New England Fishery Management Council

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

January 7, 2022

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

Dear Ms. Lefton,

Please accept these comments from the New England Fishery Management Council (New England Council) and the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) regarding the Request for Information (RFI) to obtain input on avoiding, minimizing, and compensating for impacts from offshore wind energy projects to commercial and recreational fisheries.

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 65 marine species[1] in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). In addition to managing these fisheries, both Councils have enacted measures to identify and conserve essential fish habitats (EFH), protect deep sea corals, and sustainably manage forage fisheries. 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 the marine fisheries throughout New England and the Mid-Atlantic are profoundly important to the social and economic well-being of communities in the Northeast U.S. and provide numerous benefits to the nation, including domestic food security.

Both Councils updated their policy on wind energy development in December 2021, working together on policy development and adopting the same language. Our comments in this letter build upon this policy. Note that we have made many of these same comments to BOEM over the past year in other letters on individual wind projects throughout the New England and Mid-Atlantic regions.

**Key recommendations**

Detailed recommendations on each of the RFI topics are provided in later sections of this letter. Our key recommendations include the following:

[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.

- If all topics in the RFI cannot be adequately addressed in the proposed timeline, then a subset of these topics should be prioritized for near-term development with the remaining topics developed over a longer time frame. We recommend prioritizing development of guidelines for financial compensation and environmental monitoring in the near term.
- We support national-level guidance and consistency in mitigation approaches across wind projects over wide geographic areas.
- The RFI topics should be developed through an iterative, transparent, Council-like process, including workshops with fishery stakeholders.
- Fishery stakeholders should be consulted early in and throughout the development of the design of each wind project.
- Project designs should first seek to avoid impacts to commercial and recreational fishing and transit and to marine habitats. If avoidance is not possible, spatial conflicts with existing users should be minimized, thereby reducing the need for other interventions.
- To improve safety, BOEM should consult with the fishing industry and the U.S. Coast Guard to require Automatic Identification System transponders on offshore wind structures, radar system upgrades, training for fishing vessels, and deployment of fishery liaisons on survey vessels.
- Environmental monitoring should occur before, during, and after construction, and methods should be consistent across projects.
- Financial compensation for impacts should be managed through a third-party group and the process should be consistent across wind projects. Compensation should not be processed through or allocated among states due to the regional nature of federal waters fisheries.

**General approach**

The RFI states that development of guidance for commercial and recreational fisheries will focus on the following four topics: 1) project siting, design, navigation, and access, 2) safety measures, 3) environmental monitoring plan, and 4) financial compensation for economic impacts. BOEM has indicated an intent to develop guidance on these topics by late spring 2022. All four topics in the RFI are important and we are concerned that they cannot all be adequately addressed in the proposed timeframe. As an alternative, we recommend that BOEM first effectively and thoroughly address a prioritized subset of these topics and then address the remaining issues over a longer period. We recommend prioritizing the environmental monitoring and financial compensation topics as BOEM and developers have already made many decisions and set several precedents regarding project siting, design, navigation and access, as well as safety measures to avoid, minimize, or reduce impacts.

We support the development of national guidance for the topics covered in the RFI. We recognize that BOEM can require mitigation for individual wind projects but lacks the legal authority to implement regional or national mitigation requirements. Therefore, BOEM aims to develop national level guidance, rather than requirements. However, commercial and recreational fisheries and fishery species will experience cumulative impacts from multiple wind projects and these impacts cannot be sufficiently mitigated if all impacts must be tied to an individual project in order to be subject to the guidance developed by BOEM. Specifically, some impacts are likely to be difficult or impractical to assign to a specific lease area or project and

individuals and fishing businesses are likely to be affected by more than one project. In addition, the impacts of an individual project will not be felt only by fishermen from nearby ports, but also by commercial and recreational fishermen over a wide geographic area. For example, vessels traveling from ports north and south of the project area may transit through and/or fish in the area. Consistency in mitigation programs could simplify the compensation process for fisheries, including shoreside businesses. Consistency in the approaches used to collect data to understand any changes in fishery performance in and around offshore wind facilities will also have many benefits.

