Request for Information
Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development
November 22, 2021

INTRODUCTION

The Bureau of Ocean Energy Management (BOEM), in consultation with the National Marine Fisheries Service and affected coastal states, intends to develop guidance for the mitigation of impacts from offshore wind energy projects on commercial and recreational fishing communities. To initiate the development of this guidance, BOEM is issuing this 45-day Request for Information (RFI) to obtain input from the public.

The comments and information received will inform BOEM's development of draft guidance to mitigate certain impacts of offshore wind energy projects to commercial and recreational fisheries. Once complete, the draft guidance will be shared with the public for review and input for a 45-day comment period. Any guidelines developed through this process may be updated periodically based upon public feedback and evaluation by BOEM staff.

BACKGROUND AND MITIGATION GUIDANCE

BOEM administers the Outer Continental Shelf Renewable Energy Program in accordance with the Energy Policy Act of 2005, which added subsection 8(p) to the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337(p)). The implementing regulations for this statute are contained in Title 30, Part 585, of the Code of Federal Regulations (CFR). Under this program, BOEM issues leases, right-of-way (ROW) grants, and right-of-use and easement (RUE) grants that give parties the right to prepare and submit detailed plans for assessing resources, testing/researching technology, and constructing and operating commercial-scale renewable energy projects. Subsection 8(p)(4)(J)(ii) of OCSLA specifically requires the Secretary of the Interior to ensure that any activity is carried out in a manner that provides for "consideration of any other use of the sea or seabed, including use for a fishery..."

BOEM, as with other federal agencies, also has a regulatory obligation to adhere to requirements in the National Environmental Policy Act (NEPA). NEPA was established to create broad-ranging environmental protection. NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies prepare an analysis of a project's impacts in an environmental assessment (EA) or environmental impact statement (EIS). The NEPA process is intended to assist officials in making decisions based on a thorough analysis of environmental consequences. BOEM's analysis under NEPA considers other uses of the areas being evaluated for leasing and development. Specifically, BOEM considers the impacts to the commercial and recreational fishing industries resulting from the approval of Site Assessment Plans and

Construction and Operations Plans. BOEM must consider these impacts per project based on a thorough environmental analysis, and that analysis must support the need for mitigation measures

Potential fishery impacts could include, but are not limited, to:

- Displacement from fishing grounds during offshore wind development activities or loss of fishing areas occupied by project components.
- Potential gear damage or loss from increased survey activity or new or additional underwater hazards.
- Necessary gear or fishing modifications for fishing near turbines.
- Increased transit times.
- Increased gear conflict or operational competition within and outside of wind project areas if fishing effort is shifted due to offshore wind energy projects.
- Secondary economic impacts for support businesses such as seafood dealers, vendors to the fishing industry (e.g., bait and tackle, gear supply), processors, and distributors.

As defined in the CEQ regulations (40 CFR §1508.20), mitigation includes:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
5. Compensate for the impact by replacing or providing substitute resources or environments.

The mitigation hierarchy included in the CEQ mitigation definition are reflected in a 2014 report titled *A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior*[1]. This mitigation hierarchy is also at the core of BOEM's report on Fishing Best Management Practices (BMPs) published in July 2014[2] that identified five BMP areas:

1. Fisheries communication and outreach
2. Project siting, design, navigation, and access
3. Safety
4. Environmental monitoring
5. Financial compensation

[1] https://www.doi.gov/sites/doi.gov/files/migrated/news/upload/Mitigation-Report-to-the-Secretary_FINAL_04_08_14.pdf

[2] https://www.boem.gov/sites/default/files/renewable-energy-program/Fishing-BMP-Final-Report-July-2014.pdf

BOEM issued guidance on fisheries communication and outreach in an October 20, 2015 document entitled, *Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585.* These guidelines were modified and reissued on May 27, 2020. However, BOEM has not issued guidelines on the remaining four BMP areas described in the 2014 Report (BMP areas 2 through 5 above).

SCOPE OF PROPOSED GUIDANCE

BOEM proposes to develop additional guidance for BMPs 2 through 5 from the July 2014 Report.[1] The development of guidance for commercial and recreational fisheries will focus on the following topics:

1. Project siting, design, navigation, and access to avoid, minimize, rectify, or reduce impacts.
2. Safety measures to avoid, minimize, rectify, or reduce impacts.
3. Environmental monitoring plan.
4. Financial compensation for economic impacts expected on commercial or recreational fishing activities and support services when other measures have not adequately addressed the impacts.

The guidance will be national in scope but may also consider specific regions, given regional differences in fisheries data and differences in the development phase of offshore wind energy development. The guidance may include processes and communication expectations, formulas or rubrics, standards from relevant other federal agencies or international bodies, and other elements. The guidance may be more detailed in some BMP areas and less so in others. Such impacts may result from pre-construction activities, activities during construction, or from activities after construction through the full operational term of the project (typically 30 years). The environmental analysis for each project will identify such conditions.

BOEM's Guidance Can:

- Recommend minimum standards/best practices/guidance for fisheries mitigation processes (including processes for filing claims, timing of initial proposals, etc.).

