

**BUREAU OF OCEAN ENERGY MANAGEMENT
FISHERIES MITIGATION GUIDANCE DEVELOPMENT
EAST COAST WORKSHOP ON CLAMS AND SCALLOPS (BOTTOM GEAR)
DECEMBER 1, 2021
10 A.M. – 12 P.M. ET
VIRTUAL MEETING**

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MEETING OVERVIEW

Process Background

- The Bureau of Ocean Energy Management (BOEM), in consultation with the National Marine Fisheries Service (NMFS) and affected coastal states, is developing 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 issued a 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 The comments and information received will inform BOEM's development of draft guidance to mitigate certain impacts of offshore wind energy projects to commercial and recreational fisheries.
- Once complete, the draft guidance will be shared with the public for review and input for a 45-day comment period. Guidelines developed through this process may be updated periodically based upon public feedback and evaluation by BOEM staff.

Meeting Purpose

- Present the process for developing the draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development to key stakeholders and answer questions.

- Provide information on how to submit comments during the public comment process.
- Receive comments on key issue areas.

Agenda

- Welcome and Opening Remarks
- Logistics and Agenda Review
- Overview of BOEM’s Request for Information to Inform its Guidance Document to Mitigate Potential Impacts to Fisheries
- Public Comment Period
- How to Submit Written Public Comments
- Timeline, Next Steps and Adjourn

Presenters

Amanda Lefton (opening remarks)	BOEM
Brian Hooker	BOEM

Agency Representatives

Brian Hooker	BOEM
Sam Rauch	NOAA

Facilitation Team

Julielyn Gibbons	Kearns & West
Iqra Nasir	Kearns & West
Adam Saslow	Kearns & West

Participants

One hundred thirty eight people (138) people registered for the meeting. A complete list of registrants is included as an appendix to this summary. Sixteen (16) people provided public feedback.

PRESENTATION HIGHLIGHTS

Welcome and Opening Remarks

- Adam Saslow, facilitator, Kearns & West, welcomed attendees, and reviewed the meeting logistics and agenda. He emphasized that the meeting is intended as a conversation between BOEM and fishermen and asked other attendees to remain primarily in listen-only mode.
- Amanda Lefton, Director of BOEM, welcomed participants. Director Lefton emphasized the importance of BOEM’s work in fisheries mitigation as offshore wind projects develop. Director Lefton discussed the Biden-Harris Administration’s “30x30” goals, which aim to secure 30 gigawatts of offshore wind energy by 2030. Director Lefton mentioned that these goals will result in thousands of good-paying, union jobs. She added that:
 - BOEM’s authority to mitigate impacts is afforded by the Outer Continental Shelf Lands Act (OCSLA), which seeks to minimize or avoid impacts. OCSLA allows BOEM to establish compensation if these impacts are unavoidable.

- The guidance will clarify what developers should consider before submitting their plans, and how developers can engage the commercial fishing industry.
- BOEM is not creating a general fund, as they are required to submit all funds to the U.S. Department of Treasury.
- The goal is to offer more transparency and establish a clear process around fisheries mitigation by summer 2022 to support BOEM's environmental analysis for the construction and operations of several East Coast projects.
- BOEM will use information from this dialogue, and from discussions with federal, state, and Tribal partners to shape future mitigation discussions and develop a lasting engagement strategy that prioritizes science and meaningful collaboration.

Presentation

- Overview of BOEM's Request for Information to Inform its Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development (Brian Hooker, Lead Biologist, Office of Renewable Energy Programs, BOEM)
- Mr. Hooker's presentation can be accessed at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-Fisheries-Guidance.pdf>.
- Mr. Hooker shared that:
 - BOEM is in the initial stage of the fisheries mitigation guidance development process and wants input from fishermen before drafting the guidance document.
 - BOEM can impose mitigation measures, but the guidance would not apply to impacts that are separate from a given project.
 - Financial compensation will likely be handled at a regional level. There are more data on the East Coast than other regions.
 - BOEM is not soliciting input on environmental monitoring of biological resources. BOEM does not want to repeat the efforts of those agencies.

PUBLIC FEEDBACK PERIOD

Public comments generally fell into one of the following topic areas highlighted in the RFI: fisheries communication and outreach; project siting, design, navigation, and access; and financial compensation. Specific comments provided are described in greater detail below.

Fisheries Communication and Outreach

- There is frustration at the attendance from the fishing industry. The fishing industry feels grateful for the meetings, but questions whether they are enough to deal with problems of this magnitude and asked for better communication in advance of future meetings. BOEM should focus on convening stakeholders to share best practices for mitigation and to empower impacted fishing communities from offshore wind. This does not involve a top-down approach, and developers should not be given more input than the industries or communities impacted. The fishing industry should be leading this effort and representing the public interest.
 - *Mr. Hooker responded that BOEM is developing a Technical Working Group comprised of state and federal representatives to share data and update*

methodologies. The group will be comprised of economists that have valuable information on methodologies to illustrate revenue exposure for fisheries affected by offshore wind projects. Mr. Hooker added that while the fishing community is valuable in this guidance process, fishing community leaders would not be involved in the group.

