreements with existing data providers.

FSF agrees that it would be better to utilize an existing entity if any such entity has the capacity (physical and analytical) to undertake this work, a charter that would allow the entity to undertake this work, and the necessary data sharing agreement(s) in place.

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The States propose that the details of such grievance processes be designed by the Regional Fund Administrator once established, with oversight from its governing body and advisory boards.

FSF agrees.

Governance and Advisory Structure

See answers below.

Evidence of Claims Questions

Besides traditional fisheries data sources, what additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups. Provide a rationale for inclusion of a data source and specific group the data source would apply to.

For the scallop fishery, the Fund Administrator should consider information from the annual specification setting process as well as individual scallop fishermen's data. As we have explained, scallops are spatially managed and so if a scallop ground becomes off-limits to scallop fishing, then the fleet's overall allowable catch limit will decrease. Thus, the impacts from a loss of a scallop ground to a wind farm or wind farms cannot be ameliorated via displacing effort. In the New York Bight in particular, it will be important as well to measure lost scallop grounds across adjacent leaseholds/windfarms and then apportion that loss to the fleet among developers.

Regional Fund Administrator Purpose Questions

What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds that may be distributed to help the fishing industry or specific fisheries/gear types [with] the industry transition and adapt to the presence of the offshore wind industry in traditional fishing grounds?

It will be important over time to develop sources and methods to provide resilience and transition funds. We are hopeful that development of an integrated compensation program organized by the states will provide critical mass that will result in establishment of a fund that will have sufficiently broad-based "buy-in" that adding a resilience and transition support fund will be seen as a natural next step.

But any such program should be optional, and the program funder should be able to determine whether its transition and resilience project should be funded through the regional fund administrator. If administration through the regional fund administrator provides confidence to a funding source that allows a resilience project to go forward, then that avenue should be available.

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However, resilience projects directed toward or earmarked for a specific fishery to seek to address a specific issue related to that fishery should not need to be administered through regional fund administrator if there is no independent value to be added

If you do not think that management of such funds is an appropriate role for the Regional Fund Administrator, then how should such funds be managed?

See answer above.

Should a separate gear loss claims process also be regionalized under the purview of this administrator?

A gear loss claims process is more suited to be regionalized through this administrator. Compensation for gear loss represents the type of claim that an administrator should be well- suited to handle. Gear loss claim administration is more susceptible to standardization at the regional level because it is incident-based. The only caveat on this response is that the regional administrator would most likely need to have a more expedited process for resolving gear claims than for fisheries loss claims. In certain instances, loss of gear could prevent a fisherman from being able to fish.

Governance Questions

Of the governance options proposed, which is preferable and why, or is there another model that should be considered?

FSF supports Option #3, a co-led process with membership of the governing board being made up of representatives from the fishing industry and from the states. The regional fishery management council system demonstrates that state officials and fishing industry representatives are able to work side by side to achieve fisheries conservation and management objectives. Use of this accepted structure should promote confidence in the Board and ensure that fisheries industry insights and concerns are top of mind in the governance process.

What role should the States play in governing or advising the Regional Fund Administrator?

As explained above, states should participate in a co-led governing board. State expertise will also be important on certain of the advisory boards that would be established.

What role should the fishing industry play in governing or advising the Regional Fund Administrator?

As explained above, fishing industry representatives should participate in the governing board. Fisheries expertise will also be important for many of the advisory boards that would be established.

What role should the offshore wind industry play in governing or advising the Regional Fund Administrator?

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The offshore wind industry should participate in an advisory capacity on matters relating to financial controls for the Regional Fund, and on committees where a working knowledge regarding the construction, operation, maintenance, and decommissioning of wind farms can materially add to the committee's deliberations.

Are there other entities or organizations that should be involved in governing or advising the Regional Fund Administrator?

Federal agencies (NMFS, NOAA, BOEM, Coast Guard) should be involved in an advisory capacity regarding areas within their respective expertise, as should university and other research partners of the fishing industry.

Funding Questions

How might states encourage developers' participation in directing their compensatory mitigation to a regional fund?

States could utilize incentives built into power purchase and other agreements with developers, and also encourage participation through CZM processes, particularly in instances when more than one state's CZM authority has jurisdiction.

What mechanisms or procedures should be established to ensure administrative costs are kept at a fair but reasonable level?

A Board and advisory committee should be established to address financial controls. A study should be conducted of administrative costs incurred by other, similar entities, and used as a guide. The Regional Fund Administrator could be paid a monthly flat fee for administering the fund and not be paid hourly. To the extent office space is needed, hopefully a state or states can provide space rent-free.

How should administrative costs be paid?

Optimally, the states or developers would be able to defray allocable shares of administrative costs, leaving the limited Fund for compensation. Another option is for administrative costs to be defrayed using interest on invested funds—we understand there are compensation programs that take this approach. Preferably, administrative costs would not be defrayed with interest, though, as all available funds will be needed for compensation, especially given the scope of the need and the limits on funding contained in the BOEM Draft Mitigation Guidelines. Administrative costs should, in no event, be paid from principal contained in the compensation fund.

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Claims Processing Questions

How should dispute resolution of claims be managed with respect to the Regional Fund Administrator? Should this be a role of the Regional Fund Administrator, an independent entity, or a hybrid?

A bifurcated process should be considered. If the alleged error is quantitative and can be evaluated based on existing data according to an established framework, then the Regional Administrator or a hybrid could be used. If the error was based on a substantive or policy disagreement (e.g., eligibility, eligibility of a class of expense, disputed sources of data), then an independent entity could be more appropriate.

Are there other sources of potential revenue loss or increased expenses that are missing from Table 1 of the Scoping Document?

For the scallop fishery, the category “reduced catches in lease areas” needs to be sub-divided into two categories: reduced catches in lease areas and reduced catches fishery-wide. As explained above, a loss in scallop catches from within a lease area cannot be recouped from catches outside the lease area because scallops are managed spatially, that is, fishing mortality controls are maintained on an area-by-area basis within the fishery. If a bed of scallops ends up off limits to fishing for whatever reason, overall allowable catches are reduced.

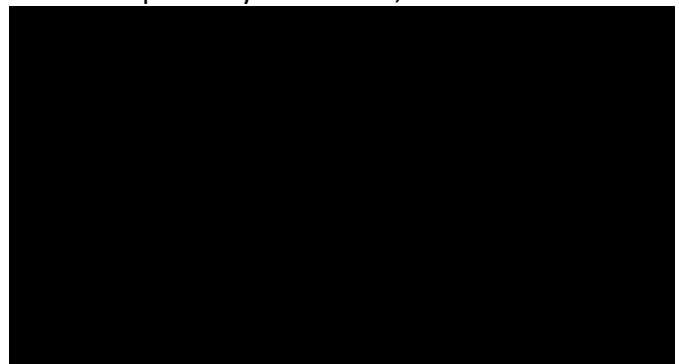
What datasets and/or approaches may be appropriate to use when determining eligibility for shoreside industries and others that may not have the same level of documentation as commercial fishing operators?

FSF recommends use of SAFIS reports.

* * *

Thank you for the opportunity to submit these comments and for your consideration of these crucial issues. Please do not hesitate to contact us at any time if you require additional information.

Respectfully submitted,





February 7, 2023

via email to comments@offshorewindpower.org

Re: Request for Information (RFI): Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development

RWE expresses strong support for the efforts of the nine Atlantic States (States), working with the Special Initiative for Offshore Wind (SLOW) to pursue the development of a third-party claims administrator to manage compensatory fisheries mitigation. RWE also supports American Clean Power's recommendation that the States first engage an independent claims administrator, and then design the claims process and supporting governance structures, consistent with Option 2 in Section 6 of the Request for Information.

