



January 7, 2022

VIA ELECTRONIC SUBMISSION

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
Fish and Wildlife Service
1849 C St. NW
Washington, D.C. 20240

Re: Request for Information, Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development (November 22, 2021).

Dear Secretary Haaland:

On November 22, 2021 the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) published a Request for Information on Reducing or Avoiding Impacts of Offshore Wind Energy on Fisheries. The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on BOEM's request. BOEM should conduct proper and thorough small business impact analyses for each proposed construction and operation plan and publish such analyses for notice and comment.

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic

¹ 5 U.S.C. § 601 et seq.

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).



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impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.³ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁴

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁵

Background

The Outer Continental Shelf Lands Act (OCSLA)⁶ sets forth procedures to produce energy resources on the Outer Continental Shelf (OCS). OCSLA permits the Secretary of the Interior in consultation with other relevant federal agencies to grant leases, easements, and rights-of-way on the OCS for activities that support production, transportation, or transmission of energy.⁷ Under OCSLA, management of such activities should consider economic, social, and environmental values of renewable and non-renewable resources contained within the OCS.⁸ Proper consideration must also be given to other uses of the seabed including fisheries navigation, and marine productivity.⁹

In administering lease sales, BOEM must also comply with requirements of the National Environmental Policy Act (NEPA).¹⁰ Under NEPA, BOEM is required to publish for notice and comment a draft environmental impact statement that includes among other things the environmental impact of the proposal, adverse environmental affects that cannot be avoided, and alternatives to the proposed action.¹¹ In conducting this analysis, BOEM considers other uses of the areas being evaluated for leasing, including commercial fishing.

In July 2014, BOEM issued a report on best practices and mitigation measures for wind energy lessees and fisheries in the Atlantic. This report outlined five best management practices including communication and outreach; project siting, design, navigation, and access; safety;

³ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁴ *Id.*

⁵ 5 U.S.C. Sec. 601 note

⁶ 43 U.S.C. § 1331 et seq.

⁷ 43 U.S.C. § 1337 (p).

⁸ 43 U.S.C. § 1344 (a) (1).

⁹ *Id.* at (a) (2).

¹⁰ 42 U.S.C. § 4331 et. seq.

¹¹ 42 U.S.C. § 4332 (C).

environmental monitoring; and financial compensation.¹² BOEM issued guidelines on communications and outreach to fisheries on October 20, 2015.¹³ This document provided guidelines for complying with agency coordination and survey methodologies. BOEM updated and reissued these guidelines on May 27, 2020¹⁴; however, this update did not address the other best management practices. On November 22, 2021, BOEM published a request for information to inform the development of additional guidance to address the remaining best management practices outlined in its mitigation measures report.¹⁵

Small Business Comments on the Request for Information

Advocacy held a small business roundtable on December 14, 2021 at which small businesses offered comments and feedback on the guidance, and other issues related to offshore wind leasing. Small fisheries spoke about concerns related to mitigation being assessed based on landings, stating that pandemic-related shutdowns slowed buying for a period creating an inaccurate picture of sales when restaurants are open. Several small fisheries spoke about the challenges in commenting on theoretical lease proposals, stating that there are simply too many unknowns, and that impacts are hard to calculate until a plan is submitted. Commenters also spoke about the time-costs associated with attending multiple scoping meetings, listening sessions, and briefings hosted by the agency and developers. They stated they felt as though they were not heard and that BOEM and the developers were not adequately responding to comments. Many commenters also noted BOEM's hasty timeline for development of this guidance stating that it did not allow for them to provide substantive feedback, given that many projects are still in very early stages.

Fisheries from several different regions were represented at the roundtable. They expressed concerns about a one-size-fits-all model stating that while national guidance is needed, regional approaches must also be considered and implemented depending on the nature and scope of the project.

