

# Position Paper: Scientific and Practical Concerns Regarding Regional Compensation Fund Design for Offshore Wind Impacts on Commercial Fisheries

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## Executive Summary

The process currently underway to design a Regional Compensation Fund for offshore wind impacts to commercial fisheries, administered by the Regional Fund Administrator (RFA), lacks scientific defensibility and fails to reflect fundamental fisheries management principles or the realities of ongoing changes in the marine environment. This paper outlines key objections to the eligibility and design criteria under consideration, provides specific evidence from the Atlantic surfclam fleet's operational history in and around the Attentive Energy lease area as one example to demonstrate how future impacts may be disconnected from historical fishing effort, and offers constructive alternatives grounded in best available science, federal policy, and fisheries law.

The paper also raises concerns with the RFA's port visit process as a means of gathering stakeholder input. Fishing industry representatives have previously documented a pattern in which offshore wind developers, coastal zone managers, and BOEM selectively cite informal comments from fishermen to support preferred narratives, while disregarding opposing views. Given this precedent, the paper questions how information gathered during port visits, often from participants not closely engaged in the regional compensation discussions, will be documented, weighed, and incorporated into a transparent and balanced decision-making process.

## I. Guiding Principles: Critique and Recommendations

### 1. Impact Principle: Compensation Based on Direct Losses

**Critique:** The requirement that claimants prove specific economic losses, particularly based on historical fishing activity within a defined "lookback period," fails to account for the dynamic and shifting nature of fisheries. In the surfclam fishery, as in many other fisheries, changes in bottom

water temperature and range shifts have already driven spatial changes in biomass availability for any lookback period under consideration. The Atlantic surfclam fishery dependent data example for 2014 through 2018 (provided in appended maps) show little fishing activity in the lease area, yet activity increased dramatically in 2022, and this area, along with many others with little historical activity, is very likely to be of significantly greater importance to the fishery than a historical snapshot could have predicted. On the flip side, there are areas with significant historical landings, where the loss of access due to offshore wind energy development, may not have impacts on the fishery that the historical landings would suggest.

**Recommendation:** It must be a First Principle of any fisheries compensation framework that in dynamic and climate-affected ecosystems, such as those in Southern New England, the Mid-Atlantic, and the Central Atlantic regions, historical fishery footprints and landings history cannot be used to predict future impacts. Doing so is not scientifically defensible. Compensation should be based not solely on past activity, but on the loss of future opportunity, including access to shifting stocks, displaced effort, and operational disruption caused by wind energy development. Scientifically credible approaches must account for changing oceanographic conditions, fleet adaptation, and the forward-looking nature of fisheries management.

## 2. Equity and Authenticity

**Critique:** The stated goal of treating all fisheries equitably is undermined by using a narrow band of years (e.g., 3-7 years) to define eligibility. This approach benefits stable, sedentary fisheries and penalizes dynamic, migratory, or climate-impacted fisheries.

**Recommendation:** A tiered eligibility framework that recognizes fisheries with high year-to-year spatial variability must be developed. Authenticity should not equate to administrative simplicity but to ecological and operational truth.

## 3. Transparency and Scientific Rigor

**Critique:** Past BOEM communications and comments emphasized the need for compensation to be scientifically defensible. Designing a fund around a fixed historical footprint contradicts this and ignores evolving spatial use validated by both fishery dependent and fishery independent data.

**Recommendation:** The RFA should publish the scientific methodology it relies upon and convene independent review panels, with fishery science backgrounds, to ensure that compensatory design reflects known patterns of environmental change and fleet behavior.

#### 4. Comprehensiveness: The "90-10 Rule"

**Critique:** This approach risks institutionalizing exclusion. Fisheries with atypical effort patterns, but legitimate operational presence, could be excluded, distorting the fund's equity and fairness.

**Recommendation:** Create a mechanism for "special case review" that allows scientifically grounded, data-supported applications outside the majority structure.