The process should always maintain compensation as the last step in the hierarchical approach to mitigation. RWE's project development and fisheries teams understand that our approach to impact avoidance, minimization, and mitigation are essential to securing successful and sustainable outcomes for fisheries and offshore wind development. Integrative approaches focused on understanding the operational details of fisheries within project areas that build on local knowledge throughout the design process can promote the development of projects that will be able to accommodate many existing fisheries. Successful mitigation measures and strategies can take many forms during and after the design phase of the project, and RWE is committed to working closely with the fishing industry to develop approaches that promote successful outcomes. Compensation should never pre-empt the hierarchical approach to mitigation or preclude fisheries adaptation and should reinforce incentives for fisheries adaptation and resilience. The framework for compensation should align with the mitigation hierarchy and BOEM's regulatory review process, including the agency's guidance on fisheries mitigation and compensation.

Governance

RWE supports a governance model that would include the fishing industry, the States, and developers directly engaged in the oversight of the fund administrator, working in close collaboration to ensure the success of the compensation process. The Governing Board options in the scoping document fall short of this, and we encourage the States to develop a Governing Board option that would afford the fishing industry and

developers appropriate roles and representation on the board to encourage a shared oversight responsibility, together with the States. Ultimately, the Governing Board should provide a balanced forum for both industries to jointly address challenges and develop solutions to ensure sustainable outcomes, and this will require more than the advisory roles contemplated for developers in the existing options in Section 9.1 of the scoping document. Developers and the fishing industry should be fully vested in the Governing Board, together with the States. RWE also recognizes the regional nature of fisheries and supports a governance structure that considers and accommodates these differences, which could be achieved through an advisory committee process as described in the scoping document or through representation on the Governing Board.

Claims Administrator

The claims administrator should be independent, free from external influence, and subject to the oversight of the Governing Board. The claims process should be equitable, efficient and accessible for affected parties. Claims should be processed consistent with the process and standards established by the Administrator and as approved by the Governing Board. Access to confidential data will be an important aspect of the claims administration process. While this may be addressed in the short term by the administrator having an external third party (e.g. Atlantic Coastal Cooperative Statistics Program [ACCSP]) conduct data reviews associated with individual claims, longer term solutions will either require direct access to data by the administrator through a data sharing agreement, or a scaling of staff resources for the external third party with an existing data sharing agreement with National Marine Fisheries Service (NMFS). The claims process should be data driven, and the administrator will need to have access to confidential data to fairly and accurately validate and process claims. Even if the administrator relies on an external third party to validate data, the administrator should anticipate resource requirements to add staff capacity with expertise in fisheries data. Federal fisheries data collection systems were primarily developed to monitor catch and manage quotas and technical measures, or to monitor spatial management areas. RWE encourages the States and BOEM to continue to work with NMFS to advance the collection and integration of high-resolution spatial data in the catch reporting and monitoring systems—including economic data—to directly support this important process. Finally, the resources necessary to develop a thorough governance and claims process should not be underestimated. Even if an existing organization is selected as a Regional Fund Administrator, and a separate existing entity with access to confidential data is chosen for claims verification, significant additional staff resources will be required.

Funding

Ensuring the sustainability of the fund should be an organizing focus for the Governing Board. Bid credits, including operating fee credits, would provide a reliable and transparent source of funding to support the compensation fund. Bid credits could provide funding in advance of the construction phase of projects. Operating fee credits could provide a revenue stream over the life of the project to attenuate any post-construction effects or to otherwise provide further investment in programs designed

to support fisheries resilience. Any funding provided directly by developers should be consistent with BOEM's regulatory review process and should be provided at the appropriate phase of the project to align with the timing of effects to be mitigated by compensation and the claims administration process.

The scoping document also considers the potential for management of transition and resilience funds by the claims administrator to support the fishing industry. RWE will already be making investments to support fisheries adaptation and resilience as part of our fisheries mitigation plan, consistent with our hierarchical approach to mitigation. This may include measures that we implement individually, or that we implement in coordination with other developers, in consultation with the fishing industry. The administrator's governing board could also be an effective body to coordinate or allocate funds designated to support longer term success and resilience of regional fisheries. We would also support this as a beneficial use of remaining funds that are not needed to cover compensation claims. Providing resources to support gear modifications and other adaptations is consistent with RWE's philosophy of investing in the long-term viability of commercial and recreational fisheries that provide social, cultural, and economic benefits to communities and national seafood security. The initial focus of the board should be to establish the claims administration process—management of transitional funds can be considered subsequently in the process.

RWE has an established procedure for handling gear loss claims. We agree that it could be beneficial for fishermen and developers to have a regional entity and process for handling gear loss claims. While this could be a future consideration for the regional compensation administrator, the initial focus should be on setting up the claims administrator to manage compensation claims. Appropriate models and entities to process gear loss claims on a regional basis could be an opportunity for future coordination between developers and collaboration with the fishing industry.

Eligibility

Eligibility will be an important aspect of claims administration, and could be addressed through the working group, together with advisory input from the industries. Eligibility should consider equitability to ensure access to compensatory mitigation for those who may be directly affected. The Administrator should strive to develop a pathway for claims that is accessible to affected fishermen and industry participants. Specifically, the claims process should verify that compensation mechanisms are available to crew who may be directly affected, and not limited to vessel owners. The scoping document acknowledges the drawbacks of existing fisheries data and methodologies to establish defensible claims for certain segments of the fishing industry. We suggest that determining which evidence is "practical and achievable", while also "legally justifiable", is a critical task that the Administrator should address in coordination with the industries, potentially through a regional advisory process.

Summary

RWE aligns with the overarching goal expressed in the scoping document, specifically:

To establish a credible regional administrator for managing and distributing fisheries compensatory mitigation funds for OSW for the U.S. eastern seaboard.

We concur with the States that a standardized framework for fisheries compensation should bring consistency, transparency, and equitability to the issue of compensation. A standardized framework and process will also reduce uncertainty for both industries, consistent with the public interest. RWE appreciates the thoughtful engagement and time the States and SLOW have spent on this important topic. We look forward to working with the States to fully implement a third-party claims process to manage compensatory fisheries mitigation that supports successful and sustainable outcomes for fisheries and offshore wind development in the Atlantic region.

Sincerely,

[Redacted signature block]



February 7, 2023

RE: Framework for Establishing a regional Fisheries Compensation Fund Administrator for Potential Effects to the Fishing Community from Offshore Wind Energy Development

Submitted via email to comments@offshorewindpower.org

I. Introduction

The American Clean Power Association (ACP) appreciates the effort by the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia (the States) and the Special Initiative on Offshore Wind (SLOW) to create a regional compensation fund that will address any effects the development of offshore wind may have on commercial and recreational for-hire fisheries that cannot first be avoided, minimized, or mitigated. We fully support the mitigation hierarchy and agree that compensation is a last, but vital step after other options are credibly exhausted. ACP recognizes that fishermen would prefer to fish, and that keeping fishermen on the water supports larger national objectives, such as food security, and associated economic and social benefits to coastal communities. ACP members are committed to working collaboratively with the fishing industry to support investment in mitigation strategies that contribute to the continued resilience and success of local and regional marine fisheries as the offshore wind industry develops clean energy projects to meet the nation's needs for domestic energy to combat impacts of climate change on natural resources.

We also agree that a standardized framework is necessary to ensure successful outcomes for both offshore wind and regional fisheries by providing an equitable and efficient mechanism for addressing economic effects that fishermen may experience. We believe there are important first steps to take before selecting, in full, one of the options proposed in this RFI. To that end, ACP encourages the States to use this RFI to first develop the goals for a claims administration framework, then to act in accordance with Option 2, Section 6 of this RFI to hire a third-party claims administrator and specialized professional staff to develop the claims administration process. We encourage the States to reconsider how best to order the operations with establishing a compensation program by refocusing on the most critical element – the appropriate administrator and the interaction between administrator and the fund's Governing Board and working groups. The Governing Board and working groups should direct the administrator to adhere to standards of process, but should not be involved in claim decision processes. It is premature to advance options as proposed without first hiring the right administrator and without considering necessary structures for the funds. Overdesigning the advisory capacities too early can complicate the actual intended goal to be inclusive of all affected parties, and can result in undesired and unintended consequences that may ultimately delay initiation and effectiveness for distributing funds at regional scales.