- *Director Lefton stated that this process is meant to shape the development of these programs going forward and that BOEM works hard to engage and communicate with fishermen about these meetings. Director Lefton is happy to continue this conversation going forward.*
- Today's meeting coincides with the start of the small-boat scallop season in Maine. There is dismay with the communication efforts from BOEM about these meetings. COVID-19 makes this process more difficult, and the fishing community is generally unfamiliar with the public input process. The process is moving too quickly. Many fishermen own small businesses and lack the time and resources to engage in this process in the same way that energy companies and/or developers do. BOEM should consider the disparity in resources, political clout, and capacity to ensure that small businesses and rural communities impacted by changes are respected and accommodated throughout the process. The biggest technical concern is the difficulty for fishermen to adjust to large structures in the ocean. Data and science should inform BOEM's decisions to not affect complicated ecosystems. Fishermen feel anxious about these changes and requested that BOEM remember that fishermen are valuable stakeholders who need to be supported in these conversations.
- There is mistrust in the federal government, including BOEM. Representatives from fishing communities should be in the Technical Working Group and BOEM should create space for fishermen in that group.

Project Siting, Design, Navigation, and Access

- How will BOEM guidance be enforced once finalized?
 - *Mr. Hooker responded that if the environmental review determines that additional measures are needed to mitigate impacts to fisheries, BOEM can enforce them. Mr. Hooker also noted that construction plan guidance can be revised through the National Environmental Policy Act (NEPA). BOEM can also impose new mitigation measures if the environmental review deems them necessary.*
 - *Director Lefton emphasized that BOEM seeks guidance within the current timeframe to allow the completed guidance to be incorporated into projects currently under review.*
- Is BOEM's guidance is strong enough to require appropriate mitigation actions? It seems that guidance relies on good-faith actions for developers to voluntarily provide information and mitigation programs.
 - *Director Lefton stated that BOEM has authority under OCSLA to appropriately balance impacts and mitigate adverse effects. Projects that are submitted to BOEM require the submission of a full environmental impact analysis. If the NEPA review process identifies impacts, BOEM can take mitigation actions. OCSLA gives BOEM the ability to enforce the laws and mitigate impacts. This current public-input process is intended to provide more clarity about what that mitigation would look like going forward.*

- There are concerns with the fact that developers cannot be forced to implement certain changes. Spacing between turbines and transit lanes are specific examples of concerns that had been brought up but were not incorporated previously.
 - *Director Lefton recognized that previous mitigation did not reach acceptable levels for fishermen. The intent of this process today is to clarify mitigation measures and give a more transparent look at what can be included in project reviews.*
- Will catastrophic impacts to fisheries can be considered in these discussions? Research shows that existing lease areas near Atlantic City, New Jersey, and proposed 2022 lease areas would remove up to 21% of clam grounds from a particular fishery. Removing that amount of fishable area would catastrophically impact the fishery. How will mitigation measures take this into account, and how will damaging events that develop over a long period of time be considered?
 - *Mr. Hooker answered that this is what is being asked through the RFI. Cumulative effects of construction plans are part of the BOEM environmental review process and factor into the approval or non-approval of a construction plan. However, the mitigation guidance under discussion looks at individual projects and their project-specific impacts.*
 - *With regard to the NY Bight project and within the leasing process, BOEM already seeks to avoid or minimize impacts when identifying potential lease areas, there is a cumulative impact analysis as part of NEPA, and the scale discussed is captured early in the review process.*
- Does BOEM have the authority to mitigate regional impacts? For example, sounds emanate from wind turbines south of Martha's Vineyard. The noise prevented tuna from migrating to this area and resulted in the cancellation of a tournament that would have generated economic activity for the region. Why can't regional economic impacts be addressed if they do not occur within the immediate area of a wind farm?
 - *Mr. Hooker responded that if negative effects are directly caused by the existence of wind projects, they fall under BOEM's authority and will be addressed in the guidance. There is a difference between biological effects and environmental effects. The current challenge in the example provided is figuring out how to properly document that the tournament was canceled due to a particular wind facility. The particular project must be shown to have contributed negatively to fisheries. The claim must be project-specific rather than a general claim about offshore wind.*
 - *Director Lefton added that while regional issues are important to consider, BOEM derives its authority to act and mitigate from OCSLA. OCSLA only allows for action to be taken on project-specific impacts.*
- The major issues significantly impacting fisheries are not addressed by this guidance, and separate funding or an entirely new mechanism that gives BOEM more authority is needed.
- There is frustration with the current input process. Why hasn't BOEM considered mitigation for fishermen who fish in multiple state waters? Lacking a coherent framework that deals with this is counterproductive to mitigation and only helps developers at the

expense of the fisheries. There is disappointment that the language in the best management practices (BMPs), as well as in the presentation, does not involve direct action and instead talks in hypotheticals or possibilities. BOEM appears to prioritize developers' opinions over those of fishermen and that there is no process to identify who is right and who is wrong on impacts from project to project. BOEM requires fishermen to prove that their impacts are correct, but this requirement does not exist for developers.

