

MEMO: Structural Deficiencies of Fisheries Displacement Programs

TO: BrownGreer

FROM: Wind DOC Commercial Fisheries Caucus

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The Caucus recognizes the Regional Fund Administrator (RFA) is charged specifically with designing a fisheries compensation program for individual, documentable losses or increased costs from displacement attributable to offshore wind energy projects.

However, the broader approach to fisheries compensation for offshore wind projects contains fundamental structural deficiencies. The Caucus understands some of these cannot be addressed through the RFA and may require changes in federal legislation, regulation, and policy. Here we document deficiencies for consideration by the parties working on the Design Oversight Committee (DOC), and as advisors to the DOC.

PREAMBLE

Fisheries have been conducted off the eastern coast of North America for 400 years. Offshore wind energy projects (“Project”) will spatially displace many fishing vessels and thus disrupt fisheries and dependent businesses for the life of a Project (site preparation, construction, operation, and decommissioning).

Fishing vessels displaced from Project lease areas will face resultant financial harm from loss of access to traditional, historic fishing grounds. This may materialize as reduced catches, increased operational costs, and, for some, the potential need to adapt gear or target different species to remain solvent.

Similarly, ex-vessel commercial seafood dealers and processors may suffer reduced landings volume and revenue resulting from vessels’ loss of spatial access.

Compensation for these two parties addresses these quantifiable economic harms by providing funds to offset lost revenue, or higher expenses, resulting from displacement, with the intent to maintain livelihoods and prevent broader fishing industry and community decline.

STRUCTURAL DEFICIENCIES

- 1. Parity.** The Outer Continental Shelf Lands Act (OCSLA) must elevate commercial fisheries as an activity on par with national defense, maritime transport and commerce, and other users of the waters.

Section 3(2) of the OCSLA specifies:

(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

But because of the formulation of priorities in OCSLA to consider in offshore wind development, commercial fisheries and wild-caught seafood production impacts are legally treated as a secondary concern. From this flows a subordination or dismissal of this centuries-old, historic use of the Exclusive Economic Zone portion of the Outer Continental Shelf.

Commercial fisheries and wild-caught seafood production seek to be treated in law under statute on par with other national priorities.

2. Enforceability: Compensation programs should be an enforceable obligation for developers and overseen by BOEM.

While NEPA requires agencies to identify impacts which may lead to compensation, NEPA does not itself require compensation. To ensure those parties with valid state or federal fishery permits are protected fairly, a Fisheries Displacement Program (FDP) must be made enforceable through the Secretary of the Interior's authority under the OCSLA and the Bureaus of Ocean Energy Management's regulatory powers.

An FDP for Projects partially or fully constructed in federal waters shall be mandatory. It shall be coupled with a Project's Construction and Operations Plan (COP) and survive intact in the event of any offshore wind lease or Project. A determination of noncompliance shall be grounds for COP suspension or cancellation. Lessors shall be provided opportunity to remedy noncompliance before suspension or cancellation.

Specifically, the Program shall be incorporated at all levels of federal approval:

- a. **Lease Stipulation.** Each Project shall include a stipulation requiring the Lessee to establish, fund, and maintain an FDP. Noncompliance shall be grounds for lease suspension or cancellation under the OCSLA.
- b. **Construction and Operations Plan (COP) Condition.** BOEM shall condition COP approval on submission of an enforceable FDP with clear funding, eligibility, claims, and appeals processes. Failure to maintain the FDP shall be cause for BOEM to suspend or revoke COP approval.
- c. **Record of Decision (ROD) Mitigation.** Each NEPA ROD shall identify the FDP as a required mitigation measure, ensuring that compensation is part of the federal mitigation record.

The BOEM shall conduct and maintain oversight over compliance with the FDP.

3. Recognition of the full temporal effects of offshore wind on commercial fishing.

Current BOEM guidance assumes, without evidence, that fishing activity can return to its prior level within a Project area after five years. This is dependent on the risks of fishing gear conflicts with a given Project's infrastructure such as unburied array cables, scour protection, and other benthic obstructions. Any compensation program must recognize and account for the long-term displacement of some fishing activity, well beyond five years.

4. Long-Term and Cumulative Effects: *Compensation should extend not only to temporary disruptions but also to long-term or permanent displacements of fishing activity.*

A comprehensive FDP must account for the long-term and cumulative effects of offshore wind development over time and space, recognizing that impacts often extend far beyond short-term construction disruptions. When multiple lease areas, cable corridors, and evolving environmental conditions shift fish distribution or compromise navigational safety, commercial fisheries may be unable to operate at their historic baseline levels. These changes can permanently displace larger vessels to offshore areas, creating new crowding pressures and safety risks for smaller boats that are forced into increasingly constrained inshore waters.

At the same time, ecosystem alterations may drive environmental shifts that reduce fishery productivity or yield in ways that are difficult to predict in advance. Given these uncertainties, the FDP should explicitly evaluate cumulative regional effects and not limit compensation to project-by-project assessments.

Periodic review of fisheries operations data - such as landings, effort, gear conflicts, and navigational incidents - will be essential to determine when long-term constraints or reductions in fishing activities emerged and to adjust compensation accordingly.

5. Fisheries Resilience Fund: *Compensation programs should include a mandatory resilience fund.*

Given the inherent uncertainties and unavoidable information gaps associated with offshore wind development, a mandatory Fisheries Resilience Fund (FRF) should be established in addition to individual direct compensation funds to address impacts on fishing communities that cannot be captured through individual, documentable claims. Many long-term or diffuse effects—such as changes in fish distribution, lost future opportunities, crowding, diminished viability of ports or gear sectors, cultural and intergenerational disruptions, or cumulative regional pressures—cannot be attributed to a single project or proven through traditional evidence standards.

An FRF will provide a structured mechanism to support community-level adaptation, invest in shared infrastructure and safety needs, and mitigate broader socioeconomic harms that fall outside the scope of a claims-based compensation program.

The FRF should be capitalized by all projects within the region, administered transparently, and deployed based on periodic assessments of fishery conditions, ensuring sustained support for the resilience and continuity of fishing communities over time.