

Bureau of Ocean Energy Management

Overview – Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development

This document introduces and provides a high-level overview of BOEM's draft guidance for mitigating impacts to commercial and recreational fisheries from offshore wind development and the process to solicit input on the guidance development. The draft guidance is available for review on BOEM's website at <https://www.boem.gov/renewable-energy/request-information-reducing-or-avoiding-impacts-offshore-wind-energy-fisheries>.

The Bureau of Ocean Energy Management (BOEM), in consultation with the National Marine Fisheries Service (NMFS) and affected coastal States, developed draft guidance for the mitigation of impacts from offshore wind energy projects on commercial and recreational fishing communities. The guidance provides detailed processes and methodologies to the offshore wind industry and lessees to mitigate impacts to fisheries in the areas of project siting, design, navigation, access, safety, and financial compensation.

Why is Fisheries Mitigation Guidance Needed?

BOEM developed guidance to provide greater consistency between projects in mitigating impacts and for equitable treatment of commercial and recreational fisheries regardless of home or landing port.

For its offshore renewable energy program, BOEM is taking a national level approach to mitigating the impacts to social and economic conditions of the fishing industry. As part of its process to approve plans to site renewable energy facilities and their components on the Outer Continental Shelf, BOEM requires information from the lessee on social and economic conditions, including “recreational and commercial fishing (including typical fishing seasons, location, and type),” that could be affected by a lessee’s proposed activities. This information assists BOEM in determining mitigation measures and complying with various regulations and laws prior to approving a lessee’s proposed plans. Complying with mitigation measures may be a condition of plan approval.

BOEM must consider potential impacts and mitigation measures on a project-by-project basis. While such an approach ensures an evaluation based upon the unique conditions affecting a project, it also creates risk for inconsistency across both projects and regions. BOEM and other regulators developed this guidance to reduce the likelihood of inconsistencies in compensatory mitigation that could not be explained by unique, local conditions.

Overview of the Guidance Development Process

BOEM issued a request for information in late 2021 and conducted a 45-day public comment period to obtain input on what to include in the fisheries mitigation guidance.

During the comment period, BOEM hosted seven, 2-hour workshops to present the process for developing draft guidance to key stakeholders, answer questions, provide information on how to submit comments during the public comment process, and receive comments on key issues. BOEM also invited written comments via regulations.gov and by mail.

Over the course of the comment period, 95 individuals provided oral comments, and 95 individuals and organizations submitted written comments. BOEM also convened the Northeast Fisheries Compensatory Mitigation Data and Methodologies Technical Working Group (TWG) to exchange facts and information around fisheries compensatory mitigation as part of the draft guidance development. The TWG comprised representatives from Federal and State coastal management agencies, including BOEM, NMFS, the Greater Atlantic Regional Fisheries Office, the Northeast Fisheries Science Center, and relevant agencies from Maine, Massachusetts, Rhode Island, New York, New Jersey, and Virginia. To accomplish the goal of building consensus amongst parties and to comply with the Federal Committee Advisory Act (FACA), TWG membership was limited to State and Federal government employees, but the group invited technical speakers from academia, consulting firms, and associations to present information and answer TWG queries. Despite FACA, the TWG acknowledged the limitations of not having fishing industry members in the working group.

Guidance Overview

The guidance outlines measures to potentially mitigate the impacts of a proposed project to commercial and recreational fisheries. Key measures include a recommendation that the lessee use existing tools to identify commercial and recreational fishing communities to engage and then engage with them prior to any activity on the lease itself. BOEM encourages the lessee to respect and record the views of the fishing communities in these meetings and to develop a publicly available document that describes the substance of those interactions as well as how the lessee will or will not adopt mitigation measures identified by the fishing communities.

The draft guidance provides recommendations related to project siting, design, navigation, access, safety measures, and financial compensation.

- **Project siting, design, navigation, and access:** Possible design considerations for the wind turbine foundations, mooring systems (if applicable), inter-array cable, and export cables should be built into the process through consultation with fisheries stakeholders. BOEM recognizes that there is not a standard facility design that will mitigate potential impacts to all fisheries in all regions, but the guidance outlines design elements to consider.
- **Safety:** BOEM recommends that the lessee consider incorporating safety measures in their plans regarding facility charting and marking, minimizing disruption to fishing activities during construction, monitoring, providing training on safe operations within a facility, and employing the commercial fishing industry as safety liaison vessels during construction, and upgrading automatic identification systems on vessels engaged in offshore wind energy activities.
- **Financial compensation:** BOEM's guidance document recommends that the lessee consider establishing a process to compensate commercial and recreational fisheries if a project is likely to result

in lost income to commercial and recreational fishing industries. The scope of impacts or losses addressed by compensatory mitigation should be based on the impacts identified in the lessee's plans and assessments where the lessee has analyzed the potential effects of its actions. BOEM recommends that compensation extend through the construction, operations, and decommissioning phases of a development.

What BOEM's Guidance Can Do

- Recommend fisheries mitigation processes (including processes for filing claims and timing of initial mitigation plan proposals).
- Recommend methodology to determine 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 on fishing communities.
- Enforce compliance with contributions proposed by the lessee that were part of the approved plan or other appropriate plan approval, whether or not such contributions are required by a State.

What BOEM's Guidance Can't Do

- 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.
- Administer funds. BOEM lacks the legal authority to receive or hold funds or to assess industry fees for mitigation.
- Require regional mitigation. BOEM cannot require a lessee to mitigate regional impacts as part of a plan approval, unless BOEM's environmental impact analysis demonstrates the regional impacts of the specific project.

Where to Find More Information

The draft fisheries mitigation guidance is being 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.

The draft guidance, background information, comments received during the public comment period, and ways to comment are available here: <https://www.boem.gov/renewable-energy/request-information-reducing-or-avoiding-impacts-offshore-wind-energy-fisheries>