- BOEM should stop developing guidance until Congress is made aware of OCSLA's weakness. Congress should amend OCSLA to authorize BOEM to take stronger positions on compensations for the harm done by offshore wind turbines. If this is not possible, BOEM must create an agreement with states to have a neutral third-party handle overall compensation. This is preferred over each state handling their funds and potentially repurposing that money for other uses. 250,000 Americans earn a living in the fishing industry; without concrete actions to address concerns, the fishing industry will be negatively affected.
- BOEM should seek a third-party advocacy group to establish mitigatable impacts among 33 states' fisheries and address systemic racism within the economic impact assessment process.
- The guidance proposed by BOEM does a good job at mitigating site-specific impacts that are expected. However, BOEM should retroactively address impacts that were unexpected, such as aggregations of any type of species because of the food chain's interconnectedness. Offshore wind will warm the ocean over time due to cumulative impacts and therefore affect the fishing industry. This impact should be mitigated before it occurs.
- There is a desire to understand the current process so that groups can advocate to BOEM what needs to be done going forward. The fishing industry has explained to offshore wind developers what the impacts of their projects will be. Developers subsequently pushed back and said their impacts are far less, a perspective which fishermen see as subjective. Who looks at developer analyses to see if they accurately reflect the impacts of their projects? If these impacts are underrepresented, then mitigation efforts will be ineffective.
 - *Mr. Hooker responded that the draft Environmental Impact Statement (EIS) process requires analysis of the potential impacts of projects. BOEM may rectify any underrepresented impacts in the final EIS. Mr. Hooker stated that the challenge is in quantifying what the effects will be, especially considering there are only seven turbines on the East Coast. Predicting future behavior is difficult. Differences of opinion are natural, but these predictions will improve as full-scale commercial projects are developed.*
 - *Director Lefton added that EISs allow every party to give feedback through the public comment process. BOEM considers each viewpoint and weigh the merits of each.*
- BOEM should focus more on regional needs and less on a national framework. Because the East Coast is significantly ahead of the West Coast and the Gulf of Mexico, the top priority should be on the Mid-Atlantic. There is frustration that the South Fork project was approved, despite major impacts on fishermen in surrounding areas that were not considered during the approval process. Fishermen must coexist with the development. Transit is a mitigation issue and an area to prioritize. Monitoring and data-sharing are

important pieces of this issue, and there needs to be more coordination between developers in sharing information publicly so that regional issues are properly put into context.

Financial Compensation

- Since a statutory amendment in 1978, BOEM and NMFS have administered a mitigation fund for oil and gas companies. Why wasn't a similar path followed for offshore wind by asking Congress for a new mitigation fund?
 - *Director Lefton responded that BOEM is a separate branch of government from Congress and does not have statutory authority to complete this action. BOEM is therefore seeking to establish guidance to mitigate impacts of offshore wind on identified fisheries.*
- This meeting is not a conversation and the scallop industry should be contacted for more in-depth conversations. The amount of money being discussed for mitigation does not cover the effects of offshore wind on fisheries, and there should be a separate mitigation fund with \$20 million a year that deals with issues such as loss of fishing grounds and impacts due to wind farms and climate change. The fishing industry employs 286,000 individuals between Virginia and Maine. The number of jobs is vastly more than the offshore wind industry, which is anticipated to create 44,000 jobs by 2030. Developers need to understand the concerns of fishermen and work together to address them.
- Fishermen feel that their comments are ignored throughout the NEPA process. For example, fishermen were dismissed in conversations around spacing between wind turbines. Adjustments need be made quickly. A fisheries compensation fund is needed. The clam industry will be severely harmed if turbines are placed too close together.
- Can BOEM retroactively compensate affected parties from offshore wind projects, specifically parties that were not included in the Task Force process? For the South Fork Wind Farm, New York fishermen had no opportunity to review the project and were not able to meaningfully participate in the process. New York fishermen who are negatively affected by this project are unable to receive compensation. Because leases are already issued and there are no teeth to the current regulations, compensation should be retroactive for existing leases. BOEM put the cart before the horse by issuing leases before doing this outreach. BMPs are ignored in the development of wind projects in the Rhode Island and Massachusetts wind energy areas, and that loopholes preventing fishermen from receiving compensation create an unfair system.
 - *Mr. Hooker indicated that procedures to address this scenario exist in regulations. If environmental impacts were not anticipated or not documented, there are provisions for how to rectify the issue.*
 - *Director Lefton added that BOEM grapples with how to properly include all stakeholders throughout the process. BOEM's goal is to provide clarity through the mitigation process to minimize differences project-to-project or state-by-state.*
- It's important to find an effective way of distributing mitigation dollars. States should not be involved in this process, as it is not their responsibility. State agencies do not fully understand these complex issues. A regional or coastal board that makes decisions fairly and equitably is preferred.

