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August 22, 2022

**Via Electronic Submission**

Amanda Lefton, Director  
Bureau of Ocean Energy Management  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

**Re: Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585 [Docket No. BOEM-2022-0033]**

Dear Director Lefton:

The New Bedford Port Authority (“NBPA”) hereby submits these comments in response to the Bureau of Ocean Energy Management’s (“BOEM”) Request for comments relating to Offshore Wind Fisheries Mitigation.

In January of 2022, the New Bedford Port Authority submitted detailed comments in response to BOEM’s Request for Information regarding Offshore Wind Energy Fisheries Mitigation Guidance (BOEM-2021-0083-0001). The Port of New Bedford asks that those comments also serve as a supplement to the additional comments we are providing in this document.

The Port of New Bedford is the most economically valuable fishing port in the country. It is also the home of the region’s first purpose-built offshore wind shoreside servicing facility. This uniquely positions the NBPA in addressing and commenting on the relationship between the two industries. New Bedford is committed to ensuring that offshore wind advances in ways that safeguard the viability of commercial fishing enterprises.

Commercial fishing is a \$5.5 billion dollar industry in the United States and the Northeast alone is responsible for 30% of landings. New Bedford ex-vessel landings alone are almost half a billion dollars (\$451m in 2019) with over \$300 million from the scallop industry alone.

That number does not take into account the countless jobs and shoreside economy supporting the industry. A 2019 economic impact study of the Port of New Bedford and Fairhaven Harbor conducted by Martin Associates and Foth-CLE Engineering Group calculated that 39,697 jobs and \$11 billion in total economic contribution are provided by our local seafood



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and commercial fishing industry. A total of \$162.8 million of direct, induced and indirect state and local tax revenue was generated by processing activity at the Port of New Bedford with another \$391.1 million of federal taxes. In addition, \$228.3 million of state and local taxes and \$608.2 million federal taxes were supported due to economic activity of the related users using the Port of New Bedford.

Even the most optimistic estimates for the potential economic contribution of offshore wind don't come close to the existing contributions of commercial fishing. The working families of our region have depended on the good jobs provided by fishing quite literally since before the American Revolution.

Our comments reflect our experiences here in the port and those of many fishermen, businessmen and women, and vendors who have reached out to us who call New Bedford their home.

### **General Comments**

BOEM initially conducted workshops in 2013 and 2014 on fisheries mitigation, it is now the summer of 2022. Multiple leases have been issued during this time so any uniform mitigation will be difficult to accomplish especially if it is only in the form of guidance where a developer theoretically could choose not to follow BOEM's recommendations.

With that said, and while we understand that the contents of this documents do not have the force and effect of law, we are concerned with the overall lack of clarity and enforceability with the language presented in the document. Throughout the document equivocal words such as "may be required", "reasonable efforts", "if needed", "when feasible", "recommend", and "should consider" are used. These words provide little incentive for a lessee to take the actions recommended and the document itself does little to emphasize what consequences a developer may face if they decide that an action is not "needed", "reasonable" or "necessary". We propose amending the language to reflect those instances where it is clear that an action must be taken and it is just the manner in which it will be taken that is up in the air. For instance, BOEM uses the phrase "if necessary" in connection with direct monetary payments for mitigation fisheries losses. There is not one single entity, including BOEM, that reasonably thinks that such payments will not be necessary, so why is BOEM still using uncertain language in that instance?

BOEM has the clear statutory authority to require certain actions and hold developers to standards as part of SAP, COP, and GAP approval. Any ability left to the wind developers to choose their own procedures will always result in their taking the least expensive path most favorable to them, not commercial fishing. "Mitigation" by definition is the action of reducing the severity, seriousness or painfulness of something. Many of the issues covered by the



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guidance document intersect with laws that have force and effect to address the main issue that there will be effects on the fishing industry.

Perhaps the most important aspect of any guidance issued by BOEM is for the guidance to make it clear that the impact on commercial fisheries is an ongoing discussion and process subject to regular monitoring. As indicated earlier, BOEM is relying on statements and studies from the offshore wind developers regarding their impact, or alleged lack thereof, on commercial fishing. BOEM has stated repeatedly in meetings that it “may” revisit mitigation if there is an “issue”. What BOEM has not committed to is requiring the wind developers to stand by their assertions as to fisheries impact. BOEM has left the fisherman with the impression that it is their burden to come back to BOEM and show the need for mitigation.