We anticipate that significant resources and a unique cross-section of skill sets will ultimately be required to successfully staff and develop an independent claims administration entity with the necessary expertise in fisheries data analysis and claims administration to create a streamlined approach that can operate equitably, objectively, and efficiently. The fund administrator should primarily have expertise in claims-based administration and investment fund management and have no biases or additional interests in either the fishing or offshore wind industries. As development of offshore wind moves forward on a regional scale, spanning numerous lease sites and the range of





multiple fisheries, a standardized regional approach will provide both industries with a framework to consistently and efficiently administer fisheries compensation.

We also recommend the States consider funding and fund scenarios that will ensure sustainability and viability of the funds and that will support the continuation of fishing and healthy fisheries as offshore wind advances. ACP encourages the States to consider how best to design and structure the fund into multiple and discrete components that differentiate the claims process from other types of funds that could be established if claims are not made. We outline our views for additional fund allocations in Section IV (Claim Logistics). Seeding and sustaining the fund should be considered prior to the establishment of work groups and as a parallel priority to hiring an administrator. ACP encourages the States to ensure that the goals and claims administration framework incentivize successful outcomes for fisheries and offshore wind. The framework, combined with BOEM guidelines for fisheries mitigation and compensation, should be aligned to reinforce the hierarchical approach to impact avoidance, minimization, and mitigation and should incentivize and promote fisheries adaptation and resilience. A collaborative funding linkage between federal efforts and the States' effort here can provide certainty for starting and sustaining funds and allows the States to refocus the goals for the regional claims administration initiative. The claims process, including standards for decision-making, and governance mechanisms, should be developed after the proper administrator is hired, as the administrator should be a contributing partner in outlining fund(s) options, structures, and processes.

We offer the following comments to further describe our views with the intent to improve the fund's structure, functionality and administration as the States progress with their thinking.

II. Hire the Fund Administrator First and Then Utilize Experts to Design the Fund Process

We believe the states should first hire a fund administrator and then employ their expertise in designing the fund process, consistent with Option 2 in Section 6 in the RFI.¹ Efforts to date have only focused on gear loss compensation localized to specific areas within a region, e.g., Massachusetts-Rhode Island Wind Energy Areas.² If Option 1 were chosen, in effect, the states, as a group, would shoulder the burden of creating a fair and legitimate process. While time is of the essence in standing up a fund that will be available when the next wave of offshore wind projects is ready to be constructed starting in 2024, efficiency, equity, and robustness of the process should be the primary objectives. While the States likely have the collective skillset to do so, we believe Option 1 will take significantly longer than Option 2 given the need to operate as a unified group. Assuming a rigorous hiring process with adequate oversight, Option 2 would delegate the process to a single entity with the experience and the resources to focus on the task beyond the capacities and capabilities of the states and various other stakeholders.

¹ Special Initiative on Offshore Wind, "Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development" (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 16.

² Record of Decision for South Fork Wind Farm and South Fork Export Cable Project Construction and Operations Plan, November 24, 2021, available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Record%20of%20Decision%20South%20Fork_0.pdf; pg. A-37.



Once the fund administrator is selected, the Governing Board should direct it to consider the logistics of the overall processes, including the types of claims that can be filed and the process, including timing and decisional determinations, for affected groups and entities to file claims (singularly or jointly) and (e.g., species-specific sectors, fishing associations, etc.). There should be a defined process for handling these types of claims and what the role of the associated entities would be. The process should also define how individual claims in relation to the joint claim(s) would be handled to avoid duplicative claims. Option 2 would allow for greater flexibility than Option 1 in designing processes that incorporate the ability of [or potential for] existing entities to bring forth claims on behalf of groups of affected fishermen.³ ACP emphasizes that we feel the Governing Board is decisional on the management of the fund and logistics associated with compensatory claims but is not the authority in deciding the legitimacy of any claims (*See Section IV*).

The final document on this regional fisheries compensation approach should contain a provision that bars claims for losses that have already been compensated through another fund, insurance, or another compensatory mechanism. We are aware that some individual offshore wind projects already have funds set up; while ACP does not believe the regional fund should replace those pre-existing funds, it should be structured to prevent “double-dipping.” Additionally, individual claims should not be duplicative of those submitted by fishing associations or sectors on behalf of their members.

III. Governing Board Membership Should Include Developers in Addition to States and Fishermen

Because this fund is for the benefit of the fishing industry, we believe fishing interests should play a prominent role in Governing Board membership regardless of how the roles and responsibilities for this group evolve during this process. We also believe that developers should have an active role in the collective distribution of funds as primary financial contributors. The scoping document seems to include a role for OSW developers on the Governing Board under Option 1 and Option 2 in a “meaningful” advisory capacity.⁴ However, given that offshore wind development is one of the two involved industries in this collaborative effort, developers themselves should be represented on the Governing Board in more than just an advisory role. None of the options currently in the document provide an adequate role for developers on the Governing Board. A more optimal governance model would fully engage the States, the fishing industry, and developers with appropriate roles on the Governing Board. Numbers across industries could be managed through a rotating nomination and application process to ensure fair and equitable representation across regions, sectors, and industries. Developers are interested in participating in review of fund distribution where appropriate to ensure the fair, transparent, and successful distribution of fishery compensation funds.

One role for the Governing Board, and hence offshore wind industry among other members, is in the oversight process of audits. While most audits will likely focus on the fiduciary performance,

³ Special Initiative on Offshore Wind, “Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 16.

⁴ Special Initiative on Offshore Wind, “Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 20.



developers would also like to have the Governing Board including the fishing industry, the offshore wind industry, and governmental representation to consider a larger audit role for regular assessment of the overall performance of the fund to support the sustainability of the fund.

Naturally, the Governing Board could consider equitable and balanced uses of funds, beyond compensation, to ensure that funds available over time are not restricted to solely compensatory claims and can incentivize and promote fisheries adaptation and resilience (*See Section IV*).

Advisory boards or committees, as proposed in section 9.4 of the scoping document, should be designed to enable the fishing industry and developers to collaborate to provide input on the overall design and execution (logistics) of the claims process. Advisory boards or committees should not have decision-making authorities. An effective appeals process should be developed as part of the claims administration process, and should be developed by the Governing Board in consultation with the administrator and with input from the advisory boards or committees.

IV. Claim Logistics

ACP's comments ask that the States and SIOW focus first and foremost on hiring the appropriate financial administrator to assist in the design of a compensation program. As previously discussed, consideration should be given as to whether claims process should be restricted to fewer parties with less public input and whether a separate effort, with public process, should be created in anticipation of funds not claimed.

In the spirit of functionality specific to sustainability, ACP recommends clear division of input into the claims process. Maintaining impartiality is critical to ensuring a sustainable, data-driven and unbiased process. Claims should be a clear transactional process between the claimant and the administrator with minimal input from various constituents and proposed committees. The reasoning is that legal and policy questions will be prominent factors in the claim logistics and appeals process. Further, burden of proof will require unbiased determination that is supported by data that the administrator relies on provided by government and other reputable and validated sources. ACP suggests the States and SIOW reconsider the options proposed and revise to consider how best to divide and narrow decision-making authority in the claims process that maintains fairness for all parties. Recognizing the States desire to balance input into the process, and if work groups remain, ACP believes that the Governance, Funding, and Engagement working group would be best suited as an advisory body to address the topics of claims logistics and appeals process. Specifically, the working group could focus on recommendations for data and validity of non-governmental data to inform the administrator and for how to structure the claims and appeals processes, e.g., timing for claims, information submitted by claimant, burden of proof application elements, and other non-decision making process items.