## II. Eligibility: Vessel Owner Criteria and Timeline

The use of rigid eligibility thresholds based on historical fishing activity, defined by arbitrary lookback periods and effort benchmarks, fails to reflect the realities of how commercial fisheries operate, particularly under conditions of rapid environmental change and spatial displacement. In dynamic systems like the Mid-Atlantic and Southern New England, where stock distributions and operational access are shifting due to both climate change and offshore wind development, retrospective effort-based eligibility is neither scientifically defensible nor equitable.

Eligibility must instead be determined by a vessel's verifiable capability, historical or emerging presence in affected regions, and demonstrated economic exposure to future impacts. The criteria must reflect real-world adaptation, not backward-looking proxies that disproportionately penalize forward-leaning participants and environmentally driven behavioral shifts.

### Question 1: Trigger for Lookback Period

**Critique:** The premise of using any fixed lookback period based on administrative milestones (e.g., COP approval, BOEM ROD issuance) presumes that fishing impacts are known and experienced at the time of project approval. This is rarely true. Fishers do not exit viable grounds based on permitting timelines—they respond to physical disruption, construction activity, and spatial exclusion when those occur.

**Recommendation:** The broader critique is that a lookback period is, in most cases, an inappropriate basis for determining eligibility. If any reference period is used at all, it should not begin until there is a measurable impact on access—namely, the onset of construction or the imposition of mandatory exclusion zones. But even this should not be used to gate eligibility without accommodating dynamic stock movement and emerging operational patterns.

### Question 2: How Far Back to Look

**Critique:** Applying an arbitrary window (e.g., 3, 5, or 7 years) presumes static patterns of effort and access. In reality, the surfclam and many other fisheries experience multi-year cycles, rotational fishing as areas are fished down but returned to years later, and interannual variability driven by biomass shifts.

**Recommendation:** Rather than enforcing fixed lookback windows, the program should incorporate fishery-specific context. For surfclams, this includes NEFSC survey cycles, modeled biomass distributions, and scientific assessments of spatial shifts over time. Timeframes should be adaptive and grounded in ecological and economic relevance.

### Question 3: How Many Years Within Lookback Must a Vessel Fish

**Critique:** Requirements such as “3 of 5 years” privilege uninterrupted historical activity and disadvantage businesses adjusting to environmental and regulatory change. They also fail to capture new entrants or expansions into newly viable areas where access is still emerging.

**Recommendation:** Eligibility should be based on demonstrated investment, operational capacity, and presence in affected regions, not just frequency of past activity. Vessels with recent operations in or near lease areas, or that are poised to operate there based on stock shifts, should be eligible regardless of multi-year history.

### Question 4: Effort Thresholds (Trips or % of Activity)

**Critique:** Counting trips or percentages of annual activity as a proxy for economic exposure assumes a uniform value per trip, which does not hold across fisheries or even within a single fishery. Trip duration, size, gear type, and market conditions all influence the economic significance of effort.

**Recommendation:** Metrics should reflect economic risk and exposure, such as gear-days, landed value, or estimated revenue at risk, not just trip counts. In data-limited cases, vessel characteristics and regional fleet patterns can support a reasoned estimation of exposure.

### Question 5: Transferability of Fishing History

**Critique:** Excluding successor owners or operators from eligibility when they have acquired vessels, permits, or operations through legitimate means penalizes younger entrants and obstructs generational continuity in fisheries. The NMFS recognizes the transfer of vessel or permit catch history.

**Recommendation:** Permit-based or vessel-based history must be transferable if accompanied by documented business continuity. This is consistent with established fisheries management protocols and recognizes the reality of how fishing operations evolve over time.

