



Amanda Lefton, Director  
Bureau of Ocean Energy Management  
1849 C Street, NW  
Washington, D.C. 20240

Docket number BOEM-2022-0033

August 22, 2022

Dear Director Lefton,

The Massachusetts Fishermen's Partnership (MFP) appreciates the opportunity to contribute comments related to the Bureau of Ocean Energy Management's (BOEM) draft "Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585" (hereafter referred to as the "Draft Guidelines").

The MFP is a 501(c)6 umbrella group representing fifteen fisheries associations. The MFP's mission is to: improve fisheries research; facilitate dialogue among gear groups and fishery stake-holders; and promote research, education, and training within our communities so as to facilitate collaborative research between fishermen and scientists, improve marine safety, encourage effective co-management of marine ecosystems, and promote the use of social, cultural, and economic data for holistic management of New England marine resources.

The MFP is a member of the Responsible Offshore Development Alliance (RODA) and we concur with and reiterate the recommendations published by RODA in its 2021 report, "Impact Fees for Commercial Fishing from Offshore Wind Development: Considerations for a National Framework" (hereafter called "RODA's Impact Fees Report"). This document may be found at [https://rodafisheries.org/wp-content/uploads/2021/12/RODA-Impact-Fees-Report\\_Dec21.pdf](https://rodafisheries.org/wp-content/uploads/2021/12/RODA-Impact-Fees-Report_Dec21.pdf)

Because BOEM's Draft Guidelines are largely focused on financial compensation (elsewhere referred to as compensatory mitigation or impact fees), we will focus our comments in this area as well. However, we would first like to stress that financial compensation should always be a *last resort*, undertaken *only* when all other mitigation measures are inadequate to avoid harm. That being said, given the pace and scale offshore wind development that is now planned for the U.S. continental shelf, it can *reasonably be presumed* that all other mitigation measures *will fail* to avoid harm. There is simply no way that an unprecedented, highly invasive use of heretofore un-industrialized ecosystems can proceed at the planned pace and scale *without*

inducing harm – both to the ecosystems where development will take place and to the fishing businesses and communities that have long depended on these ecosystems.

Taking this into account, mitigation measures must be put in place at the outset, *before any development occurs*, and these measures must be reasonably and adequately designed to offset harms that may occur both to individual fishing businesses and to the fishery system as a whole. BOEM’s draft guidelines are inadequate to this purpose in the following respects:

Point 1. The draft guidelines leave financial compensation to the discretion of individual developers. Instead, all developers within a region should be *required* to follow a strict set of uniform standards for financial compensation, with funds deposited prior to and as a condition for issuance of project permits.

Point 2. The draft guidelines fail to address impacts to the *collective* seafood system that will result from wind project development, well into the future. A separate and complementary framework is needed to collect and administer fees from developers to support long-term adaptation and resilience of the seafood system as a whole.

Point 3. The draft guidelines treat all offshore wind projects as discreet and co-equal units, and do not recognize the cumulative harms that may result from development of multiple wind projects within a single eco-region. Wind farm planning, permitting, and mitigation must adopt an eco-regional approach that considers and addresses the cumulative impacts of multiple projects.

Point 4. A trusted, centralized entity – not private offshore wind developers – must collect and administer funds.

We will elaborate on each of these points below. But first, we must again highlight that the ambitious goal set by the White House, Department of Interior, and Department of Energy in 2021 to deploy 30 GW of offshore wind power by 2030 – a trend that is projected to lead to the development of 100 GW by 2050 – represents a discontinuity in the evolution of offshore wind energy planning in the U.S. What *might* have been passable in the year 2014, when BOEM published its Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf” (hereafter called the “2014 document”), is no longer at all adequate in light of the 30 GW by 2030 goal. The Draft Guidelines ignore this discontinuity and proceed as though nothing has changed.

The pace and scale of development that are now being driven by the highest levels of government *fundamentally changes the magnitude of impacts that are likely to occur to fisheries*, especially in regions where this development will be highly concentrated, such as Southern New England and the Mid-Atlantic Bight. An entirely new approach to mitigation is now needed – not one that layers minor new details onto a document produced in 2014, but one that is designed from the ground up to accommodate the *new* reality that U.S. fishermen

are facing – one in which we may see entire ocean ecosystems forever altered by industrial energy activity. BOEM lacks sufficient expertise in fishery systems to develop such an approach, and should defer to the National Oceanic and Atmospheric Administration (NOAA), the regional fishery management councils, and RODA to rectify this inadequacy. Below, we elaborate on the cornerstones that should inform BOEM’s approach to fisheries mitigation moving forward.

