

Virginia Ocean Stakeholder Engagement

FY21 Task 92.02 Final Report

Grant Period October 1, 2021 to March 30, 2023

Grant# NA21NOS4190152

Compiled by Todd Janeski, VCU, Department of Life Sciences, Rice Rivers Center

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Executive Summary

The Environmental Scientist/Program Manager with the Virginia Commonwealth University (VCU) Department of Life Sciences (LS), Rice Rivers Center (RRC), as retained by the Virginia Department of Environmental Quality, Coastal Zone Management Program, served as the Ocean Planning Stakeholder and Fisheries Coordinator (“OPSE Coordinator” or “Fisheries Coordinator”) for the grant reporting period under the VACZM Section 309 Ocean Resources Strategy. The focus of the efforts was targeted to the commercial fishing industry with the key outputs of strengthening the relationship with the CZM as it relates to changes in ocean use, advance the VA Ocean Plan and ensure that the commercial fishing industry was actively engaged and informed in those ocean changes.

Ocean planning in the Commonwealth includes a partnership, the Mid-Atlantic Regional Council on the Ocean (MARCO), which includes representatives from the States of New York, New Jersey, Delaware, Maryland and Virginia. The broader MARCO effort is being supported through several contractors such as Monmouth University, University of Delaware, Rutgers University, Nature Conservancy, and NatureServe. Primarily, ocean planning brings together the sectors of Ports and Navigation, Military, Commercial Fisheries, Recreational Users, Alternative and Traditional Energy, Conservation, Tourism, and Local Government. These sectors have been brought together both in the Commonwealth as well as in the region to share information regarding ocean uses for the purpose of understanding the complexity of overlapping and abutting uses.

The relationship with the commercial fishing industry has continued to grow where representatives from the east coast have shared their experiences with respect to the changes in ocean use. Fishermen have shared concerns including the loss of access to fishing areas, loss of revenue and changes in transit routes that would increase operating expenses or take away days at sea. The competition for access continues to be a concern as the lack of formal organization, the industry shares concerns that the developers are more able to invest in advancing energy development due to more available capacity and funding.

Product #1: Report on stakeholder engagement to inform the Virginia Ocean Plan and Ocean Use (60%)

During the reporting period, the Fisheries Coordinator continued to maintain a productive relationship with field partners including NOAA, VA Marine Resources Commission (VMRC), Fisheries Representative from Sea Freeze Inc, Responsible Offshore Development Alliance (RODA), Responsible Offshore Science Alliance (ROSA), Garden State Fishing Association, Long Island Commercial Fisheries Association, private seafood companies in/out of VA and

representatives from the Virginia commercial fishing fleet from the pot, trawl, and dredge fisheries. The focus of the interactions has been to work closely with the commercial fishing sector to maintain communication and to provide updates on the development of the Virginia Ocean Plan, broader reaching ocean issues, and to help organize commercial industry’s participation as VA advances offshore renewable energy. The Fisheries Coordinator began to build a working relationship with the new VMRC Policy staff during this reporting period and participated in regularly occurring Joint Cabinet Offshore Wind coordinating meetings as well as regularly scheduled bi-weekly meetings with the Secretary of Natural and Historic Resources.

The Fisheries Coordinator’s outreach efforts with the commercial fishing industry were two-fold: 1) deployment of offshore wind and 2) the VA Ocean Plan. For the CVOW-C project, the Fisheries Coordinator met weekly with the Dominion and VIMS team to advance the preconstruction monitoring for black sea bass, whelk and surf clam. These meetings permitted regular communications with the fixed gear (black sea bass and conch), dredge, and bottom trawl sectors as the CVOW-C continued to advance and BOEM began to initiate new call areas for offshore wind. The Fisheries Coordinator developed a tracking mechanism to attempt to track the volume of calls, texts and meetings during the project period. In all likelihood the following is an underestimation of the effort.

OSW Call Log		number			text			number			meetings		hrs			
Date	dredge	pot	trawl	Govt	public	dredge	pot	trawl	govt	public	dredge	pot	trawl	govt	public	
		40	59	4	360	13	67	636	9	185	4	11	2	0	403	8

The Fisheries Coordinator also worked closely with the newly re-emergent surf clam industry landing product in Cape Charles, VA, Surfside Seafood. The Fisheries Coordinator introduced the point of contact to the VMRC and to Dominion with the hope to ensure this new industry was included as the project advances. Significant potential of surf clam has been identified in the lease and south of the lease that re-starts an industry that has been dormant for nearly two decades. The Fisheries Coordinator exchanged data with the Surfside Seafood operations manager to ensure the most accurate information was being utilized. The Fisheries Coordinator coordinated comment and input from the pot sectors for the CVOW monitoring plan and helped coordinate meetings in person at VMRC.

The reporting period included the transition of a new Governor and their respective Administration. At the request of the commercial fishing industry, the Fisheries Coordinator established and facilitated meetings with Governor Youngkin’s Administration on the commercial fishing sectors that included the pot fishery, February, 2022 (Appendix 1); Scallop with the Fisheries Survival Fund, April, 2022 (Appendix 2); and the newly emergent Surfclam industry; May, 2022 (Appendix 3). These meetings illustrated the footprint of their activities relevant to Virginia and their economic impact. Those fisheries were interested in communicating the concept of co-existence and protecting existing jobs as it relates to the development of OSW and offshore renewables while being included in the deployment/operation of CVOW. As illustrated in the attached briefing documents, the newly re-emergent surf clam industry recorded catches 15 times greater than off New Jersey, landed \$2.5 million in product, and spent \$5 million in labor, shipping and fuel to move that product to market.

In late 2021, BOEM released a Request for Information (RFI) to seek input on the development of Offshore Wind Fisheries Mitigation (BOEM-2021-0083). The Fisheries Coordinator worked

directly with the VMRC to develop and submit comments to BOEM. The response addressed a number of concerns including the lack of involvement of the commercial fishing industry in the development of the document under review, the lack of consistent baseline conditions assessments to inform claims, and the need to better addressing the needs of the data poor fisheries that do not have specific spatial reporting requirement and are not managed under Magnusson. Those comments can be seen the Appendix 4.

Special Initiative for Offshore Wind (SLOW) led an effort with nine Atlantic States from Maine to Virginia to develop a mitigation and compensation program including identification of a third party to host the funds for compensation. The Fisheries Coordinator represented Virginia and actively participated in the process to develop a Scoping Document and Request for Information (RFI) that was released to the public (Appendix 5). Regularly occurring meetings of the states and SLOW revealed that the end user of a regional fiduciary administrator, the commercial fishing industry, was not being directly and openly engaged. Through meetings with the nine states and three core (MA, NY and NJ) states, it was communicated that the fishing industry would be engaged toward the end of the process to validate the approach developed by the states. To ensure strong and effective public policy as it relates to compensating those affected fishing businesses, the Fisheries Coordinator worked with the VA Administration, RODA and Consensus Building Institute (CBI) to scope out integrating the industry into that process. Further details about the support to the commercial fishing industry in the nine-state process can be seen in the section under Product 2.

The Fisheries Coordinator garnered financial support from the VMRC to increase the amount of effort that is being expended to ensure our commercial sector is engaged, involved, and aware of changes in ocean use and to provide policy analysis and input on ocean fisheries issues. The VMRC established a contract to jointly support the position modifying the title to be Commercial Fisheries Coordinator (Fisheries Coordinator). This partnership between VCZM and the VMRC demonstrates the Commonwealth's commitment to stakeholder inclusion in the public policy process. At this point, the Fisheries Coordinator was able to allocate additional time to facilitating responses and address pressing fisheries issues to benefit the Commonwealth. The Fisheries Coordinator worked directly with the VMRC on policy analysis, responses to changes such as the Central Atlantic Call Areas, submitting written comments and on technical documents and for the CZM Federal Consistency process. The Fisheries Coordinator worked directly with VMRC to submit comments to BOEM on the Central Atlantic Call Area. As part of the included letter, the Fisheries Coordinator suggested the VMRC include those letters from out of state companies licensed to land product in Virginia that were received as part of their comments (Appendix 6).

The Fisheries Coordinator supported the Commonwealth by working with the VMRC on the review and analysis of the Virginia Energy Plan. Through this partnership, a letter was submitted to the Secretary of Commerce and Virginia Department of Energy highlighting fisheries concerns as it relates to energy development in Virginia with a focus on the co-existence of commercial fishing with deployment of offshore wind (Appendix 7). Additionally, the Fisheries Coordinator developed and delivered a briefing to the Deputy Secretary of Commerce and Trade on the Energy Plan and the co-existence of commercial fishing and renewable offshore energy deployment, and the economic value of the industry to Virginia (Appendix 8).

The Fisheries Coordinator also represented Virginia on the BOEM Central Atlantic Task Force and participated in sub regional meetings between DE, MD, and NC. The Fisheries Coordinator attended the Sunrise Wind, Empire, and Beacon public meetings as well as the BOEM Clam, Trawl, Dredge and Pot Sector meetings for the Central Atlantic Call Areas. The Coordinator attended the quarterly VOWDA meetings remotely and in-person, the monthly Interstate Fisheries Coordination meetings, and monthly Interstate OSW Coordination meetings coordinated by RI. The Coordinator participated in the monthly MARCO OSW workgroup, the New York State Energy Research and Development Authority Fisheries Technical Working Group (NYSERDA FTWG), specifically the Wind Turbine Generator Impacts to Marine Vessel Radar meeting, and worked closely with state fisheries and energy staff from NC to ME. The Fisheries Coordinator met with Maine Department of Marine Resources Deputy Commissioner, Maine Governor's Office OSW Deputy Director and Program Manager and with NH Department of Environmental Services Assistant Commissioner. The Fisheries Coordinator provided an update to NOAA during the VCZM 312 review via PPT (Appendix 9)

The Fisheries Coordinator ensured the participation of the commercial sector in cooperative research for CVOW and actively participated in the weekly meetings with Dominion and VIMS to develop preconstruction monitoring for whelk, sea bass and surf clam. The Coordinator met with commercial industry representatives in field and communicated frequently to share project updates and to include them in the overall process, specifically in the development of monitoring from design to implementation and data review.

The Fisheries Coordinator represented the Commonwealth as part of a nine-state, state lead effort facilitated by the Special Initiative for Offshore Wind (SLOW) to develop a compensatory mitigation effort and fiduciary administrator. The Fisheries Coordinator actively participated in the development of the Scoping Document and the Request for Information as part of detailed review and edits. The final Scoping Document that was released can be seen in the Appendix 10.

Product #2: Soliciting the Input from the Commercial Fishing Industry on the development of a fisheries compensation administrator (40%)

The process under the nine-state effort was intending to openly engage the commercial fishing industry only prior to the release of the Scoping Document and Request for Information to the public with an associated Press Release. The Fisheries Coordinator, serving as the Virginia representative on the nine-state effort, identified the fatal flaw of late engagement and brought to the states a proposal to support the commercial industry through a deliberate and transparent process. The process required the Fisheries Coordinator to work directly with the states of ME, NH, MA, NY and NJ that were hesitant to change the process in fear of losing momentum toward the release of the Scoping Document and RFI.

However, to benefit strong and effective public policy as it relates to compensating those affected fishing businesses, the Fisheries Coordinator worked with the VA Administration, VA CZM, VMRC RODA and Consensus Building Institute (CBI) to scope out integrating the industry into the process to develop a regional fiduciary manager for fisheries compensatory mitigation. A budget amendment and workplan modification was made to directly support the integration of the commercial seafood industry into the state-lead development of a regional fiduciary administrator

for fisheries compensatory mitigation. Concurrently, as the CBI and RODA were organizing the integration of the industry, Virginia worked directly with both SIOW and RODA to develop press releases to illustrate the new path forward that openly engaged the commercial sector as an active participant (Appendix 11).

CBI subcontracted the RODA to serve as the primary point of contact for the industry. RODA, CBI, and Virginia coordinated and planned bi-weekly meetings to ensure the commercial fishing industry was engaged and involved in the 9-state process. The intent of the effort was not expected to fully support the outcome of the 9-state process but provide the direct and tangible opportunity to inform the outcome of the recommendations to the 9-state process.

First, RODA, CBI and VA developed a list of suggested industry representatives to serve as fisheries experts in advising the 9-states on their fisheries compensatory mitigation process. RODA then reached out to these experts and requested they participate in the effort moving forward. RODA made honoraria available to the Fishing Advisors (FAs) to help facilitate their participation.

The FAs represented a diverse representation of fisheries, gear types and regions. Associations and businesses the FAs represented included:

- Fisheries Survival Fund
- The Town Dock
- Massachusetts Lobstermen's Association
- Maine Lobstermen's Association
- Garden States Seafood Association
- Northeast Seafood Coalition

RODA and Fishing Advisors (FAs) participated in coordinated meetings with the 9-state effort to integrate their perspective, provided examples and relevant research. The following dates include the meetings between RODA-VA, RODA-Nine States and RODA-Fisheries Advisors: Oct 14, 18, 27, Nov 18, 21, Jan 9, 11, 31, and Feb 10, 14, 15, 16. This include participation on the weekly calls with the 9-states, follow up calls with the subset of states and sector calls with the FAs, VA and CBI. See "**230301_FAs Regional Fund meetings**" for a list of meetings (Appendix 12).

During the development of the draft RFI, RODA worked with the FAs to develop recommendations and edits to the draft RFI for consideration in the final version. RODA prioritized those recommendations from industry where necessary to ensure the most relevant issues are discussed and considered by the 9-states. This included recommendations from both the FAs and other industry experts. See "**221121_input for draft compensation RFI**" (Appendix 13).

In the fall/winter, RODA also supported the facilitation (with CBI) to provide examples of existing fiduciary programs to the 9-state effort through an educational presentation to state representatives. RODA invited speakers from the following compensation programs:

- Oregon Fishermen's Cable Committee
- RI Fishermen's Viability Trust
- Gloucester Fishing Community Preservation Fund

RODA also communicated with a larger group of the commercial fishing industry as needed to

facilitate a wider communication of the States' effort. This included multiple one-on-one meetings with active participants in the commercial fishing industry and two membership-wide meetings on Regional Administrator RFI.

RODA worked with the FAs to develop comments for the final RFI. The basis of these comments was formed during the membership meetings mentioned above. RODA made the summary of these comments/recommendations available to the organization's membership. See “**DETAILED version - States Compensation Administrator points_230124**” and “**230206_Regional Administrator RFI**” (Appendix 14).

FAs were invited to participate in some parts of the Pocantico workshop. Five FAs (including representation from RODA) attended the meeting for half of the second day and evening. The Fishing Advisors raised important questions about the link between the source of funds in aggregate raised to fund compensation and the pay out of those funds to individual claimants. The Fishing Advisors also offered early input on potential approaches to procurement and oversight of a selected entity.

Following the Pocantico meeting, the FAs met with CBI and VA to summarize next steps. This included organizing an industry-to-industry call with the offshore wind sector to understand the concept of bid credits funding a compensation program and designating FAs to work on either the Governance Structure or Procurement Development for the Regional Administrator.

These discussions are on-going upon the conclusion of contract.

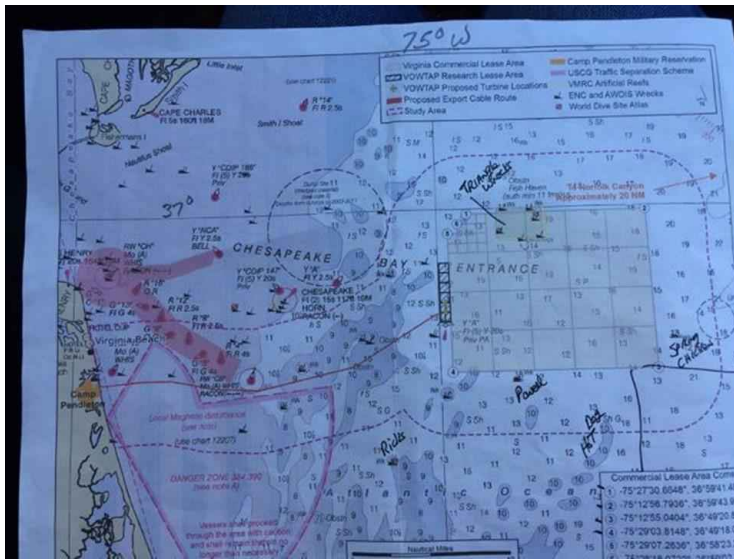
RODA held an additional membership meeting on the general status of fisheries compensation from offshore wind development. See “**230421_RODA compensation presentation_v2**” and “**States Regional Fund Administrator presentation**” (Appendix 15)

Appendix 1: Pot Fisheries Briefing PPT

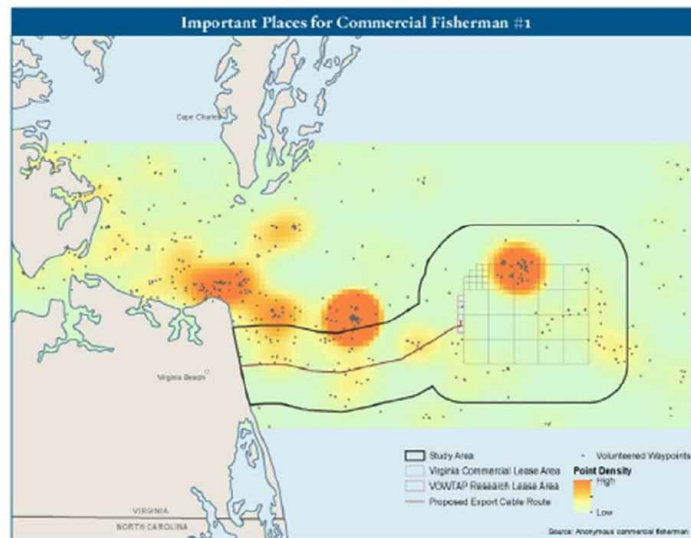
2014



2014

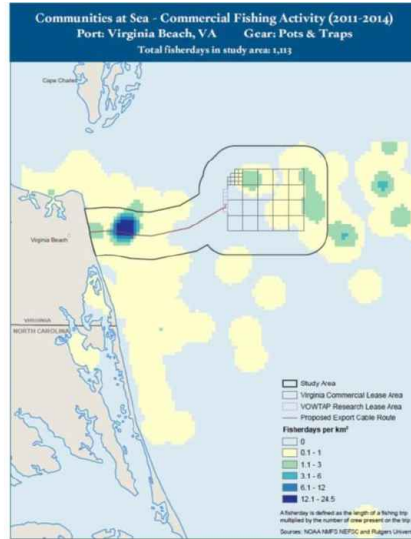


2015

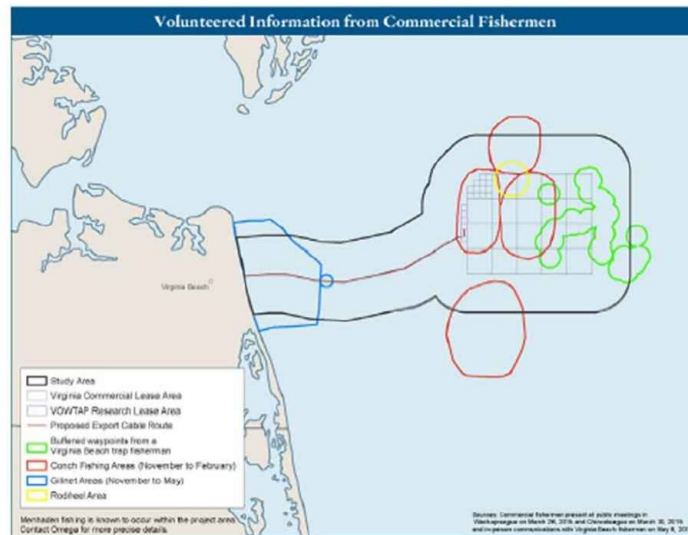


Appendix 1: Pot Fisheries Briefing PPT

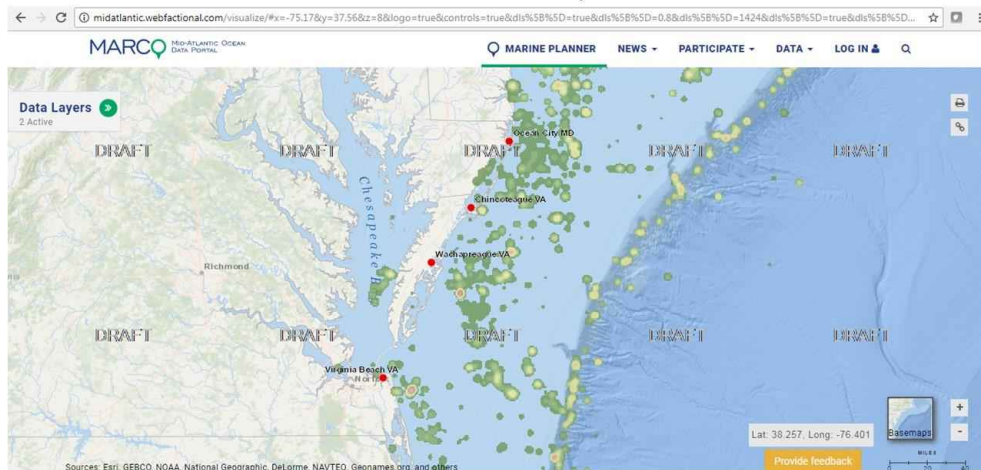
2015



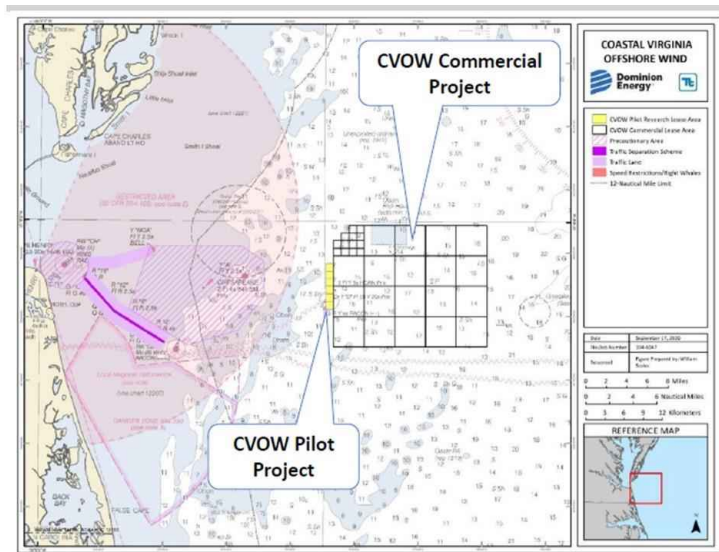
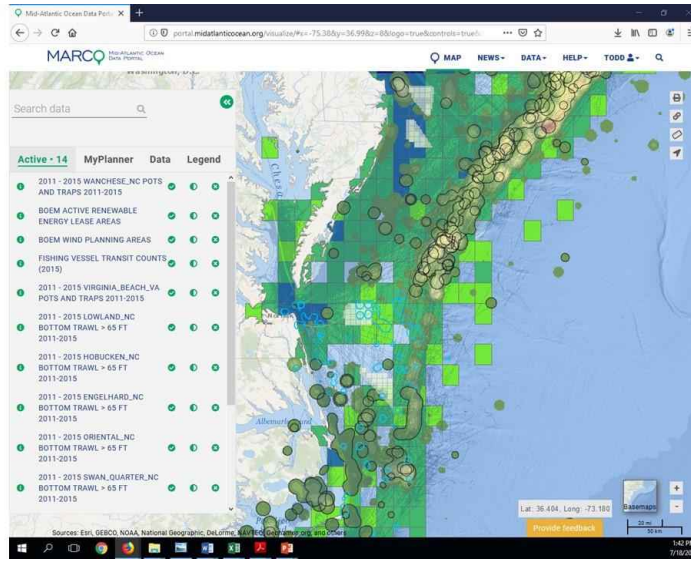
2015