### III. Use of Data to Determine Eligibility

A scientifically credible and equitable compensation program must be built on the recognition that most fisheries affected by offshore wind energy development operate within changing and dynamic ecosystems. Nowhere is this more evident than in the Mid-Atlantic, Central Atlantic and Southern New England regions, where stock distribution, bottom temperature, and habitat suitability are in active flux. As such, historical data, such as Vessel Monitoring System (VMS), Automatic Identification System (AIS), and Vessel Trip Report (VTR) records, are generally inappropriate and scientifically indefensible as the basis for determining eligibility for compensation in regards to future impacts.

**Critique:** The use of historical positional data to define who is "eligible" presumes that past presence within a lease area predicts future dependency. That assumption does not hold in ecosystems experiencing rapid ecological change. For example, in the surfclam fishery, shifting thermal habitat boundaries have altered biomass distributions substantially over the past decade. As shown by SEFES modeling and validated survey efforts, fishing activity in specific areas, including within wind lease areas, may be sparse during one period and concentrated in another, not because of disinterest, but because of evolving stock conditions and adaptive fishing behavior.

Eligibility criteria that rely on historic VMS, AIS, or VTR data ignore this ecological context. These data systems were not designed to determine long-term entitlement or predict future use. VMS is not universally required across vessel sizes; AIS is limited to vessels over 65 feet and is often disabled for operational or safety reasons; and VTR data lacks spatial resolution and can be incomplete or inconsistent. Moreover, none of these sources account for latent effort, vessels poised to operate in an area as conditions allow.

By anchoring eligibility to these flawed datasets, the RFA risks excluding fishers who face the most significant future harm, particularly those currently adapting to environmental shifts or exploring emerging fishing grounds. This approach also fails to reflect the ecosystem-based management principles that underlie federal fisheries law.

**Recommendation:** It must be a foundational principle of the Regional Compensation Fund that historical fishing data cannot be used as a primary determinant of eligibility in dynamic, changing ecosystems. Instead, when eligibility must be established, it should be based on forward-looking, fishery-specific monitoring and survey data collected during and after offshore wind construction, operations, and decommissioning. These data should measure actual displacement, loss of access, operational changes, and associated economic impacts.

To support such determinations, the following steps are required:

- Establish a framework for monitoring fishery resources within and adjacent to lease areas that tracks biomass availability, habitat suitability, gear-specific operational constraints, and ecological change over time. Monitoring should assess what would be available for harvest in the absence of development-related impacts and be capable of attributing

changes in fishing patterns or access to the effects of offshore wind infrastructure rather than to natural variability or unrelated factors.

- Establish agreements to ensure that data on fishing activity and harvest occurring within offshore wind lease areas is made available to support accurate eligibility determinations and accountability under compensation programs. When compensation is based on lost access to biomass, data-sharing mechanisms should reflect actual harvest levels within the lease area during and after development.
- Incorporate predictive modeling tools, such as SEFES, into the broader monitoring framework to forecast future fishery use patterns under multiple environmental and development scenarios. These models should be used to evaluate likely displacement, changes in access, and regional shifts in biomass and fishing activity that inform eligibility decisions and compensation program design.
- Create adaptive eligibility mechanisms that allow fishers to qualify for compensation post-construction if they are excluded from areas due to ecological shifts or can demonstrate emerging use based on changing biomass distributions. Eligibility pathways should reflect dynamic resource conditions and be informed by ongoing monitoring and modeling.

Where historical data is used at all, it must be contextualized as supplementary, not determinative, and weighed against the known trajectory of environmental and operational change.

## IV. Legal and Policy Obligations

The foundation of any compensatory framework for offshore wind development must rest on the federal government’s legal obligations to avoid, minimize, and mitigate harm to commercial fisheries and to do so based on the best available science and full transparency. A lookback-based eligibility model fails this standard.