**Point 1. The draft guidelines leave financial compensation to the discretion of individual developers. Instead, all developers should be *required* to follow a strict set of regionally standardized requirements for financial compensation, with funds deposited prior to and as a condition for issuance of project permits.**

Use of the terms “should,” “may,” and “BOEM recommends” in the Draft Guidelines are deeply disconcerting. In the Draft Guidelines Overview, BOEM states that it can only “*recommend* fisheries mitigation processes,” “*recommend* methodology to determine sufficiency of funds,” “*propose* measures that *could* result in fair, equitable, and predictable methodologies used by developers for mitigating impacts of offshore wind energy on fishing communities,” and “enforce compliance with contributions *proposed by the lessee* that were part of the approved plan or other appropriate approval” (p. 3). These statements would appear to suggest that BOEM lacks the authority to *require* developers to carry out fair, equitable, and adequate fisheries mitigation measures. In other words, developers *may*, if they so choose, ignore all of BOEM’s guidance completely and do nothing *whatsoever* to mitigate impacts of offshore wind energy on fishing communities!

We are left wondering why BOEM has changed its tone so dramatically from the 2014 document that the Draft Guidelines are ostensibly designed to complement. In contrast to BOEM’s Draft Guidelines, the 2014 document – which is replete with terms like “will,” “must,” and “require” – stated:

If avoidance is not possible, then BOEM, in consultation with other federal and state agencies, *will require mitigation measures* that will reduce conflicts with existing uses. *BOEM makes these mitigation measures mandatory* via lease stipulations or conditions of approval of SAPs or COPs should the specific conditions with an associated lease warrant so (p. 5-2).

The 2014 document and the Draft Guidelines are glaringly inconsistent. Through this inconsistency, BOEM is effectively stating that fair, equitable, and adequate fisheries mitigation measures are *optional* and at the discretion of each developer, and that BOEM has no commitment to ensuring that offshore wind development is compatible with existing uses of the continental shelf. We are told that BOEM has communicated to RODA that it lacks authority to regulate developers’ projects in a way that would mitigate fishing impacts. However, BOEM has a clear mandate under the Outer Continental Shelf Lands Act to “provide... for the prevention of interference with reasonable uses” including fishing. The 2014 document did not seem to question this mandate; why are the Draft Guidelines any different?

In sum, mitigation measures should be neither optional, piecemeal, nor left to the discretion of developers. Instead, they must be mandatory, standardized, and uniformly enforced by an agency accountable to the U.S. public. BOEM's current approach, characterized by such troubling statements like "The lessee *should* make reasonable efforts to implement the project in a manner that minimizes, mitigates, or redresses any adverse project effects on commercial and recreational fisheries (p. 5, emphasis added)," is frightfully inadequate and prejudicial to the U.S. fishing fleet.

**Point 2. The draft guidelines fail to address impacts to the *collective* seafood system that will result from wind project development, well into the future. A separate and complementary framework is needed to collect and administer fees from developers to support long-term adaptation and resilience of the seafood system as a whole.**

The Draft Guidelines provide for an approach to individual vessel-level compensation that, while inadequate and inconsistent, at least grasps the nature of the harms that may occur to individual vessels – namely, damage to gear or vessels or lost revenue from missed fishing time or displacement from traditional fishing grounds. However, BOEM completely fails to grasp the nature of another significant, longer-term category of impact that will undoubtedly occur as a result of offshore wind development – namely, impacts to the seafood system as a whole. In the remainder of this section, we will distinguish between these two types of impact as "individual harms" and "system-level impacts."

BOEM implicitly recognizes the existence of these two categories in its Draft Guidelines, where it states that the measures listed in the Guidelines "may mitigate the impacts of a proposed project" only, but that "These measures may work in tandem with additional mitigation measures that are *directed at the overall health of a fishery or community* (e.g., marketing/seafood promotion initiatives, gear development, and support programs that ensure safe and profitable fishing alongside offshore wind energy development (p. 4, emphasis added)." However, BOEM chose to issue guidelines only for financial compensation related to individual harms, and opted not to issue guidance on mitigating system-level impacts. This is a conspicuous oversight and it should be filled prior to finalization of the Draft Guidelines.