2011-2015 Pots and Traps

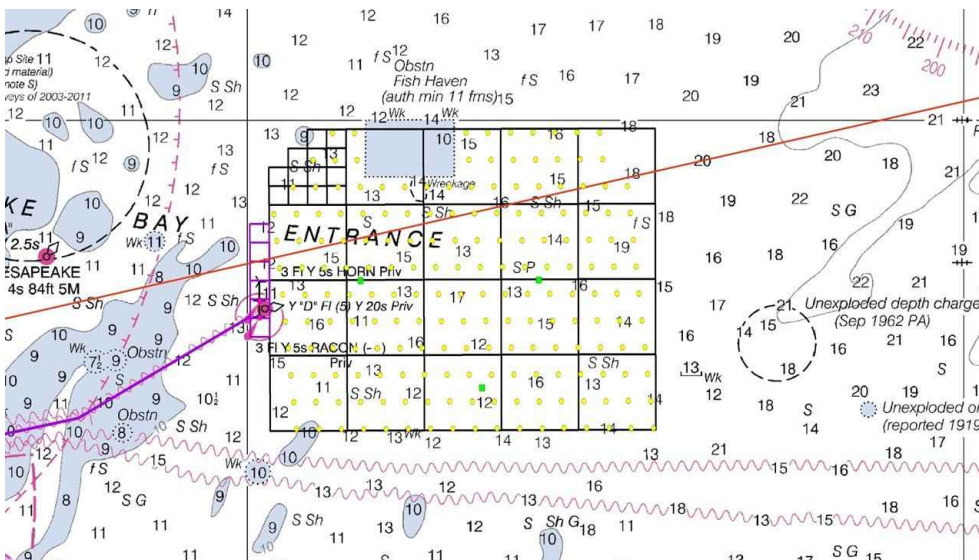
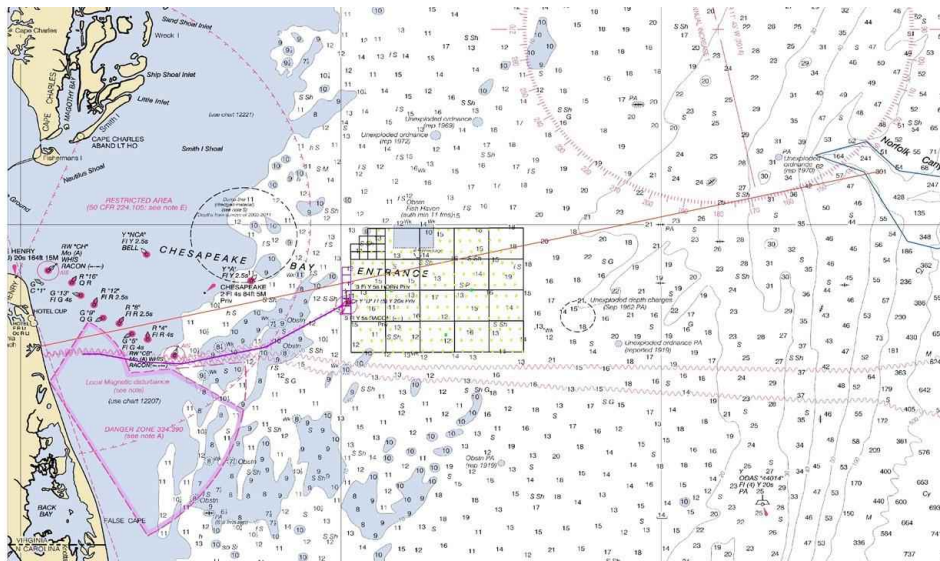
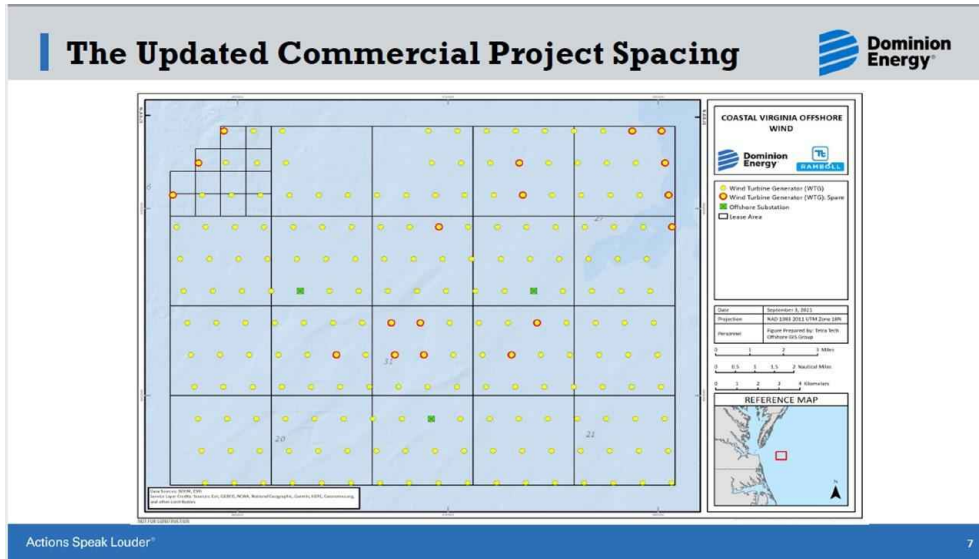


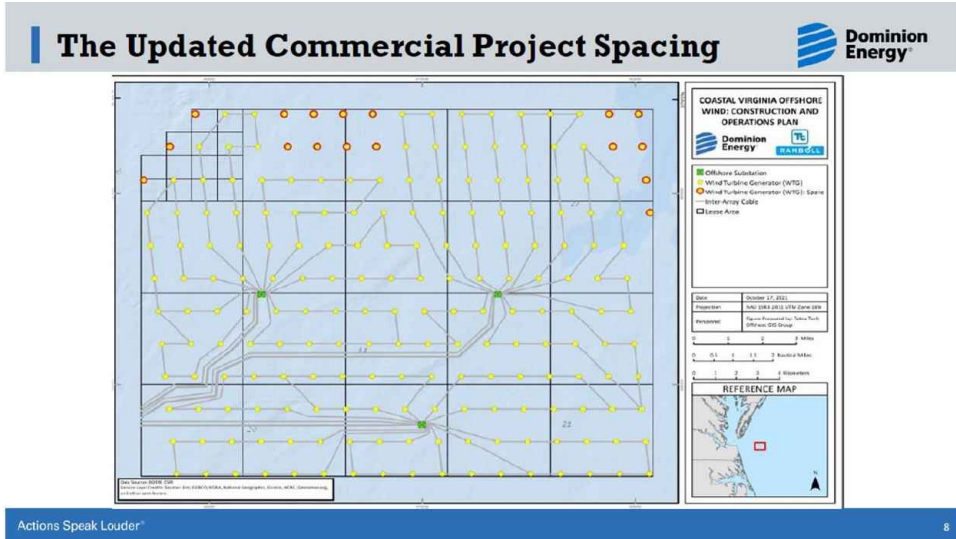
Appendix 1: Pot Fisheries Briefing PPT




2020





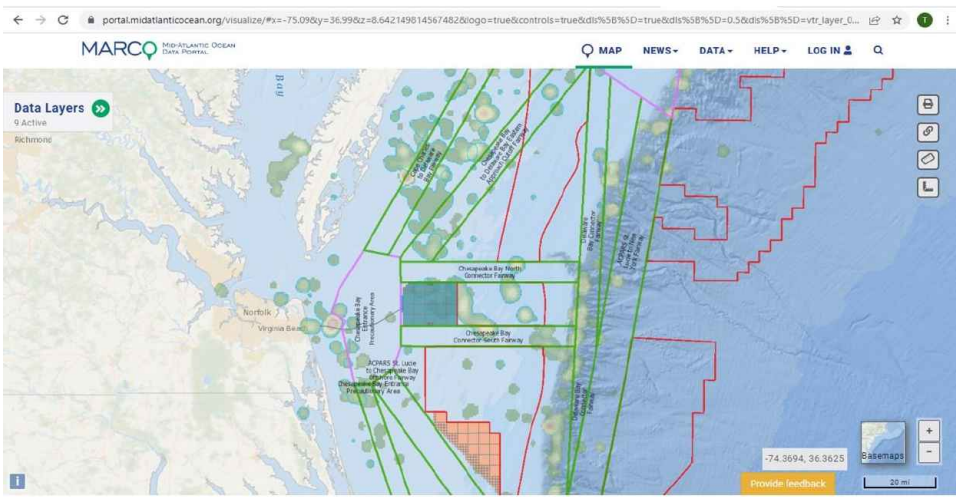


CVOW Commercial Expected 'On-Water' Timeline

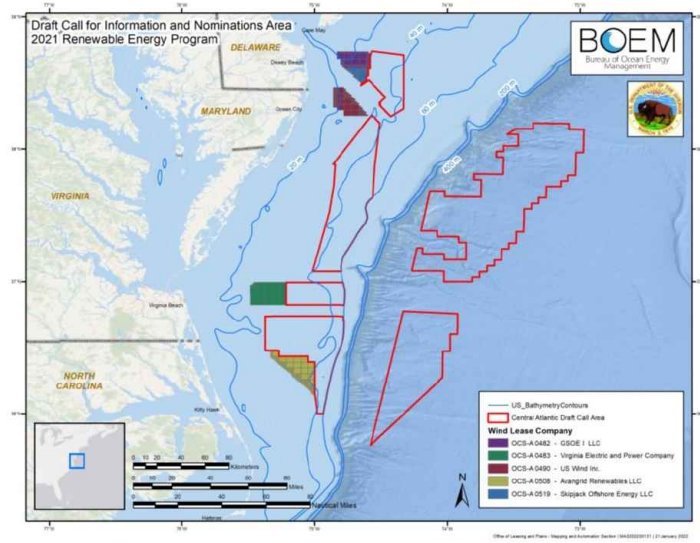


April 2020 to June 2021	Geophysical and Geotechnical (G&G) Surveys
Fall 2021	Deployed Metocean data collection buoy in Lease Area
2022 (Dates TBD)	Unexploded Ordinance (UXO) Investigation Survey
2023 (Dates TBD)	Unexploded Ordinance (UXO) Identification Survey
Late 2021 to 2023	Pre-Construction Survey Activity (as required)
May to October 2024	Construction - Monopile Installation
November 2024 to April 2025	Construction – Wind Turbine and Cable Installation
May to October 2025	Construction - Monopile Installation
November 2025 to April 2026	Construction – Wind Turbine and Cable Installation

Actions Speak Louder®



Appendix 1: Pot Fisheries Briefing PPT



Overview of the Atlantic Sea Scallop Fishery

Jonathon Peros

Scallop Plan Coordinator

New England Fishery Management Council

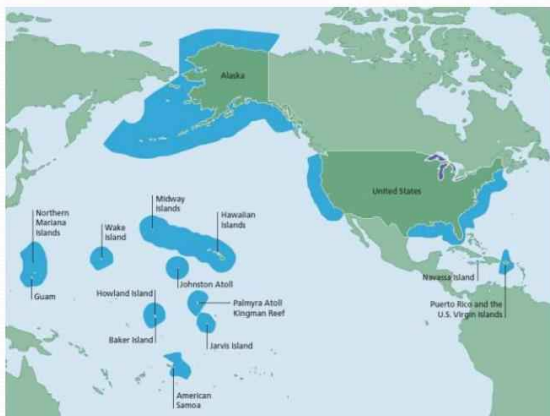
April 5, 2022



New England
Fishery Management
Council

1

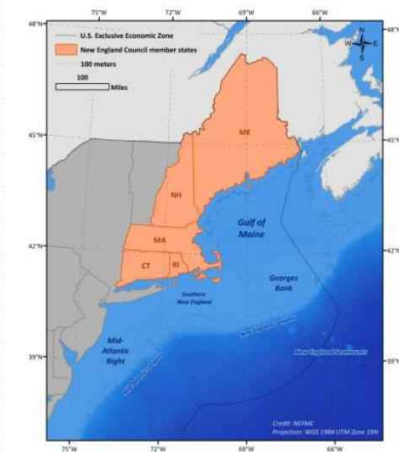
Magnuson – Stevens Act (MSA)



- National Standards (NS) for fisheries management
- Regional implementation
- Science-based decisions

2

New England Fishery Management Council

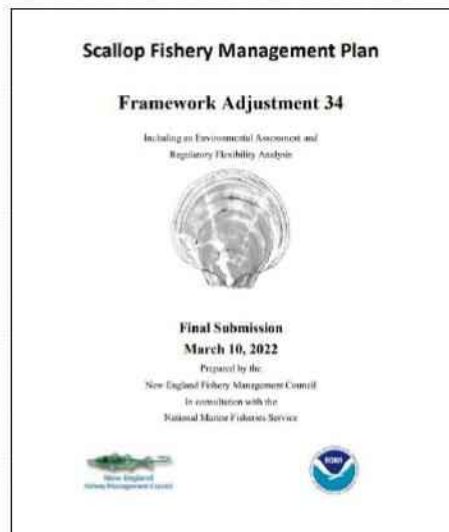


- Established by statute
- **Not a part of NOAA Fisheries**
- Five states represented
- Federal waters (3nm – 200nm)
- Deliberative body
- www.nefmc.org

3

Council Functions

- Prepare fishery management plans for fisheries that require conservation and management
- Conduct public hearings as appropriate
- Develop annual catch limits



4

Council Operations



- 18 voting members
- Oversight Committees
 - Advisory Panels
 - Plan Development Teams (PDT)
- Scientific and Statistical Committee (SSC)

5

Atlantic sea scallop (*Placopecten magelanicus*)

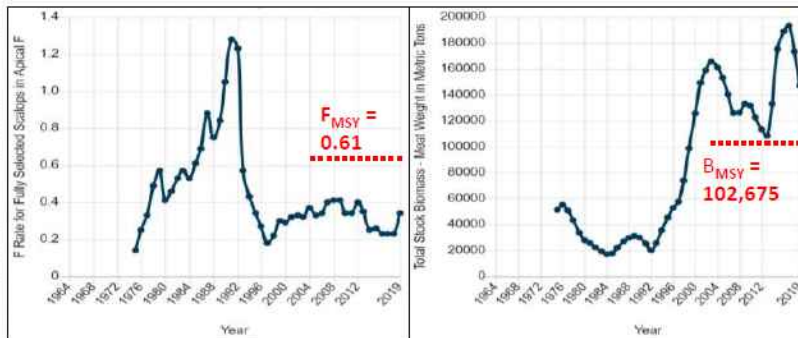


6

Current Stock Status

Stock status: Not overfished and overfishing not occurring

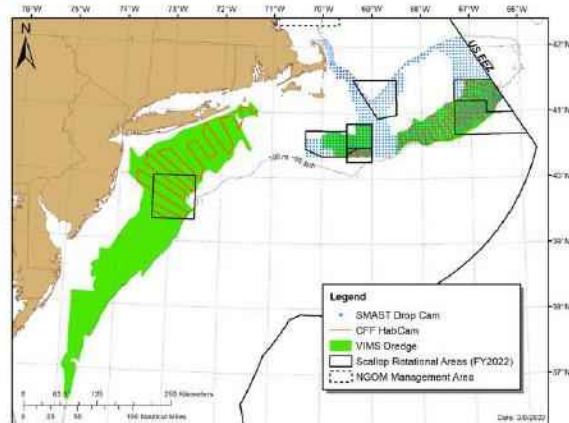
The fishery has not exceeded legal catch limits since the last reauthorization of the Magnuson-Stevens Act (2010)



7






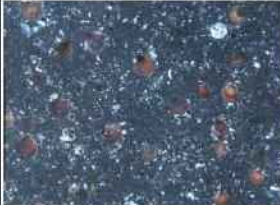
Setting Catch Limits

- Science-based → Annual surveys → Updated each year
- Multiple survey tools, support from a research set-aside
- Management is based on forecasts of scallop population using observations from the annual surveys and fishery



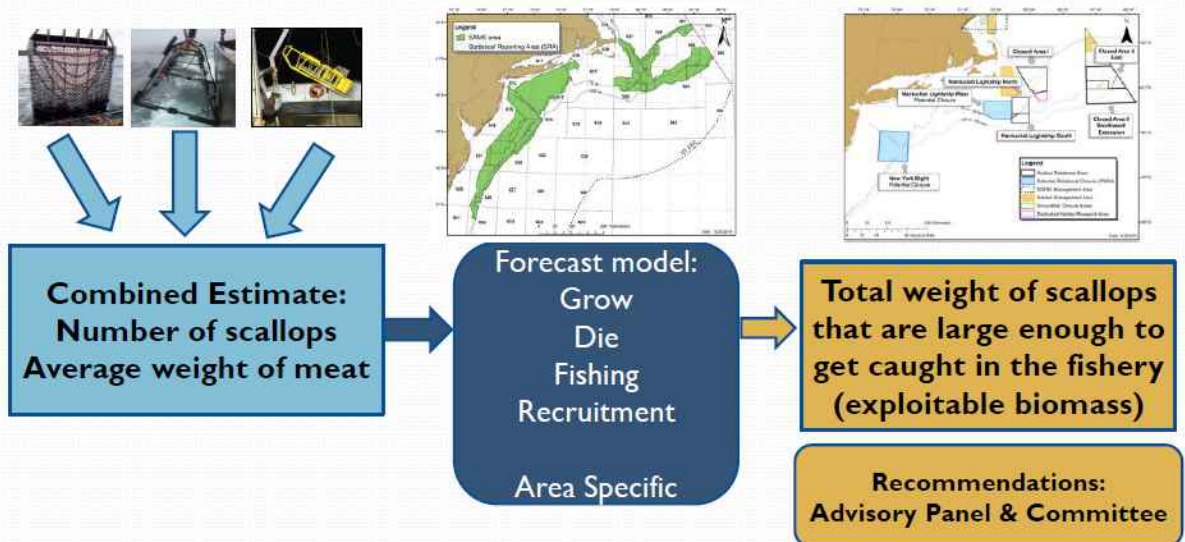
8

Resource Surveys:

Dredge	Drop Cam	HabCam
		
		

9

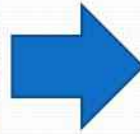
Survey Data, Forecasts, Management



10

Rotational Management (2004)

- Use spatial management of scallops to improve yield and minimize impacts on bycatch and habitat



11

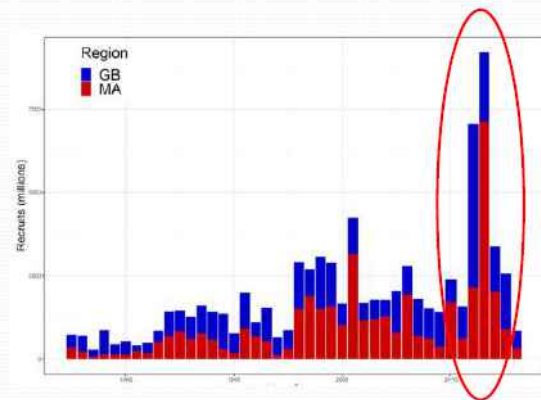
Rotational Management (2004)

- Spatial management: Managers develop “area” recommendations based on the results of annual surveys
- Four types of areas
 - “**access areas**” open to fishing based on biomass and size structure
 - “**closed areas**” closed temporarily to allow growth and protect small scallops
 - Permanently closed areas (HAPC, EFH closures)
 - “open areas” using Days At Sea (DAS) – Areas not part of rotational management
- Viewed as a highly successful management approach.