The States and SIOW should strongly consider challenges associated with past government fisheries, and other types of claim programs, particularly the outcome of what happens to funds not claimed. ACP encourages the States to consider other independent methods from direct compensation for how this fund can support the sustainability and viability of fishing in areas where offshore wind is advancing, specifically if compensation is not occurring. If claims do not fully exhaust available funds, monies parked in an account are not benefiting the fishing and offshore wind industries. ACP sees a role for the Governance, Funding and Engagement working group to serve a more influential





role in deciding how any excess funds could be used to support the sustainability and longer-term success of fisheries. In ACP's past comments to BOEM addressing compensation, we highlighted specific types of activities that monies could contribute to meeting this goal: fishing community investments, technology and innovation fund, and other grant programs to benefit coastal communities.⁵ With an experienced financial administrator, this working group on an annual, or longer term, basis can determine appropriate amounts of funds that could be allocated to supporting broader fisheries and fishing communities. In doing so, the Governance, Funding and Engagement working group can solicit public input in how to spend funds. Further, this working group would create protocols for allocation of these funds. This important work has the potential to broaden the program to ensure funds not claimed would make positive contributions to fisheries and the fishing communities in areas where offshore wind is advancing.

V. Defining Long Term Funding and Securing Coverage of Reasonable Administrative Costs is Essential to the Durability and Viability of the Fund X

ACP requests the States and SIOW reconsider the options proposed and focus first on hiring the appropriate financial administrator to assist in the design of a compensation program. As previously discussed, consideration should be given as to whether the claims process should be restricted to fewer parties with less public input and whether a separate effort, with public process, should be created in anticipation of funds not claimed. Focusing on the immediate first step of hiring the appropriate administrator should help the States, through SIOW, reconcile questions posed in the RFI related to developer participation, logistics of fund management, and coverage of administrative costs.

ACP agrees with Figure 2 of the Scoping Document in showing that payments into the fund are made after the Record of Decision and are based on the full environmental analysis. ACP agrees with conceptual goal in Figure 2 of the Scoping Document in showing that payments into the fund are made after the Record of Decision and are based on the full environmental analysis. Developers should not contribute into the fund for impacts from displacement until they have an approved project that can move to construction. ACP also recommends that developer financial input not be expected all at once up-front as a lump sum payment. Contributions should have the option be phased over time to ensure regular deposits of monies into the fund at times consistent with project progress through the intended lifecycle.

In principle, ACP recognizes that funds are required to initiate this effort and strongly encourages the States and BOEM to consider a joint state-federal solution to initial administrative funds. As commented to BOEM, ACP believes the States will not have to encourage independent developers' participation if BOEM adopts ACP's recommended federal bidding and operations fee credit approach.

If this approach is adopted, the States can apply responsibilities of the Governing Board to the following activities:

⁵ American Clean Power, "Re: Comments on the Draft Guidance for Mitigating Impact to Commercial and Recreational Fisheries from Offshore Wind Energy Development," Submitted via regulations.gov, Docket ID BOEM-2022-0033; August 22, 2022; available at <https://www.regulations.gov/comment/BOEM-2022-0033-0071>.



The Governing Board, with the input of the administrator, would determine the initial starting model for investment until bidding and operating credits are available.

In this proposed scenario, administrative funds would be covered from interest on the principal, which will be more than sufficient if BOEM adopts the aforesaid credits. Recognizing this may take a few years to initiate, ACP proposes a collaborative approach to get the fund started, including hiring of an administrator, that includes a combination of the States, federal agencies, and other parties. There is precedent for collaborative financial contributions for activities equitably convening all affected stakeholders, including government partners, notably the Responsible Offshore Science Alliance and the Regional Wildlife Science Collaborative, that can provide models for how best to integrate funding sources for initial start-ups.⁶⁷

The Governing Board should supervise the administrative costs to ensure costs are reasonable and equitable.

The Governing Board's responsibilities would be to provide oversight of fund allocations through the administrator and to ensure efficiency in claims process and other established programs to minimize arbitrary spend and ensure longevity of funds for full lifecycle of offshore wind development.

The Governing Board, with the input of the administrator, should ensure longevity and sustainability of the fund.

The Governing Board's primary objectives should be securing fund viability. The ideal scenario is regularly seeding of the fund with bidding and operation credits. The Governing Board, with recommendation of the administrator, determines best investment mechanism.

In the long run, administrative costs of this fund should be primarily covered by the interest generated by the principal. As stated in its comments on BOEM's draft fisheries mitigation guidance, ACP believes the fund's principal should be regularly contributed to by bidding credits and operating fees of offshore wind projects.⁸ Offshore wind developers would contribute to the fund in exchange for a like discounted credit granted by BOEM in exchange for payment into the fund. We anticipate that BOEM's final guidance regarding compensatory mitigation will accommodate this approach. Creating identified funding streams for fisheries compensation and for the fund's administration will help provide durability and enhanced reliability for both the fishing and offshore wind industries.

The Governing Board, with the input of the administrator, should determine the initial startup costs until bidding and operating credits are available.

We recognize that it may take time for enough money to accrue in the fund for escrow interest to be sufficient to pay for administrative costs. In the initial phase, ACP proposes a collaborative approach to startup costs that could include a combination of funds from States, federal agencies, foundations, the offshore wind industry, and other key stakeholders. There is precedent for collaborative financial contributions for activities equitably convening all affected stakeholders, including government

⁶ Responsible Offshore Science Alliance: <https://www.rosascience.org/>.

⁷ Regional Wildlife Science Collaborative for Offshore Wind: <https://rwsc.org/>.

⁸ American Clean Power, "Re: Comments on the Draft Guidance for Mitigating Impact to Commercial and Recreational Fisheries from Offshore Wind Energy Development," Submitted via regulations.gov, Docket ID BOEM-2022-0033; August 22, 2022; available at <https://www.regulations.gov/comment/BOEM-2022-0033-0071>.



partners, notably the Responsible Offshore Science Alliance and the Regional Wildlife Science Collaborative, that can provide models for how best to integrate funding sources for initial start-ups.

Administrative costs of this fund should be primarily covered by the interest generated by the principal, and if necessary, could also be covered by funds contributed for bidding credits and operating fees from offshore wind developers. As stated in its comments on BOEM’s draft fisheries mitigation guidance, ACP believes the fund’s principal should be regularly contributed to by bidding credits and operating fees of offshore wind projects.⁹ Offshore wind developers would contribute to the fund in exchange for a like discounted credit granted by BOEM in exchange for payment into the fund. States should publicly support BOEM issuing guidance regarding compensatory mitigation that would allow for offshore wind lease bidding credits and project operating fees to be eligible for BOEM-granted discount credits in return for equivalent contributions to qualified funds such as this regional approach.

Creating identified funding streams for fisheries compensation and for the fund’s administration will help provide durability and enhanced reliability for both the fishing and offshore wind industries. This certainty would also help ensure future codification of fisheries compensation as an eligible contribution options for bidding credits and operating fees within the Bureau of Ocean Energy Management’s regulatory structure.¹⁰

VI. Claims Should be Evidence-Based

ACP agrees on the emphasis in section 7.2 of the need for a reasonable evidentiary showing and burden of proof.¹¹ This concept should be emphasized throughout the process. The “Call to Action” presumes some adverse effects from the construction and operation of offshore wind projects, but it should place more emphasis on the need to demonstrate compensable harm and a causal link to in order to qualify for funding.¹² The final document should underscore these requirements more prominently detailing the need for fact and science-based claims, in place of possible effects of offshore wind projects. Specifically, the Intended Purpose of a Compensation Program should specify “demonstrated” losses and increased costs.¹³

⁹ American Clean Power, “Re: Comments on the Draft Guidance for Mitigating Impact to Commercial and Recreational Fisheries from Offshore Wind Energy Development,” Submitted via regulations.gov, Docket ID BOEM-2022-0033; August 22, 2022; available at <https://www.regulations.gov/comment/BOEM-2022-0033-0071>.

¹⁰ See § 585.220(a)(4) which could be modified to ensure bidding credit for contributions to qualified funds such as this one; and § 585.506 which could be modified to clarify that operating fees can be included in or added to existing leases for fisheries compensation.

¹¹ Special Initiative on Offshore Wind, “Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 17.