The meeting adjourned at 12:03 p.m. ET.

APPENDIX A: PARTICIPANT LIST

1. Amilynn Adams
2. Calvin Alexander
3. Catherine Alves
4. Sam Asci
5. Blair Bailey
6. Jerry Barnes
7. Edward Barrett
8. Linda Barry
9. Julia Beaty
10. Sharon Benjamin
11. James Bennett
12. Richard Bernardini
13. Mary Beth
14. Mary Boatman
15. Erno Bonebakker
16. David Borden
17. Annette Bossler
18. Bonnie Brady
19. Megan Brunatti
20. Morgan Brunbauer
21. Colleen Brust
22. Tom Budija
23. John Callahan
24. Cassie Canastra
25. Ben Casela
26. Emma Chaiken
27. Marina Chaji
28. Douglas Christel
29. Joe Cimino
30. David Ciochetto
31. Mary Conroy
32. Doug Copeland
33. Trevor Cowan
34. Tom Dameron
35. Brian Dresser
36. Stephen Drew
37. Lorena Edenfield
38. Jim Edwards
39. Paul Eidman
40. Dan Eilertsen
41. Scott Farley
42. Ian Fernandez
43. Travis Ford
44. Paul Forsberg
45. David Frulla
46. Gwen Gallagher
47. Benjamin Galuardi
48. Nelson Garcez
49. Luisa Garcia
50. Pat Geer
51. Connie Gillette
52. Andrew Gould
53. Rebecca Green
54. Nichola Groom
55. Kara Gross
56. James Gutowski
57. Eric Hansen
58. Annie Hawkins
59. Lyndie Hice-Dunton
60. Peter Himchak
61. Fiona Hogan
62. Sidney Holbrook
63. Caela Howard
64. Ursula Howson
65. Todd Janeski
66. Natalie Jennings
67. Brandon Jensen
68. Libby Jewett
69. Lane Johnston
70. Jeff Kaelin
71. Jason Kahn
72. Jim Kendall
73. Zachary Klein
74. Peter Knorr
75. Elizabeth Lange
76. Ron Larsen
77. Kirk Larson
78. Brian LeFebvre
79. Anastasia Lennon
80. Emily Lindow
81. Andy Lipsky
82. Jennifer Lukens
83. Scot Mackey
84. Elizabeth Marchetti
85. Kim Marshall
86. Ben Martens
87. Sam Martin
88. Tim McCune
89. Emily McGuckin
90. Laura McLean
91. Quinn McWatters
92. Elizabeth Methratta
93. Rennie Meyers
94. Tracey Moriarty
95. Ed Mullis
96. Ryan Munnelly
97. Nicole Murphy
98. Candace Nachman

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|------|-------------------------|------|--------------------|
| 99. | Tasha O'Hara | 119. | Everett Rzeszowski |
| 100. | Kris Ohleth | 120. | Mark Sanborn |
| 101. | Virginia Olsen | 121. | Nathalie Schils |
| 102. | Molly Pacifico | 122. | Prianka Sharma |
| 103. | Ross Pearsall | 123. | Liese Siemann |
| 104. | Frank Pendleton | 124. | Angela Silva |
| 105. | Jonathon Peros | 125. | Ronald Smolowitz |
| 106. | Daniel Perrone | 126. | Chris Sparkman |
| 107. | Lisa Pfeiffer | 127. | Brent Stoffle |
| 108. | Stephen Pigeon | 128. | Barbara Stone |
| 109. | Mike Pol | 129. | David Stormer |
| 110. | Kelsey Potlock | 130. | Doug Taylor |
| 111. | Douglas Potts | 131. | Beth Toolen |
| 112. | Lyndsey Pyrke-Fairchild | 132. | Maureen Trnka |
| 113. | Sam Rauch | 133. | David Wallace |
| 114. | Bettina Rayfield | 134. | Brick Wenzel |
| 115. | Kathleen Reardon | 135. | Katy White |
| 116. | Renea Reilly | 136. | Andrew Yberg |
| 117. | Samuel Rodriguez | 137. | Katharine Zamboni |
| 118. | David Rudders | 138. | Alexander Zygmunt |