



August 22, 2022

Ms. Amanda Lefton
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, Virginia 20166

Re: Draft Fisheries Mitigation Guidance

Dear Ms. Lefton,

Please accept these comments from the New England Fishery Management Council (New England Council), the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), and the South Atlantic Fishery Management Council (South Atlantic Council) on the Draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development.

The New England Council has primary management jurisdiction over 28 marine fishery species in federal waters and is composed of members from Maine to Connecticut. The Mid-Atlantic Council manages more than 65¹ marine species in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). The South Atlantic Council manages 64 marine species in federal waters and is composed of members from North Carolina through Florida. In addition to managing these fisheries, the three Councils have enacted measures to identify and conserve essential fish habitats (EFH), protect corals and other important habitats, and sustainably manage forage fisheries². The Councils support efforts to mitigate the effects of climate change, including the development of renewable energy projects, provided risks to the health of marine ecosystems, ecologically and economically sustainable fisheries, and ocean habitats are avoided.

While the Councils recognize the importance of domestic energy development to U.S. economic security, it is important to note that marine fisheries are profoundly important to the social and economic well-being of communities throughout the U.S. and provide numerous benefits to the nation, including domestic food security.

¹ Fifteen species are managed with specific Fishery Management Plans, and over 50 forage species are managed as “ecosystem components” within the Mid-Atlantic Council’s FMPs.

² Two of the South Atlantic Council’s Fishery Management Plans are habitat-based plans with over 400 coral species and associated habitat conserved under the Coral, Coral Reefs and Live Hard Bottom Habitat FMP, and two species of the only structural pelagic habitat under the Pelagic Sargassum Habitat FMP.

General comments

Our comments build off our Councils' policies regarding offshore wind energy.³ We are pleased that many recommendations in BOEM's draft guidance align with our offshore wind energy policies and with recommendations we have made in many previous comment letters to BOEM.⁴

We support development of this guidance as it provides clarity on BOEM's recommendations for considering and addressing impacts to fisheries. This guidance also represents a step towards greater consistency across projects, which is very much needed.

While the draft guidance represents an important first step, many details should be further developed, especially regarding financial compensation. It is essential that BOEM work with affected industries and federal and state fisheries agencies to develop these methods. A working group approach may be an effective method for further development. Absent detailed guidance from BOEM, the responsibility for developing methods for estimating compensation falls on the fishing industry and fishing-related agencies and/or wind developers.

BOEM should clarify the objective of the guidance regarding which types of impacts may be compensated. For example, the final guidance should clarify if compensation will be focused only on revenue exposure or if other impacts, such as changes in the value of vessels and limited access permits, will also be eligible for compensation.

BOEM has made it very clear that this guidance does not establish binding requirements for offshore wind energy projects. For example, the draft guidance document states: "This guidance does not have the force and effect of law and does not bind the public or BOEM in any way." With this in mind, we recommend removal or modification of language which weakens BOEM's recommendations. For example, terms such as "in some cases" (page 4), "if necessary" (page 5), "make reasonable efforts" (page 5), "where feasible" (page 5), and "consider" (pages 7, 8, and 9) are unnecessary as the document does not establish any binding requirements. The guidance would be improved by greater use of terms such as "should."

The final guidance will be applied on a project-by-project basis during BOEM's development of terms and conditions in the Record of Decision for individual projects. We recommend that the guidelines be applied to all projects. We understand that BOEM cannot require regional mitigation or mitigation for cumulative impacts unless an individual project's contribution to a regional or cumulative impact can be estimated. We are unaware of any attempts to estimate an individual project's contributions to cumulative effects. We recommend that BOEM provide additional recommendations on how this could be estimated, including how it could be addressed in National Environmental Policy Act (NEPA) documents which analyze the impacts of

³ The New England and Mid-Atlantic Councils worked together on their offshore wind energy policy and adopted the same policy language, which can be found at <https://s3.us-east-1.amazonaws.com/nefmc.org/NEFMC-Offshore-Wind-Energy-Policy-December-2021.pdf> and https://www.mafmc.org/s/MAFMC_wind_policy_Dec2021.pdf. The South Atlantic Council has a standing [Energy Policy Statement](#) which will be reviewed and revised to better address renewable energy development in 2023.