¹² Special Initiative on Offshore Wind, “Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 6.

¹³ Special Initiative on Offshore Wind, “Nine Atlantic Coast States Scoping Document: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development” (2022) available at https://offshorewindpower.org/wp-content/uploads/2022/12/FisheriesCompensationFund_ScopingDoc_FINAL.pdf; pg. 10.



The recreational for-hire and commercial fishing sectors operate independently and could be affected in different ways. Recreational for-hire and commercial fisheries often employ different gear types, fishing methods, and frequent different locations. Each interaction and claim will be site specific, but the fund should be accommodating of these differences by creating a claim evaluation process that does not rely solely on traditional commercial fisheries data sources and metrics. The States should further collaborate with the federal government to fill any data gaps and improve compatibility between existing fishery data sets to ensure the fund administrator can efficiently evaluate all necessary data sources for claim decision-making. Regardless of which sources are used, the fund administrators and staff should also maintain a working knowledge of the specific differences between how the recreational for-hire and commercial fishing sectors within this region could be affected to assist in the fair, transparent, and timely processing of claims from both sectors.

VII. Additional Items

- Figure 2 (p. 9) should also include operating fee credits.
- The final document should define and use consistently one term to refer to professionals in the fishing industry. ACP suggests using a term common to the intended region such as economic effects on “fishermen” but acknowledges some alternative uses for the same concept such as “fishers”.
- Gear Loss: Gear loss compensation should be considered distinct and separate from this effort to ensure the administrator can fairly and efficiently distribute funds intended for compensatory mitigation as last option in mitigation hierarchy. The offshore wind industry suggests considering other forums for gear loss such as those that have worked well for similar issues such as cable interactions with fisheries. On the West Coast telecom cable companies and trawl fishermen have negotiated a cooperative agreement to maintain and build industry to industry relationships and manage shared use of the ocean in a specific area.¹⁴ It is in the interest of both industries to work together to avoid and minimize damage to both infrastructure and fishing gear through improved coordination and education. Gear loss coverage could be reassessed at a future point after the regional fisheries compensation fund is established and functioning.

VIII. Conclusion

ACP thanks the States and SIOW for their continued effort on a regional fisheries compensation fund. This fund will be an important component in supporting the successful coexistence of offshore wind and fisheries. ACP looks forward to continued collaboration with the States, the fishing industry, SIOW, and others to create this regional compensation fund.

Sincerely,

[Redacted signature block]

¹⁴ See: Oregon Fishermen’s Cable Committee at http://www.ofcc.com/about_ofcc.htm

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

February 7, 2023

Comments sent via email: comments@offshorewindpower.org

Re: NSC comments submitted for the Request for Information (RFI): Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development.

To Whom it May Concern:

Established in 2002, Northeast Seafood Coalition (NSC) is a non-profit membership organization that represents commercial fishing businesses that rely upon the federal northeast multispecies (groundfish) fishery in legislative, policy and scientific processes. NSC members include shoreside businesses and fishing vessels that represent the full diversity of the groundfish fishery. NSC members hail from ports across the northeast and utilize all groundfish gear types (e.g. trawl, gillnet, long-line).

Today, NSC members are enrolled in the commercial groundfish sector program, a catch share program implemented in 2010 under Amendment 16 to the Northeast Multispecies Fishery Management Plan. This program transformed the operations and management of the commercial groundfish fishery, a fishery that has experienced a complicated web of regulatory measures over the past twenty years. NSC groundfish businesses operating today have made significant sacrifices over the years in anticipation of increased biomass levels that have been projected by rebuilding plans, conservation measures and the sector management program.

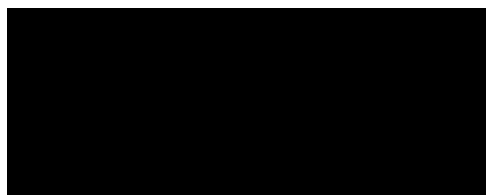
NSC appreciates the thought and work that has gone into developing a Fund Administrator, designed to establish a predictable and streamlined process for compensatory mitigation for fishing entities facing displacement or losses resulting from wind energy development projects.

The Northeast Seafood Coalition (NSC) offers the following comments:

1. Compensatory mitigation should be a last resort. Financial compensation does not replace any of the mitigation measures that should be required to actively avoid an area or minimize impacts through the siting and design of a project.

As highlighted in the NSC comments submitted to BOEM's draft compensatory mitigation guidance, any compensatory mitigation should be considered the last resort when it comes to offshore wind development projects. The states should be working directly with their federal commercial fishing constituents to ensure BOEM ensures, through siting and development, that wind companies adhere to, the best practices for mitigating impacts to commercial fisheries (Council of Environmental Quality regulations (40 CFR 1508.1(s)), which include:

1. **Avoiding** the impact altogether by not taking a certain action or parts of an action.
2. **Minimizing** impacts by limiting the degree or magnitude of the action and its implementation.
3. **Rectifying** the impact by repairing, rehabilitating, or restoring the affected environment.



4. **Reducing or eliminating the impact** over time by preservation and maintenance operations during the life of the action.

5. **Compensating** for the impact by replacing or providing substitute resources or environments

2. The Fund Administrator is based upon BOEM's compensatory mitigation guidance that has not yet been finalized. NSC recommends the states wait until this final guidance is offered before moving forward.

NSC expressed our reservations about the inefficiencies of the BOEM draft guidance in our comments to BOEM. We have great concern that the final guidance will not sufficiently value impacts of wind development projects on fisheries. Without this in hand, it is difficult to know whether the Fund Administrator will have sufficient funds to cover losses.

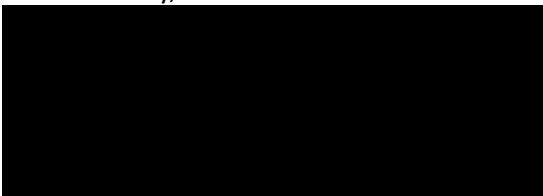
3. When considering next steps on the establishment of a Fund, the states should design the Fund first and hire second.
4. Governing Board Membership should be Co-Led, comprised of representatives from the fishing industry and from the states.
5. Establishing Advisory Boards by sub-region in order to reflect the expertise, knowledge and experience by fishery and community is essential.
6. Establishing additional fishery resiliency funds, that focus on reoccurring benefits and investments in fisheries and fishing businesses, is vital.

NSC agrees there is a high need for resiliency funds, designed by the fishing industry, that is focused on targeted programs to ensure the long-term co-existence of offshore wind development and fisheries. NSC looks forward to working with our industry and state partners to establish such funds.

7. Exploring all opportunities for statutory authority for compensatory mitigation is critical. Whether this be through new federal law or through states utilizing existing state procurement authority it is essential to any further efforts.

Thank you for the opportunity to provide our initial comments to the Framework. We look forward to our continued communications with states in the near future.

Sincerely,





Long Island Commercial Fishing Association



February 7, 2023

Re: Request for Information: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community From Offshore Wind Energy Development

To Whom it May Concern:

The Long Island Commercial Fishing Association, representing commercial fishermen throughout Long Island, appreciates the time and effort spent by members of those nine states that took part in the discussions regarding a framework for a fishing compensation fund and administrator for offshore wind impacts to the commercial fishing industry.

We are to assume this framework was done with the best of intentions to try to find a way through the quagmire that BOEM had created by leasing offshore wind energy areas to developers with apparently no knowledge that commercial fishing took place in the ocean. Leases that were literally placed on top of some of our most revered, traditional historic fishing grounds, thereby creating a conflict that could have been avoided from the very beginning. By utilizing the first golden CEQ rule, “avoiding the impact by not taking a certain action or parts of an action.” Meaning remove commercial fishing grounds from areas of consideration before a lease was auctioned.