12

2015-2021 Recruitment and Biomass

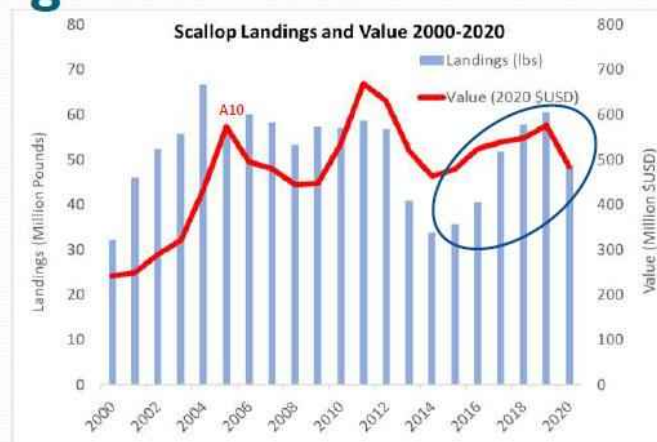
- Very large year classes – 2012 and 2013 on Georges Bank and Mid-Atlantic
 - New opportunities and challenges
 - Increased allocations with high level of landings at high prices
 - High density aggregations, anomalous growth, increased mortality
- Average/below average recruitment in recent years
 - Biomass decline as large scallops are fished and no incoming year classes



13

2015-2021 Landings and Value

- Average landings
 - ~50 million pounds
- Average value
 - ~\$525 million
- Average price per pound
 - ~\$11.00/lb



14

Scallop Fishery by Permit Category

- Two rounds of limited entry, capped the number of participants.
- Two components of the fishery:
 - Limited Access (Amendment 4 - 1994)
 - Full time, part time, and occasional permits
 - Double dredge, single dredge, trawl
 - Limited Access General Category (Amendment 11 – 2008)
 - Individual Fishing Quota
 - Northern Gulf of Maine
 - Incidental

15

General Category IFQ Fleet

- Smaller vessels (~120 active vessels)
- *Quota (pounds) allocated to individual vessels.*
- *Permanent and temporary transfer of quota between permits.*
- **Allocated 5.5% of total allocation**



16

Limited Access Fleet



- Generally larger vessels (~350 active vessels)
- *Hybrid allocation*: set number of days they can fish in “open areas” & allocations to rotational areas.
- One vessel, one allocation
- **Receive 94.5% of total allocation**

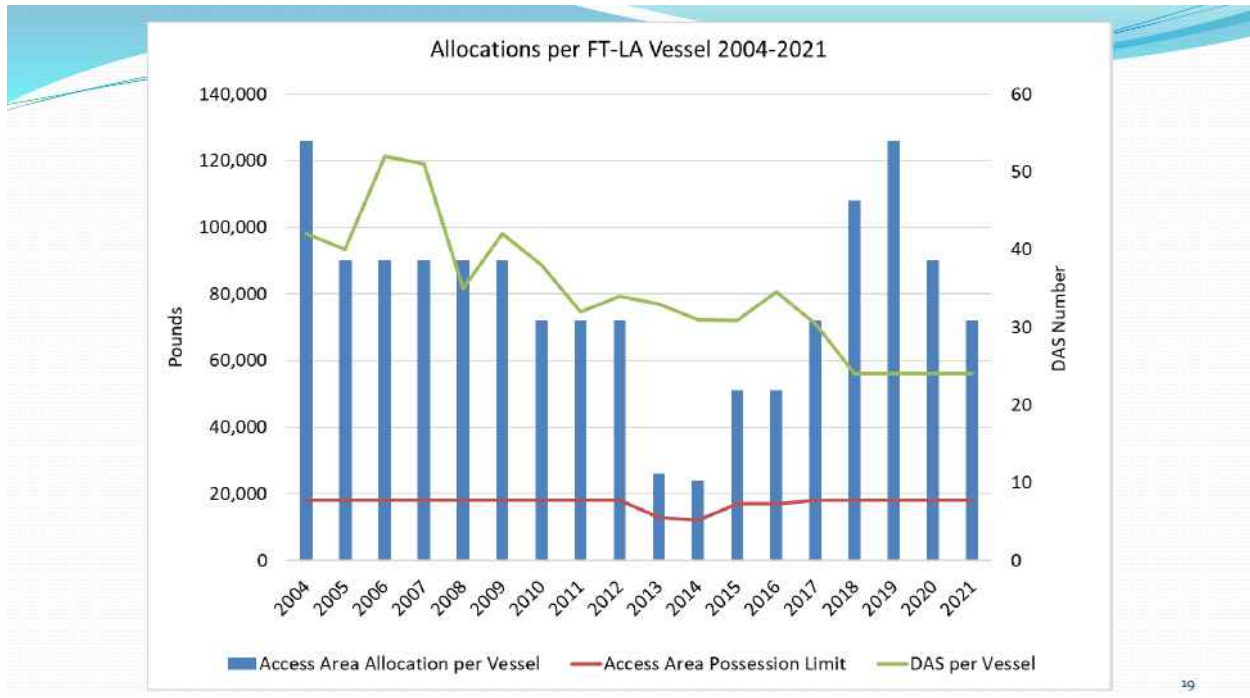
17

Scallop Vessels in Virginia



- In 2021 ...
 - 52 Limited Access vessels homeported in Virginia
 - 55 vessels with a principal port in Virginia
 - ~15% of the Limited Access fleet

18

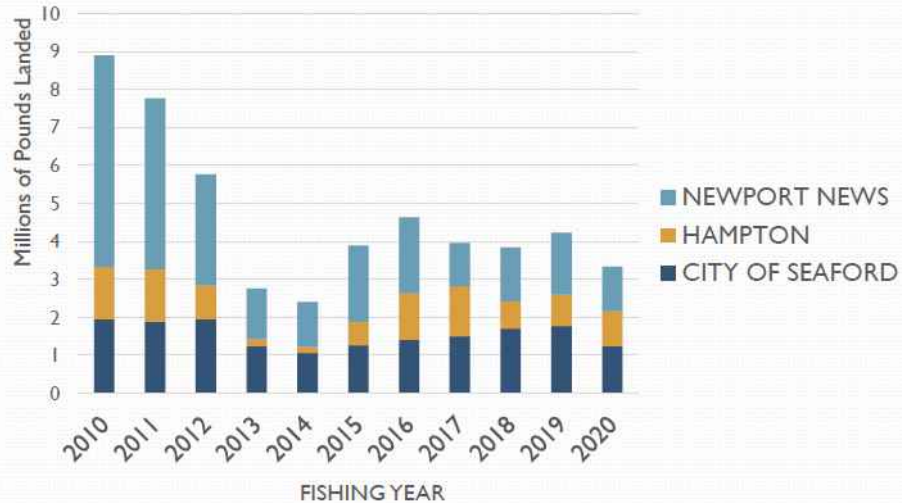


Scallop Landings in Virginia

- From 2010 – 2020....
 - ~51.5 million pounds landed
 - Revenue of ~\$501 million dollars
 - 10% of total landings and revenue
- 3rd highest landings and revenue by state



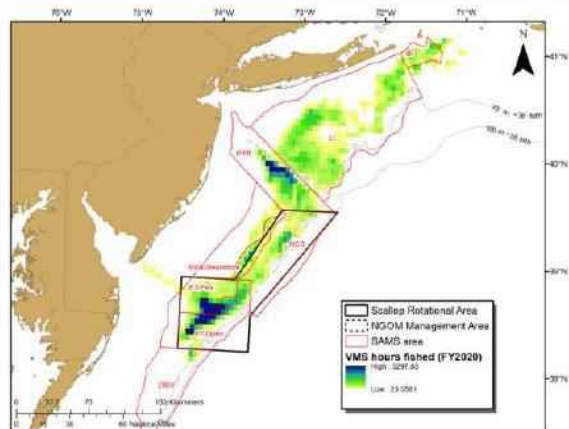
Scallop Landings in Virginia – Top Ports



21

Mid-Atlantic Access Area

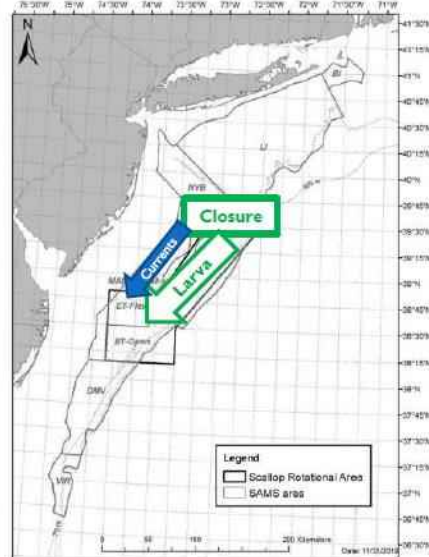
- Large recruitment – highest in time series
 - Access area open every year 2015-2021
 - Over 75 million pounds allocated since 2016
 - 13+ “Access Area” trips per vessel
 - Larger market grades (U10, 10-20)



22

Mid-Atlantic Research

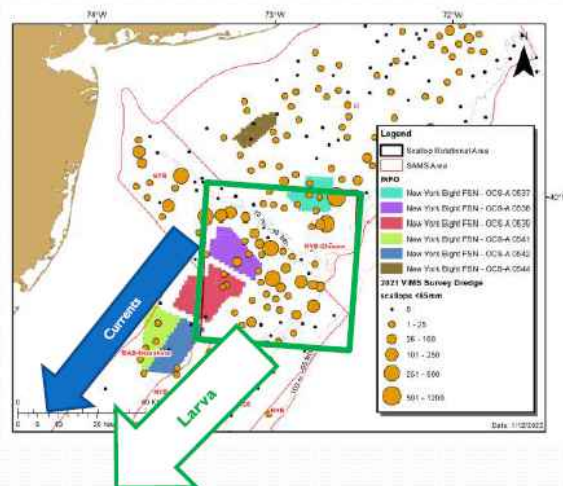
- Increases in recruitment were observed down current after an area was closed.
- Modeling work supported connectivity between areas in the Mid-Atlantic.
- Research contributed to the siting of a new closure → managers attempting to increase the odds of recruitment event.



23

New Rotational Area

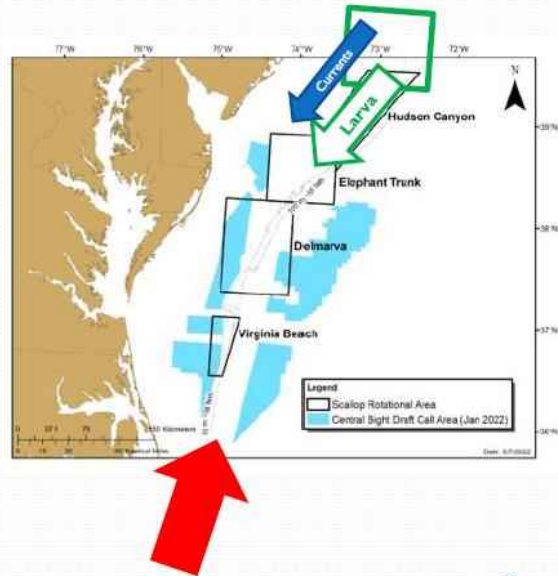
- Research contributed to the siting of a new closure → managers attempting to increase the odds of recruitment event.
- New uses of the OCS that overlap with or are adjacent to scallop grounds.



24

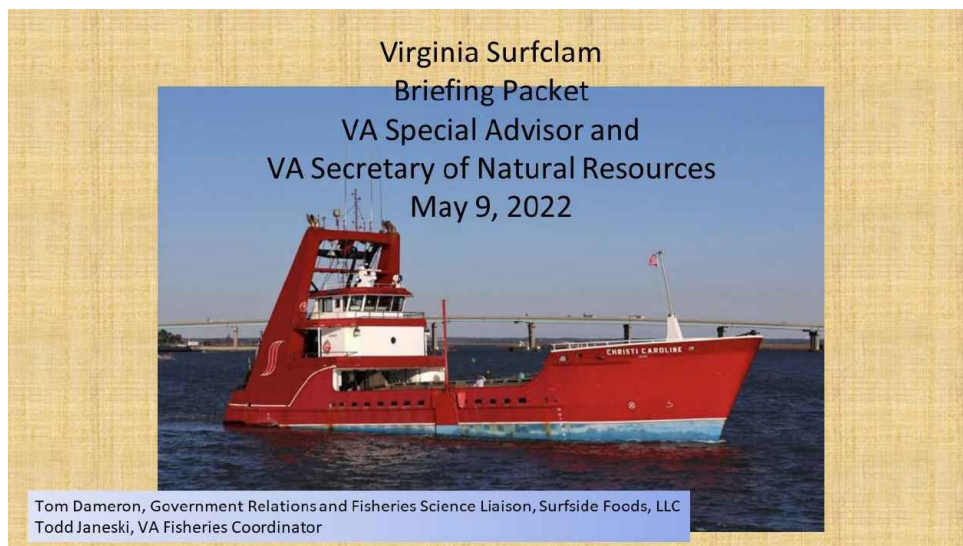
East of Virginia

- Map: Central Bight Call Areas (Jan 2022) relative to Scallop Rotational Areas.
- Potential new uses of the OCS that overlap with or are adjacent to scallop grounds.
- Southern extent of the commercial fishery.



Thank You! & Questions?





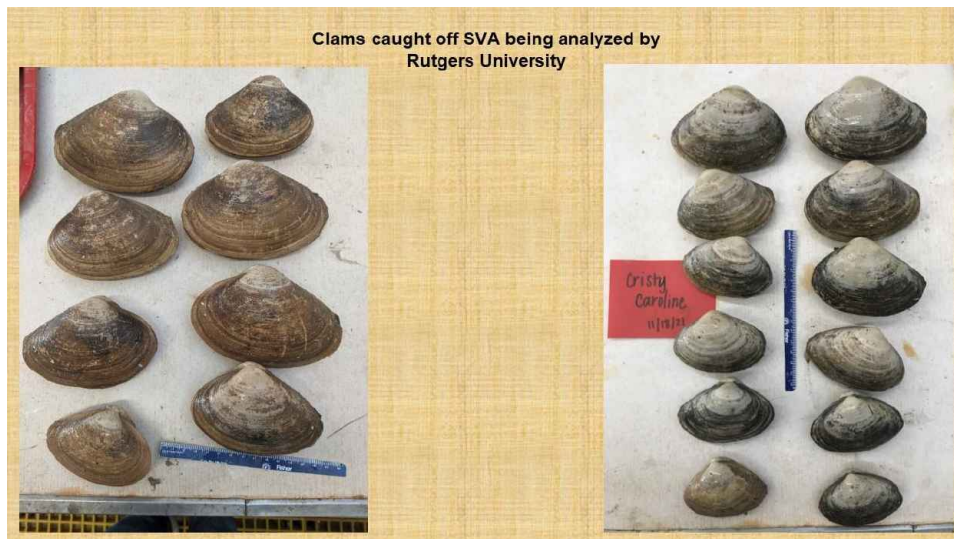
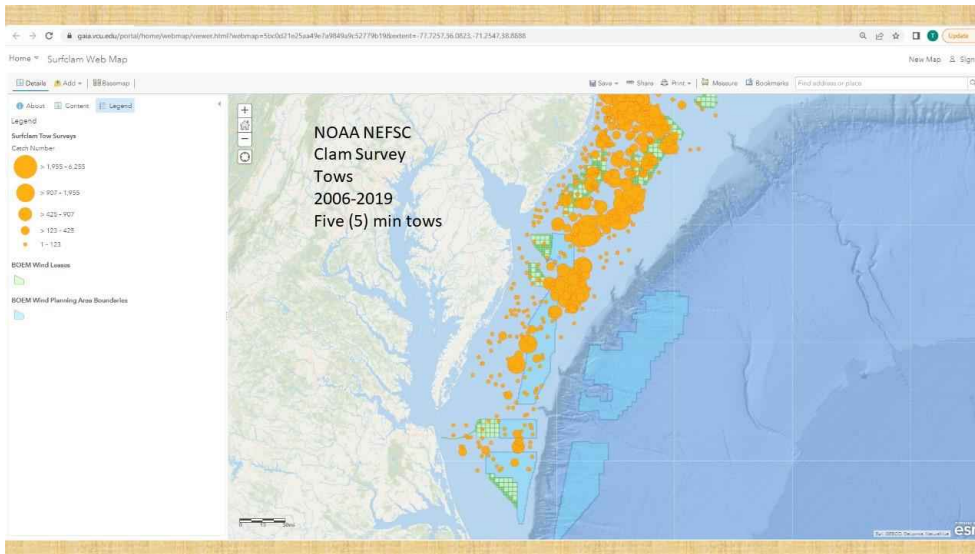
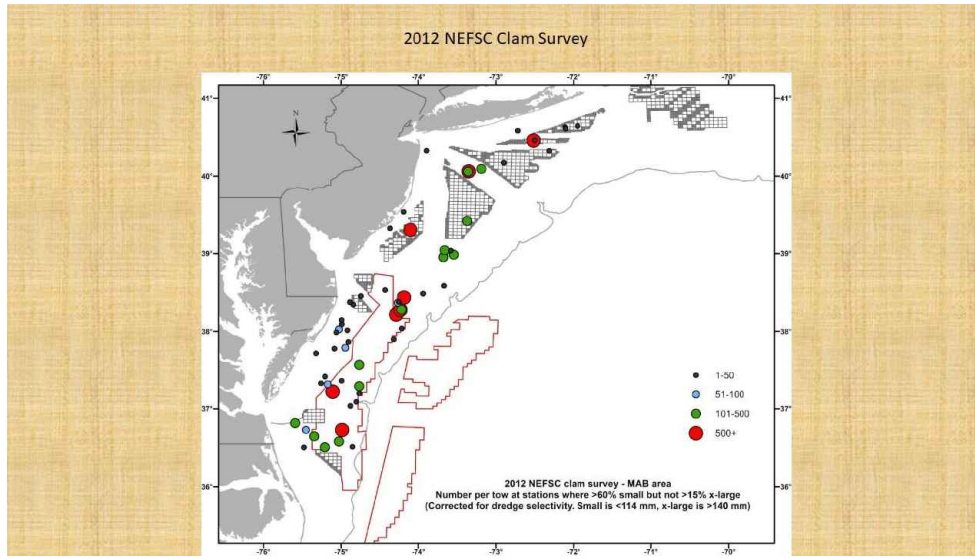
Purpose of Briefing

- Share status of Atlantic surfclams (*Spisula solidissima*) being landed in VA
- Request that the Coastal Virginia Wind Commercial Project Offshore Virginia (CVOW-C) include the assessment and monitoring of surfclams within a comprehensive monitoring plan
- Surfclams should be included in any mitigation and/or compensation plan
- Surfclams must be considered as the Central Atlantic Call Areas advance

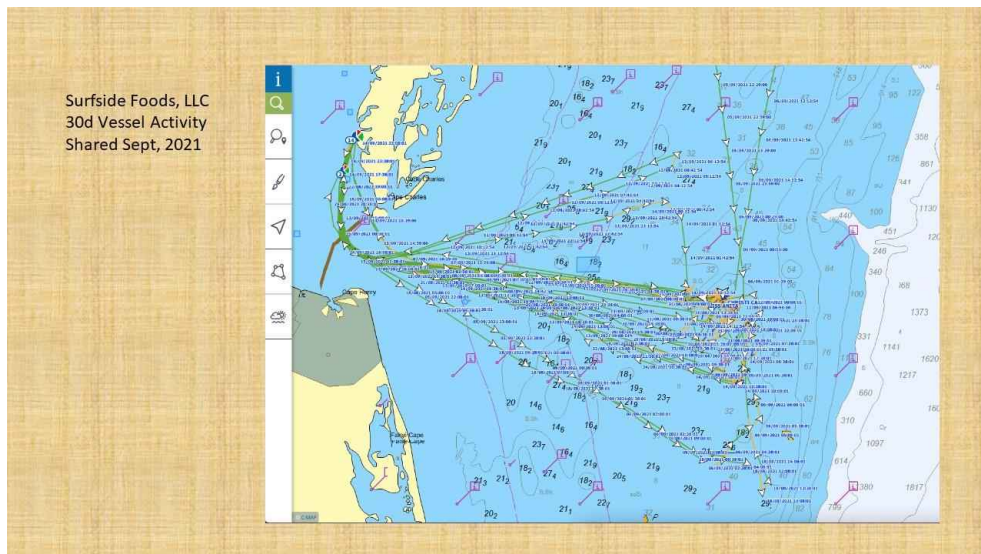
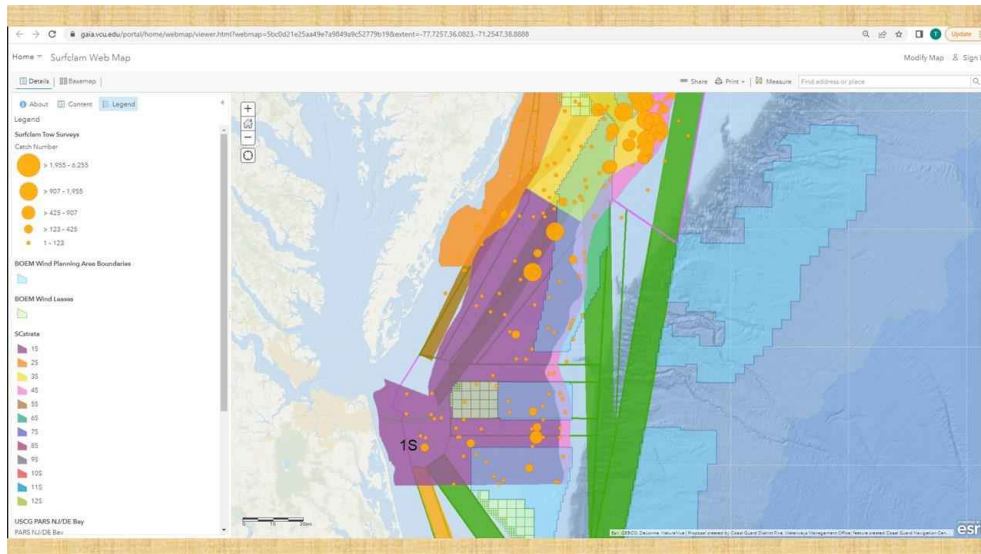
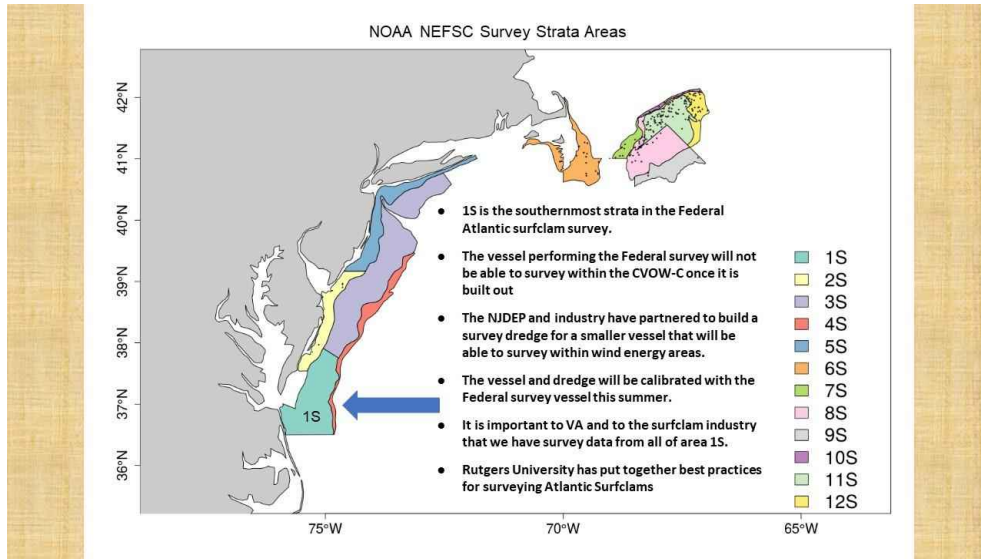
Status of Atlantic surfclams being landed in VA

- Surfside Foods learned of the large sets of surfclams off SVA after the 2012 Federal survey. The clams were small at the time and not ready for harvest.
- Surfside vessels started working regularly off SVA and landing their catch in Cape Charles late July 2021
- Surfside vessels are experiencing **catch rates up to 15 times** industry averages for the mid-Atlantic region.
- Since July 2021 Surfside has had between 1 and 4 vessels working out of Cape Charles
- Rutgers is currently aging and genetically testing the clams being caught off SVA so that the industry can better understand this resource. Multiple year classes are evident.
- Since July 2021 Surfside has landed 163,456 bu. of surfclams with an ex-vessel value of \$2,435,494 (\$14.90 per bu.) Total 2021 harvest was valued at \$24M
- Landings are providing downstream impacts for VA businesses of greater than 62% of landed value or \$1,439,774. to date.
- Virginia's share of Federal Landings is currently greater than 10% and is likely to grow. Seawatch International has sent boats down off SVA *sniffing around*.