The December 2021 listening sessions hosted by BOEM on this issue were not sufficient for fishery stakeholders to understand possible mitigation approaches and identify specific recommendations across the large range of topics identified in the RFI. These topics, including consideration of which data to use to calculate compensation, how to address fisheries with limited data, and methodologies for calculating economic impacts, should be further developed through a transparent, Fishery Management Council-like process, including focused workshops to engage all fishery stakeholder groups. A Council-like process would include multiple opportunities for input, learning, and iterative feedback. Under the Council process, detailed written briefing materials are distributed in advance of meetings, ample time is provided for technical presentations and questions, and in many cases the bulk of time at a meeting is spent developing and debating management options. This process is often repeated at multiple levels, including within technical teams, among industry advisors, and within Council committees, with recommendations finalized by the Council as a whole. This process has many benefits for the complex and multidimensional issues addressed in fisheries management. This approach can help ensure that all parties understand the process and feel as if they had an opportunity to provide meaningful input.

In addition, BOEM should work with NOAA Fisheries to evaluate if and to what extent the forthcoming mitigation guidance aligns with existing policies and best practices as it relates to fisheries and habitat resources mitigation, social and economic impacts assessment, environmental justice, and scientific principles. Finally, federal and state-operated fishery independent monitoring surveys are critically important for stock assessments and setting fishery catch limits. BOEM should also consider how to avoid, minimize, and mitigate impacts to these surveys through development of national or regional guidance.

**Project siting, design, navigation, and access**

A precautionary approach to avoiding impacts to fisheries, habitat, and marine species should be taken with all areas of project siting and design. Spatial conflicts between wind projects and fishing activity should be minimized. This will reduce the need for other interventions. For example, coordinated turbine and substation array layouts across nearby projects could help allow for safe fishing operations and transiting through multiple projects. Consideration should also be given to using fewer, but larger turbines to reduce the number of turbines needed to produce the same electrical output while minimizing the footprint of impacts to marine habitats and fisheries. Surface structure setbacks can also help facilitate transit and fishing and can provide other benefits if they are of sufficient width. Offshore wind project developers should consult directly with affected fishermen to develop project layouts that minimize impacts.

Varying fishing practices and environmental conditions at different sites underscore the importance of involving people familiar with each lease area when designing projects. Fishermen should be involved in early stages of lease area development (e.g., during call area development) and during the early planning stages for individual projects. Unfortunately, to date, many details about wind projects have already been solidified before the construction and operations plans are released and scoping begins. Fisheries engagement during COP development is largely at the discretion of developers, and this engagement can look different across projects. Stronger guidance from BOEM on fisheries engagement in project siting, design, navigation, and access is needed.

Transmission cables, wind turbines, electrical service platforms, or other structures should not be placed in areas with complex habitats. Foundation locations and cable routes should be microsited to avoid complex habitats in accordance with NOAA Fisheries' Recommendations for Mapping Fish Habitat. Structures should not be placed in fishery management areas established to protect important or sensitive habitats (e.g., Habitat Areas of Particular Concern, deep-sea coral protection areas, and other areas closed to fishing with the primary goal of protecting habitat).

Export and inter-array cables should be buried to an adequate depth to reduce conflicts with other ocean uses, including fishing operations and fishery surveys, and to minimize effects of heat and electromagnetic fields. If scour protection or cable armoring is needed, the materials should be selected based on value to commercial and recreational fishery species. Natural materials or materials that mimic natural habitats should be used whenever possible and should not be obtained from existing marine habitats. The materials used must not be toxic.

Coordinated transmission across multiple projects provides an opportunity for reducing the footprint associated with cabling; however, to date, transmission has been proposed project by project. We appreciate the conversations that BOEM and DOE held with Council leadership and other fisheries stakeholders in August 2021 on coordinated transmission; however, we are not aware of further progress made on this issue and we hope this can be addressed through the development of guidance.

