

**BUREAU OF OCEAN ENERGY MANAGEMENT
FISHERIES MITIGATION GUIDANCE DEVELOPMENT
EAST COAST WORKSHOP ON MOBILE GEAR, MIXED TRAWL, AND PELAGIC
DECEMBER 2, 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 The comments and information received will inform BOEM's development of draft guidance to mitigate certain impacts of offshore wind energy projects to commercial and recreational fisheries.
- Once complete, the draft guidance will be shared with the public for review and input for a 45-day comment period.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- Present the process for developing the draft Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development to key stakeholders and answer questions.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

James Bennett (opening remarks)	BOEM
Brian Hooker	BOEM

Agency Representatives

Brian Hooker	BOEM
Doug Christel	NMFS

Facilitation Team

Julielyn Gibbons	Kearns & West
Adam Saslow	Kearns & West
Hannah Silverfine	Kearns & West

Participants

One hundred forty eight (148) 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.
- James “Jim” Bennett, Program Manager for BOEM’s Renewable Energy Program, welcomed participants. Mr. Bennett emphasized the importance of BOEM’s work in fisheries mitigation as offshore wind projects develop. Mr. Bennett discussed the Biden-Harris Administration’s “30x30” goals, which aim to secure 30 gigawatts of offshore wind

energy by 2030. Mr. Bennett mentioned that these goals will result in thousands of good-paying, union jobs. He 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; safety; environmental monitoring; and financial compensation. Specific comments provided are described in greater detail below.

Fisheries Communication and Outreach

- Fewer than 15 people from the fishing industry are on a call in which there are more than 120 attendees. This meeting should not be mischaracterized as having a large presence from the fishing community. The timeline for guidance is being rushed. If guidance is published in the spring after Construction and Operations Plans (COPs) are submitted,

how can feedback be incorporated for the summer when COPs have already been submitted and Environmental Impact Statements (EISs) take months to write?

- *Mr. Hooker responded that the hope is that COPs will provide guidance that has already been incorporated. The Draft EIS is still being drafted, and the COP and mitigation are typically revised during the draft period. However, developers are still in the process of understanding mitigation and revising plans based upon ongoing negotiations.*
- *Doug Christel replied that NMFS will be part of the Technical Working Group, identifying data issues and working with partners to address those issues.*
- There's concern within commercial fisheries that BOEM issued best management practices in 2014 that didn't require mitigation. Despite this, multiple wind projects have been approved since. There's frustration with the limited time to engage during the current process, when the fishing community has been asking for workshops and other discussions for years. BOEM generally references climate change as a threat, but squid (for example) is a climate change "winner." BOEM leases areas with squid populations. Squid farms need equipment that won't work where there is offshore wind development.
 - *Mr. Hooker replied that BOEM is asking for feedback on the desired process leading up to proposed mitigation/compensation. States will also have their own meetings in this process.*
- The fishing industry was devalued in both this process and the Vineyard Wind process. The process was disheartening. BOEM should set up meetings in every community impacted.
- These types of meetings are not accessible to fishermen, because they can't take the day off. NOAA has observer data about where people are fishing based on the history of tows. The answers to many of the questions are already in the data. It is concerning that projects like Vineyard Wind and South Fork are moving forward and fishermen didn't have a choice.
- BOEM could ask Congress for mitigation funds like those provided for oil and gas. BOEM needs to improve its messaging and communication. BOEM has already approved projects and entered into leases without mitigation language.
 - *Mr. Hooker responded that a lease is an important document governing what occurs on a lease, but most stipulations regarding actual projects are attached to the terms and conditions of approval of the plan submitted by the lessee. In terms of payments to the Federal government (U.S. Treasury), leases deal primarily with rent and operating fees.*
- Will these discussions replace negotiations between states and prospective wind developers?
 - *Mr. Hooker responded that nothing overwrites existing processes, but that this effort seeks to create consistency in negotiations. An objective is to help ensure that there is no differential treatment based on port or state.*