Appendix 3: Surf Clam Briefing PPT



Appendix 3: Surf Clam Briefing PPT

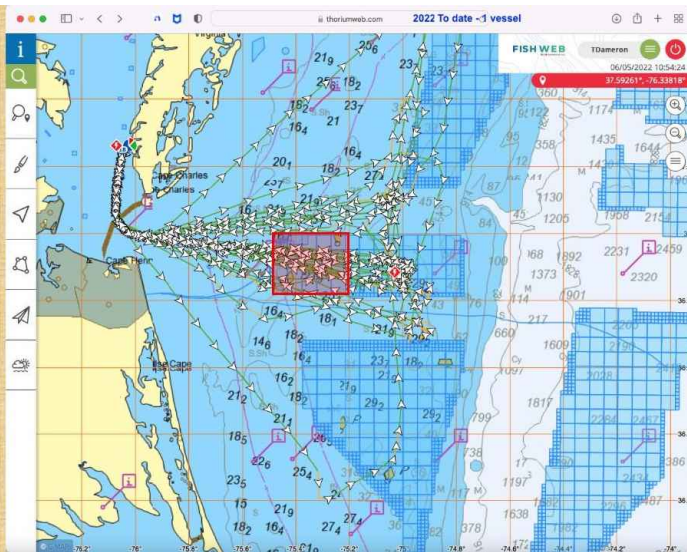


Appendix 3: Surf Clam Briefing PPT

Surfside Foods, LLC
 Vessel Activity
 8/2021-12/2021
 Three (3) vessels

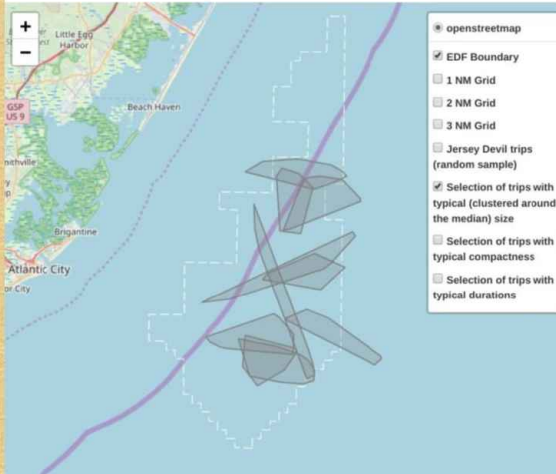


Surfside Foods, LLC
 Vessel Activity
 01/2022-4/2022
 One (1) vessel



Fishing trip shaped within EDF renewable region

Selected trip polygons overlaid with potential wind turbine grids spaced out at various widths; from all trips 20-28 hours long



Appendix 3: Surf Clam Briefing PPT

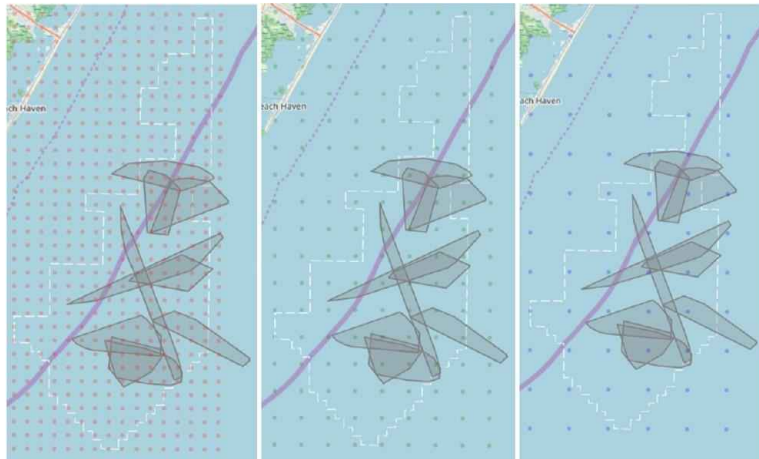
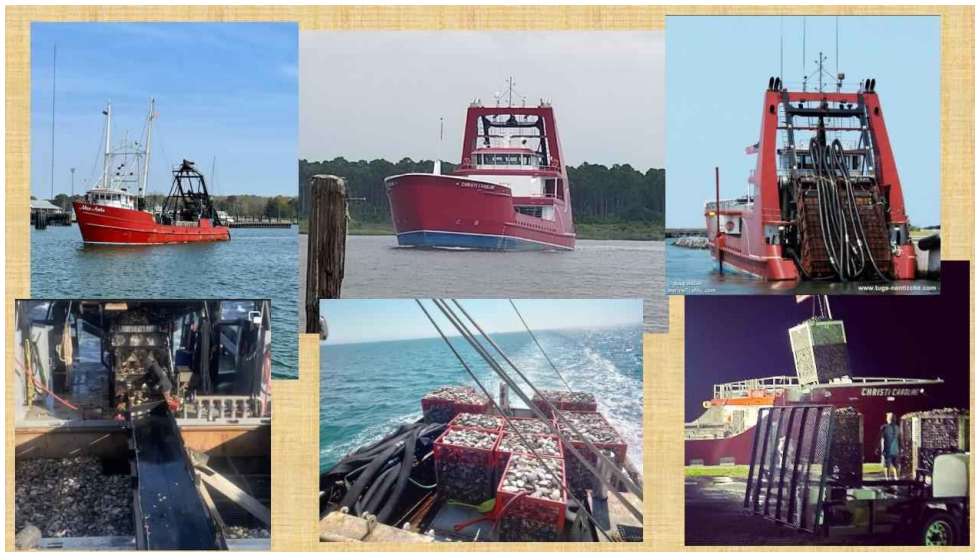


Fig 13. Typically sized fishing trip polygons overlaid with potential turbine grids spaced out at 1nm x 1nm (left), 2nm x 2nm (center), and 3nm x 3nm (right)



Virginia Marine Fisheries Enforceable Policy

V. Marine Fisheries It is the policy of the Commonwealth to conserve and promote the seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and manage the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. *Marine fishery management shall be based upon the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement.* In support of this policy, any activity in the Commonwealth's tidal waters must:

- A. Achieve optimum yield from fisheries without engaging in overfishing.
- B. Not negatively impact the short and long term viability of the Blue crab stock in Virginia.
- C. Protect spawning stock, nursery areas and habitat.
- D. Not encroach upon the natural oyster beds, rocks, and shoals of the Commonwealth, which shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth.
- E. Engage in the planting or propagating of oysters only on assigned leases (i) that are not on waterfront that is already assigned or reserved for the riparian owners, (ii) on the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and (iii) on grounds other than the Commonwealth's natural oyster beds, rocks, or shoals held in trust for the benefit of the public.
- F. Not encroach upon the lawful use and occupation of previously leased ground for the term of the lease unless exercising riparian rights or the right of fishing.

Va. Code Ann. §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603-618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3 VI.

Surfside Seafood Sept, 2021

- Surfside Foods, LLC was introduced to VA
- Effort was made connecting Surfside Seafood with Dominion, VMRC and BOEM beginning Sept 15, 2021
- Surfside directly requested of Dominion:
 - A pre-construction clam survey is conducted within the wind energy lease area
 - A monitoring program is set up to monitor clam abundance within the wind energy lease area through the life of the project
 - We are provided continued reasonable access to the wind energy lease area.

What needs to be done

- CVOW-C COP Federal Consistency Conclusion: "The project is not expected to have adverse impacts on marine fisheries"
- Dominion should conduct a regionally transferable, comprehensive preconstruction assessment consistent with the work by Rutgers University to offset the limited information collected by the NOAA NEFSC surveys
 - Surveys should be two years prior to construction
 - During the duration of construction
 - For four (4) years post construction
- Surfside Foods, LLC directly requested of Dominion:
 - They are provided continued reasonable access to the wind energy lease area.
- Surfclam should be clearly identified in the fisheries mitigation and compensation plan

Chincoteague, 1980s



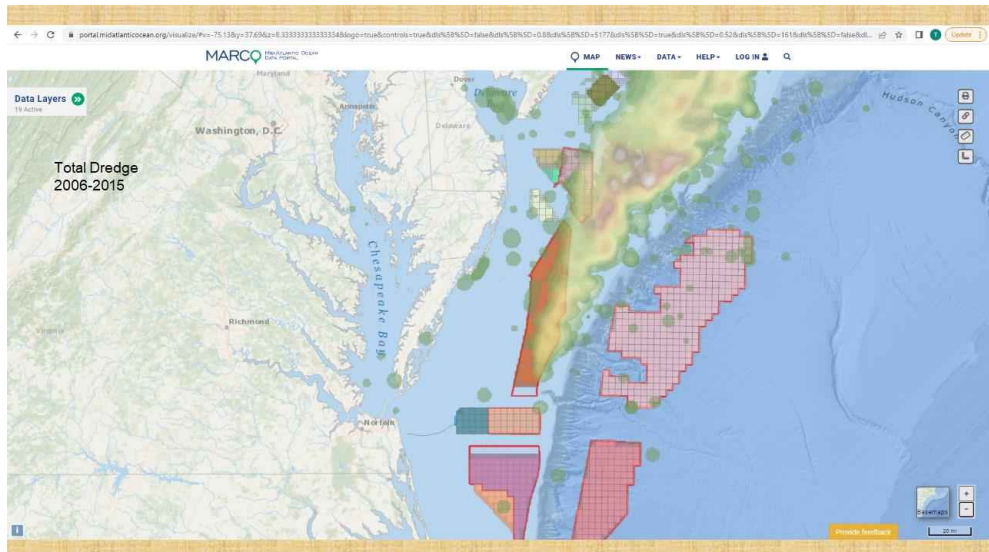
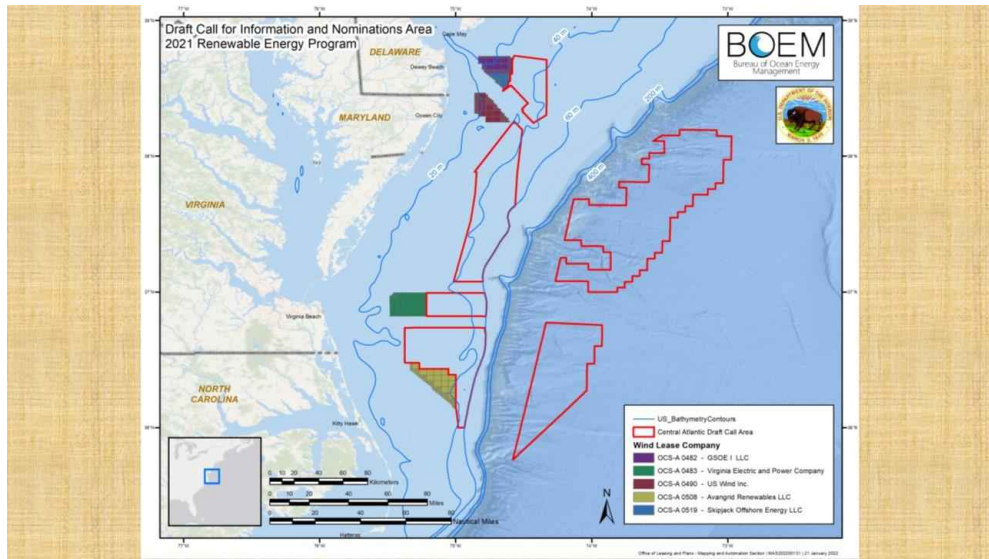
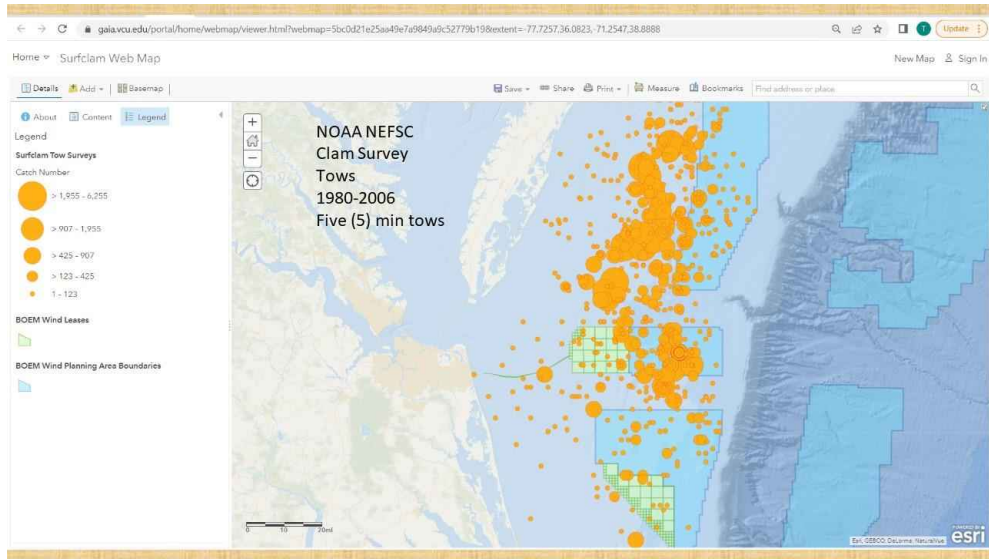
Cape Charles, 1980s



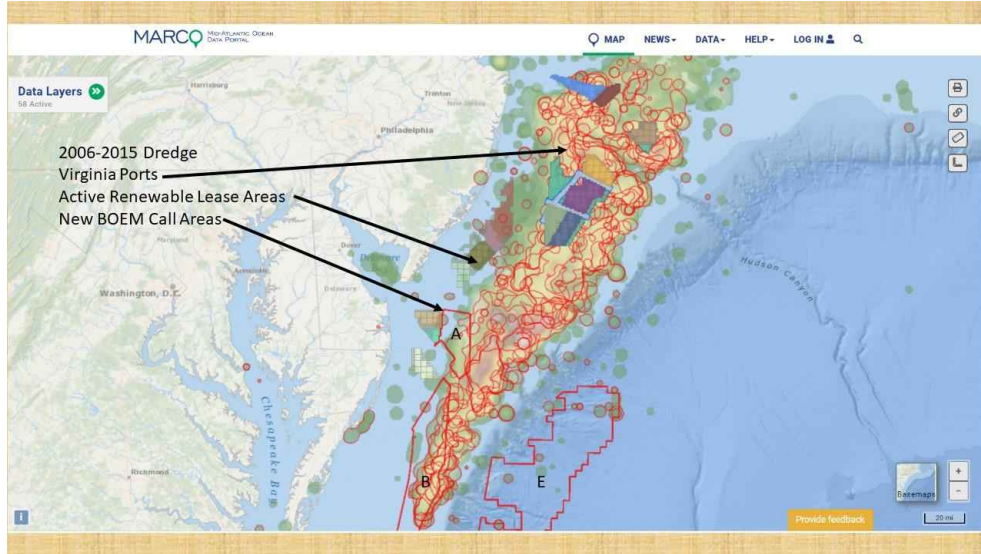
Cape Charles, 1980s



Appendix 3: Surf Clam Briefing PPT

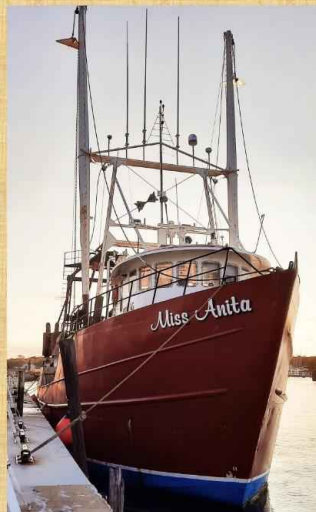


Appendix 3: Surf Clam Briefing PPT



What are the next steps?

- Dominion should conduct a regionally transferable, comprehensive preconstruction assessment consistent with the work by Rutgers to offset the limited information collected by the NOAA NEFSC surveys
 - Surveys should be two years prior to construction
 - During the duration of construction
 - For four (4) years post construction
- Surfclams will be an important re-emergent fishery to VA and affected the Central Atlantic Call Area C
 - VA should discourage the development of Area C to maintain this fishery
- VA should encourage the VMRC to advocate for regionally transferable, comprehensive fisheries assessments
- Dominion should include a comprehensive fisheries management plan that includes an assessment from preconstruction to decommissioning consistent with the Rutgers survey time series
- VA should advocate for ensuring VA landed fisheries are not sacrificed to develop OSW
- VA should ensure all shoreside and ocean-based operations are included in consideration in mitigation and compensation plans for the life of OSW projects
- VA should encourage this to be a VA-based industry and capitalize on those opportunities being developed
 - <https://gcaptain.com/cosco-wind-turbine-installation-vessel-awarded-abs-approval-in-principle/>



Tom Dameron, Government Relations
and Fisheries Science Liaison
Surfside Seafoods, LLC
tdameron@surfsidefoods.com
c 609.876.0189



COMMONWEALTH of VIRGINIA

*Marine Resources Commission
380 Fenwick Road
Building 96
Fort Monroe, VA 23651*

Jamie L. Green
Commissioner

Amanda Lefton, Director
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

Subject: VMRC comments on the BOEM *Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf* Pursuant to CFR Part 585; Docket BOEM-2022-0033-0003

Dear Director Lefton,

The Virginia Marine Resources Commission (VMRC) is submitting the following comments for the Request for Information (RFI) for consideration by the Bureau of Ocean and Energy Management (BOEM) *Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf*, Docket: BOEM-2022-0033. Our agency is responsible for the management of all marine fisheries as they relate to the Commonwealth of Virginia.

Offshore wind (OSW) is an important component of a comprehensive Virginia energy plan that considers all energy sources and focuses on lowering the cost of living, creating jobs, and bringing people to Virginia. VMRC is charged with overseeing Virginia's marine and aquatic resources, including the responsibility to ensure our historic seafood industry is maintained as economically healthy, sustainable, and minimally impacted by changes in ocean use. To advance these goals, the Commonwealth of Virginia is committed to developing a process that considers the potential impacts to the seafood industry, businesses, their families, and domestic food security.

The current pace of wind development along the Atlantic Coast has resulted in a sense of urgency for mitigation guidelines, particularly due to a number of OSW projects currently under review where avoidance of fisheries impacts appears to no longer be an option. Clear, prescriptive guidance from BOEM on mitigation efforts will be instrumental in helping advance negotiations between the fishing community and OSW developers to ensure coexistence of both activities in previously approved projects.

The process to facilitate the Atlantic states toward a consistent compensation approach has continued to be unbalanced as it relates to engaging the commercial fishing industry who, by trade, do not have the capacity nor time to articulate a consistent approach through the platforms

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Appendix 4: VMRC Fisheries Mitigation Letter

offered by BOEM. The responsibility to obtain input from the industry has been left to the states through disparate efforts while states continue to have very little jurisdiction over leasing or project approval.

Despite these challenges, VMRC has consulted with commercial fishing industry representatives in Virginia, and those that are licensed to land in Virginia, from the dredge, trawl, gillnet, fixed gear sectors and highly migratory species sectors to aid in the below comments. Consistent feedback from the commercial industry has concurred that a compensatory mitigation program managed separately from OSW developers is a preferred option, but that the current draft Guidelines is insufficient to manage coexistence between OSW development and commercial fishing communities.

VMRC has concerns that the breadth of scope that BOEM is currently employing in developing guidance for compensatory mitigation, is bound by an overly tight timeline while States are working and multiple on-going reviews for existing projects. Consideration should be given to coinciding projects when timelines are initiated.