- Recommend minimum standards/best practices/guidance on the methodology for determining the sufficiency of funds to compensate fishing communities for negative economic impacts arising from offshore wind energy development activities approved by BOEM.

- Propose measures that could result in fair, equitable, and predictable methodologies used by developers for mitigating impacts of offshore wind energy resulting from all offshore renewable energy projects.

- Enforce compliance with contributions proposed by the lessee that were part of the approved Construction and Operations Plan (COP) or other appropriate plan approval, regardless if said contributions were required by a state.

BOEM's Guidance Cannot:

- Create a central fund. BOEM lacks legal authority to create or oversee a central funding mechanism for compensatory mitigation. BOEM also lacks authority to require contributions to a particular compensation fund, absent a previous commitment or obligation for the lessee to do so (e.g., commitment/obligation under state contracts or the proponent's own proposed COP).

- Administer funds: BOEM lacks the legal authority to hold funds received or assess industry fees for mitigation.

- Require regional mitigation. BOEM cannot require a lessee to mitigate regional impacts as part of a COP approval, unless BOEM's environmental impact analysis demonstrates the regional impacts of the specific project. This environmental impact analysis must be supported by the record and the effects analysis cannot be based on speculation.

TIMELINE OF GUIDANCE DEVELOPMENT

BOEM intends to develop this guidance as follows:

- Fall/Winter 2021: Identify ideas and considerations from the fishing community, offshore wind energy developers, and others to inform the draft guidance.
- Early Winter 2022: Develop draft guidance considering comments received.
- Early Spring 2022: Publish draft guidance and request public comment.
- Summer 2022: Issue final guidance.

INFORMATION SOUGHT

BOEM is seeking information regarding the four BMP topics listed above as well as on the general approach for developing this guidance. Specific sub-questions for consideration for each of these topics are listed below.

General Approach

- Should BOEM develop mitigation guidance for some or all of the four topic areas below and how should they be prioritized?
- Are there specific strategies, process steps, and engagement components for minimizing impacts and obtaining information requested in the topic areas?
- Should the topics be addressed from a national or a regional perspective and why?

Project siting, design, navigation, and access

- What processes and engagement between fishermen and developers for a particular project site could help BOEM identify specific project layouts that avoid, minimize, or mitigate impacts to fishing, and to ensure that parties are satisfied with the engagement?
- Are there project design criteria for avoiding or minimizing impacts to fishing that the guidance should include (e.g., distance between turbines, clustering or spacing of turbines, orientation of turbines, setbacks or other means to address particular regulated fishing areas, such as Essential Fish Habitat (EFH), rotational fishing areas, closed fishing areas, or other similar regulatory spatial designations)?
- Are there evidence-based project criteria for avoiding or minimizing impacts to fishing from both export and inter-array electric cable layout, location, burial depth, and cable protection measures?
- Are there evidence-based criteria or guidance, such as scale and size of projects, number of affected vessels, distance between projects, and other factors, that would avoid or minimize impacts to navigation and fishing activities within a project area?

Safety measures

- What specific safety measures or specifications should be included in the guidance?
- Is there specific training that is necessary to improve safety?
- Are there specific navigational or fishing products/equipment that could improve safety?
- Is there existing guidance issued by U.S. agencies, state agencies, or international bodies that should be incorporated by reference?

Environmental monitoring plan

- What data should be collected to understand fishery performance (e.g., changes in catch, transit, and/or fishing itself) in and around offshore wind facilities? What methods should be used to analyze such data?

Financial compensation

- Data-related considerations:
    - What data sets should be used to calculate compensation for fishing losses?
    - How should data be handled for fisheries that currently lack more complete datasets (e.g., small fisheries, more distributed fishing, fixed gear fishing, etc.)?
    - What is the expected extent of historical data that should be considered in calculating losses not otherwise mitigated?
- How should future conditions, such as changing fishery presence and abundance due to climate change, be handled in calculating financial compensation?
- What role should relevant states agencies have in ascertaining estimated economic impacts and the mitigation process more broadly?
- What types of guidance should be included regarding compensation (e.g., gear loss, fishing loss before or during construction, losses post construction in the shorter term

(up to five years post construction) or the longer term (life of the project), losses to upstream and downstream fishing-related businesses, etc.), and why?

- What methodologies are appropriate for calculating economic impacts resulting from pre-construction, construction, and post-construction?
- How should the costs of gear modification, gear design, and changes in practices in order to fish within wind turbine arrays be addressed?
- What considerations for administration of funds should be included in the guidance, recognizing that BOEM cannot receive, distribute, or directly manage the funds?
- How can the guidance provide parameters for the inherent uncertainties posed by a new industry, dynamic environmental conditions, other ocean uses (e.g., shipping, telecommunications, sand and gravel), and climate change?
- Eligibility considerations:
    - How should the guidance identify those eligible for compensation (e.g., by valid federal fishing permit, valid vessel registration, vessel monitoring systems (VMS) automated identification systems (AIS) or fishing vessel trip reports/logbooks, etc.)?
    - How should the guidance address which sectors (e.g., commercial, recreational, shoreside) or members of a particular sector (e.g., captains, owner/operator, crew, dealers, processors) are eligible under a compensation framework?
- How often should the fisheries mitigation guidance be re-evaluated?