Advocacy also heard from wind energy representatives who noted that wind energy lease sales create opportunities for small businesses to subcontract on projects. BOEM should thoroughly

¹² U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., *Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf* (July 2014), <https://www.boem.gov/sites/default/files/renewable-energy-program/Fishing-BMP-Final-Report-July-2014.pdf>

¹³ U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., *Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585* (June 2019), <https://www.boem.gov/sites/default/files/renewable-energy-program/Regulatory-Information/BOEM-Fishery-Guidelines.pdf>

¹⁴ U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., *Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585* (May 27, 2020), <https://www.boem.gov/sites/default/files/documents/aboutboem/Social%20%26amp%3B%20Econ%20Fishing%20Guidelines.pdf>

¹⁵ U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt., *Request for Information Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development* (November 22, 2021), <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf>

review all comments from small businesses on the guidance and work to incorporate specific suggestions in its proposal.

Comments from Advocacy

I. BOEM’s guidance documents should not be “one and done;” rather the agency should conduct ongoing outreach and outline plans for regular updates.

While Advocacy appreciates that BOEM is offering opportunities for all small businesses to comment in advance of providing updated guidance on mitigation, Advocacy notes the difficulty in offering substantive comments on the impacts of offshore wind projects, as many regions do not yet have projects and activities on which to base these discussions. Many small businesses that Advocacy spoke with noted the challenges in commenting on something that is generally unknown at this stage. BOEM should therefore not treat these guidance documents as fixed policies; rather, the agency should continually monitor actual projects and regularly offer opportunities for the public to provide feedback so that the guidance can be updated to reflect the latest available data and information.

II. BOEM should publish small business impacts analyses within its draft environmental impact statements.

To increase transparency and allow small businesses to meaningfully participate in the commenting process, BOEM should include within its draft **environmental impact statements** a specific small business impacts section. This analysis would provide context to the public on the impacts of a particular proposal on small fisheries and other small businesses and perhaps assist in determining alternatives and mitigation measures that would adequately minimize these impacts.

BOEM should use the RFA as a guide for conducting this analysis. BOEM should identify the small businesses impacted by a proposed construction and operations plan (COP), discuss any known impacts to those small businesses, offer alternatives to the proposed COP, and solicit specific comments and feedback from small businesses on this analysis. Providing a separate small business section will allow stakeholders to have a means of digesting otherwise lengthy and cumbersome technical documents while also putting the focus on what if any impacts they may face directly. Small businesses simply do not have the time or resources to review long technical documents nor attend lengthy scoping meetings. Most small business owners cannot afford to hire a consultant to read and digest the proposals; rather they must do this themselves while also managing a business. These activities pull owners away from running their businesses and result in a direct loss in revenue.

Having clear, concise, and thorough information ensures that small businesses have an equal opportunity to participate in the commenting process, and have their voices heard. Conducting a small business impact analysis will also allow BOEM to properly identify all small businesses that may be impacted by a particular project, even those that may otherwise benefit from offshore wind projects.

As noted above, there are currently many unknowns with respect to quantifying impacts. BOEM should, however, examine the fishing industry to understand the characteristics of small fishing firms, which make up 99.4 percent of the industry. Using data such as annual receipts, locations, and employment levels of small fishing businesses, BOEM should provide a profile of affected entities and describe the relative impacts of different levels of costs. This information will help BOEM understand the severity of different potential costs and determine the necessary degree of mitigation. Such impacts to consider include reductions in catch limits and/or quotas, accessibility to navigation channels, damage to vessels and gear, inability to continue to use existing gear, loss of permit and vessel values, increased safety measures and procedures, changes to species migration patterns and behaviors, and others.

Table 1 describes the makeup of the U.S. fishing industry based on firm size. The right three columns indicate the share of a firm’s annual revenue that would be represented by various levels of new costs. For example, a \$10,000 increase in costs for large fishing firms from a new offshore wind project would represent less than 0.1% of annual receipts for large firms. However, for the 434 fishing firms with less than \$100,000 in annual receipts—17.4% of all small fishing firms—it would represent an average of 18.8% of annual receipts. This would be a significant impact on these small fishing firms and would warrant greater mitigation efforts than would the effects on large fishing firms.