VMRC supports the concept of refining the Guidelines as outlined in the 2014 "A Strategy for the Mitigation Policies and Practices of the Department of the Interior (DOI)". Which outlined a hierarchical approach consistent with requirements within the National Environmental Policy Act (NEPA) process to *avoid, minimize, then compensate*. BOEM should prioritize *avoidance* and *minimization* before compensatory mitigation is considered. VMRC recommends that BOEM consider an equally intensive, cooperative, and transparent, process to refine the avoidance and minimization approaches. Fisheries resources should be considered immediately in the leasing process to fully realize avoidance as an option to reduce the reliance on compensatory mitigation. When avoidance is not possible, BOEM should consider a prescriptive process of direct engagement with the fishing industry prior to submission of a Construction and Operations Plan (COP) to ensure their interests are accurately represented.

The commercial fishing community has been clear that in some cases, offshore renewable energy development will force fishing activities into suboptimal or high traffic areas while addressing ongoing changes in catch related to seasonal, climatological, or regulatory modifications. The commercial fishing industry and VMRC agree that the cumulative impacts of projects being approved on an individual basis will result in increased impacts on communities that rely on those biological resources. This reinforces the need to put significant effort toward the initial process of *avoidance* followed by *minimizing* impacts. For these reasons, BOEM should consider the cumulative impact and secondary impacts of renewable energy development in any compensatory guidelines.

VMRC appreciates BOEM's acknowledgement that offshore renewable energy developers should compensate communities, affected individuals, and businesses adversely affected by changes in ocean use as part of the development, operation, and decommissioning activities. VMRC also appreciates that BOEM has suggested the use of a third-party fiduciary administrator for those compensatory mitigation funds. VMRC suggests the commercial fishing industry and state agencies be consulted in the selection, development, and initiation of a fiduciary manager.

VMRC has also identified the following deficiencies in the draft Guidelines:

Regulatory Authority

- BOEM and NOAA lack the legal authority to require contributions or to participate in the fund. Therefore, contributions to the fund will remain project and state-specific.
- The existing leasing and project design process does not follow NEPA requirements by adhering to *avoidance* early in the leasing process. *Avoidance* and *minimization* could be better informed by a more intensive and collaborative process with the fishing industry, NOAA NMFS, and the states.
- The draft Guidelines and the Appendix do not consistently address displacement of fishing activities during the Site Assessment Plan (SAP) and leasing process. Both the Guidelines and Appendix should address loss of fishing opportunities or gear loss/damage resulting from active survey activities and the steps to scientifically inform the outcome.
- Currently, the Guidelines and Appendix only address the replacement of lost gear during the SAP. This is an insufficient approach to cover the loss of fishing opportunity from displacement. BOEM should consider including a more comprehensive approach to include a socioeconomic analysis to quantify potential impacts to the fishing community during survey operations
- The existing leasing, survey, and permit review process has placed BOEM in the position to make fisheries management decisions without utilizing or adhering to the Magnuson-Stevens Act which was established to ensure the long-term biological and economic sustainability of marine fisheries. The Guidelines should include recommendations on utilization of existing fisheries management structures and science for final permit decisions.
- BOEM should improve their leveraging of the fisheries councils and NOAA NMFS to inform the science-based decision-making process as opposed to relying on formal meetings and public comments.

Safety

- Under safety measures, the Guideline identifies simulation as means for training. However, there is no incentive for OSW developers to provide radar upgrades to ocean users, thus making simulation training insufficient. While new technology should be provided to the community, BOEM states solid state radar is the solution and to have the developers retrofit that equipment on vessels. However, solid-state radar is unproven technology as outlined in the BOEM NAS study which confirms the technology will have interference¹².
- The Guidelines should include a requirement for electronic marking of each turbine consistent with Automatic Identification Systems.

Financial

¹ https://www.boem.gov/sites/default/files/documents/environment/Radar-Interference-Atlantic-Offshore-Wind_0.pdf

² <https://nap.nationalacademies.org/catalog/26430/wind-turbine-generator-impacts-to-marine-vessel-radar>

Appendix 4: VMRC Fisheries Mitigation Letter

- In the existing regulatory structure, participation in a fisheries compensation fund is completely voluntary. BOEM should include language to ensure participation would eliminate the confusion between projects, developers and reduce conflicts within fisheries for claims of displacement or loss.
- Under the Outer Continental Shelf Lands Act (OCSLA), BOEM is charged with “providing for the prevention of interference with reasonable uses”. Clarification as to how BOEM intends to define “reasonable use” would benefit the understanding of how the Guidelines might be applied.
- BOEM should consider the use of a panel of fishery experts, professionals, industry representatives, and states to inform the development of the financial structure, fiduciary responsibilities, and advisory review board for displacement claims.

Compensation for Gear Loss

- The draft Guidelines only addresses replacement at 50% of gross income lost due to gear loss during the period from the discovery of lost gear to when it is repaired or replaced. BOEM should consider the reimbursement of 100% of gross income losses due to gear damage or necessary replacement, rather than 50% as indicated in the draft. Selecting 50% of gross income reimbursement is arbitrary and does not accurately reflect the loss of the claimants.

Compensation for Lost Fishing Income

- VMRC recommends BOEM reconsider the 5-year sliding scale for loss reimbursements. Compensation for loss of fisheries revenue should be available and calculated for losses throughout the entire lifespan of a project. A 5-year timescale assumes that the fishing community will adjust and transition their activities to equally profitable locations due to the new ocean use. Not all fisheries are managed in a way to allow location adjustment or may not be biologically available for shifting harvest locations. Additionally, an increase in ocean development will lead to bottlenecking of ocean uses and may affect long term revenues. BOEM should consider that the vessel and permits follow the lifespan of the projects to permit retiring fishermen to have an option for post industry income. Additionally, BOEM should consider buy-outs of those active fisheries in lease areas.
- VMRC recommends BOEM reconsider the estimates on the impacts to shoreside businesses, which BOEM currently estimates to be 1-2%. BOEM’s current estimated rate insufficiently considers operating expenses and the economic multiplier of many industries to the State’s economy. This most likely undervalues the impacts to shoreside industry and is not based on science.
- Data poor fisheries will pose unique challenges that will need to be further addressed. If a third party is identified and established it will require them to be granted confidential data access from the states and provide for a confidential data management system for proprietary data to be provided by affected parties.

The Commonwealth appreciates BOEM’s effort to develop compensatory mitigation guidance for impacts from development of offshore renewable energy. To ensure coexistence between the commercial fishing industry and the development of offshore renewable energy, BOEM must consider our recommendations and develop a more productive feedback mechanism with the commercial fishing industry to better inform this process.

Appendix 4: VMRC Fisheries Mitigation Letter

VMRC appreciates the opportunity to provide comments to BOEM and we look forward to continued communication in this process. Please contact me at Jamie.Green@mrc.virginia.gov should you have any questions concerning these comments.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jamie L. Green', is positioned above the printed name.

Jamie L. Green
Commissioner, VMRC



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, VA 23651

Ann F. Jennings
Secretary of Natural and Historic
Resources

Steven G. Bowman
Commissioner

January 7, 2022

Amanda Lefton, Director
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

Subject: Commonwealth of Virginia Comments on the BOEM RFI for Offshore Wind Fisheries Mitigation
(Docket: BOEM-2021-0083)

Dear Director Lefton,

The Virginia Marine Resources Commission (VMRC) is submitting the following comments for the Request for Information (RFI) for consideration by the Bureau of Ocean and Energy Management (BOEM) Offshore Wind Fisheries Mitigation, Docket: BOEM-2021-0083. We are responsible for the management of all marine fisheries as they relate to the State of Virginia. The VMRC recognizes that Offshore Wind (OSW) will be a critical component to meeting the Virginia Clean Economy Act (VCEA) passed in 2020 but also acknowledge that we want to maintain our historic seafood industry as economically healthy, sustainable and minimally impacted by changes in ocean use. The Commonwealth of Virginia is also committed to developing an inclusive process that fairly and equitably considers the potential impacts to the seafood industry, businesses and their families.

The Commonwealth of Virginia is committed to meeting the Virginia Clean Economy Act and recognizes two timescales as it relates to the development of OSW, near term and long term. We feel a particular sense of urgency due to an OSW project currently under COP review where increased avoidance of fisheries impacts is no longer an option, therefore acknowledging the need for a clearly articulated compensation strategy. Guidance from BOEM on the issue would be instrumental in helping advance negotiations between the fishing community and offshore wind developers.

We appreciate the assistance from the Special Initiative for Offshore Wind (SLOW) to facilitate the nine states that signed onto a letter to the White House requesting improved coordination, transparency and consistency of guidance as OSW develops. We support the concept of refining the guidance as outlined in the 2014 *A Strategy for the Mitigation Policies and Practices of the Department of the Interior (DOI)*.

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Appendix 5: VMRC RFI Letter to BOEM

Which outlined a hierarchical approach consistent with the NEPA process that includes *avoid, minimize and compensate*. The VMRC has strong concerns about the breadth of scope that BOEM is currently considering in developing guidance for compensatory mitigation, especially under a tight timeline as we are working and multiple on-going reviews for existing projects. The VMRC strongly requests an equally intensive, cooperative, transparent and inclusive process is developed for drafting refinements to the avoidance and minimization approaches.

As outlined above regarding the timing of projects soon to be developed in the Atlantic, the VMRC encourages BOEM to focus the geographic area of the guidance for compensatory mitigation in the Northeast and Mid-Atlantic with the understanding that the guidance will have national scope implications. Therefore, in the near-term context, we acknowledge the immediacy of the need to assist the states in their efforts to advance OSW.

The VMRC has concerns that the process to facilitate the states toward a consistent approach was not equally conducted with the fishing industry who, by trade, do not have the capacity nor time to articulate a consistent approach. Despite that effort, we directly consulted with commercial fishing industry representatives in Virginia from the dredge, trawl, gillnet and fixed gear sectors who have concurred that a compensatory mitigation program managed separate from OSW developers is a preferred option. However, their highest preferred option is avoidance all together.

Science-based decisions should be made to inform the appropriate course of action, including impact fees. The existing processes have not identified how baseline conditions should be assessed to inform those claims of impact. To inform compensatory mitigation, the process should include transparent, consistent methods that develop regionally comparable and transferable data. Fishery impacts need to be assessed at the stock, port and even business levels, starting at pre-construction, to inform those conversations about displacement of activities. Fisheries assessments should be conducted that include a minimum of three to five years of pre-construction data. Economic analysis should include captains or crew members and shoreside infrastructure. In addition, data should be port or state-specific but also by harvest area and landing locations. Economic data cannot be reliant solely on NOAA, NMFS, or state landings but inclusive of proprietary data maintained by the industry. Proprietary data confidentiality must be considered in the management and utilization of mechanisms such as the Fisheries Knowledge Trust or other data housing mechanisms endorsed by the industry should be strongly considered.

The VMRC would appreciate BOEM's consideration of the secondary and cumulative impacts of OSW development. Displacement of historic fishing activities may result due to changes in ocean use, habitat or targeted species resulting in an increased conflict with other ocean users. This conflict may include an increase in gear-loss due to ship strike when displaced fishermen are relocating their fishing to areas that have increased vessel traffic. Recently, the USCG conducted a Port Access and Route Study to concentrate vessel traffic around planned OSW projects often overlapping with historic fishing areas. Many of our fixed gear commercial fishermen may experience increases in conflicts from recreational anglers due to the sheer increase in small vessel traffic and recreational use. Historically, many of these areas saw little or no recreational fishing other than those targeting pelagic species. Additionally, secondary impacts may present themselves as changes in landings and viability of shoreside businesses which include dealers, vendors, processors and distributors. BOEM should consider developing a process that includes mechanisms for those businesses to be considered for compensatory mitigation.

The VMRC would like BOEM to consider streamlining the Consistency Certification and Draft Environmental Impact Statement (DEIS) by requiring the DEIS data as required information within the

Appendix 5: VMRC RFI Letter to BOEM

Consistency review. A concurrent DEIS and Consistency review will address marine resources issues inclusive of both fisheries and habitat changes. Additionally, Virginia needs the ability to participate in out-of-state consistency reviews that do not trigger a Virginia review for projects such as Vineyard Wind, South Fork or other projects currently under consideration. Therefore, BOEM and NOAA need to coordinate on the geographic issues associated with VA-based fishermen working in areas where activities would affect the landings associated with Virginia, but don't allow the involvement of the State to comment to ensure our interests are addressed.

In the long-term context, the Commonwealth kindly requests BOEM to execute this same feedback process to inform and articulate the other steps of the hierarchical review process including developing consistent, prescriptive language for measures to address avoidance. The consideration of commercial fishing activity, and fisheries resources should be considered immediately in the project siting process to fully realize avoidance as an option to reduce the reliance on compensatory mitigation. After avoidance is completely explored and ruled out, BOEM should consider developing a similar process to encourage the micro-siting to minimize the impacts on the remaining fishery. When considering minimization/mitigation, BOEM should require developers to follow a prescriptive process of direct engagement with the fishing industry prior to submittance of COP to ensure their interests are accurately represented.

We appreciate the opportunity to provide comments to BOEM on this Request for Information. The VMRC looks forward to continued communication in this process. Please contact me at Rachael.peabody@mrc.virginia.gov should you have any questions concerning these comments.

Respectfully,

Rachael Peabody

Rachael Peabody,
Director of Coastal Policy, Restoration and Resilience



COMMONWEALTH of VIRGINIA

*Marine Resources Commission
380 Fenwick Road
Building 96
Fort Monroe, VA 23651*

Jamie L. Green
Commissioner

Bridgette Duplantis
Bureau of Ocean Energy Management
Office of Leasing and Plans
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123

Subject: VMRC Comments on BOEM Docket 2022-0023, Call for Information and Nominations – Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf

Dear Ms. Duplantis–

Please accept this letter as formal comment from the Virginia Marine Resources Commission (VMRC) on the BOEM Docket 2022-0023 *Call for Information and Nominations – Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf*. The VMRC serves as stewards of Virginia’s marine and aquatic resources, and protectors of its tidal waters and homelands for present and future generations. As such, the agency manages saltwater fisheries and their habitats for benefits of all citizens of the Commonwealth and the ecosystem. The VMRC supports Virginia’s development of diversified clean energy through offshore wind energy. The agency is also committed to ensuring that local and regional environmental and socioeconomic impacts are minimized and offset in these projects and work toward an outcome that is based on co-existence of historic uses with renewable energy development.

A guiding principle for the Commonwealth is the VA Marine Fisheries Enforceable Policy which is intended to “conserve and promote Virginia’s seafood and manage Virginia’s fisheries to maximize food production and recreational opportunities” and informs our management decisions upon the “best scientific, economic, biological, and sociological information available”, as specified in the marine fisheries enforceable policy. This policy has guided Virginia towards being a top seafood producer on the East Coast where Virginia has the highest seafood landing revenue in the Mid-Atlantic (\$184M in 2020) and is the nation’s fourth largest producer of marine products, with total landings of 362.5 million pounds in 2018 and is only outpaced by Alaska, Louisiana, and Washington (NMFS 2020). In 2019, Hampton Roads was the nineteenth wealthiest seafood port in the nation. The VMRC is taking a greater role in the planning and

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Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

reviewing of offshore wind leases because it has become apparent that increased state collaboration is needed to minimize conflicts with existing, traditional, and historical fishing.

The VMRC has evaluated fisheries interactions within BOEM's Central Atlantic Call Area based on the best available information at the time of reporting. Avoidance, minimization, and mitigation of fisheries impacts should be a top priority from the beginning of the siting, bidding and leasing process. As such, requirements for acquiring an offshore wind commercial lease on the Outer Continental Shelf (OCS), pursuant to 30 CFR 585, should include language to require mitigation and compensation for temporary displacement of fishing activities during the site assessment activities as identified in both the leasing instrument and the Site Assessment Plan (SAP). This would ensure fishing activities are considered prior to submission of the Construction and Operation Plan (COP). Additionally, increasing concern has been raised by commercial vessel operators and owners on transit safety within and between leases as they transit between fishing grounds and ports. This issue requires additional outreach and planning in the Central Atlantic Call Area and existing leases as it specifically pertains to commercial fishing.

The VMRC has referenced the following data sources to inform this letter which include the Virginia Institute of Marine Science's (VIMS) Annual Sea Scallop Dredge Survey; Northeast Fisheries Science Center's Atlantic Surfclam and Ocean Quahog Survey; the recently released National Marine Fisheries Service (NMFS) 13-year summary of fisheries exposure for the Central Atlantic Call Areas; a public interactive mapping exercise with the fishing community hosted by the VMRC on June 13, written and direct interactions with the fishing industry, and our best professional judgment. We have included in the appendices those letters received as well as summaries of personal communications with the commercial fisheries industries that are licensed to land fish in Virginia.

In the recently released NMFS synthesis of economic exposure for years 2008 - 2020, of each call area, Virginia is found to have the second highest revenue exposure with an annual average ex-vessel¹ potential impact of \$3,822,000 or a cumulative ex-vessel value of \$49,603,000 in seafood landings in all areas combined.² The social and economic impacts from offshore wind development in the Call Areas will impact vulnerable coastal communities in Virginia including Tangier, Chincoteague and other small coastal communities that rely on commercial and recreational fishing for their livelihood; they also will have direct impacts on domestic food production that could limit the availability of sustainable sources of protein.

¹ Ex-Vessel value is calculated as the price per pound at first purchase of the commercial landings multiplied by the total pounds landed and does not account for the total economic value of a fishery to the Virginia economy through such things as retail, restaurants, shipping, value added wholesale, boat repair etc. which is generally much higher. High volume fisheries such as Illex squid estimate an economic multiplier of 5x-7x the ex-vessel value.

² 13-year revenue provided by the NMFS economic impact report and is reported in cumulative revenue for years 2008-2020.

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

Additionally, revenue impacts are driven by Virginia's most profitable ocean fishery, Atlantic sea scallops, which will disproportionately face the most cumulative impacts in the proposed Central Atlantic Call Areas at a 13 year total of \$107.5 million. The Fisheries Survival Fund, which represents the Atlantic sea scallop fishery, indicated during our public hearing process that the scallop fishing industry is incompatible with offshore wind, as their fishing grounds are fixed and strictly regulated. This fishery is consistently the most valuable ocean-caught fishery in the Commonwealth, and additionally will see cumulative impacts as a result of fisheries interactions in multiple proposed leased areas. The same is true of other fisheries mentioned in this report.

As recommended by the National Marine Fisheries Service, spatial modeling to support decision making in the Atlantic is necessary prior to issuance of any new lease areas. Given the extensive area eligible or proposed for development on the Atlantic OCS, we request that you take this opportunity to establish a method for estimating cumulative resource and economic impacts upfront in the planning process. This should include the development of decision-support tools to analyze and predict the aggregated and cumulative impacts from multiple stressors, including offshore wind development and associated activities in the context of climate change. This approach should include an integrated ecosystem assessment or application of best available ecosystem-based management tools to incorporate a cumulative impact analysis of additive impacts to inform the planning process, rather than waiting to consider such effects on a project-by-project basis.

The following comments are intended to achieve an outcome of co-existence between renewable energy development and maintaining Virginia's historic and valuable fisheries resources. VMRC recommends the following:

- **Area A:** Removal of 309 square miles (197,760ac) of the eastern portion of Area A to remove conflicts with dredge fishery (Atlantic sea scallops and surfclam), trawl fisheries (summer flounder/black sea bass/scup/squid), and provide a buffer from the productive Atlantic sea scallop Rotational Area (Figure 1). The NMFS 13-year summary illustrates Area A represents a 13-year cumulative revenue of at least \$10,162,000, or \$781,692 annually for Virginia in ex-vessel seafood value. Removal of 309 square miles of the eastern portion of Area A includes aliquots 6280-1, 6330-3, 6380-3, 6430-3, 6530-3, 6580-3, 6630-3, 6680-3, 6730-3, 6780-3, 6830-2. This retains approximately 106 square miles (67,840ac of leasable area in A (Figure 2).
- **Area B:** Removal of this entire area, which accounts for a 13-year cumulative revenue of \$32,741,000, or \$2,518,538 annual ex-vessel revenue, for Virginia (Figure 1) and includes active dredge fisheries (Atlantic sea scallop, Atlantic surfclam), pot and trap (whelk, black seabass, lobster), gillnet, and trawl fisheries. Virginia is identified in the NMFS 13-year summary as the most impacted port by landings revenue in this area;

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

- **Area C:** We recommend full removal of area C because the area contains important fishing grounds for black sea bass pots, surfclam dredge, squid trawl, and commercial and recreational fishing for Highly Migratory Species. (Figure 1). The NMFS 13-year summary identified Virginia Beach, VA as the most impacted port by Landings Revenue and Virginia highest impacted state by Revenue and Landings in this area;
- **Area D:** This area does appear to have the least documented fisheries conflicts, however there are state-managed species in the area that are spatially data poor and additional research is needed to specify these conflicts. The VMRC recommends the removal of the Eastern edge of D, totaling 220 square miles (140,800ac) to allow the squid trawl fishery sufficient space to maneuver vessels during operations along the shelf. This recommended removal includes aliquots 6373-5, 6423-5, 6473-5, 6523-4, 6573-4, 6623-4, 6672-4, 6722-3, 6822-3, 6872-3, 6922, 6972, 7021-2, 7071-2, 7171-2 (Figure 1). Additionally, through consultation with the pot and gillnet industries to determine their active footprint, VMRC recommends that mitigation and compensation measures are required to be included in BOEM's WEA leasing mechanism which includes the SAP and COP for temporary displacement or loss of fixed gear and gillnet operations in at least 144 square miles (9,2160ac) of the western portion of the lease area to include aliquots 6364-6, 6414-6, 6464-6, 6514-6, 6564-6, 6616 (Figure 2);
- **Areas E and F** contain an active commercial pelagic longline fishery of Highly Migratory Species (HMS) which include tuna, swordfish and Atlantic mahi mahi and is not believed to be compatible with wind development. A recreational fishery is also concentrated around and east of the shelf. Strong consideration should be given to those activities as it relates to floating technology and fishery compatibility.