Since that rule was ignored by BOEM at the same time the leasing process was sped up, first in 2010, then further in 2021, we as an industry are now left with an offshore wind freight train racing through millions of acres of prime ocean productive-bottom, gobbling up all in its path where no limit seems to exist. Thousands of commercial fishermen, their families, corollary businesses and coastal communities are watching helplessly from the sidelines. Fear that their livelihoods and lifelong businesses will turn to dust when BOEM gets through their latest round of Record of Decision approvals, preventing them from continuing to ply their trade, for some the same as they have done for 13 generations.

So it's with that future in our rear-view mirror seeming to speed up quickly behind us that were are handed this RFI document, and asked to churn out comments.

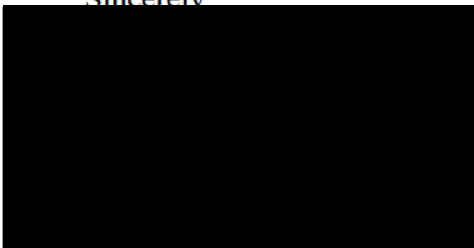
Unfortunately, we cannot support this document in its present state. It must be further evaluated completely, paragraph by paragraph if need be, so that when it is finished, a real proposal can be evaluated. It is far too vague, too many shoulds (32), woulds (62) and coulds (32). There was never enough time given to evaluate all components by the commercial fishing industry, and virtually no way over the Christmas holidays to gather the various gear groups and advisory panels and work through this document. It left more questions than it answered.

The one item that is clear however is that cumulative impacts of offshore wind to commercial fishermen are not being considered. That is, in our opinion, the fatal flaw of this document. Lease areas replacing fishing grounds up and down the Eastern Seaboard to build steel forests will have dire cumulative consequences for New York fishermen. Due to low New York state quotas, NY fishermen have been forced to purchase permits from other states, and must land those fish in those states' ports. As such, they will lose not only traditional fishing grounds to turbine fields in nearby federal waters, but then will be forced to zigzag around the ocean to avoid additional turbine fields as they navigate around them to land fish in ports in some cases 36 hours away in Virginia.

The cumulative effect of having to steam for hours more due to turbines to find fish and hours more to bring their fish to another state's port on land will be huge. It will have a drastic effect on their once profitable larger quota permits. Out of state permits are quite expensive to buy because they have higher quota catch limits, and fishermen choose to fish them during times of the year where they can increase their profits by landing larger quotas out of state than what they could in New York. If the turbines roadblock their straight path to port, and they must travel much farther to catch fish in the first place, these permits will become worthless if they cannot make the trip profitable.

It is our sincere hope that this timeline can be re-initiated so that the requisite time and energy can be devoted to this to truly focus on a way forward so that the commercial fishing industry can survive this assault upon their fishing grounds.

Sincerely



Request for Information: Framework for Establishing a Regional Fisheries Compensation Fund Administrator for Potential Impacts to the Fishing Community from Offshore Wind Energy Development

Orsted Wind Power North America LLC (“Ørsted”) appreciates the opportunity to comment in response to the Request for Information (“RFI”) related to the establishment of a regional fisheries compensation fund. Ørsted supports efforts by nine Atlantic coast states — Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia (“the States”) — to advance and implement a consistent regional approach for the administration of financial compensation that addresses the effects of offshore wind development on commercial and for-hire recreational fishing industries. Our recommendations follow the order presented in the RFI:

1. Establishing a Regional Fund Administrator for Fisheries Compensatory Mitigation Framework

a. Statements Regarding Fisheries Socioeconomics

While the nine Atlantic states well encompass the status of fisheries in the U.S., the socioeconomic figures should be revised to exclude imported seafood values. We raise this nuance not to diminish the importance of the seafood industry but to ensure the States are not considering the impact of imported seafood in their decision making given that the mitigation framework applies solely to domestic production from wind energy areas on the Outer Continental Shelf (“OCS”). Economic activity associated with imported seafood from outside that area should have no bearing on this process. As the tables from the report *Fisheries Economics of the United States* (“FEUS”) show, nationwide there are 696,284 jobs, \$55 billion in sales, \$20 billion in income, and \$29 billion in value added when seafood imports are removed from the equation.¹ This is roughly half of what the scoping document claims.

2019 Economic Impacts of the United States Seafood Industry (jobs, thousands of dollars)

	With Imports				Without Imports			
	#Jobs	Sales	Income	Value Added	#Jobs	Sales	Income	Value Added
Total Impacts	1,233,915	165,482,382	43,376,464	67,612,967	696,284	54,884,890	20,101,147	28,507,336
Commercial Harvesters	164,522	14,680,679	4,891,017	7,599,797	164,522	14,680,679	4,891,017	7,599,797
Seafood Processors and Dealers	99,630	16,218,109	5,118,330	7,115,051	52,991	8,625,994	2,722,308	3,784,312
Importers	252,396	82,574,434	13,234,128	25,172,303	0	0	0	0
Seafood Wholesalers and Distributors	79,979	12,900,669	4,239,250	6,065,788	24,700	3,984,206	1,309,238	1,873,340
Retail	637,389	39,108,491	15,893,739	21,660,029	454,071	27,594,012	11,178,584	15,249,888

Similarly, the figures quoted for the state from Maine to South Carolina also appear to include information related to seafood imports. If imported seafood is removed from the equation, less than 160,000 jobs are attributed to the seafood industry across the nine states. Therefore, when taking imported seafood out of the equation, the top five states are Massachusetts (76,000), Maine (38,000), Virginia (13,000), New Jersey (7,000), and Maryland² (6,000).

¹ See Fisheries Economic of the United States 2019, March 2033, available at: https://media.fisheries.noaa.gov/2022-07/FEUS-2019-final-v3_0.pdf

² Presumably, a sizeable portion of Maryland’s jobs are tied the Chesapeake Bay which is not impacted by OSW development.

New England Region | Commercial Fisheries

2019 Economic Impacts of the New England Seafood Industry (jobs, thousands of dollars)

	Landings Revenue	With Imports				Without Imports			
		#Jobs	Sales	Income	Value Added	#Jobs	Sales	Income	Value Added
Connecticut	16,600	3,069	589,593	123,125	205,702	813	57,106	19,423	27,153
Maine	657,033	45,674	3,641,818	1,076,489	1,606,570	38,264	2,332,580	800,582	1,148,488
Massachusetts	681,044	148,437	16,334,748	4,044,374	6,273,163	75,604	3,382,243	1,262,772	1,706,938
New Hampshire	39,550	6,155	837,995	204,694	321,307	2,746	183,008	67,162	92,093
Rhode Island	109,306	8,024	886,930	239,748	365,973	5,580	377,124	137,080	191,798

Mid-Atlantic Region | Commercial Fisheries

2019 Economic Impacts of the Mid-Atlantic Seafood Industry (jobs, thousands of dollars)

	Landings Revenue	With Imports				Without Imports			
		#Jobs	Sales	Income	Value Added	#Jobs	Sales	Income	Value Added
Delaware	11,831	774	156,991	29,749	51,198	415	55,667	11,883	18,915
Maryland	77,944	18,248	2,778,243	645,919	1,027,469	5,782	359,481	131,425	179,457
New Jersey	181,741	52,262	10,808,641	2,238,502	3,761,959	7,028	676,709	223,053	321,329
New York	42,176	42,006	6,492,898	1,346,110	2,257,380	2,708	150,209	51,853	72,716
Virginia	184,269	23,523	3,230,751	803,235	1,250,426	12,726	840,664	318,232	432,103

South Atlantic Region | Commercial Fisheries

2019 Economic Impacts of the South Atlantic Seafood Industry (jobs, thousands of dollars)

	Landings Revenue	With Imports				Without Imports			
		#Jobs	Sales	Income	Value Added	#Jobs	Sales	Income	Value Added
Florida ¹	237,631	81,647	19,373,993	3,619,588	6,476,479	9,338	964,486	254,045	389,720
Georgia	24,271	19,883	3,278,306	725,453	1,194,897	2,681	146,413	57,471	78,255
North Carolina	87,463	8,784	947,383	255,891	387,119	5,212	301,886	123,774	164,399
South Carolina	25,113	1,739	168,148	51,035	74,261	1,341	84,830	34,681	46,184

We appreciate the reference to recreational fishing, however, the citation is not relevant to the issue at hand. The information cited applies to all recreational fishing—not solely to charter and for-hire fishing. Private recreational angling is included the figures cited yet private recreational angling is beyond the scope of this compensation initiative. Again, we raise this not to diminish the importance of the economic impact recreational fishing brings but to ensure the States are basing decisions on relevant information pertaining to those who derive a living from fishing in the areas being developed for offshore wind.