We strongly believe that the “burden of proof” must lie with developers to prove to the fishing community that they are not causing environmental or economic harm. To the greatest extent possible this shall be done before development is allowed to proceed. The uncertainty about the total impacts of wind energy development is a major reason why the fishing industry distrusts the current process. The fishing industry deserves a complete understanding and sound science of the impacts on habitats, safety and navigation, and the social and economic impacts to fisheries and the ports they rely on. It is understood, as stated in the draft, that this is “guidance”. Simply because it is guidance does not mean that BOEM cannot unequivocally state that it will review the COP for each area at least every five (5) years to make sure that whatever the lessee has done to mitigate the impact of a development on fisheries is actually working.

A commitment to properly and extensively fund surveys pre, during, and post construction by wind developers using a collaborative approach with academia, scientists and stakeholders in the fishing industry will go a long way in gaining trust from the fishing industry. Furthermore, major long-term research is paramount and should be funded collectively by all offshore wind companies based on the fishing industry’s research priorities. It goes without saying that the absence of reliable data on fishing activity, developers may be cautious in providing funding for mitigation or compensation options.

There is nothing in the applicable laws or regulations that limits BOEM’s ability to impose or address mitigation to an environmental analysis. BOEM has missed the opportunity to address mitigation in the lease language of the leases it has already entered into, it must make certain that such mitigation is addressed in everything it does moving forward.

*In the document, BOEM states “BOEM outlines the following measures may mitigate the impacts of a proposed project, as identified in environmental analyses and public feedback, to commercial and recreational fisheries. These measures may work in tandem with additional mitigation measures that are directed at the overall health of a fishery or community (e.g.,*



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*marketing/seafood promotion initiatives, gear development, and support programs that ensure safe and profitable fishing alongside offshore wind energy development).*” BOEM then goes on to state that such additional measures may be considered outside of the mitigation guidance. BOEM must put more emphasis on community investment as a necessary and major form of mitigation that will benefit the most stakeholders relative to the fishing community and make such investment part of any fisheries mitigation framework.

### **Specific Comments on Guidelines**

#### **A. General Approach to Developing Mitigation Measures**

*“The lessee should make reasonable efforts to implement the project in a manner that minimizes, mitigates, or redresses any adverse project effects on commercial or recreation fisheries.”* (pg. 5 draft document). This statement reflects our major concerns with the vague language, and unenforceable nature, of the document.

There is an opportunity here for BOEM to take the lead to empower the fishing industry by partnering with federal agencies, industry experts, and local fisherman to develop an all-encompassing advisory board to develop administration, valuation, and eligibility outlines for fisheries compensation. This advisory board would be charged with developing a robust framework that promotes equity in science and values local knowledge.

#### **B. Project Siting, Design, Navigation, and Access**

It is important that the installation and operation of submarine cables avoid, minimize, or mitigate potential impacts; both to the environment as well as to existing ocean users. Historical and current trends in commercial and recreational fishing are another major consideration when planning a cable route. The best and most effective manner to avoid, minimize, or mitigate impacts to fishing interests is engagement with fishermen early in the planning process. The two major considerations cable route engineers review with respect to fishing interests are identifying and avoiding heavily fished grounds where possible during upfront planning and developing fishing gear-type and seabed composition-based mitigation measures.

This is an area that must be included in requirements, not recommendations. The lease area lines are not on nautical charts. It is vitally important that fishermen be able to rely on the fact that the areas are constructed, as much as technically feasible, in the same manner. Inter array cable in adjoining lease areas should be routed in the same way. A fishing boat doing a trawl or scallop dredge should not have to worry that they must conduct operations differently in areas that abut each other. The same goes for spacing and other design elements. At a minimum, BOEM must require areas that abut to be designed the same way.



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### **C. Safety Measures**

This is an area that BOEM clearly has the ability to "require" the actions listed as opposed to "recommend" them. It is critically important that these items be uniform throughout ALL of the lease areas or, at the very least, in adjoining areas that fishermen must traverse through when making a trawl or pass.

Developers must be required to commit to supporting provisions of updated vessel and personal safety equipment and vessel refits to allow fisherman to operate more safely and efficiently near wind farms, including conversion to wind facility-safe fishing gear. Furthermore, Developers, in consultation with the US Coast Guard, must be required to ensure that there is a cable communication and awareness system in place to ensure fishermen/other mariners have access to information on cable placement (app, website, updated navigational charts). Specific guidelines around fishing activities such as "peak seasons," and regulated or temporary closures should also be considered.