Table 1. U.S. Fishing Industry (NAICS Code 1141)

Firm Size (by Receipts)	Firm Count	% of Small Firms	Avg. Receipts	Cost Impacts as % of Receipts		
				\$1,000	\$10,000	\$50,000
Small Firms	2,493	100.0%	\$535,456	0.2%	1.9%	9.3%
<\$100K	434	17.4%	\$53,168	1.9%	18.8%	94.0%
\$100K - \$499K	1,320	52.9%	\$258,786	0.4%	3.9%	19.3%
\$500K - \$999K	397	15.9%	\$671,322	0.1%	1.5%	7.4%
\$1M - \$2.49M	286	11.5%	\$1,582,465	0.1%	0.6%	3.2%
\$2.5M - \$4.99M	41	1.6%	\$3,385,220	<0.1%	0.3%	1.5%
\$5M - \$7.49M	9	0.4%	\$6,416,889	<0.1%	0.2%	0.8%
\$7.5M - \$9.99M	9	0.4%	\$8,531,667	<0.1%	0.1%	0.6%
Large Firms	16	N/A	\$49,591,313	<0.1%	<0.1%	0.1%

Note: Data come from the Census Bureau’s Statistics of US Businesses (2017).

Understanding the geographical distribution of small fishing firms can also shed light on the potential effects of individual offshore wind projects. While BOEM should develop a national guidance based on commonalities among all fisheries, the agency must also consider regional differences that may affect such analyses and incorporate the nuances of that region into a mitigation strategy. BOEM should consider weather impacts, types of gear used, the species being fished etc. In addition, different types of offshore wind energy infrastructure have different environmental impacts, for example fixed versus floating operations, and differences in the types of fishing gear used depending on what species is being fished.

Table 2 shows the number of firms, employment levels, and total receipts for the fishing industry in all U.S. coastal states, grouped by region. Washington, Maine, and Alaska have by far the most fishing firms among the states, and the Northeast and Northwest have the most among the regions.

Table 2. Fishing Industry by Region and State

Region/State	Firms	Employment	Receipts (\$1,000)
Northeast	661	1,169	\$479,656
Connecticut	7	19	\$11,644
Maine	451	715	\$309,580
Massachusetts	170	354	\$129,806
New Hampshire	4	3	\$1,969
Rhode Island	29	78	\$26,657
Mid-Atlantic	180	683	\$207,030
Delaware	7	7	\$1,490
Maryland	23	16	\$4,488
New Jersey	55	224	\$92,177
New York	43	92	\$19,877
Virginia	52	344	\$88,998
Southeast (Atlantic Coast)	102	154	\$43,381
Florida (Atlantic Coast)	73	119	\$33,098
Georgia	8	9	\$2,591
North Carolina	16	20	\$6,104
South Carolina	5	6	\$1,588
Gulf Coast	292	635	\$178,227
Alabama	15	27	\$8,614
Florida (Gulf Coast)	112	180	\$50,293
Louisiana	65	259	\$70,762
Mississippi	7	41	\$6,620
Texas	93	128	\$41,938
Northwest	612	1,695	\$1,067,900
Oregon	155	283	\$99,753
Washington	457	1,412	\$968,147
California	139	342	\$122,944
Alaska	426	226	\$197,506
Hawaii	20	61	\$16,997

Note: Table only includes coastal states. Data come from the Census Bureau's Statistics of US Businesses (2017).

Conclusions and Recommendations

Advocacy urges BOEM to include small business impact analyses in its draft **environmental impact statements**. Including such analyses provides transparency to affected entities about the economic impacts of a particular COP and allows small businesses to participate meaningfully in

the commenting process. BOEM should also provide a schedule for regularly updating mitigation guidance based on new data and information so that policies and procedures are not out of date.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or prianka.sharma@sba.gov.

Sincerely,

/s/

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Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

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Copy to: Sharon Block, Acting Administrator
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