### A. Outer Continental Shelf Lands Act (OCSLA)

Section 8(p)(4)(I) of the OCSLA (43 U.S.C. § 1337(p)(4)(I)) requires that offshore renewable energy activities be conducted in a manner that:

*“provides for safety of navigation, protection of the environment, conservation of natural resources, and protection of...commercial or recreational fishing...”*

These provisions impose a clear mandate on BOEM to prevent *unreasonable interference with other ocean uses*, such as commercial fishing. When interference is unavoidable, BOEM and lessees must implement measures to avoid, minimize, mitigate, and compensate for those impacts.

Eligibility frameworks that ignore future access loss or rely on outdated fishing footprints violate this requirement by failing to account for actual interference as it manifests through construction, operations, and stock displacement.

## B. BOEM's Nonbinding Guidance and the Risk of Substituting Expedience for Compliance

Under 30 CFR §§ 585.611(b)(7), 585.627(a)(7), and 585.646(b)(7), lessees must provide information on both current and potentially affected future social and economic conditions in their Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs). These regulatory provisions require lessees to demonstrate how impacts to fisheries and fishing communities are assessed both quantitatively and qualitatively, and to provide methods to avoid or mitigate such impacts.

BOEM's 2020 *Guidelines for Providing Information on Fisheries Social and Economic Conditions* restate this obligation and emphasize that a lessee's plan:

“should demonstrate how those conditions were considered and impacts assessed, both quantitatively and qualitatively...and should provide potential methods to avoid or mitigate impacts.”

However, BOEM's Guidelines are not binding and do not carry the force of law. As noted in the guidance disclaimer itself, the document is “intended only to provide clarity” and does not create new legal requirements. While helpful in encouraging early engagement and administrative efficiency, these Guidelines are not a substitute for compliance with BOEM's regulatory mandates under OCSLA or with federal environmental review under NEPA.

The forward-looking language in both the regulations and BOEM's own guidance confirms that compensatory eligibility decisions must be based on anticipated impacts, not solely on historical patterns of use. Overreliance on retrospective data, simply because it is administratively convenient, undermines the very regulatory standards that BOEM and lessees are required to uphold. Instead, developer-funded monitoring and survey efforts are essential to ensure that economic harm resulting from changing access, stock distribution, or operational feasibility is measured and addressed fairly and lawfully.

## C. NOAA Fisheries' Federal Survey Mitigation Strategy (December 2022)

In response to growing spatial conflict between offshore wind and fisheries, NOAA Fisheries and BOEM jointly issued the *Federal Survey Mitigation Strategy for the Northeast U.S. Shelf* (Tech Memo NMFS-NE-292). This document offers critical insight into the scientific standards that should underpin any fisheries impact and compensation assessment.

NOAA Fisheries writes:



“Offshore wind energy development presents both short- and long-term risks to the continuity and integrity of scientific surveys...These risks include *reduced data quality, altered sampling areas, and changes in survey catchability.*”

To mitigate these impacts, NOAA explicitly calls for:

“Survey modifications and independent studies throughout construction, operations, and decommissioning phases...to ensure continuity and detectability of fishery resource changes.”

Most significantly, the Strategy affirms the very principle at the heart of this position paper:

“Baseline environmental data collection and continuous monitoring are essential to understanding potential impacts. Relying solely on historical data is inadequate in dynamic ecosystems where species and fisheries are adapting to multiple stressors.”

These federal comments directly support the view that lookback-based eligibility is not scientifically defensible, and that compensation must instead reflect observed changes documented through structured, real-time monitoring and adaptive data collection.

#### D. Statutory and Regulatory Protections for Fishing Communities

The Outer Continental Shelf Lands Act (OCSLA) and the National Environmental Policy Act (NEPA) establish enduring legal obligations that apply regardless of administrative priorities.

- OCSLA requires that offshore energy development “consider the use of the sea or seabed as a fishery” and that activities be conducted to avoid “unreasonable interference with other uses of the OCS,” including commercial fishing (43 U.S.C. § 1337(p)(4)(B), (D)).
- NEPA mandates that agencies consider the environmental and socio-economic impacts of federal actions and meaningfully engage affected communities, including fishing-dependent ones (42 U.S.C. §§ 4331–4332).