We call on BOEM to work closely with RODA, NOAA, and the regional fishery management councils to develop a complementary set of guidelines focused on reducing system-level harms. This will require a fundamentally different approach that requires terminology other than "compensation," which conveys individual-level, direct, claims-based harms. For instance, many of MFP's members support the idea of a "seafood resilience fund" which would be funded by fees levied on developers and administered by a national or regional entity, and would provide funds to enhance the resilience of the fishing and seafood industry *as a whole* as it undergoes what is bound to be a profound transformation resulting from offshore wind development. This type of fund would serve not to repair harms to current individual users of the marine environment, but to help ensure that the *future* of the fishing industry as a whole is not diminished as a result of offshore wind development.

We must underscore that although fishing businesses, vessels, and permits are owned by individuals, the ocean as a whole is a publicly owned commons managed for the benefit of all Americans. The fishing industry has long operated in a public trust relationship with the American public to provide food, jobs, business opportunities, and cultural value to coastal communities. BOEM's Draft Guidelines must incorporate a new focus on mitigating the impacts of offshore wind development on the sustainability of this system *as a whole*, though one or more funds collectively managed for the future integrity of the system.

In fact, most of the fisheries mitigation packages negotiated between developers and fishermen have thus far recognized this, as evidence by their inclusion of the following:

- Deepwater Wind – RI: funds for the hiring of an executive director by the commercial fishing industry and a marketing program for the for-hire fishing industry.
- Vineyard Wind I - RI: \$12.3 million for a Fishermen's Future Viability Trust.
- Vineyard Wind I – MA: \$1.75 million for a Fisheries Innovation Fund.
- South Form Wind – RI: \$950,000 for a Coastal Community Fund.

While we withhold comment on whether the dollar amounts of these funds are sufficient, we enumerate these examples to illustrate that mitigation for the seafood system *as a whole* has consistently been important to fishermen participating in negotiations with developers. This importance should be reinforced by the BOEM Draft Guidelines by making "additional mitigation measures that are directed at the overall health of a fishery or community (p. 4)" a standard and required part of any mitigation package.

**Point 3. The draft guidelines treat all offshore wind projects as discreet and co-equal units, and do not recognize the cumulative harms that may result from development of multiple wind projects within a single eco-region. Wind farm planning, permitting, and mitigation must adopt an eco-regional approach that considers and addresses the cumulative impacts of multiple projects.**

Cumulative impacts result from the collective impacts of *all* wind energy projects operating within a shared ecological region, and there is sound reason to believe that the cumulative impacts of offshore wind development will increase *exponentially* – not linearly – as more projects are developed in a region, due to two factors. First, if – as the 2014 document states – "BOEM's primary mitigation strategy is avoidance (e.g., locating a project away from a prime fishing area)," then the *least critical areas*, from an ecological and economic perspective, will be developed first. Every subsequent development will presumably take place in a slightly more critical area, and *the marginal impact of each new project will be greater than the last*.

Second, as the cumulative acreage placed under development increases, remaining acreage will shrink. Fishing boats will be crowded into ever-smaller patches of ocean (and these patches will be less desirable, as explained above) and marine species will have fewer areas available for refuge - especially if construction is carried out concurrently in multiple locations within a region. In effect, as an eco-region approaches (or exceeds) its carrying capacity for offshore wind, cumulative impacts will become *progressively* more detrimental. This has implications for

the total amount of harm that will occur to fisheries, and therefore for the amount of funding that will be needed to repair this harm.

All of this is to say that the impact of each subsequent project will be greater than the one before, through no fault of its own – but rather, due to the *cumulative* impacts of all projects operating at once. Addressing cumulative impacts will require substantially more funding than BOEM’s current framework provides for. Because cumulative impacts are caused not by individual wind farm developers on their own, but by the sum total of all offshore wind development in a given ecoregion, responsibility for funding a cumulative mitigation fund should not be borne by developers individually, but collectively. It would not be fair to hold each new developer individually responsible for the harms induced by *all* developers; rather, developers must be held *collectively* responsible for cumulative harms. This can only be accomplished through establishment of a centralized fund at either the national or regional level, that all developers are required to pay into.

The BOEM Draft Guidelines not only fail to stand up measures to address cumulative impacts, but utilize language and framing that *constrains* constructive thinking about how cumulative impacts could be addressed, including the following:

- A fallacy that equates “affected parties” with only those vessels that fish within a wind energy area. In reality, “affected parties” will include *all* fishermen who depend on fishery resources that are affected directly or indirectly by wind energy development. In areas with significant offshore wind development, this can be presumed to include all marine species and all fishermen.
- A fallacy that equates “impacts” with direct interaction, such as damage to fishing gear or displacement from specific fishing grounds. In reality, impacts will be both direct and indirect, and will affect fishery activities, ecosystems, habitats, supply chains, and the interlinkages among these components.
- A fallacy that equates a “responsible party” with a specific wind energy developer whose activities have directly caused such impacts. Instead, when considering cumulative impacts, the notion of “responsible party” must be understood in the collective sense, especially in light of the increasing marginal impacts of each consecutive wind project. In this framing, the responsible party is not the individual developer, but *all* developers.

