

Comment Summary

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

Introduction

Nine Atlantic Coast States (the States) of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia issued an RFI through the Special Initiative on Offshore Wind on December 12, 2022. The RFI was intended to seek information/feedback on a consistent regional approach for administration of financial compensation (Regional Fund Administrator) paid by developers to address adverse effects of offshore wind energy development on the U.S. Eastern Seaboard's (i.e., Atlantic Coast's) commercial and for-hire¹ recreational fishing industries in the absence of current federal authorities for doing so.

The States requested input from members of the commercial and for-hire recreational fishing industry, renewable energy industry, corporate and financial management, and others with direct involvement in issues regarding offshore wind energy siting and development, as well as interested members of the public, to help design an effective and efficient way to accomplish this important shared objective. Respondents were informed that all responses to the RFI will be considered non-confidential and may be considered public records by one or more of the States supporting this effort. A summary of the comments received by the deadline (extended from January 31, 2023 to February 7, 2023) are summarized below.

Comment Summary

Metrics

- 41 total comment submittals received from individuals/representatives of commercial fishing (17), industry groups, and 'other' groups/entities/individuals (15), recreational/for-hire fishing (6), and offshore wind developers (3).
- 25 commentors were generally in favor of the intent of the RFI or compensation, while three commentors were opposed.
- Three commentors submitted an alternative framework/approach to what was presented in the RFI.
- 11 commentors provided specific responses to some portion of the questions posed in the RFI (see tab in comment matrix [RFI Questions], summarizing the questions/responses).
- Eight commentors submitted comments in favor, or opposition of, offshore wind in general.
- Two commentors submitted comments that were not at all relevant to the intent of the RFI.

¹ "For-hire" include party and charter recreational fishing businesses

Takeaways/Common Themes

- Appreciation of the overall 9-state effort to keep this moving. However, some concern about getting too far out ahead before BOEM guidance is finalized.
- Prioritize avoidance/minimization, before compensation.
- Key Administrator Task - Option #1 (Design first, hire second) seems to be preferred over Option #2 (hire first, design second), but with efficiencies of option #2 acknowledged – administrator involved vs. not involved in program design.
- May need additional categories in Table 1 (factors leading to potential lost revenue).
- Emphasis on qualifications/experience of administrator (fiscal fund management, claims processing, fisheries management) and diverse stakeholder representation (fishermen, fishing gears/sectors/vessel operators/processors/dealers), developers, etc.) on the governing board, as well as potential for conflicts of interest that might emerge.
- Legal framework & authority/enforceability of the plan remains unclear, as well as the expected level of developer participation (funding) – in contrast to similar programs in the oil & gas industry. This points at a potential need of codifying the compensation and administrative processes in federal (or state) law.
- Need for a ‘standard formula’ for valuation & compensation, rather than case-by-case approach.
 - Basis of valuations may “undervalue” revenue for many fisheries (including downstream businesses – processors, distributors, shoreside businesses, etc.).
 - Concern of burden on fishermen to furnish evidence/data of impacts. Administrator should have access/utilize confidential data where appropriate and where publicly-available data does not establish appropriate level of impacts/valuation.
 - Concern of ‘first-come-first-served’ approach.
 - Uncertainty of compensation fund allocation to commercial sector vs. ‘for-hire’ sector.
- Need/desire for vessel upgrades (e.g., navigation systems, radar systems, VMS, AIS, etc.).
- Concern/disapproval for using BOEM Draft Mitigation Guidance as basis of program.
- Draw on experience/lessons-learned from existing compensation programs in-place for existing offshore wind projects.
- Some commentors used this as a platform to voice general support/opposition of offshore wind, not specifically responsive to the RFI.

Recommendations

- Several commentors agreed with the overall approach, but provided additional recommendations, identified in the comment summaries (too many to list here)
- Several commentors proposed alternative frameworks, such as:
 - RFA for short-term vs. an in-lieu fee mitigation program on a ‘credit-based’ system
 - Adaptive updates to approach/implementation as actual levels of impact emerge
 - “Resiliency Funding” should be continuous, with a defined mechanism, and perhaps managed separately.
 - “burden of production”, rather than burden of proof.