Any eligibility framework that favors administrative expediency over ecological and socio-economic validity would contravene these statutory mandates and fail to protect established fishing interests from disproportionate burdens.

#### E. Lookback-Only Eligibility Models Fail the Legal Standard

Federal law requires that offshore wind energy development avoid unreasonable interference with existing ocean uses, including commercial fisheries, and that developers and regulators assess and mitigate social and economic impacts. These obligations are embedded in the Outer Continental Shelf Lands Act (OCSLA) at 43 U.S.C. § 1337(p)(4)(B) and (D), and in BOEM’s implementing regulations at 30 CFR §§ 585.606, 585.627, and 585.102. In parallel, the National Environmental



Policy Act (NEPA) mandates a robust evaluation of environmental and socio-economic impacts and the equitable distribution of project burdens.

Under this legal framework, a compensatory eligibility model must reflect the actual or reasonably anticipated harm to fishing operations and communities, not merely past use data. In contrast, lookback-only models, which limit eligibility to historical fishing footprints, fail to account for dynamic fishery conditions, shifting biomass, future fishing opportunity, and evolving ecological baselines. These models are commonly endorsed by BOEM, state coastal zone management programs, and wind energy developers due to their administrative convenience, but they do not meet the legal requirements established by statute and regulation.

BOEM's 2025 *Guidelines for Providing Information for Mitigating Impacts to Commercial and For-Hire Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585* and other administrative tools may aid in implementation, but they cannot override binding obligations under OCSLA and NEPA. When compensation is based solely on retrospective vessel tracks or historical landings, fishers who are displaced by offshore wind development but who cannot "prove" historical use of now-viable areas are unlawfully excluded. This outcome is particularly unjust in fisheries affected by climate-induced range shifts, gear-specific operational constraints, or reduced access within built-out wind energy areas.

To comply with federal law, any compensatory mitigation program must be science-informed, forward-looking, and responsive to ongoing ecological and operational changes. Eligibility determinations must be grounded in a lawful assessment of harm, not expedient proxies.

## Summary

Federal law, BOEM regulations, and NOAA's scientific framework all converge on a single, clear requirement: a forward-looking, science-based, and dynamically monitored approach to mitigating impacts on commercial fisheries. This is not simply best practice - it is a legal obligation.

A rigid, backward-facing eligibility model tied solely to lookback periods or outdated vessel tracks:

- Contradicts BOEM's own regulatory framework under 30 CFR Part 585, which requires the assessment of both current and future social and economic conditions;
- Misapplies BOEM's nonbinding guidance, which cannot override statutory or regulatory mandates;
- Undermines OCSLA's directive to avoid unreasonable interference with existing ocean uses, including commercial fishing;
- Ignores NOAA's survey impact mitigation strategy, which emphasizes continuity and comparability of scientific data collection;
- Fails to account for dynamic resource conditions, including shifting biomass, evolving fishing practices, and climate-driven changes in fishery access.

To be legally and scientifically defensible, any compensatory mitigation framework must be grounded in ongoing monitoring, ecological and operational context, and the measurement of both projected and observed impacts - not static past activity alone. Expedience cannot take precedence over compliance.

## VI. RFA Port Visit Process

The Regional Fund Administrator's (RFA) initiative to conduct port visits across key fishing communities is framed as an effort to increase transparency and gather broader input into the design of the Regional Compensation Fund. While direct engagement with fishing communities is important, the methodology, context, and use of information collected during these visits raise significant concerns about the integrity of the process and the reliability of the resulting record.

Fishing industry stakeholders, including the Responsible Offshore Development Alliance (RODA), have previously documented cases in which offshore wind energy developers, state coastal zone managers, and the Bureau of Ocean Energy Management (BOEM) selectively cited oral or informal comments from fishermen in ways that misrepresented or oversimplified the diversity of industry views. Statements such as "we heard from the fishing industry that trawlers could safely operate in a 1nm x 1nm grid" were used to support preexisting narratives while opposing viewpoints, often well-documented in written comments, were omitted or downplayed. This practice undermines public trust in the consultation process and results in skewed policymaking that does not reflect the true range of stakeholder perspectives.