⁴ Recent comment letters from the New England and Mid-Atlantic Councils are available at <https://www.mafmc.org/northeast-offshore-wind>.

individual projects. Cumulative effects will increase in magnitude as more projects are built and our understanding of those impacts will increase over time. These factors will pose challenges for estimating the contribution of early projects to cumulative effects and planning for appropriate mitigation.

The inability to address regional mitigation and cumulative impacts is a serious shortcoming of the guidance. As we have stated in several past comment letters to BOEM, we are very concerned about the cumulative impacts of multiple wind energy projects on the fisheries we manage. The multiple wind energy projects planned along the east coast will have cumulative and compounding effects on our fisheries. The synergistic effects of multiple projects may be more than additive and this may not be sufficiently identified in project-specific documents; therefore, losses may be undercompensated by taking a project-by-project approach.

The guidance should differentiate between commercial and recreational fishing and between fixed and floating wind project installations when discussing expected impacts and mitigation and compensation measures. Inclusion of the for-hire industry for compensation should also be clearly stated throughout the document and not implied when discussing recreational fishing.

Offshore wind technology is evolving, as is our understanding impacts to the fisheries and the need for mitigation. It will be important to update this guidance periodically to ensure continued relevance.

We request that BOEM share publicly the comments received on the draft guidance, including from state and federal agencies. This will help the fishing community reach a common understanding about shared concerns and issues and how to address them.

Project siting, design, navigation, and access

The first step in mitigation is to site projects where fishery interactions are minimized. Overall, we support the recommended cable and facility design elements as they are similar to recommendations in the Councils' offshore wind energy policies. We appreciate use of the phrase "maximize access to fisheries" when describing recommended facility design elements on page 5 of the draft guidance. As stated in multiple previous comment letters, we support use of "larger turbine sizes to reduce total project footprint and meet energy production commitments" (page 6).

The guidance refers to static vs. dynamic cables. We are not familiar with these terms from our review of previous BOEM documents. Additional clarity could be provided by indicating if these terms refer to export cables, interarray cables for fixed foundations, or floating wind interarray cables.

The draft guidance states that dynamic cables "should share corridors and minimize the total cable footprint," where feasible (page 5). It is unclear how this approach could apply to interarray cables as each turbine must be connected to an adjacent turbine. Overall, we support the concept of shared corridors and minimizing overall footprint. This should apply to all cables to the extent possible.

We support the recommendation that “all static cables should be buried to a minimum depth of 6 feet below the seabed where technically feasible” (page 5). The Councils have not endorsed a specific burial depth, but rather have recommended depths that are adequate “to reduce conflicts with other ocean uses, including fishing operations and fishery surveys, and to minimize effects of heat and electromagnetic field emissions.” Assuming a depth of 6 feet is sufficient to address these objectives, we note that several COPs for projects off the Atlantic coast include depths of less than 6 feet within the proposed range. We recommend that all COPs be updated to reflect a minimum cable burial depth of 6 feet based on this guidance. In addition, we suggest clarifying the expectations for burial of interarray floating cables, or at least leaving a placeholder in the guidance that indicates this issue will be addressed as floating projects are designed. Floating cables present specific concerns and their impacts on both fishing operations and seafloor structures should be carefully evaluated.

We strongly support the language in the draft guidance that states “If needed, cable protection measures should reflect the pre-existing conditions at the site. This mitigation measure chiefly ensures that seafloor cable protection does not introduce new obstructions for mobile fishing gear. Thus, the cable protection measures should be trawl-friendly with tapered or sloped edges. If cable protection is necessary in ‘non-trawlable’ habitat, such as rocky habitat, then the lessee should consider using materials that mirror the benthic environment” (page 5). In addition, BOEM is recommending that “facility planning should use nature inclusive designs, where applicable, to maximize available habitat for fish” (page 6). Our Council policies on offshore wind include similar recommendations.

Safety measures

We support the measures in this section of the guidance, many of which are consistent with Council policies.

The final guidance should clarify that all offshore wind energy cables be monitored throughout the life of the project to ensure they remain sufficiently buried or covered to minimize safety risks. Exposed cables should be reported immediately to the Coast Guard and to all mariners.

The draft guidance recommends identifying structures which may be most appropriate for Automatic Information System (AIS) transponders. AIS will be an important tool for safe navigation within wind arrays. Individual transponders for all structures is preferred, but a redundant virtual system should be a minimum requirement in the event of a system failure or service upgrade. The guidance also recommends consideration of lessee-funded radar system upgrades for commercial and for-hire recreational fishing vessels (page 11). Private recreational fishing vessels should have access to the same safety upgrades. In addition, we recommend provision of AIS transceivers for commercial, for-hire, and private recreational vessels, funded by wind energy lease holders.