- There's concern that mitigation doesn't consider cumulative impacts across projects. Examining cumulative approaches would help identify areas where mitigation is too high, and no further areas should be leased.
 - *Mr. Hooker replied that an EIS considers cumulative effects and future actions. Mitigation imposed on a specific project must be related to that project, but how to deal with thresholds is one of the questions that the guidance could address.*
- Cumulative impacts must be considered in offshore wind. One wind farm is not in a vacuum. Guidance should be mandatory and retroactive and consider fishermen displacement. Decades of scientific surveys went into catch limits, but small businesses are pitted against billion-dollar hedge funds in offshore wind. Wind farms should be regulated under the Magnuson-Stevens Act.
- Fishermen have repeated the same comments for years. There is a power disparity and fishermen don't trust the process. Fishermen must attend each wind developer meeting and individual business owners are up against the industry. The coastal lane investigation should be made public.
 - *Mr. Hooker replied that previous environmental reviews and decisions are documented in environmental assessments.*
- The fishing industry has existed for centuries and is being compromised by a new industry. The government is not sufficiently respecting ocean fisheries and their importance in providing food for this country. BOEM has two projects in the leasing process whose impacts should be reevaluated.
 - *Mr. Hooker indicated that BOEM identifies areas that are least-conflicted from a variety of ocean uses and environmental concerns and specifically tries to avoid areas with the greatest fishing effort and productivity. BOEM is always trying to improve the process.*
- The mitigation process should include food insecurity. The Barrier Islands in New Jersey are considered food deserts and will be impacted by the loss of fishing opportunities in lease sites. Community members haven't been invited to meetings. If marine mammals are impacted by offshore wind, then community members, the tourist industry, and the land-based agriculture industry should be invited.
- The fishing community has repeated itself many times to BOEM and developers through verbal comments and workshops.
- Offshore wind is not the answer. Fishermen have a long history of stewardship with the ocean that needs to be recognized. What's BOEM's authority for issuing leases on the Atlantic Outer Continental Shelf (OCS)?
 - *Mr. Bennett stated he would follow up regarding the "ownership" of the OCS. Below is Mr. Bennett's follow-up response: No one "owns" the oceans in the same sense as individuals and entities own property within a country. Rather, there is a set of internationally recognized principles about the rights that coastal*

nations have to control and manage activities off their coasts. Primarily, the United Nations' Law of the Sea Convention sets forth a comprehensive legal framework for the use and protection of the sea, the seabed and subsoil, and the marine environment, including both natural and cultural resources. Through a wide range of provisions, the Convention establishes guidelines with respect to states' navigational rights, maritime zones and boundaries, and economic jurisdiction. (The U.S., while not yet a party to the treaty, observes the Convention as reflective of customary international law and practice.) The Convention recognizes a coastal nation's sovereign rights over a certain extent of the seabed for the purpose of exploring it and exploiting its natural resources, and it recognizes a coastal nation's sovereign rights over the waters of the Exclusive Economic Zone for the purposes of exploring and exploiting, conserving, and managing natural resources, including managing fishing. In the U.S., Congress has passed several different laws that authorize or regulate different uses of the ocean and the seabed. It's difficult to generalize about these laws, because they may apply to different resources, activities, or locations. The law that gives BOEM its authority is the Outer Continental Shelf Lands Act (OCSLA), in which Congress stated, "that the subsoil and seabed of the Outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter [i.e., OCSLA]." 43 USC 1332. Moreover, OCSLA authorizes the Secretary to "grant a lease, easement, or right-of-way on the outer Continental Shelf" for certain activities, including those to "produce or support production, transportation, or transmission of energy from sources other than oil and gas." 43 USC 1337(p)(1)(C). This same provision of OCSLA also imposes a general duty on the Secretary to use her discretion to balance twelve enumerated goals, including prevention of interference with reasonable uses.

Project Siting, Design, Navigation, and Access

- The Empire lease provided no deference to commercial fishing areas. The process used incorrect data on trawl fleets. Trawl fleets need to be shown as a series of dots. Many fishermen work offshore in more than one state, and it is a challenge to get home to market to make a profit because of wind impacts on fishing transit lanes. New York has had little representation on councils.
- BOEM should impose regional mitigation to address more than single projects and fishermen want lanes in leased areas.
- Plans do not state how far wind turbines will be spaced from each other. There are only two channels for trade and fishing boats, and one collection point to combine electricity. Why can't turbines be placed closer together, and is there is a relationship between wind energy areas and marine reserve areas?
 - *Mr. Hooker replied that there are certain types of gear and types of fishing that are may be unable to function near some areas. One nautical mile spacing was developed to mitigate navigation in Southern New England lease areas, but it's not a BOEM requirement. It was negotiated as part of mitigation around a particular COP. BOEM is still negotiating whether some areas move closer or are more open. Wind farm layouts will be made public after the COP is prepared and the NEPA environmental review begins. Developers often have conversations*

with the fishing industry that BOEM isn't a part of. BOEM is trying to strengthen the communication of new leases in the early design phase.