Figures of VMRC Recommendations

Figure 1: Proposed Areas of Removal (Orange Polygons) from leasing due to high impact to Virginia's ocean fleet.



Figure 2: Areas that contain fisheries with a high likelihood of temporary displacement or loss of fishing during pre-construction surveys, construction, and decommission, but may be wind-compatible industries once construction is complete.



Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

In summary, Virginia is found to have the second highest fishing revenue exposure in all areas combined. It is the intent of the VMRC to avoid loss of fishing in areas identified as important fishing grounds or fisheries resource areas. Therefore, based on the review of existing resource surveys, harvest data, direct interaction with commercial fishermen, and VMRC hosted public meetings, we recommend removal of approximately 1,550 square miles of economically important fishing grounds from potential leasing as depicted in Figure 1 from Areas A - D. This leaves more than 4,500 square miles of available lease area in which VMRC recommends early mitigation and compensation measures through BOEM's required SAP and COP requirements for temporary displacement in the beginning of the site assessment process.

We look forward to continued conversations in early avoidance of fisheries resources with the goal of a coexisting relationship between renewable energy development and commercial fishing in the Central Atlantic. If you have any questions please contact me at (757) 247-2269 or by email at rachael.peabody@mrc.virginia.gov. Thank you for the opportunity to comment.

Rachael Peabody, Director of Coastal Policy

Virginia Marine Resources Commission

Rachael Peabody

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

Appendices

Appendix A: Letters from Industry (zip file attached to email for draft)

Appendix B: Jun 13, 2022 VMRC and BOEM Public Meeting Slides and Recording

<https://www.mrc.virginia.gov/Notices/2022/2022-06-13-Wind-Coordination-VMRC.pdf>

<https://www.youtube.com/watch?v=h59oQri0ZTA>

Appendix C: Personal Communication with Industry Representatives

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

Appendix A: Letters from Industry



Managing the Needs of our Customers Through our Commitment to Sustainable Fisheries

June 23, 2021

Rachael Peabody,
Director of Policy
VMRC
Building 96, 380 Fenwick Road
Ft. Monroe, VA 23651

Re: Requests for Information: Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf; BOEM-2022-0023

I am writing on behalf of Lund's Fisheries, a family-owned and operated, vertically-integrated, commercial fishing company, employing more than 200 on our company-owned vessels and in our freezing/processing plant and cold storage operation, based in Cape May, New Jersey.

One of the fisheries that would experience the most impacts as a result of Central Atlantic Planning Area developments would be the Illex squid fishery. The Illex squid fishery is a distinct and unique fishery, which BOEM has not delineated in either its materials or meeting summaries. It requires a separate limited access permit and utilizes a separate class of vessels than those used in the Loligo squid fishery, which is primarily the impacted squid fishery from other BOEM projects. In addition, many New Jersey vessels are licensed to land in Virginia the primary port in Hampton, VA where other valuable species are routinely landed. We expect serious disruption to our regional fisheries from the Central Atlantic Call Areas.

Lund's could suffer serious economic impacts from the potential interference by BOEM activities in the Central Atlantic. Our vessels were built specifically to be able to target Illex and have engaged in this fishery for over 40 years. It has been a vital part of our operations and Lund's was one of few US companies that created and developed both domestic and international markets for US harvested Illex. The fishery has been determined to be a sustainable fishery by the Marine Stewardship Council four years ago, a designation that adds value for us in these markets.

We have emphasized to BOEM since day one, that ex-vessel revenue, i.e. the revenue to the vessel from the harvested species, is not the same as fishery revenue. Our product is in demand literally all over the globe. Lund's facilities were built and designed with the purpose of handling and processing Illex, which is a specialty high tonnage fishery and requires specialty facilities and equipment. We have sustained continued investment into



Managing the Needs of our Customers Through our Commitment to Sustainable Fisheries

these facilities over time, increasing frozen storage capacity, increasing freezing capacity, increasing infrastructure for quicker offloads and dock maximization, and constantly increasing plant efficiency. We have purchased additional permits and vessels to supply our facility, hired new staff, and made significant investments into plant expansions for Illex over the past few years. Interference with the Illex fishery could render these investments void. The true economic impact of the entire supply chain has been ignored by BOEM. Multipliers commonly used in these high value fisheries are 5 to 7 times the value of ex-vessel value; this is the fishery value BOEM must use in its mitigation and compensation calculations.

We have continually explained the importance of continued safe navigation and sufficiently wide transit lanes to allow for our vessels and other ocean users to safely transit through wind lease areas. Transit requirements are separate from those related to whether a vessel can actively fish in an area. Since the direct risks associated with turbines, cables, and associated protection methods mean that commercial fishing operations are unlikely to continue within a wind array, unless conditions are ideal, the maintenance of safe transiting conditions to access fishing grounds outside of the project area is of paramount importance.

A transit corridor of no less than two nautical miles between the two leases would need to be included in these projects' designs to safely preserve these traditional transit paths based on the distance and use patterns of the area. However, due to a high presence of recreational fishing vessels for much of the year, submerged materials, overall port traffic, radar interference associated with OSW structures, and other factors, four nautical miles is appropriate.

In 2020, NYSERDA, NYDEC, and RODA gathered feedback from commercial fishermen regarding transit through the NY Bight region and produced a workshop summary outlining highly trafficked areas, directionality of transit, and key transit route designation considerations.¹ To date, engagement with the commercial fishing industry on transit needs in and around the proposed Central Atlantic Call Areas has not transpired. We encourage a more robust transit planning and navigational needs conversation with regional fishermen prior to lease designation.

As identified in the 2020 NY Bight Transit workshop, key considerations for designing transit routes should be established:

- To avoid or minimize conflict among various users, including but not limited to commercial fishing, as well as avoid or minimize potential collision impacts to wildlife;



Wild caught product of USA

Managing the Needs of our Customers Through our Commitment to Sustainable Fisheries

- Early, be enforceable, and preferably be established before developers have submitted bids and made financial commitments based on assumptions about the amount of lease area available for development;
- To provide connection and consistency across lease areas and projects [...] to allow for safe, regular, and coherent travel across the region;
- To ensure commercial fishing economic opportunities for all ports, not just some or a few;
- To allow for transit to and from various ports and fishing grounds in the straightest and most direct route possible to minimize transit time, associated costs, and economic impacts on the commercial fishing industry;
- Between lease areas in the final BOEM lease area designations;
- Based on data provided and limited in number, to not overburden any one proposed lease area while ensuring sufficient transit across such areas for different purposes and needs (varying by port and fishery);
- With data to the greatest extent possible, utilizing a shared and widely accepted methodology, and include risk analysis for both calm seas and storm conditions;
- Follow a process for determining lanes that is broadly inclusive of the commercial fishing industry; and
- To provide safe passage of vessels in a range of sea conditions above all.

BOEM should work with USCG to take a highly conservative approach to safety and navigation for vessels operating and transiting near or through individual offshore wind projects and on a broader scale to address regional navigational needs. With the Administration's recent announcement of additional lease sales on a rapid timeline, and the likelihood for identification of even more call areas, a careful, forward-thinking approach to navigation and transit safety is necessary. Without such an approach, OSW development will result in dangerous outcomes for mariners including our fishermen.

The U.S. Atlantic shelf is becoming increasingly cluttered with planned OREIs. The staggering size and fast-tracked project-by-project analyses are wholly uninformative. And yet, BOEM has never conducted any regional or cumulative assessments related to navigational traffic and safety. In project reviews to date, BOEM defers that authority to USCG through regional PARS. Regional PARS often perpetuates this broken system, stating that operations such as fishing "will be evaluated during BOEM's project specific environmental assessment process." Any analyses or safety measures should be overly conservative to protect ocean users from the worst case scenario.

Thank you for your attention to and your consideration of our request.

With best regards,

**LUND'S
FISHERIES**



Wild caught product of USA

Managing the Needs of our Customers Through our Commitment to Sustainable Fisheries

Wayne Reichle

Wayne Reichle, President

wreichle@lundsfish.com



45 STATE STREET | PO BOX 608
NARRAGANSETT, RI 02882

June 17, 2022

VMRC
Building 96, 380 Fenwick Road
Ft. Monroe, VA 23651

Dear VMRC,

I understand that BOEM will be hosting a meeting regarding the proposed Central Atlantic Call Area for the new wind energy areas.

I am writing because our company, the Town Dock based out of Pt. Judith Rhode Island, owns five vessels with Virginia fluke permits. The location of the call areas on the shelf will have an impact on our transiting to and from the Virginia ports for offloading fluke.

When determining the location of the turbines, cables, and the necessary transiting lanes it's important to consider the vessels from other states that both fish and transit to and from Virginia as well as the local fleet. It would be most helpful if VMRC would include that in their comments to BOEM.

Thank you for taking this under consideration.

Sincerely,

Katie Almeida
Sr. Representative, Government Relations & Sustainability



TOWNDOCK.COM
INFO@TOWNDOCK.COM
PH 401-789-2300 | FAX 401-782-4425



Surfside Foods, LLC

Phone: (856) 785-2115 * Fax: (856) 785-0975

2838 High Street
PO Box 692
Port Norris, NJ
08349

June 11, 2022

Virginia Marine Resources Commission &
Virginia Finfish Management Advisory Committee

Re: Community comments to inform Virginia Marine Resources Commission comments to BOEM, BOEM's Central Atlantic Call Areas for New Ocean Wind Energy Leases

Dear Commission & Committee members;

Surfside vessels resumed fishing of Southern Virginia (SVA) in July 2021, landing the clams in Cape Charles, VA. Most of these clams came from Call Area C. Over the following 10 months Surfside landed surfclams with a landed value of \$2,435,494. (\$14.90 per bu) equal to 10% of all clams landed across the species range of the waters off North Carolina to Georges Banks in 2021. Landings are providing downstream benefits for VA businesses of greater than 62% of landed value or \$1,439,774. to date. The revenues were enjoyed by VA dock owners, fuel, and transportation companies. Rutgers University has taken sample sets of the SVA stock and is studying the genetics and aging the clams to determine the number of year classes present. These data are too new to show up in the NOAA Socioeconomic Impacts of Atlantic Offshore Wind Development Data. <https://www.fisheries.noaa.gov/resource/data/socioeconomic-impacts-atlantic-offshore-wind-development> Areas A and Area C of the BOEM Call for Information and Nominations Area 2022 Renewable Energy Program are two of the small productive grounds that are very important to the Atlantic surfclam fishery and should be removed from consideration. Area A produced > \$17MM worth of surfclam landings over the past 13 years while Area C produced \$2.43MM over a recent 10 month period.

At least 3 age classes have been identified within Call Area C while using commercial clam gear (Commercial clam gear efficiently retains large market sized clams and sheds smaller clams.) potentially indicating commercial quantities for years to come. "..., stock size is lower and exploitation rates are higher in southern regions, particularly on small productive grounds where the fisheries operate."¹ Loosing Call Area C to an offshore Wind Lease could potentially end the surfclam fishery out of SVA.

¹ Improving the NEFSC Clam Survey for Atlantic Surfclams and Ocean Quahogs by Larry Jacobson and Daniel Hennen, May 2019. Pg.1 Introduction

Thank you for your consideration of our comments.

Sincerely,

Thomas Dameron

Thomas Dameron
Government Relations &
Fisheries Science Liaison
Surfside Foods, LLC

QUALITY SEAFOOD PRODUCTS

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

Appendix B: Jun 13, 2022 VMRC and BOEM Public Meeting Slides and Recording

<https://www.mrc.virginia.gov/Notices/2022/2022-06-13-Wind-Coordination-VMRC.pdf>

<https://www.youtube.com/watch?v=h59oQrj0ZTA>

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

VIRGINIA MARINE RESOURCES COMMISSION
BOEM MEETING - FMAC invited
Monday, June 13, 2022 - 6:00-8:30PM

Public Attendance

NAME	Email
Monty Diehl	Montgomery.diehl@oceanfleetservices.com
Kimberly Larkin	klarkin@dewberry.com
Jeff Deem	Deemjeff@Erois.com
David Frulla	dfrulla@belleydrye.com
Scott Lawton	Scott.Lawton@dominionenergy.com
Sarah Borsetti	sborsetti@vims.edu
Ed Mullis	bseafood@aol.com
Bill Mullis	wmmullis@aol.com
Mark Hodges	mihodges56@verizon.net
Cindy DiFranco	Cindidi@icloud.com
Jerry Barnes	jerry_r.barnes@dominionenergy.com
Bill Wells	BillWellsScilla@aol.com
Ross Butler	ross.butler@oceanfleetservices.com
Angela Beszak	angie@auricaberk.com

Appendix 6: VMRC Central Atlantic Call Area letter to BOEM

**Appendix C: Personal Communication with Commercial Industry and Recreational
Representatives**

Appendix C: Personal Communication with Commercial Industry and Recreational Representatives

1. Virginia Fisheries Coordinator personal communications with Meghan Lapp, Fisheries Liaison Seafreeze Ltd, North Kingstown RI, 6/22/2022

The following are verbal comments provided:

"If the cables come up from the offshore areas, this will impact where/how squid can be fished"

"If the offshore floating systems integrate suspended export or interarray cables, this will exclude the squid fishery as well as any other active fishing activities"

"Our vessels are restricted in maneuverability along the edge because our vessels will then be in the coral zone. Therefore, it is all about the turning, maneuvering and passing that has to happen on the eastern edge of areas B, C, D as well as keeping the edge free of cables"

"We are concerned about hurricane impacts to turbines, debris and oil spills due to hurricane damage, and de facto exclusions due to hurricane clean-up since turbines, blades, nacelles are not built for top hurricane strength. I would like to share this article

https://www.cfact.org/2022/06/24/hurricane-risk-is-real-for-offshore-wind/?utm_source=rss&utm_medium=rss&utm_campaign=hurricane-risk-is-real-for-offshore-wind"

2. Virginia Fisheries Coordinator personal communications with Jeff Deem, recreational angler and Chair of FMAC, June 16, 2022

"Recreational points of interest such as the twenty-one, twenty-three and 26 Mile Hill should be considered for protection"

"Structure on nearby sites will give us great new territory but I think these hills and other lesser known spots which we typically troll would be less productive if obstructed by towers. Like the canyons, these can draw a crowd of boats, sometimes from a fair distance away"



COMMONWEALTH of VIRGINIA

Marine Resources Commission
380 Fenwick Road
Building 96
Fort Monroe, VA 23051

Travis A. Voyles
Acting Secretary of Natural and
Historic Resources

James L. Green
Commissioner

September 19, 2022

Chelsea Jenkins
Deputy Secretary of Commerce and Trade
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

The Virginia Marine Resources Commission (VMRC) is submitting the following comments for consideration by the VA DOE for the 2022 Virginia Energy Plan. The VMRC is responsible for the management of Virginia's marine and aquatic resources, including the responsibility to ensure our historic seafood industry is maintained as economically healthy and sustainable. The VMRC manages fisheries as part of Virginia's diverse portfolio of commerce, trade and valuable natural resources. The Governor has outlined seven guiding principles for the 2022 Energy Plan, including affordability, reliability, capacity, competition, environmental stewardship, choice and innovation with the objectives to focus on lowering cost of living, creating jobs, and bringing people to Virginia.

To meet those principles, the VMRC supports a comprehensive and strategic approach to charting a new course for energy development in Virginia that takes into consideration an innovative approach to environmental stewardship and considers all existing businesses such as those in the seafood industry. VMRC requests that investments in new energy industries should recognize and protect the existing traditional, seafood industry jobs which are valuable to Virginia's economic portfolio and ensure we have sustainable domestic food security. The VMRC recognizes offshore renewable energy will be an important component of a comprehensive Virginia energy plan which considers all energy sources and focuses on lowering the cost of living, creating jobs, and bringing people to Virginia.

Based on the 2018 Virginia Energy Plan and informing the 2022 Plan, the VMRC recommends the following:

- Include VMRC as a collaborating and coordinating agency, independent of federal reviews as a means to incorporate existing ocean users into the new wind economy
- The BOEM Task Forces for offshore renewable energy development currently includes VMRC as a participating agency and considers natural resources but does not include

An Agency of the Natural and Historic Resources Secretariat

www.dnr.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 VTDD Information and Emergency Hotline 1-800-541-4646 VTDD

Appendix 7: VMRC Comments on VA Energy Plan

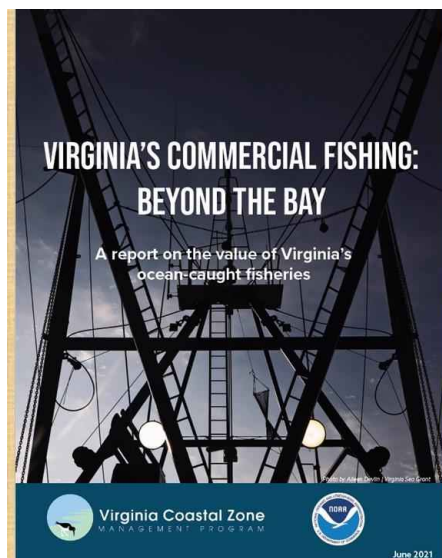
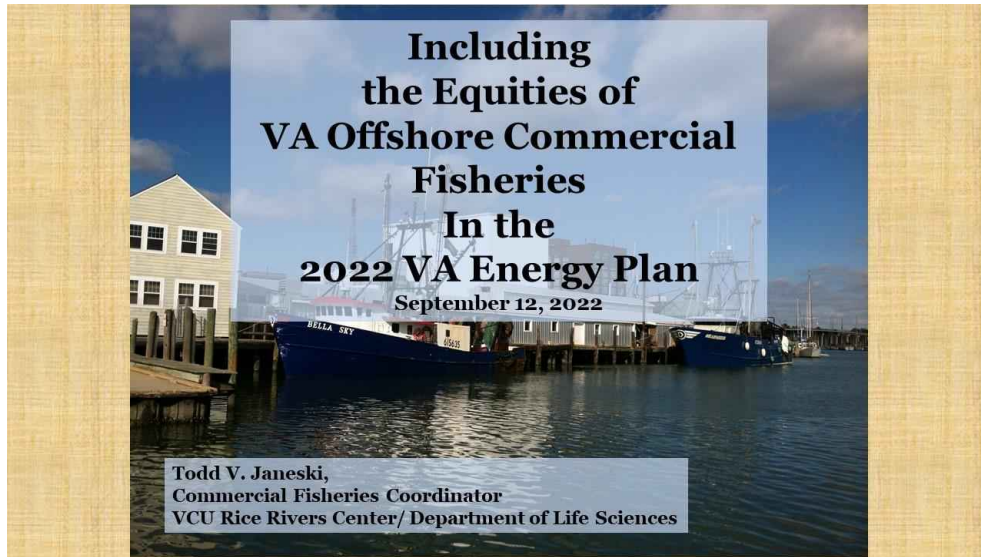
representatives of the seafood industry. To ensure that the interests of the industry are represented at task force meetings the Commonwealth should support the VMRC to actively develop opportunities to obtain direct feedback.

- Virginia Offshore Port Readiness Study did not include existing users when planning for development and any revisions should strongly consider those existing and historic waterfront and water based industries such as seafood landing, processing, storage, and shipping.
- The Virginia Offshore Wind Development Authority (VOWDA) (<https://law.lis.virginia.gov/authorities/virginia-offshore-wind-development-authority/>) should consider adding representatives of the VMRC and/or commercial fishing interests to ensure all equities are accounted for in future discussion of offshore wind development.
- The Commonwealth should support and further articulate coordination with VMRC, NOAA, and neighboring states to ensure fisheries are included early in the planning process for offshore wind deployment to help protect existing seafood industry jobs. Early involvement with those partners will help inform future offshore wind to be deployed with a focus on avoidance, minimization, and compensation with the goal of coexistence. The Commonwealth should strongly advocate for the protection of those industries that will be most adversely affected such as commercial fishing.
- The Commonwealth should advocate for a comprehensive socioeconomic analysis to be completed before any future offshore leasing processes to inform costs of deployment, operation, and decommissioning to clearly articulate the impacts to existing users and waterfront and water-reliant businesses.
- As the Commonwealth advances the development of new energy related industries, workforce development should capitalize on the unique capabilities of the commercial fishing industry such as maritime navigation, vessel operation, port access, etc.
- Investments in port infrastructure to support energy development should also recognize the existing port users to maximize the benefit (dredging, bulkheading, storage, dedicated space, etc).

The VMRC appreciates the opportunity to participate in the development of the 2022 Virginia Energy Plan and recommends the Commonwealth's domestic energy production should advance in collaboration with the seafood industry to ensure sustainable seafood, protection of traditional jobs, and protection of domestic food security. If you have any questions, contact me or VA Commercial Fisheries Coordinator, Todd Janeski (tjaneski@vcu.edu). We would be happy to work with you further to advance a shared goal for the Commonwealth.

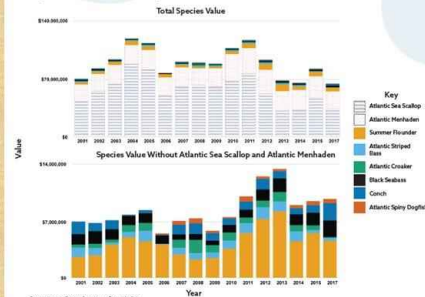
Rachael Peabody

Director of Policy, VMRC



THE VALUE OF VIRGINIA'S MOST COMMERCIALY IMPORTANT OCEAN-CAUGHT SPECIES

Commercial fishermen travel from just a few miles offshore to hundreds of miles off New England to fish before heading back to their home ports in Virginia. This section summarizes landing information on some of Virginia's most important commercial species caught beyond the Chesapeake Bay, from the mean low water (MLW) mark to 200 nautical miles offshore in the Atlantic Ocean. Hard clams and oysters have been excluded from these data because they are not typically considered ocean-caught species. These data were derived from both the Virginia Marine Resources Commission and NOAA landings, removing those values associated with the Chesapeake Bay to arrive at the value of species caught in the Atlantic, except for the value of conch*. The first graph below shows the combined value of some of Virginia's most commercially important species caught in the Atlantic Ocean from 2001-2015, and 2017. The second graph shows the same data as the first, but without the values of Atlantic sea scallop and Atlantic menhaden to show data for other species in greater detail. The values of Atlantic sea scallops and Atlantic menhaden are orders of magnitude larger than the other species, and emphasize the importance of the fisheries to Virginia.