Environmental monitoring

The Mid-Atlantic and New England Council policies on wind energy provide detailed recommendations on research and monitoring. These recommendations should be incorporated

into the final mitigation guidelines. For example, monitoring should occur for the life of the project and efforts should be coordinated across developers to ensure development of datasets that can be compared across projects. We also recommend that developer-funded data be made publicly available on a timely and regular basis.

Also, NOAA Fisheries and Council staff are currently collaborating to develop benthic monitoring recommendations. Once finalized, these recommendations should be referenced in future versions of the guidance.

The final guidance document should further specify the objectives and the frequency of environmental monitoring. Offshore wind developers should be required to monitor changes in composition and abundance of aquatic species, habitats, and ecosystems at the project and regional scales to understand project-specific and cumulative effects. Monitoring should analyze the duration, intensity, and magnitude of potential impacts to the fishery, the affected community, and to habitats upon which managed fish species depend. Baseline assessments should begin at least 2-3 years prior to construction and operation and continue without interruption throughout the life of the project, including decommissioning. Monitoring plans should be sufficiently detailed to inform short term and cumulative effects to habitats, ecosystems, fishing activities, and marine species. Monitoring plans should be developed in coordination with state and federal agencies with the expertise to develop attainable plans with sufficient scientific rigor. Habitat data should be classified using a standardized system such as the Coastal and Marine Ecological Classification Standard to ensure scientific rigor, coordination and consistency between projects, and data sharing.

Much additional work is needed to develop guidelines for monitoring related to socioeconomic impacts. We recommend convening work groups of state and federal fisheries agencies, BOEM, the fishing industry, and wind developers to further develop this topic. Based on the limitations of available data, it will be challenging to fully assess socioeconomic impacts for all impacted individuals, including commercial and recreational fishery permit holders, captains, crew, and private anglers, as well as employees of shore-side commercial and recreational fishery support businesses related to processing, packing, shipping, bait and tackle shops, and others. Offshore wind impacts could include changes in revenues, costs, travel times, and the value of permits and vessels, as well as many downstream impacts to shoreside businesses and communities, and other impacts. It will be challenging to assess these impacts based on available data and it is not a simple process to change requirements related to socioeconomic data collection. For example, many impacted fisheries, including commercial, for-hire, and private recreational fisheries, do not require precise reporting of catch locations, which will pose challenges for demonstrating impacts from specific wind projects. It will also be challenging to associate impacts with offshore wind energy projects as opposed to other factors such as changes in species distributions, management measures, prices, market demand, environmental conditions, and other factors. We recommend that BOEM consider community vulnerability indices as one aspect of assessing impacts at the community level.

Financial compensation

A compensation fund and process should be established for all wind projects. The draft guidance suggests compensation funds should be “considered” if income losses are “likely.” However, it is impossible to fully estimate the extent of losses before construction. Compensation should be thoroughly planned for given that it will not be possible to avoid all negative impacts to commercial and recreational fisheries, shoreside support businesses, and communities.

Compensation should address all relevant impacts to commercial, for-hire, and private recreational fishing, as well as shoreside commercial and recreational fishery support businesses. Relevant impacts include, but are not limited to, adverse impacts on revenues, costs, travel times, and the value of permits and vessels. It is also important to consider that many individuals other than captains, permit holders, and business owners will be impacted (e.g., crew members, processing plant employees); however, not all individuals will have the documentation necessary to demonstrate the degree of income impacted by specific wind projects.

The draft guidance states “the scope of impacts or losses addressed by compensatory mitigation should be based on the impacts identified in various environmental documents analyzing the potential effects of the action proposed in the lessee’s submitted plans.” The final guidance should clarify which environmental documents may be used (e.g., the Final Environmental Impact Statement for an individual project, or some other documents) and how to address discrepancies in information provided in different documents. We are concerned that reliance on specific documents would preclude compensation that would be supported by a more detailed evaluation (e.g., at the individual vessel or business level) or based on updated information. It is also important to consider that some fisheries information, including information for individual vessels, permits, or businesses, cannot be presented in public documents due to confidentiality requirements.

In addition, environmental analysis documents completed to date have not thoroughly examined all impacts that are relevant for compensation. For example, export cable corridors are not always analyzed with the same level of detail as turbine and substation locations. Different fisheries may be impacted by export cables compared to turbine and substation locations.