- Fishing appears to be prohibited in some lease areas. If fishermen and their equipment damage the turbine line, they are liable for the damage, which restricts fishing near the turbines. Both scenarios need to be mitigated.
- A one-by-one layout should not be used in place of transit lanes. The topic needs to be revisited to include the industry.

Safety

- Wind projects have adverse impacts on search and rescue operations. Automatic Identification System (AIS) should not be used as a qualifier, and New York does not have AIS.
- Safety requirements from the U.S. Coast Guard study on the Vineyard Wind project did not consider cumulative impacts. For transit around and through wind farms, most fishing boats have one to two people who can navigate around obstacles. Would a new study consider wind turbines?
 - *Mr. Hooker clarified that conducting additional port access studies is under the authority of the U.S. Coast Guard.*

Environmental Monitoring

- Using aerial surveys to monitor fishing activities was proposed.
 - *Mr. Hooker replied that this could be proposed. Those data are currently used to monitor protected species.*
- Spills from development sites and industrial zones are an issue.

Financial Compensation

- Trawl nets need different modeling than fixed gear. The only accurate analysis for trawl fleet impacts is from the Vineyard Wind lease in Rhode Island. Land-based activities need to be included in the financial compensation modeling. The Vineyard Wind and South Fork projects were approved without the benefit of the current process. Guidance should be made retroactive to projects that already started.
 - *Mr. Hooker responded that there are different ways to calculate value, directly and indirectly, and that BOEM is soliciting input on that in the RFI process.*
- Financial compensation is important and fishermen need answers, not just questions. There should be ways to quantify use (location), distinguish between types of fishing, and compensate for wind farms built in locations for different types fishing.
 - *Mr. Hooker responded that BOEM is soliciting comments on how to provide compensation if there aren't AIS requirements.*

- BOEM should not rush the process, because there could be serious impacts on fish spawning and migration. NOAA has data to assess the value of potential losses to the industry, but it hasn't been used properly.
- Fishermen are displaced without a choice and not compensated for it. There is no plan for compensation in projects that have already been approved.
 - *Mr. Hooker responded that BOEM is doing the best it can to engage and reach out early in the process. BOEM would have traditionally traveled to local ports, but COVID restricted that kind of outreach.*
- The South Fork and Vineyard Wind projects need retroactive compensation.
- It appears that there will be financial compensation only if necessary. Because other parts of mitigation are recognized as necessary, BOEM should remove the phrase "if necessary."
 - *Mr. Hooker replied that BOEM goes through a hierarchy of mitigation, and that decisions must be supported by data.*
 - *Mr. Bennett replied that "if necessary" is a qualification because BOEM doesn't have the legal authority to impose compensation unilaterally.*
- Fishing equipment will be worth less than it is now, and it is hard to estimate by how much. Fishermen need economists and other professionals, paid for by the wind farms, to help them successfully negotiate with Orsted/BOEM. There's no consistent pattern to engage in complex topics, and it's hard to get fishermen to meetings.
 - *Mr. Hooker replied that BOEM is trying to create consistency across negotiations and that compensation for time spent will be taken into consideration.*
- If project impacts are evaluated on a project-by-project basis, the developers should be more responsible due to greater impacts.
 - *Mr. Hooker replied that BOEM is looking for guidance on this.*
- BOEM should define the term "if needed," as sufficient funds should be based on the full value of fisheries for every dollar generated by fish throughout the full supply chain.
 - *Mr. Hooker clarified that "if needed" means whether BOEM can identify empirical triggers to determine whether mitigation is necessary for a project to move forward.*
- The amount offered for yearly mitigation of Vineyard Wind area impacts was less than the value of two vessels pulled out of the area every year, which is unacceptable.
 - *Mr. Hooker responded that BOEM wants to understand the data behind fishermen's experiences and that the guidance will assess the value of the impact and seek to correct issues.*

- When research vessels started mobile operations, the fishing community was notified but had to change their fishing operation location while out at sea, which reduced catch. Data show only that fishermen fished in their typical locations. Documentation needs to consider the reduction of effort and retroactive compensation to the industry.
 - *Mr. Hooker indicated that the anticipated guidance will detail the direct impacts on commercial fisheries.*

- In a recent meeting in Rhode Island, an economist presenting on how offshore wind would impact the fishing industry was prevented from further explaining the effects to the public.
 - *Mr. Hooker replied that BOEM seeks to address equitability and fairness in the guidance.*

The meeting adjourned at 12:02 p.m. ET.