A framework for adequately addressing cumulative impacts from offshore wind development to seafood system as a whole must consider fisheries as a “socio-ecological system.” Fishery systems are complex, interlinked systems consisting of ecological and human components in which changes can have ripple effects across the entire system. Thinking about the cumulative impacts of offshore wind in this context may include consideration of: direct and indirect ecological impacts to fishery ecosystems and resources from habitat disruption, habitat alteration, construction impacts, etc.; impacts of fishing vessel displacement not only on the vessels that shift fishing location, but also on vessels working on areas they move *to*; upstream and downstream impacts on shoreside support businesses and seafood dealers that depend on fishery revenues affected by offshore wind development; impacts to seafood supply and port-

and state-level economic revenues derived from seafood; and impacts to recruitment of new entrants into the fishery, availability of financing for permits, and other aspects of long-term industry sustainability that may be highly sensitive to uncertainty and risk. NOAA, its science centers, and the regional fishery management councils have considerable expertise in eco-regional approaches and socio-ecological systems; these experts should be at the forefront of designing an approach to addressing the cumulative impacts of offshore wind development on fishery systems.

**Theme 4: Trusted, centralized entities – not private offshore wind developers – must collect and administer funds.**

As written, BOEM’s Draft Guidelines could result in dozens of distinct financial compensation funds, each administered by a developer or an entity of the developer’s choosing. There would be no consistency of operations across funds, and in a region like the East Coast, where dozens of different projects are expected to be developed, fishermen would need to maintain a full rolodex to keep track of them all. Such an approach would be unwieldy for redressing individual harms, but it would be impossible for addressing cumulative impacts to the collective seafood system. Below, we recommend two better approaches.

For individual claims-based compensation, BOEM should insist at the very least that developers place compensation funds into neutral, third-party-managed funds. Developers should not be the administrator of funds, only the suppliers of such funds. Panels consisting only of fisheries experts (fishing industry representatives, fisheries scientists, experts, and economists) should determine a framework for payouts and a neutral party should execute payments. Payments should be up-front, prior to development, and as condition of permitting. BOEM, in consultation with NOAA, should oversee the setting aside of funds based on transparent, consistent, and equitable scientific and economic estimates. Regardless of who administers funds, they should be calculated using a common framework.

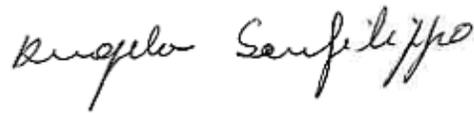
For cumulative impacts of multiple wind projects on the collective seafood system, there must be a neutral, centralized (national but administered regionally) fund in which developers are required to deposit fees at the outset and/or over the life of a project for the purposes of building seafood system resilience for the benefit of all Americans (e.g, as part of lease fees or a royalty system). Fee amounts should be based on each developer’s portion of overall developed acreage or the energy capacity anticipated to be developed as a whole within a region. There are precedents for such pooled funds, including the Superfund Trust Fund and the NOAA Fishermen’s Contingency Fund Program, both of which derive funds from fees levied on the oil and gas industry and spend/disburse funds as necessary to clean up or mitigate pollution.

The establishment of such a central fund is vital, but not without significant challenges. RODA’s Impacts Fee reports correctly observes that “A working group should rapidly convene to co-develop effective frameworks based on the participatory governance structures of the fishery management councils and [NOAA] advisory panels. The working group must be co-led by the fishing industry and its membership should include [NOAA], fishery management councils,

marine fisheries commissions, and independent or academic fisheries scientists. These are the leading experts and a group of this composition can provide coordination with existing practices in fisheries management and business operations.” We also reiterate RODA’s statement that “Because much of the seafood industry is regional in nature, impact fees must be coordinated and consistent amongst projects, include cumulative impacts, and be equitable across impacted fisheries and through the supply chain.”

Thank you for the opportunity to comment. We stand at the ready to assist BOEM in further developing methods to adequately, fairly, and equitably mitigate impacts of offshore wind development to the commercial fishing industry.

Sincerely,



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