Apart from this information noted above, we agree with how the information is framed.

b. Statements Regarding Intended Purpose

We agree with the stated purpose of the compensation fund in general: compensating verifiable losses and increased costs associated with offshore wind development. In addition to the stated purpose, the scoping document raises points about funding, particularly fund deficiencies and surpluses, and inclusion of for-hire/party fishing. Regarding funding, we do not believe additional state reviews would be able to capture unforeseeable impacts. By definition, unforeseeable impacts are not discernible until they are realized and cannot be accounted for in a forward-looking review process. Any review to categorize or define an unforeseeable impact would be an exercise in speculation at worst and defining a foreseeable impact at best (which as noted is done in the National Environmental Protection Act (“NEPA”) process). While we appreciate the States’ concern that relying on the NEPA process or BOEM guidance could theoretically lead to a fund deficiency, this concern is solved by creating a dedicated funding mechanism based on lease fees and bidding credits with a uniform framework rather than trying to predict the future on a state-by-state and project-by-project basis. Moreover, it seems as though additional state review would not be able to address unforeseeable cross-project impacts or regional impacts associated with multiple projects as state authority is limited by geography and scope. In

addition, truly unforeseeable impacts could be covered by fisheries disaster declarations or private insurance. As for potential surpluses, the scoping document lists initiatives for transition and resilience funds. We believe that surplus funds could be directed towards that list. Finally, regarding for-hire and party boat fishing, we believe that sector should be compensated in the same manner as commercial fishing interests.

c. Statements Regarding Anticipated Losses

For the most part, we agree with the types of anticipated losses in the RFI. However, leaving the fund open to any undefined, unanticipated, or unforeseen loss may invite unfounded claims and go against the intent of the fund itself. We realize that not all types of harm can be defined in advance, but the States should consider creating a limit on how the compensation fund is used to ensure solvency, prevent unjust enrichment, and to promote responsible offshore wind development. The compensation fund should not be a catch-all for any adverse impact. We suggest that the compensation fund focus on losses which are reasonably foreseeable. By leaning heavily on the fishing industry as well as BOEM's final mitigation guidance, the States should be able to create a rather exhaustive list of potential harms that the entire industry may experience to define what the compensation fund may cover. Additionally, the States should consider excluding particularized events and resultant damages from the types of losses covered under a compensation program. For example, accidents where fault can be attributed should not be considered under the compensation fund, i.e. an allision (when a vessel hits a fixed or stationary object) with a LiDAR buoy. Because the scoping document raises the issue of private insurance, we would suggest that any insurable event should be excluded from the compensation fund. Instead, insurable events should be handled outside of the compensation program and through the responsible party.

d. Statements Regarding Geographic Scope

The scoping documents includes a variety of reasons for creating a regional fund, and we agree with all of those. A regional approach could potentially reduce costs to developers and streamline the process for the fishing industry. We applaud the States for their initiative and vision in this effort.

e. Statements Regarding a Unified Regional Fund

We agree that a fund with multiple sets of rules would decrease efficiency and fairness precisely because doing so would encourage the status quo of project-by-project or state-by-state approaches. The point of creating a regional fund along with establishing a regional administrator is to alleviate cross-state impacts. If the fund consisted of multiple approaches with different sets of rules, then nothing changes for the better. An important aspect of the regional fund is the creation of a consistent set of rules applicable to any impacted claimant and not rules based on where a claimant calls home.

While we agree with the idea that the number of fiduciaries should be reduced to minimize transaction costs, we disagree with the suggestion that doing so is solely within developer control. If a developer uses numerous fiduciaries, that may be due to regulatory or statutory reasons. If lease and

auction fees form the basis of any administered fund as we and have suggested,³ the issue of dealing with multiple fiduciaries may be moot.

f. Statements Regarding Key Qualities

The scoping document properly identifies the key qualities of an administrator. We suggest the States focus on regional accounting firms with a history of working with clients in the seafood sector. Recognizing that “extensive fishery industry experience, knowledge, and understanding,” is dependent on fishery and geographic location, we suggest the administrator include a person or persons with direct fisheries knowledge of all fisheries from Maine to South Carolina as part of the administration team and outside of the proposed governance and advisory structure. It is our experience that even firms that have an extensive list of fisheries clients do not have a requisite understanding of on-the-water experience to make informed decisions about operational loss. Filling that gap with people who have extensive experience in the fishing and/or seafood industry should help the administrator to make reasoned and informed decisions.

g. Statements Regarding Key Tasks of an Administrator

The scoping document sets forth the essential tasks. If the administration team includes a person or persons with extensive fishing experience, we believe that fishing expertise should be relied upon in Steps 3 through 6, as necessary. Figure 3 suggests that claim verification could be handled by a separate entity. If people with fishing experience are included in claims process, there will not be a need for an outside entity to conduct a review. Additionally, if there is an appeal process which affords a separate level of review, that should provide an additional safeguard.

As to options on how to proceed, the States should opt to hire first and design second. As we have often heard, neither the States, fishing industry, nor developers have the willingness, expertise or ability to design a regional claims process. If the States were to choose Option 1, in effect, they, as a group, would shoulder the burden of creating a fair and legitimate process. While the States certainly are able to do so, Option 1 will take exponentially longer than Option 2 given the need to operate as a group. Option 2, on the other hand, would delegate the process, presumably after a robust hiring process with adequate oversight, to a single entity with experience and ability beyond what the States and various stakeholder have to offer.

h. Statements Regarding Technical Considerations

The scoping document raises appropriate issues concerning eligibility, evidence, administration fees, and data verification.

- 1. Eligibility.** We suggest the administrator selected by the States be empowered to rely on whichever source and in whatever manner they see fit to determine eligibility. While NOAA, academic institutions, and offshore wind industry experts could provide expertise, deferring to

³ See Comment from Orsted Wind Power North America (Aug. 19, 2022), available at: https://downloads.regulations.gov/BOEM-2022-0033-0034/attachment_1.pdf

outside organizations and requiring a structured mechanism for that feedback will only slow down efforts to establish a compensation process.

- 2. Evidence.** We disagree with the statement that evidentiary burdens could make it impossible for a claim to be made. The point of having an administrator evaluating claims on a case-by-case basis is to allow for consideration of facts and circumstances particular to each claimant. The administrator should be given wide latitude to examine any and all evidence to support a claim. The data limitations the scoping document notes seem to be relative to claim verification and are generally referring to industry-level data, not fine-scale data that can be traced to claimants. Individual claimants should have the ability to present evidence to support a claim that falls within the purpose of the compensation fund. It should be up to the administrator to determine whether or not the claim is supported by the evidence presented. If a claim is denied for lack of evidence, the appeals process will be able confirm or deny the finding. If there is a concern that the administrator would not be able to corroborate evidence, particularly protected landings information, a claimant could provide authorization for the administrator to receive landings data.
- 3. Administrative fees.** We believe that administrative fees should be handled in a way that will remove long-term dependence on developers. In the short term, this is achievable by structuring the fund to generate a requisite amount of interest on investments. While lease fees and bidding credits will not be directed to this fund at the outset, it is our belief that they will be in the future. Once that happens, it is possible that administrative fees transition from interest earned on investments to a set fee derived from lease fees and bidding credits.
- 4. Data verification.** It is unclear why access to confidential data will be necessary except in limited circumstances. If confidential data is related to a specific claim, a claimant could simply supply the data requested or provide an authorization to request data on their behalf. This authorization could be part of a claim submission process.⁴

i. Statements Regarding Appeals Process

We recommend that a third party administers the appeals process. Stakeholders have consistently told us that reviews of any sort should be handled by an independent party. We agree that review by an independent party leads to a greater level of credibility and buy-in.