Financial planning for vessel owners and limited access permit holders can include the eventual sale of the vessel and/or permits. This represents a separate revenue source than that from landings. If offshore wind energy development results in a loss of access for some fisheries, that will likely reduce the value of fishing vessels and limited access permits. Therefore, it is important to consider how to compensate for these impacts. These impacts will be difficult to quantify as vessels and permits are sold through private entities and data on revenues from these sales are not publicly available. In addition, it is important to consider that individuals with permits in multiple fisheries must sell their permits as a bundle. Therefore, each unique combination of permits may be impacted differently. In some cases, if a vessel’s permit is transferred to a new owner, then the new owner would not have a permit history, and thus, could not be compensated given compensation is based on the owner’s permit history.

The final guidance should describe approaches that will be used to address unexpected impacts. EIS documents generally predict future fisheries conditions based on data from recent years; however, the marine environment is changing, and independent of offshore wind energy development, the value of fishing areas will change over time. Future conditions, especially conditions beyond a few years into the future, are challenging to accurately predict.

The guidance assumes commercial and recreational fisheries and shoreside support businesses will generally adapt and learn to co-exist with offshore wind projects within five years after construction and furthermore suggests a specific rate at which compensation can be phased out. It is important to acknowledge that some aspects of the fisheries, including some individual fishermen and individual businesses, will not adapt as easily or as quickly as others. The five-year time frame and proposed rate of phase-out may not sufficiently address all fisheries impacts and we are concerned that they are not sufficiently justified. This aspect of the guidance will benefit from review and revision as needed after projects are built and actual adaptation rates can be assessed. For example, some fishermen may choose not to fish within wind project areas due to operational logistics, safety, and navigation concerns, and may not be able to make up for these losses by fishing elsewhere given fish distribution, additional costs associated with transit, etc. The final guidance should include guidelines for how the impacts will be mitigated/compensated for if commercial or recreational fishermen are not able to adapt within the specified timeframe or if they choose to no longer fish within the lease areas.

We appreciate that the draft guidance acknowledges that shoreside commercial and recreational fishery support businesses may be negatively impacted and could be eligible for compensation. However, the multipliers to evaluate impacts to shoreside businesses appear modest (~1-2% to be used in the revenue exposure calculation) and are lacking a thorough justification. Shoreside multipliers may vary by fishery and we acknowledge that this is an area without a commonly agreed upon methodology for estimation. This section of the guidance could benefit from future research and evaluation.

In regard to the Fisheries Contingency Fund claims process, fishermen should be able to file a claim for income loss after more than two years, given the lengthy data QA/QC process for fisheries data. The guidance references the public availability of state and federal landings records but we suggest clarifying this section. Although summary data are generally available, data for individual fishing vessels are only available to certain analysts or to the vessel owners on request, and not to the general public. At this time, it is difficult to predict the number of claims that will be filed, and therefore the number of data requests NOAA Fisheries or the states may be asked to fulfill. There may be delays in obtaining data required to submit a claim, such that a longer period than two years may be needed, especially in the early years of this process.

For fishing activity where revenue exposure data are not available, more explicit guidance should be provided on how compensation funds will be determined. Recommending “working collaboratively with state and Federal fisheries management agencies regarding all revenue exposure data” in Attachment 1 (page 5) is insufficient. Impacts and compensation to data-poor fisheries must also be considered.

The final guidance should also consider the appropriate steps that will be taken if the guidance is not followed, if sufficient funds are not set aside to compensate for all valid claims, or if valid claims are not paid for any other reasons. To this end, the final guidance should outline an appeals process for disputes between the fishing industry and the offshore wind developers.

Finally, we support creation of one centralized compensation fund managed by a third-party entity to be used by developers for all wind energy projects. This will create efficiencies for affected individuals who wish to file a claim and for partner agencies involved in providing relevant data.

Conclusion

We appreciate the opportunity to provide comments on the Draft Fisheries Mitigation Guidance and look forward to working with BOEM to ensure that wind development minimizes impacts on the marine environment and is developed in a manner that ensures coexistence with our fisheries. Please contact us if you have any questions.

Sincerely,



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Dr. Christopher M. Moore
Executive Director, Mid-Atlantic Fishery Management Council



John Carmichael
Executive Director, South Atlantic Fishery Management Council

cc: M. Luisi, W. Townsend