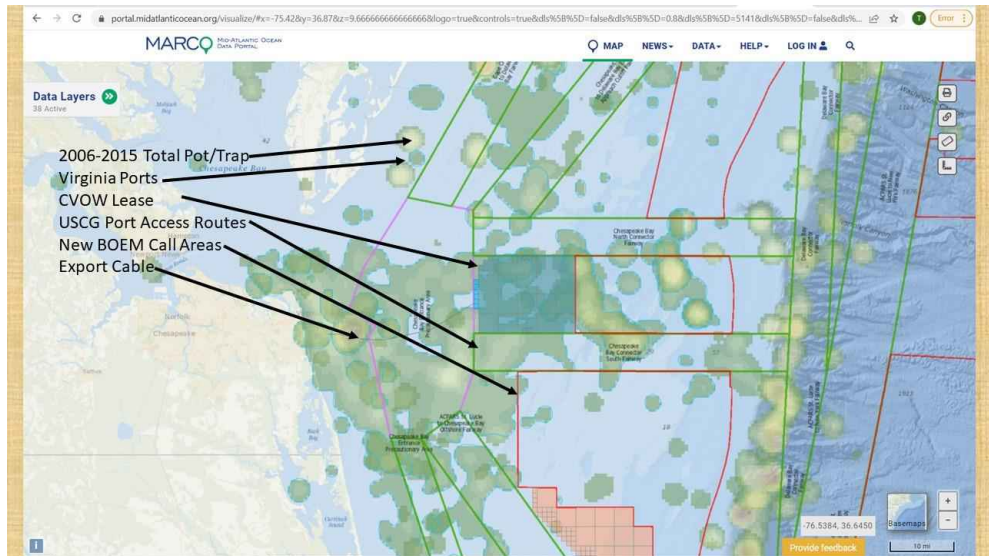
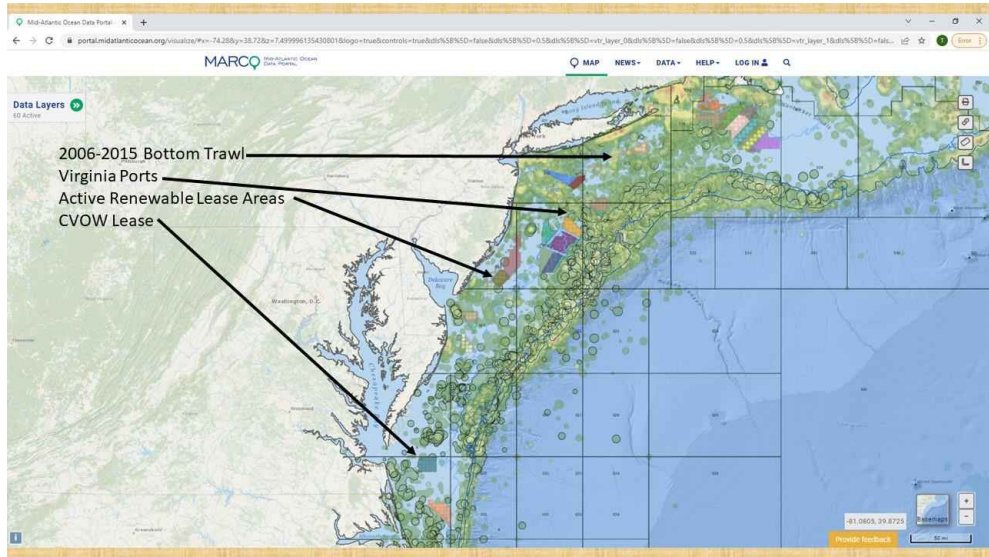
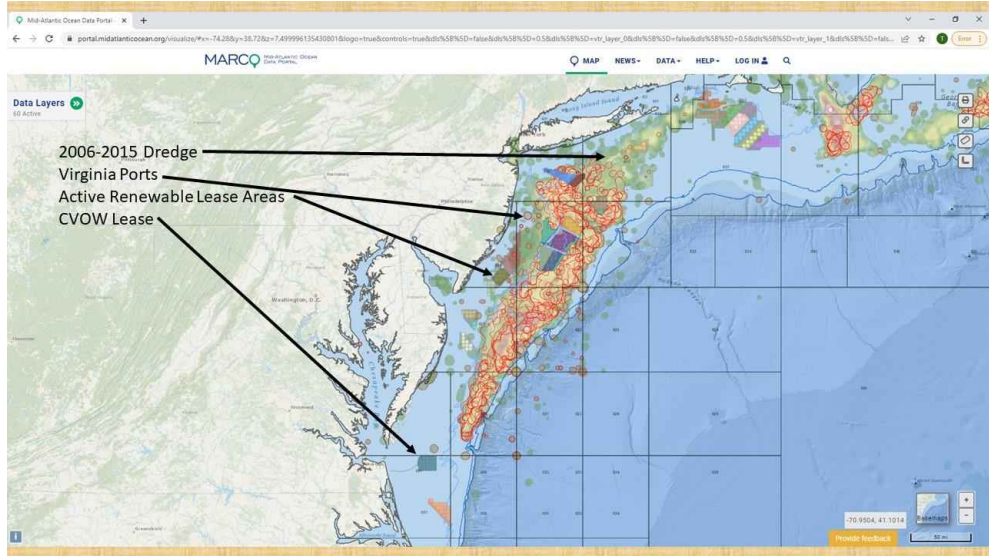
4 | Virginia's Commercial Fishing: Beyond the Bay

Virginia Fisheries Combined Value \$1.5 Billion

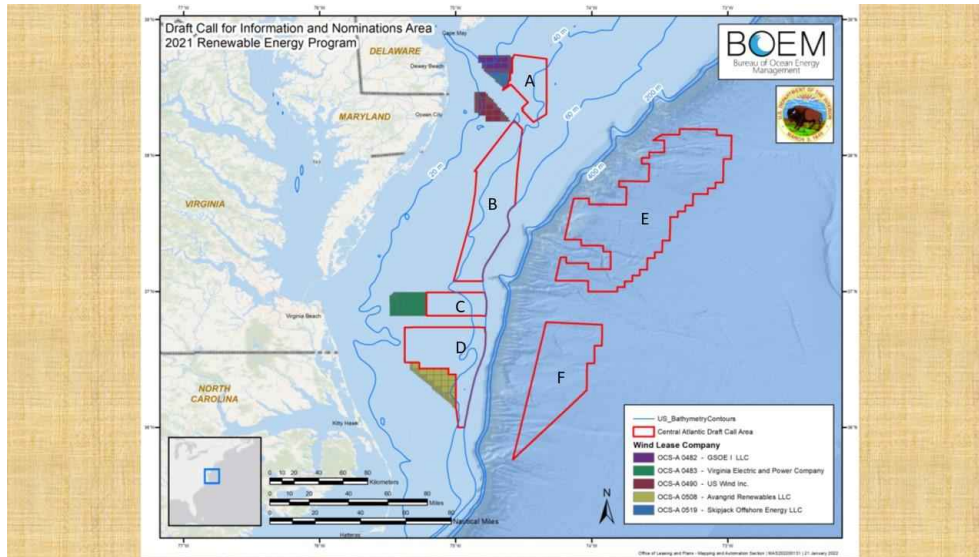
- Scallop Fishery: Ex-vessel Annual Value \$50 Million; Value to Virginia \$100+ Million
- Surfclam Fishery: Annual Value TBD; \$2.5 Million in 8mos; Potential \$40 Million
- Trawl Fishery: Annual Value \$13 Million
- Black Sea Bass and Whelk Fishery: Annual Value \$10 Million



Appendix 8: VMRC Briefing for Sec of Commerce and Trade



Appendix 8: VMRC Briefing for Sec of Commerce and Trade

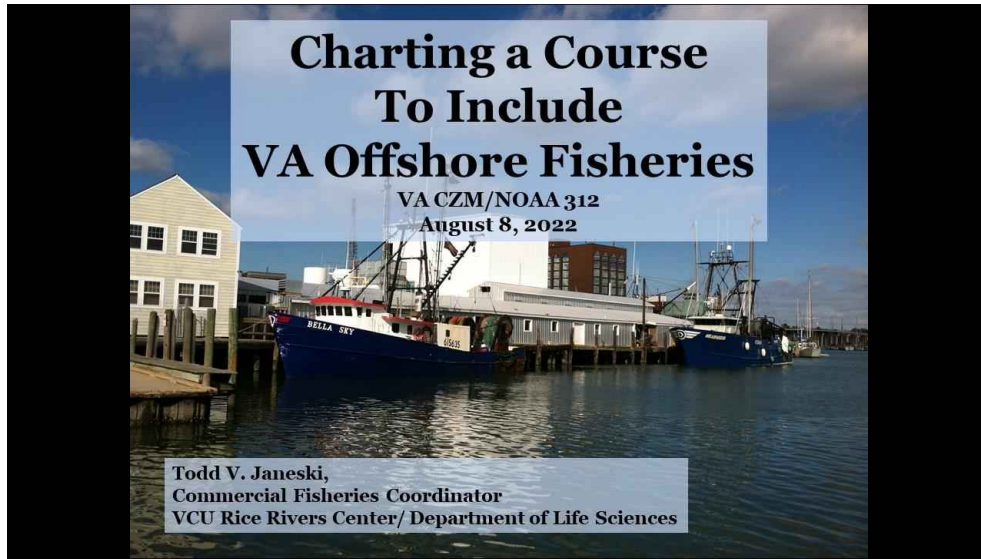


Virginia Energy Plan 2022

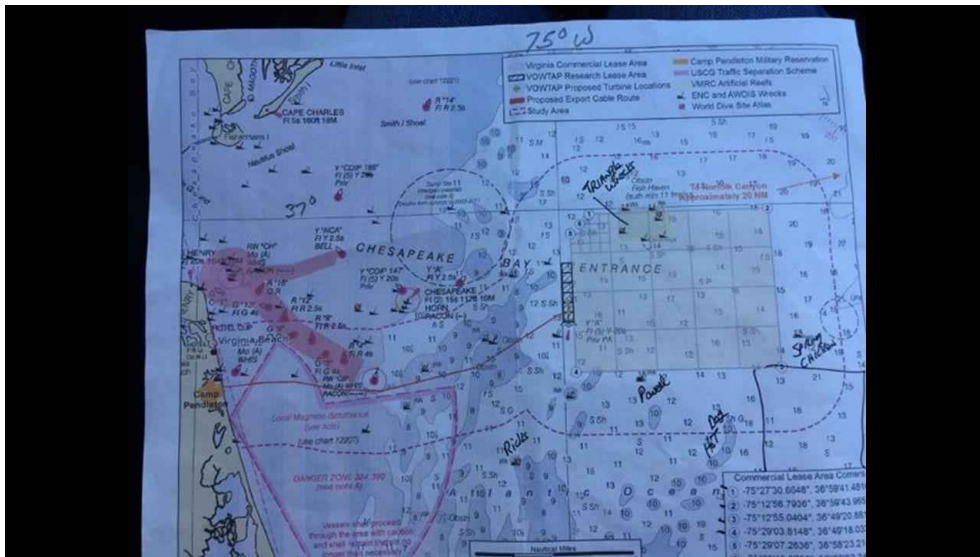
- The BOEM Task Forces currently includes VMRC and natural resources but not industry
- Virginia Offshore Port Readiness Study should include existing users when planning for development
- VOWDA should consider expansion to include marine fisheries and/or commercial fishing interests
- Fisheries should be considered early in the planning process
- Future offshore wind should be deployed with a focus on Avoidance, Minimization and Compensation with the goal of coexistence
- Socioeconomic analysis should be completed before the leasing process to inform costs of deployment, operation and decommissioning
- Workforce development should capitalize on the capabilities of commercial fishing industry

Looking ahead

- Fisheries are commerce, trade and a natural resource
- Include VMRC as a collaborating and coordinating agency, independent of federal reviews
- Incorporate existing ocean users into the new wind economy
- Investments in new industries should recognize those existing traditional jobs to maintain or grow the existing level of economic impact
- Investments in port infrastructure should also recognize the existing port users to maximize the benefit (dredging, bulkheading, storage, dedicated space, etc)



Appendix 9: 312 Fisheries PPT



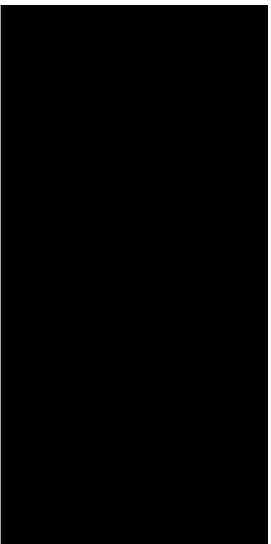
VCZM Leveraged
BOEM and DMME
funding

OCJ Study
BOEM 2018-040

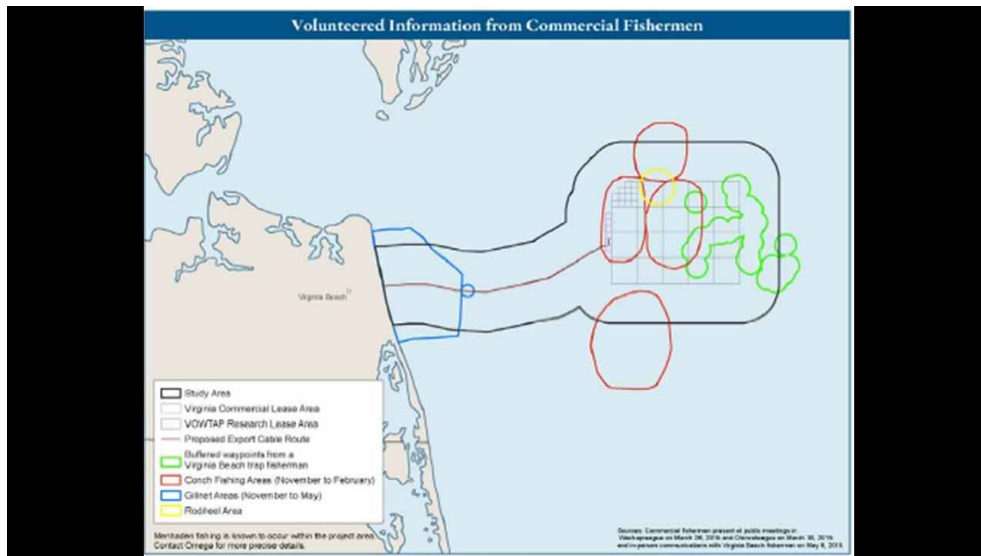
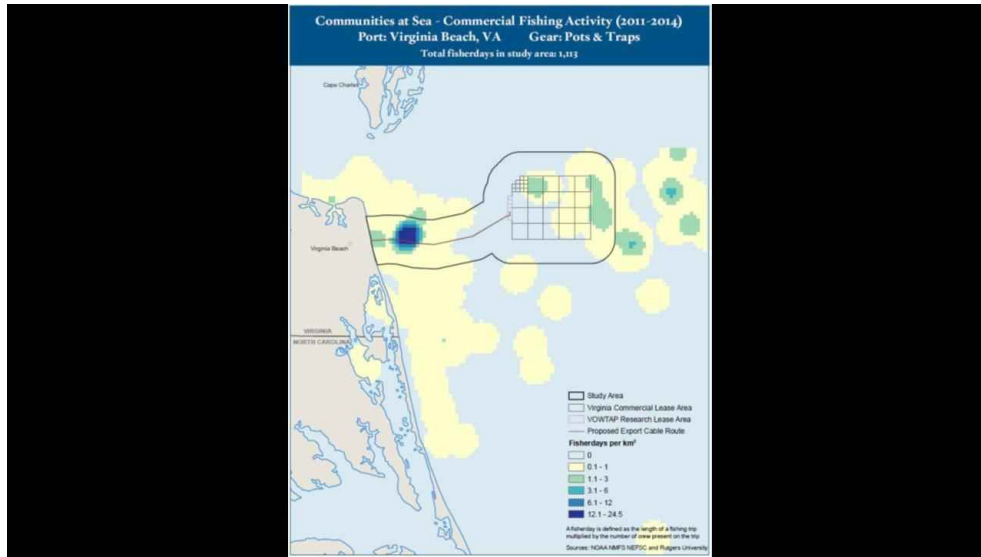
Collaborative Fisheries Planning for Virginia's Offshore Wind Energy Area

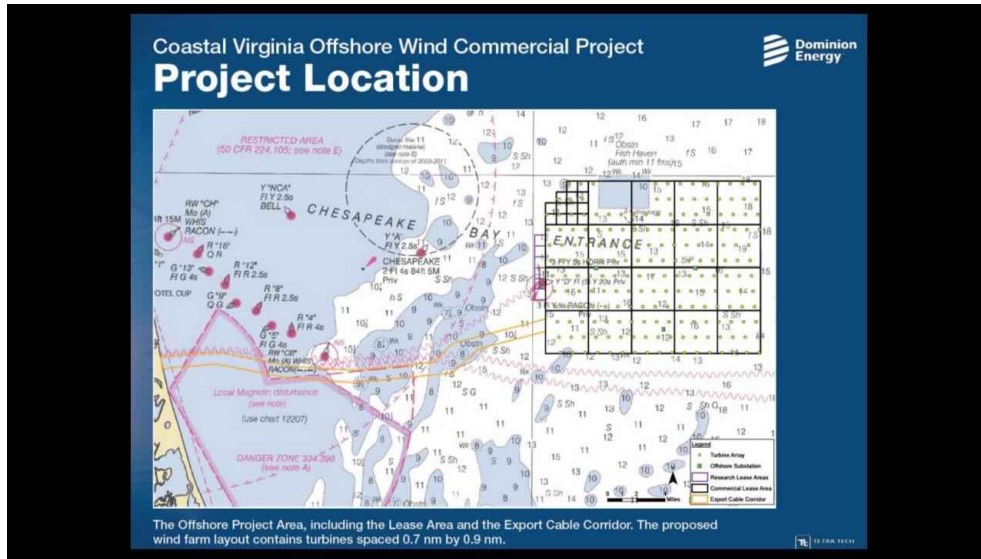
U.S. Department of the Interior
Bureau of Ocean Energy
Management
Office of Renewable Energy Programs

Virginia Coastal Area
BOEM
BUREAU OF OCEAN ENERGY MANAGEMENT

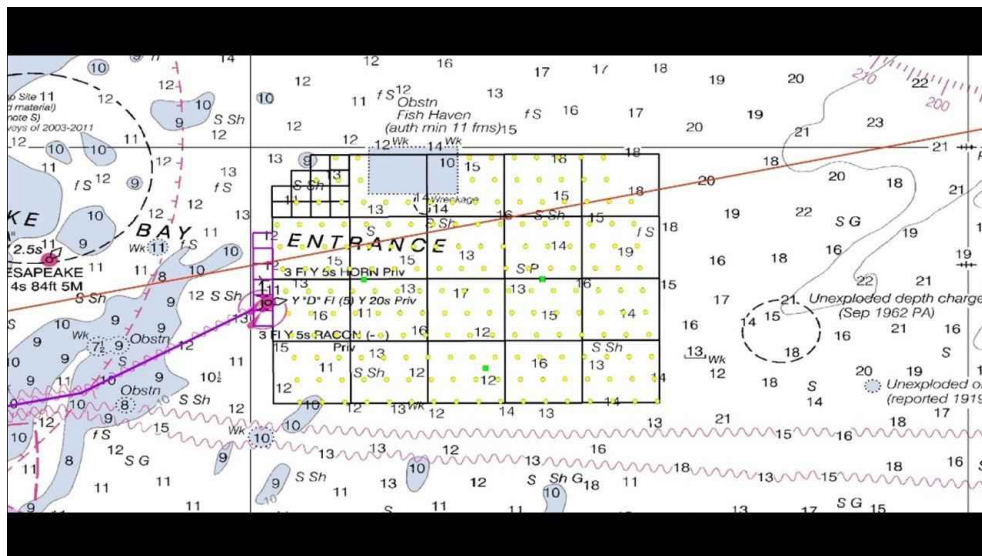
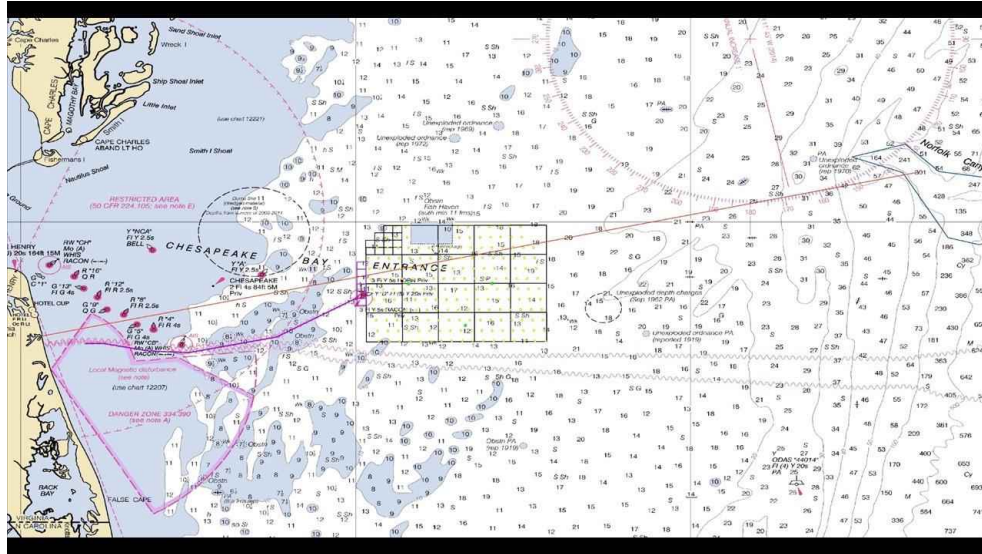


Appendix 9: 312 Fisheries PPT





Appendix 9: 312 Fisheries PPT



Virginia Marine Fisheries Enforceable Policy

V. Marine Fisheries It is the policy of the Commonwealth to conserve and promote the seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and manage the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. *Marine fishery management shall be based upon the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement.* In support of this policy, any activity in the Commonwealth's tidal waters must:

- A. Achieve optimum yield from fisheries without engaging in overfishing.
- B. Not negatively impact the short and long term viability of the Blue crab stock in Virginia.
- C. Protect spawning stock, nursery areas and habitat.
- D. Not encroach upon the natural oyster beds, rocks, and shoals of the Commonwealth, which shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth.
- E. Engage in the planting or propagating of oysters only on assigned leases (i) that are not on waterfront that is already assigned or reserved for the riparian owners, (ii) on the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and (iii) on grounds other than the Commonwealth's natural oyster beds, rocks, or shoals held in trust for the benefit of the public.
- F. Not encroach upon the lawful use and occupation of previously leased ground for the term of the lease unless exercising riparian rights or the right of fishing.