APPENDIX A: PARTICIPANT LIST

1. Amilynn Adams
2. Calvin Alexander
3. Lianne Allen-Jacobson
4. Katie Almeida
5. Michael Auriemma
6. Blair Bailey
7. Crista Bank
8. Michael Bauhs
9. Julia Beaty
10. Morgan Benggio
11. Sharon Benjamin
12. James Bennett
13. Mary Boatman
14. David Borden
15. James Boyd
16. Karen Bradbury
17. Bonnie Brady
18. Morgan Brunbauer
19. Colleen Brust
20. Collin Buchanan
21. Aurora Burgess
22. John Callahan
23. Marina Chaji
24. Douglas Christel
25. Joe Cimino
26. David Ciochetto
27. Christopher Cooper
28. MSD Coram
29. Al Cottone
30. Fara Courtney
31. Stephen Davies
32. Brian Dresser
33. Stephen Drew
34. Jynessa Dutka-Gianelli
35. Kyra Dwyer
36. Lorena Edenfield
37. Jim Edwards
38. Mark Ellington DeCristoforo
39. Dan Farnham
40. Paul Farnham
41. Dan Farnham Jr.
42. Timothy Feehan
43. Marianne Ferguson
44. Paul Forsberg
45. Gwen Gallagher
46. Nelson Garcez
47. Luisa Garcia
48. Julielyn Gibbons
49. Connie Gillette
50. Susan Gonzalez
51. Andrew Gould
52. John Haran
53. Amalia Harrington
54. Kevin Hassell
55. Annie Hawkins
56. Heidi Henninger
57. Lyndie Hice-Dunton
58. Peter Himchak
59. Fiona Hogan
60. Sidney Holbrook
61. Brian Hooker
62. Caela Howard
63. Ursula Howson
64. Bob Humphrey
65. Taylor Irwin
66. Todd Janeski
67. Libby Jewett
68. Lane Johnston
69. Jim Kendall
70. Shana Kinsey-Carlsen
71. Zachary Klein
72. Scott LaFlamme
73. Jim Lanard
74. Elizabeth Lange
75. Meghan Lapp
76. Ron Larsen
77. Chris Lee
78. Brian LeFebvre
79. Emily Lindow
80. Julia Livermore
81. Morgan Lommele
82. Tyler Macallister
83. Samantha MacQuesten
84. Dan Malone
85. Elizabeth Marchetti
86. Kim Marshall McLean
87. Catherine McCall
88. Tim McCune
89. Laura McLean
90. Laura McLean
91. Meredith Mendelson
92. Connor Mighell
93. Judy Mills
94. Tracey Moriarty
95. Michael Murphy
96. Christine Myers

97. Michelle Nannen
98. Casey Nolan
99. Tasha O'Hara
100. Kris Ohleth
101. Lisa Pfeiffer
102. Stephen Pigeon
103. Kelsey Potlock
104. Lyndsey Pyrke-Fairchild
105. Kathleen Reardon
106. Eric Reid
107. Renee Reilly
108. Everett Rzeszowski
109. Mark Sanborn
110. Angela Sanfilippo
111. Joseph Sanfilippo
112. Chris Sarro
113. Adam Saslow
114. Prianka Sharma
115. Liese Siemann
116. Angela Silva
117. Hannah Silverfine
118. Laura Singer
119. Joel Southall
120. Chris Sparkman
121. Brent Stoffle
122. Barbara Stone
123. David Stormer
124. Erin Summers
125. Sophie Swetz
126. Doug Taylor
127. Nick Townley
128. Abigail Tyrell
129. Brick Wenzel
130. Kathryn White
131. Andrew Yberg
132. Alexander Zygmunt
133. Unknown Caller
134. Unknown Caller
135. Unknown Caller
136. Unknown Caller
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138. Unknown Caller
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