**Safety measures**

Threats to safety and navigation (e.g., radar disruption, ice shedding, vessel allisions and collisions, security threats, and impacts on search and rescue efforts) should be routinely monitored within and around wind projects. Safety issues should be efficiently identified and addressed using best management practices (e.g., see section 3.4 of MAFMC Offshore Wind Best Management Practices Workshop held in 2014).

Automatic Identification System (AIS) transponders should be placed on wind turbine, offshore substation, and any other offshore structures to help improve safety and prevent collisions and allisions. However, fishermen have noted there is a need to declutter radar within lease areas, otherwise fine scale targets may be lost while navigating through them. If AIS is most appropriate on a subset of structures only, BOEM should consult with the fishing industry and the U.S. Coast Guard to identify where AIS would be most helpful.

Developer-funded radar system upgrades and training for fishing vessels would support safer navigation through these areas. BOEM should consider several options to improve safety and prevent radar cluttering and be adaptive to determine what works best as projects are constructed. A fisheries liaison should be on all wind survey, construction, and monitoring vessels to help with safety, monitoring, and to witness and verify any encounters with fishing gear.

**Environmental monitoring plan**

Understanding wind farm impacts on commercial and recreational fisheries and fishery species will be foundational to mitigation and compensation efforts. Monitoring to assess these impacts should be done at project and regional scales to understand project-specific and cumulative effects on marine species, habitats, and ecosystems and must occur before, during, and after construction. The methods used should be consistent across projects.

Fisheries and fishery species may be impacted by habitat changes (e.g., reef effects and habitat conversion), electromagnetic fields, ecosystem changes (e.g., shifts in larval recruitment or migration), hydrodynamic changes, turbine noise, and other factors. Therefore, data to measure changes in all these factors must be collected. Data on the benefits of applying noise dampening technology during construction and operations should also be collected as this is not well understood.

It will also be essential to monitor shifts in the spatial distribution of fishing effort in response to wind energy development, which could be significant if some vessels avoid fishing within wind farms entirely. Generally, we recommend using multi-year averages to assess fisheries conditions and impacts as landings, value, and other socio-economic characteristics can vary year to year. Changes in patterns of fishing activity can be cyclical and this should be accounted for when evaluating impacts to fisheries. BOEM should coordinate with NOAA Fisheries on the best data to collect and analytical methods to evaluate any changes in fishing and transit. All datasets have limitations. Local fishermen should be consulted to better understand use patterns not captured in the data.

We acknowledge that there are many challenges associated with predicting future conditions and impacts from offshore wind development with a high degree of certainty. For example, climate change is changing the spatial distribution of fish and thus fishing grounds of certain species. It may be challenging to disentangle the impacts of climate-based distribution changes on fisheries from impacts of wind projects. However, these interacting impacts will be important to consider when calculating compensation. It may be possible to use models that forecast species distributions under various climate change scenarios for estimating potential impacts.[2] However, modeling cannot substitute thorough monitoring.

**Financial compensation**

A standardized compensation process on a national level should be developed through BOEM's guidance. A third-party group should be created to administer financial compensation to help

[2] The ongoing work by Dr. Malin Pinsky at Rutgers University is one example. More information can be found here: https://www.lenfestocean.org/-/media/assets/2021/03/pinskyfactsheet.pdf

ensure consistency and standardization across projects. Financial compensation should not be administered by developers or individual states. Compensation funds for individual states' fishermen (like what was established in the Vineyard Wind 1 and South Fork Records of Decision), or administered by individual states, would pose many challenges. Federal waters fisheries are regional in nature which will make it difficult to fairly divide compensation among states and determine the state through which an individual fishermen should be compensated. For example, many fishermen hold permits to land in more than one state and may fish off one state but land their catch in one or more other states. Most offshore wind projects, especially in the New England and Mid-Atlantic regions, will impact fishermen from many states.