Port visits, by their informal nature, are especially vulnerable to this kind of selective interpretation. Participants may not be fully informed of the issues under consideration, particularly complex eligibility and design features of the compensation fund that have evolved over months of technical discussion within the Design Oversight Committee (DOC). As such, statements made during brief or one-time conversations, especially by individuals not closely following the regional compensation process, must not be treated as equivalent to informed stakeholder positions developed through deliberative engagement or written testimony.

The availability of only partial materials further limits meaningful engagement. While the DOC Meeting Slides from the July 11, 2025, DOC meeting are available on the RFA website (<http://www.rfainfo.com/>), the accompanying meeting notes are not. These notes would provide critical context, clarify the reasoning behind specific proposals or questions, and reflect the perspectives and deliberations of DOC members. Without access to these meeting notes, stakeholders lack a full understanding of the evolving discussion and are not positioned to provide fully informed feedback. Soliciting stakeholder comments without making the complete meeting record available undermines both transparency and fairness.

Moreover, it is unclear how the RFA intends to document, analyze, or weigh the input gathered during port visits. Without clear protocols for recording, attributing, and contextualizing stakeholder feedback, there is a risk that these interactions will produce an incomplete or distorted view of fishing community sentiment. Transparency requires that all stakeholder comments,

whether provided orally at port visits or in formal written submissions, be documented, categorized, and made available as part of the public administrative record.

If the RFA seeks to genuinely engage with a broad spectrum of fishing industry stakeholders, it must adopt a clear and consistent protocol for stakeholder feedback that includes:

- Written documentation of all comments received, including identification of the speaker and the context in which the comments were made;
- Clear distinction between informal, exploratory input and formal, representative positions submitted on behalf of fishing organizations or industry sectors;
- Public availability of compiled input, allowing industry participants to verify whether their views were accurately captured;
- Equal weight given to written comments from actively engaged stakeholders, particularly those involved in the DOC or who have submitted detailed feedback, relative to verbal input from ad hoc conversations; and
- Timely public release of DOC meeting notes, to provide stakeholders with a complete record of discussions that shape the questions and criteria for which feedback is being solicited.

Absent these safeguards, the port visit process risks becoming a public relations exercise rather than a legitimate mechanism for refining a scientifically and legally defensible compensation framework.

## VI. Conclusion

The RFA and DOC must shift away from backward-looking, administratively convenient methods and instead embrace dynamic, forward-looking, and scientifically rigorous approaches to fisheries compensation. Compensation should reflect the real, evolving impacts of offshore wind development, not simply historical activity patterns. The current process risks perpetuating injustice and failing the test of scientific defensibility, transparency, and fairness.

Moreover, transparency and inclusiveness must be reflected not only in the fund's eligibility and compensation criteria but also in how stakeholder input is gathered and incorporated. The port visit process, while well-intentioned, is vulnerable to misrepresentation and selective use of informal comments, particularly from individuals who may not be fully informed on the nuances of the regional compensation design. Past experiences have shown how anecdotal remarks can be cited to support preferred narratives while disregarding well-documented opposing views.

To prevent this, the RFA must adopt a clear and consistent protocol for documenting stakeholder input, ensuring equal weight is given to formal written feedback and technical expertise. This includes the timely release of DOC meeting notes and full transparency around how comments, whether collected at port visits or through public comment channels, will be recorded, attributed, and considered.



Attachments - Clam Vessel Towing Tracks in Lease Area OCS-A 0538 (2014–2018, 2022)  
The yellow lines are the proposed export cable routes and the red lines are clam vessel VMS tracks while harvesting.