j. Statements Regarding Governance and Advisory Structure

Because this fund is for the benefit of the fishing industry, fishing interests should play a prominent role in governance to the greatest extent possible. As described in the scoping document, the duties of the governing board seem to fall more in line with corporate governance and do not describe a need for fisheries experience. Therefore, Option 3, Co-Led, strikes the right balance as the States could help assist

⁴ NOAA Fisheries/Greater Atlantic Region Analysis and Program Support Vessel Landing History Request Fact Sheet (Sept 2020), available at: <https://www.greateratlantic.fisheries.noaa.gov/public/nema/apSD/DataRequestFactSheetTemplate09-15-2020.pdf>

on governance and the fishing industry would have a significant seat at the table. Additionally, developers should have a role in oversight, as they have a vested interest in the fund's long-term success. The scoping document seems to include a role for offshore wind developers on the governing board under Option 1 and Option 3 in an "meaningful" advisory capacity. However, given that developers are paying into the fund, there should be at least one seat with voting rights reserved for an offshore wind industry representative. This seat would not have as much voting authority as the States or the fishing industry representatives, but it would be more than an advisory role. We have no interest in micromanaging the administration of this fund, but a full seat at the table (even in minority role) and the continued discussions that will follow will help to strengthen the sinews of trust between the fishing industry and the offshore wind industry.

As proposed in the RFI, the advisory panels and committees should be almost completely driven by fishing industry with the other organizations named playing a supporting role. As the scoping document notes, advisory boards will have to consider sub-regional differences and needs. We suggest a specific number of seats on the advisory panels be reserved for fishing industry members from each state and possibly by gear type.

2. Evidence of Claims Questions

- a. Besides traditional fisheries data sources, what additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? Provide a rationale for inclusion of a data source and specific group the data source would apply to.**

We believe the fishing industry is best suited to answer this question.

3. Regional Fund Administrator Purpose Questions

- a. What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds that may be distributed to help the fishing industry or specific fisheries/gear types of the industry transition and adapt to the long-term presence of the offshore wind industry in traditional fishing grounds?**

Ideally, the Regional Fund Administrator should handle as many transition or resilience funds as possible. This would include Navigational Safety Funds, and Coastal Community Funds. It seems as though all funds related to offshore wind have some form of eligibility, evidentiary requirements, or review by the fishing community. In some cases, eligibility for a direct compensation fund is a prerequisite for inclusion in a transition or resilience fund. It makes sense that the same administrator handles any related fund.

- b. If you do not think that management of such funds is an appropriate role for the Regional Fund Administrator, how should such funds be managed?**

We believe this is an appropriate role.

- c. **Should a separate gear loss claims process also be regionalized under the purview of this administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator.**

Yes, and this should be a priority. Gear loss programs vary by developer and having a singular approach with third-party administration would be extremely beneficial to all involved. While the exact mechanics will need to be defined, the Regional Fund Administrator could follow final BOEM mitigation guidance which will hopefully explain how gear claims should be handled.⁵ Even if gear claims are not addressed in the final guidance, the Regional Fund Administrator will have an existing federal process to follow with input from the proposed advisory board. Most importantly, we believe third-party administration will help turn down the temperature around gear claims, especially if gear loss claims are paid from lease fees and bidding credits rather than by developers directly. This approach, which would remove developers from the process completely, was taken by the Fishermen's Contingency Fund that BOEM cites in the draft mitigation guidance.⁶

4. Governance Questions

- a. **Of the governance options proposed, which is preferable and why, or is there another model that should be considered?**

As noted above, we believe that the co-led option is the correct method. Through stakeholder outreach, we have been advised that the cable committees established on the West Coast have been examples of success with relatively simple governance structures albeit without state representation.⁷

- b. **What role should the States play in governing or advising the Regional Fund Administrator?**

We recommend that the States play a large part in governing the Regional Fund Administrator. In order to ensure long term success on a regional scale, individual States should have representation on the governing board, especially if developers play a smaller role over time.

- c. **What role should the fishing industry play in governing or advising the Regional Fund Administrator? Please be as specific as possible as to why, what, how and who?**

We defer to the fishing industry on the role they would play but suggest it be equal to the state and developer role.

- d. **What role should the offshore wind industry play in governing or advising the Regional Fund Administrator? Please be as specific as possible as to why, what, how and who?**

To date, we have advocated for a "hands-off" approach. In the few compensation arrangements that Ørsted has created, we have played a prominent role in designing the framework but have agreed to

⁵ BOEM's draft guidance currently states gear loss programs should follow NOAA's Fishermen's Contingency Fund.

⁶ Gear claims are paid of the NOAA-administered fund rather than by developers directly.

⁷ See <http://www.ofcc.com/> and <http://www.cencalcablefishery.com/> as examples.

step aside once funding is in place. Ideally, we would like any regional fund to proceed in the same way. It seems reasonable that all contributing developers should at the very least be part of the initial governing board membership. Once the regional fund is established, it makes sense to create a seat or seats on the governing board for an offshore wind industry appointed member(s) to represent the industry. Again, the point of being on the board would be for oversight purposes, not day-to-day management. We do not want to take an active role in advising or managing the claims process.

e. Are there other entities or organizations that should be involved in governing or advising the Regional Fund Administrator?

We do not believe other entities should be included in the initial phase. After the Regional Fund Administrator is established by the States and the governing board is created, then recommendations for other entities can be considered.

5. Funding Questions

a. How might States encourage developers' participation in directing their compensatory mitigation to a regional fund?

Assuming this question refers to contributions made prior to funding via lease fees and bid credits, the existence of the fund itself may be all that is needed to encourage contributions. It takes a similar amount of effort to establish a developer-sponsored compensation fund. Reducing that effort would come at a savings so long as the contributions were properly credited to the developer. As noted above, developers have an interest in making sure their contributions are being used wisely and appropriately. Giving developers more than an advisory role in governance could help encourage participation.

b. What mechanisms or procedures should be established to ensure administrative costs are kept at a fair but reasonable level?

This will be dependent on the entity selected as there is sure to be myriad proposals and fee structures. A robust RFP process will enable the States and possibly the initial board to weigh options.

c. How should administrative costs be paid?

As noted above, we think the best option is to pay via interest generated by fund investments. We believe this is the fairest solution as it would not be an additional payment required from developers nor would it impact the amount reserved for compensation. If the fund receives lease fees or bidding credits, then those receipts should pay for administrative costs as well.

6. Claims Process Questions

a. How should dispute resolution of claims be managed with respect to the Regional Fund Administrator? Should this be a role of the Regional Fund Administrator, an independent entity, or some hybrid?

As noted above, we believe disputes and appeals should be handled by a third-party.

- b. Are there other sources of potential revenue loss or increased expenses that are missing from Table 1 of the Scoping Document?**

We defer to the fishing industry.

- c. What datasets and/or approaches may be appropriate to use when determining eligibility for shoreside industries and others that may not have the same level of documentation as commercial fishing operations?**

We defer to the shoreside industries.

7. Identifying a Regional Fund Administrator

- a. What kind of firms could help design and or administer the Regional Fund as described in the Scoping Document (claims process, data, governance, etc.)?**


We believe that firms with expertise in large-scale claims processes should help design and implement the process. As noted above a regional accounting firm could administer the fund.

- b. Please provide the names of firms who may have an interest in this work.**

We have recommendations of firms who have expertise in this line of work. The States can contact us if they would like more information on these firms that could help in designing the regional fund.

- c. Please provide additional considerations that were not outlined in the Scoping Document and that are necessary for a firm's interest in providing services for the regional compensatory mitigation Regional Fund Administrator in the future.**

N/A

Ørsted appreciates the opportunity to provide the above recommendations to the States. For any questions about these comments, please contact me at 

Sincerely,