Again, uniformity at the very least among adjoining areas is vitally important. BOEM must make it clear that each lease area is not on its own when it comes to safety issues like inter-array, spacing, etc.

### **D. Environmental Monitoring**

This is yet another example of the manner in which BOEM equivocates with language that should not be optional or vague. There is no question that there is a "need" to monitor changes in fishing activity as a result of proposed development. In issuing leases, BOEM has already essentially taken the developers word as gospel as it relates to claims in the EIR that the development will not have a significant impact. BOEM must require that the developers monitor the situation and revisit their claims at least every 5 years to make sure that the claims made at the beginning remain true. It cannot rest with the fishermen to prove the impact of a development. Developers must be required to monitor their impact and report back to BOEM at least every 5 years.

Current and future wind projects do not occur separate from one another. It is important to consider the cumulative effects of all wind projects as whole to species and their habitat. It is therefore the responsibility of BOEM to assess cumulative impacts across multiple wind energy projects regionally, through all phases of the project and through all life history stages of the various species effected. According to the New England Fisheries Management Council, monitoring shall occur 2-3 years before, during, and after construction for the life of the project at regular intervals (*NEFMC Offshore Wind Energy Policy, 12/07/21*).



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BOEM must encourage/compel Developers to coordinate monitoring surveys and methods across projects to develop a cumulative impact analysis and partner with regional fishery management councils to develop monitoring frameworks and protocols in carrying out research. Developer-funded monitoring and research activities should utilize the existing fishing community and other stakeholder resources for research and monitoring activities.

### **E. Financial Compensation**

In this section, once again BOEM is using vague language where it should not exist. There is no reasonable person familiar with the interaction between offshore wind areas and fishing that would say the wind areas will not result in lost income to fishing. More suitable language should read "Every lessee must create a compensation process for lost income to commercial and recreational fishermen."

BOEM has been collecting funds for a fund administered by NMFS for fisheries mitigation associated with oil and gas leases since 1978, a fact brought up in the 2012 study commissioned by BOEM. BOEM certainly has had plenty of time to request the statutory ability to administer the same kind of fund for offshore wind but has chosen not to make such a request to congress. BOEM must commit to supporting any legislative effort to create such a fund.

The Fishermen's Contingency Fund was established to compensate fishermen for economic and property losses caused by oil and gas obstructions on the U.S. Outer Continental Shelf. The fund was established in the U.S. Treasury, without fiscal year limitation, as a revolving fund comprised of assessments paid by offshore oil and gas interests. Fishermen who can prove that they suffered losses in income due to inability or reduced capacity to fish as a result of the damage sustained may be eligible for compensation for economic loss and property loss or damage. Compensation for economic loss is based on 50 percent of gross income lost, rather than loss of profits. Amending this compensation fund to include Offshore Wind Development Companies will require federal legislation. It is our hope that BOEM makes every effort to use the power of the office to work with Congress to statutorily administer these measures.

### **Determining Adequate Reserve Funds for Compensation/Duration of Compensatory Mitigation Period**

Why is the compensation for fishing revenue "voluntary"? (pg. 9 "Construction")

There really is no need for this diminishing payment based upon an "assumed adjustment period." Either there is revenue loss as a result of the ex-vessel landings going down or there isn't. If the fishermen are going to be required to use NOAA numbers to back up their claim, then why would that loss not continue through the life of the project? The flawed assumption here is that the fishermen have to change their behavior and "adjust" by fishing the area



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differently. In that event, the landings numbers will indicate that adjustment and there is no need for a formula for diminishing payments. There is either a loss that can be verified or there isn't. BOEM should not be artificially creating a mechanism to incentivize a lessee to create a plan where they won't have to fully compensate the fishermen.

The use of landings data to substantiate a claim is acceptable but it should not be tied to the latest time frame. As acknowledged by BOEM in this paragraph, this data is frequently at least a year behind and sometimes farther. Fishermen have bills to pay. They cannot go without income while waiting for the latest landings report. It is patently unfair to allow a lessee to continue to make money while holding up compensation payment to a displaced fisherman. There must be a mechanism to pay a claim no more than sixty days after submission. There should be a calculation made taking the last five years of available ex-vessel landings data, averaging it, and having the boat owner submit a whatever additional proof is acceptable to the Lessee to show lost landings revenue. Should there be an issue when the more contemporary landing data becomes available, it can be remedied any number of ways between the two entities. It is important to remember that this is an ongoing relationship, not an instance of a one-time payment.