Furthermore, BOEM should require a standardized and equitable process across all developers for submitting claims and receiving compensation for impacted stakeholders. Financial compensation should be provided to all affected fishery stakeholders, including those directly and indirectly impacted, including commercial, recreational, and shoreside infrastructure and support service sectors, and including stakeholders who participate in fisheries that do not require federal permits. Vessel monitoring systems (VMS) and AIS should not be the only way to qualify for compensation given not all vessels have VMS and AIS, especially smaller vessels. Compensation should not only be provided to vessel owners but also to captains, crew, dealers, and processors for any loss in revenue as a result of lost fishing opportunity from offshore wind development. The values of shoreside infrastructure and support services were not estimated as part of previous environmental reviews so quantification of impacts will be important to estimate. Some of these recommendations are also included as part of RODA's Impact Fees Report published December 2021.

BOEM should establish clear guidelines on how to assess and compensate for entangled or damaged fishing gear and lost fishing opportunities. Consideration should be given to the most recent market prices, as well as historical prices, as prices and revenues can fluctuate based on a variety of factors. Past market conditions may not be the best predictor of future demand, prices, and revenues. In addition, if fishermen choose to change where they fish due to safety considerations, changes in the distribution of target species, or other concerns regarding impacts during and post-construction, compensation should be provided for lost efficiency (e.g., due to increased transit times) even if there is no change in the target species or the volume harvested. It is important to consider that many fishing permits are gear-based; thus, gear-switching should not be used or assumed as a mitigation strategy. For fishermen who decide to modify their gear or retrofit their vessels to fish within wind turbine arrays, the costs associated with this change should be compensated. Fixed and variable costs that incur over the long term should be accounted for in any compensation mitigation plan before, during, and post-construction activities for the life of the project.

The Councils support creation of a fisheries development and research fund related to ecosystem changes associated with offshore wind energy development. However, innovation funds and funds allocated for adaptive fishing should not comprise the majority of compensatory measures. Fishermen who choose to cease fishing in the project areas entirely once construction begins will incur significant losses and would not benefit from fisheries development funds. Upstream and downstream fishing-related businesses must be compensated appropriately given these businesses are inherently tied to the fishing industry so any loss in landings and revenue will directly negatively affect onshore processing companies, for instance.

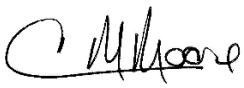
As previously stated, we do not support state-specific mitigation funds; however, states should be involved in the development of the mitigation process. Impacted states should be determined based on proximity to wind projects, cable locations, fishermen homeported or permitted to land in those states, and shoreside businesses located in each state. Section 388 of the EPAct[3] provides a formula for allocating royalties, fees, rentals, and other payments from sources other than oil and gas among states. BOEM should clarify if this section of the EPAct applies here or could be used as the basis for determining which states should be involved in mitigation for a particular project. The 15-mile distances from shore referenced in the EPAct are insufficient given how far wind leases are located from shore. This could lead to a greater role for additional states beyond those already engaged via CZMA consistency mechanisms.

**Conclusion**

We look forward to working with BOEM on further development of guidance on these important topics. Please contact us if you have any questions.

Sincerely,

Thomas A. Nies
Executive Director, New England Fishery Management Council



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

cc: J. Beaty, M. Luisi, W. Townsend, J. Bennett

[3] "The allocation is based upon a formula that equitably distributes to states 27% of the revenues collected by the federal government, based on the proximity of the project to the affected states' offshore boundaries. The act established that states that have a "coastline that is located within 15 miles of the geographic center of the project" are entitled to a revenue share. More than one state may be eligible to receive a portion of these revenues, depending upon the location of a project. To determine each eligible state's share of those revenues, the agency uses an "inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area." https://sgp.fas.org/crs/misc/R40175.pdf