When it comes to the very real impact that will fall on shoreside businesses and communities, BOEM again uses ambiguous language in an area where there must be, at a minimum, an expectation of action on the part of a lessee. This phrase used, that a lessee "should consider the propriety of permitting claims" is perhaps the least definitive statement that is used in the entire document. We suggest the following "every lessee must establish a mechanism to compensate shoreside businesses for revenue lost from displaced fisheries. This program should include direct payment to eligible entities where proof of loss can be established and should also include mitigation payments that are directed at the overall health of a fishery or community where the impacted shoreside businesses are located (e.g., marketing/seafood promotion initiatives, gear development, and support programs.)" We remain concerned that these draft guidelines greatly underestimate the shoreside impacts to seafood processors and fleet operations in our ports.

### **Potential Additional Areas of Mitigation:**

- Assist in providing capital/funding for marketing campaigns to promote fishery products to increase demand for locally-produced food and increase fisheries' viability and profitability;
- Subsidies in the form of a fixed reduction off fuel prices to reduce fuel costs to fisherman and alleviate potential wind farm impacts to profitability;



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- Additional/supplemental employment opportunities to fisherman as guards/patrols, data collectors for research & environmental assessments and other services (joint data collection/impact studies);
- Financial support for potentially high insurance premiums required of fishermen fishing within wind farms areas;
- Coordinating construction schedule taking into account high use areas, seasonality, and closure periods;
- Financial support for fisheries enhancement programs. Mitigation shouldn't end and compensation begin after project siting measures have been accomplished. For fisheries such as surfclam, stock enhancement outside WEAs is reasonable mitigation for the loss of access the surfclam fleet will experience within WEAs post construction. Fishery stock enhancement programs will also naturally benefit the downstream businesses; (*SCEMFIS, VIMS, Rutgers report 7/5/22*)
- Port operational interface group that meets regularly to discuss any issues arising from development operations– run by local port authorities.

Pursuant to BOEM's regulations, 30 CFR §585.633, BOEM may require the following from a leaseholder with an approved COP for a project:

“(a) Based on BOEM's environmental and technical reviews, we will specify terms and conditions to be incorporated into your COP.

(b) You must submit a certification of compliance annually (or other frequency as determined by BOEM) with certain terms and conditions of your COP that BOEM identifies. Together with your certification, you must submit:

(1) Summary reports that show compliance with the terms and conditions which require certification; and

(2) A statement identifying and describing any mitigation measures and monitoring methods, and their effectiveness. If you identified measures that were not effective, then you must make recommendations for new mitigation measures or monitoring methods.

(c) As provided at § 585.105(i), BOEM may require you to submit any supporting data and information.”

The above regulations clearly give BOEM the ability on at least an annual basis to require a developer to demonstrate that their mitigation measures are working and to support that demonstration with their monitoring methods. Any fisheries mitigation framework must include a requirement that the COP reporting by the developers includes definitive statements supported by data that their fisheries mitigation measures are working. The COP requirements must also provide for baseline data and fisheries impact analysis information sufficient for BOEM and fisheries groups to analyze the effectiveness of mitigation. BOEM must also commit to providing this reporting to the stakeholders in this process.





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Fishermen across the United States, and especially here in the Northeast, strongly value their way of life and the resources available to make a good, honest living. It goes without saying that there is fear of the unknown when it comes the disruptions offshore wind development will have on their industry. It is incumbent on BOEM, BSEE and the Federal Government to develop a national framework for mitigation, which includes ongoing scientific and economic analyses, technical aspects of fishery management and ecosystems, and socio-economic values all with direct and substantial participation of our fishermen. Lastly, any mitigation discussions, which is absent from this document, must take into account the protection of the workers, on the vessels, in the processing facilities, and throughout shoreside businesses, in a sense the "community as a whole."

Thank you for your attention and consideration of the above comments.

A handwritten signature in black ink that reads "George Krikorian, Jr." with a small mark above the 'i' in "Krikorian".

**George Krikorian, Jr.**  
Interim Exec. Director/Dir. of Finance  
New Bedford Port Authority