Va. Code Ann. §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603-618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3 VI.

Scallop Fishery

Ex-vessel Annual Value \$50 Million
Value to Virginia \$100 Million



Surfclam Fishery

Annual Value: TBD
\$2.5 Million in 8mos
Potential \$40 Million

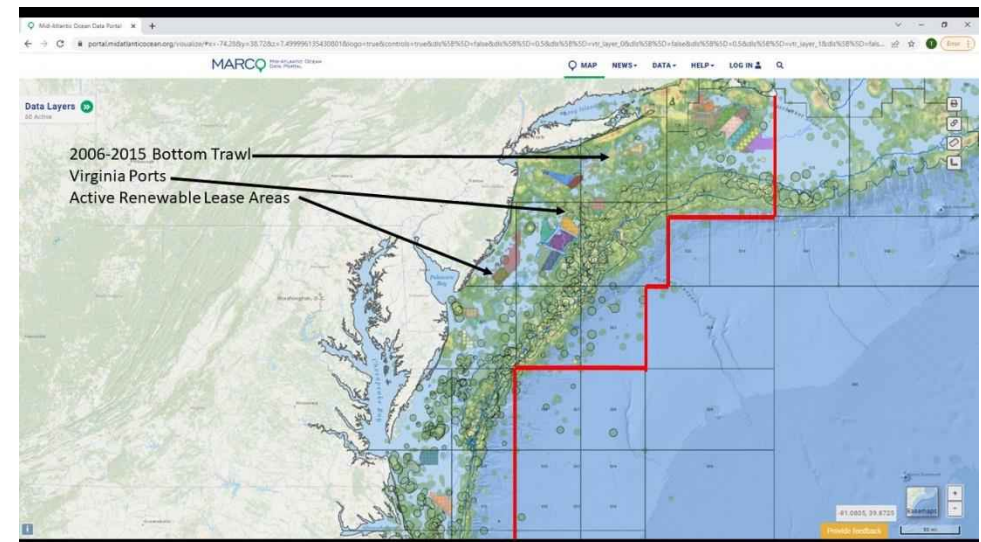
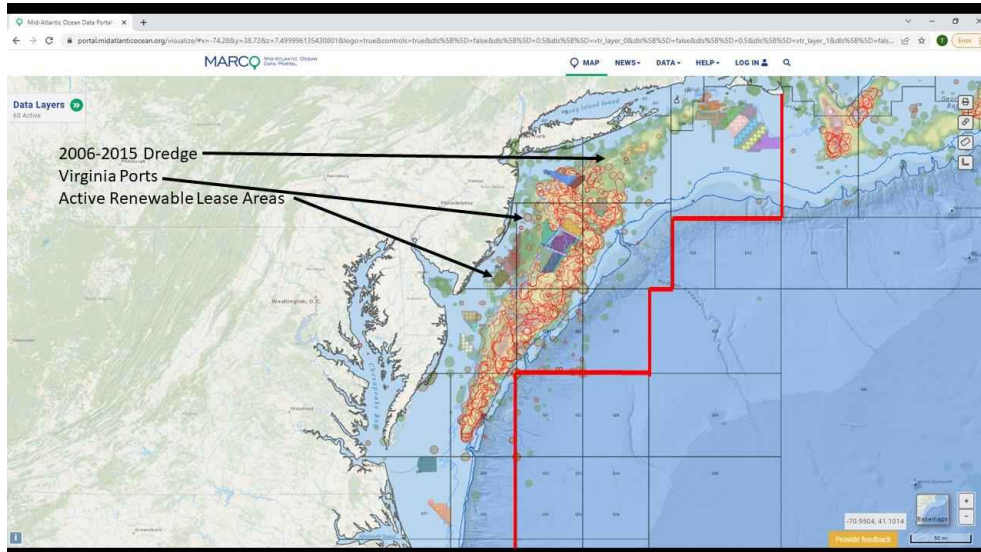
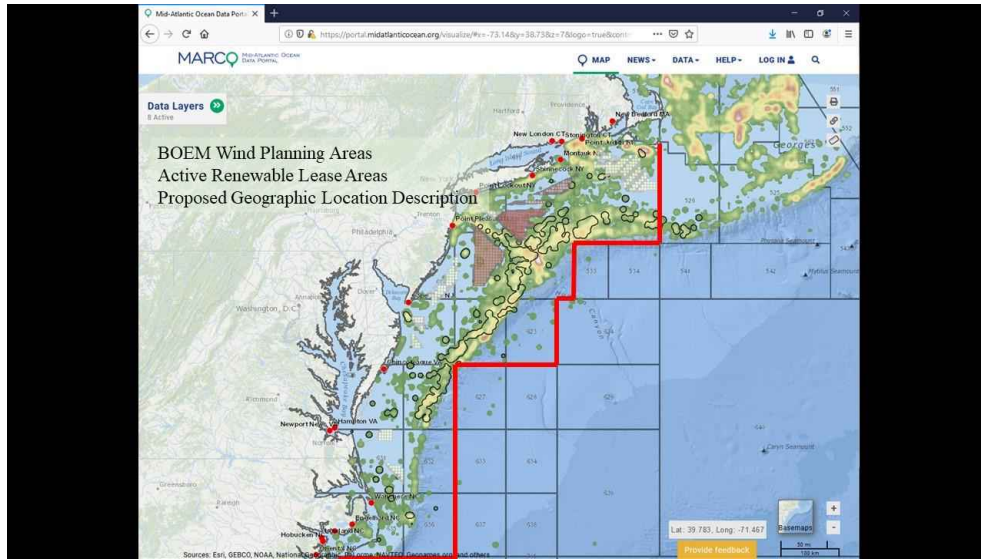


Trawl Fishery

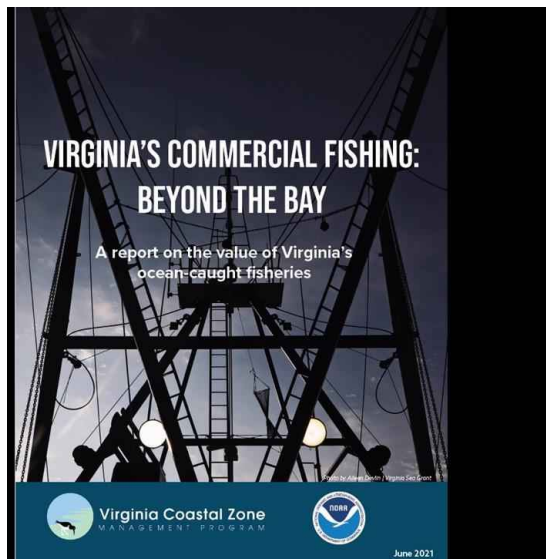
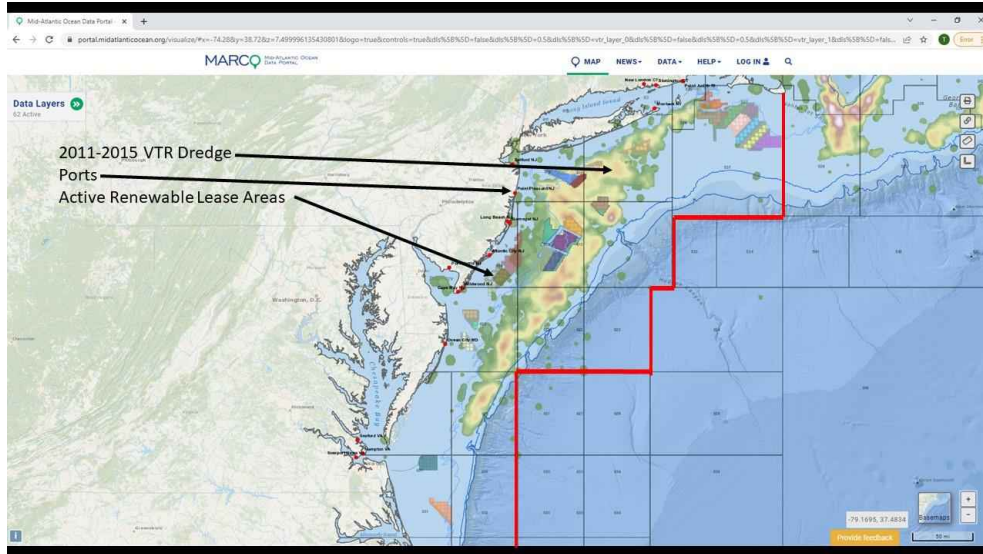
Annual Value: \$13 Million



Appendix 9: 312 Fisheries PPT

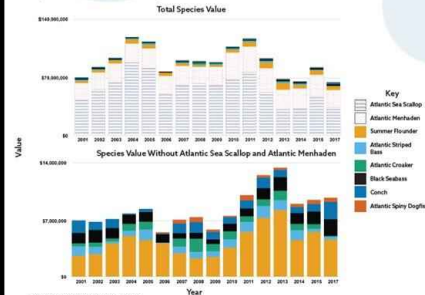


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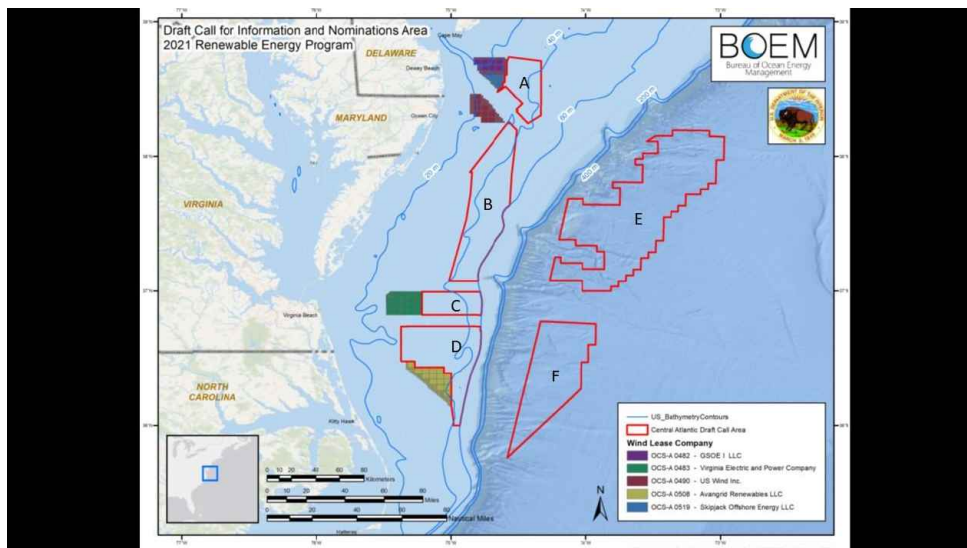


THE VALUE OF VIRGINIA'S MOST COMMERCIALY IMPORTANT OCEAN-CAUGHT SPECIES

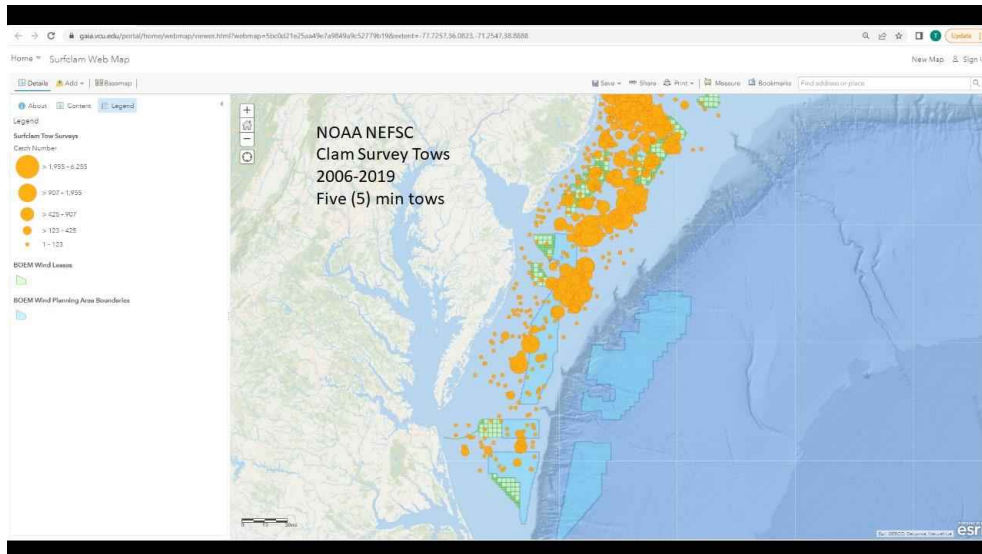
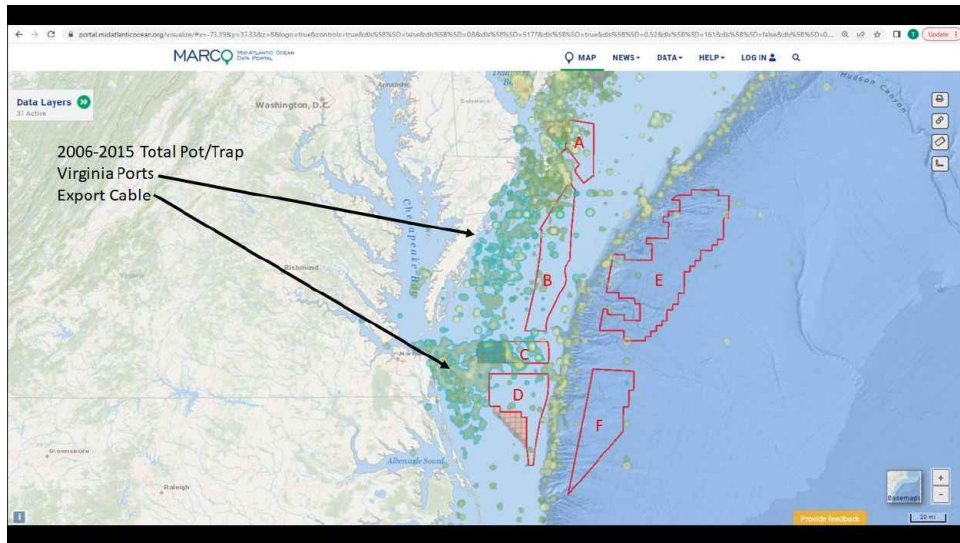
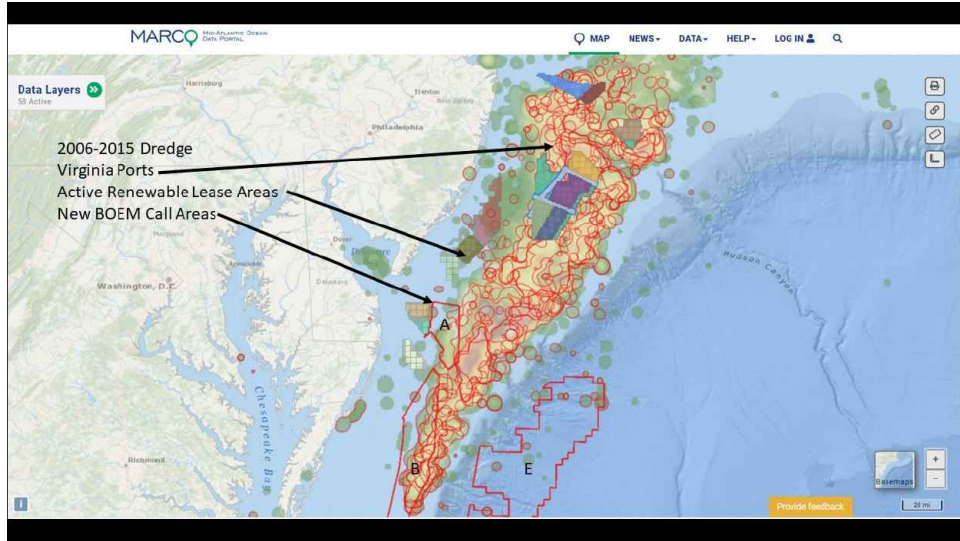
Commercial fishermen travel from just a few miles offshore to hundreds of miles off New England to fish before heading back to their home ports in Virginia. This section summarizes landing information on some of Virginia's most important commercial species caught beyond the Chesapeake Bay, from the mean low water (MLW) mark to 200 nautical miles offshore in the Atlantic Ocean. Hard clams and oysters have been excluded from these data because they are not typically considered ocean-caught species. These data were derived from both the Virginia Marine Resources Commission and NOAA landings, removing those values associated with the Chesapeake Bay to arrive at the value of species caught in the Atlantic, except for the value of conch. The first graph below shows the combined value of some of Virginia's most commercially important species caught in the Atlantic Ocean from 2001-2015, and 2017. The second graph shows the same data as the first, but without the values of Atlantic sea scallop and Atlantic menhaden to show data for other species in greater detail. The values of Atlantic sea scallops and Atlantic menhaden are orders of magnitude larger than the other species, and emphasize the importance of the fisheries to Virginia.



4 | Virginia's Commercial Fishing: Beyond the Bay



Appendix 9: 312 Fisheries PPT



**Nine Atlantic Coast States Scoping Document:
Framework for Establishing a Regional Fisheries Compensation Fund
Administrator for Potential Impacts to the Fishing Community from
Offshore Wind Energy Development**

December 12, 2022

Nine Atlantic Coast States (the States) of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia are working together to advance and ultimately implement a consistent regional approach for administration of financial compensation paid by developers to address adverse effects of offshore wind (OSW) energy development on the U.S. Eastern Seaboard's (i.e., Atlantic Coast) commercial and for-hire¹ recreational fishing industries in the absence of current federal authorities for doing so. The States are requesting input from members of the commercial and for-hire recreational fishing industry, renewable energy industry, corporate and financial management, and others with direct involvement in issues regarding OSW energy siting and development, as well as interested members of the public, to help design an effective and efficient way to accomplish this important shared objective.

Background

Overview of Issue

The U.S. has established an ambitious goal to implement renewable energy as part of an effort to increase energy independence and to mitigate the changes in climate. To help achieve this national goal as well as individual state renewable energy goals, coastal states have committed to include OSW as part of their future energy plans. Because coastal states are reliant on seafood as part of their complex economic portfolios, they are committed to ensuring sustainable seafood and domestic food security be maintained into the future. The junction of OSW and fishing is a complex intersection where solutions are needed to advance the long-term sustainability of both industries.

The hierarchy for effective coexistence between the OSW and fishing industries is built on four key principles described below in order.

1. Avoid potential impacts to fisheries and fishing industries;
 2. Attempt to minimize impacts when avoidance is not possible;
 3. Where impacts cannot be fully avoided or minimized, implement mitigation measures;
- and

¹ For-hire includes party and charter recreational fishing businesses

4. Provide financial compensation to affected entities as the final step if other forms of mitigation cannot resolve the impact.

Although compensation is the last step to consider regarding this mitigation hierarchy, the States agree that the availability of this option is vital to ensuring coexistence of robust and dynamic OSW energy and fishing industries. Experience to date with siting and development of OSW energy in the region indicates that a standardized framework is necessary to ensure compensation in addressing aggregated adverse economic effects on fisheries equitably and efficiently.

Fisheries compensation has been utilized as a mitigation approach in other countries as well as the United States (BOEM 2021a, DEA 2018, FLOWW 2015,). While there are currently no overarching regulatory mechanisms for compensation, two states have already required developers to establish compensatory mitigation funds to offset potential impacts on the fishing industry and to fund training, technology updates, and research aimed at better understanding those potential impacts (MACZM 2020; RICRMC 2021). Collectively, such programs have established the beginnings of how these types of compensatory mitigation strategies might work within the U.S. OSW industry.

Nine Atlantic Coast states have collaborated to develop the foundation to establish an overall compensation framework and governance structure for a Regional Fund Administrator to manage claims for fishery compensatory mitigation as it relates to OSW construction and operations. The States are undertaking this effort with the acknowledgement that additional federal legislative or administrative actions may be necessary for some of the concepts, ideas, and proposals being put forth in this Scoping Document to be fully implemented.

OSW Development on the U.S. East Coast

Worldwide, the demand for renewable energy is rising because of the increased desire by countries to find alternative, clean energy sources to reduce carbon emissions caused by the combustion of fossil fuels and the associated impacts expected from climate change. OSW development is of particular interest due to the consistency and speed of winds off the coast and its energy-source proximity to densely populated coastal municipalities. OSW energy generation has been around globally since the first projects came online in Europe in the early 1990s. The first OSW farm, Vindeby Offshore Wind Farm, was installed off Denmark in 1991, and the industry has been on a rapid increase in scale and efficiency over the last thirty years. As of 2022, Europe leads the world in OSW generation with 28,363 megawatts (MW) generated from 123 wind farms (WindEurope 2022). European countries with installed capacity for OSW include Belgium, Denmark, Finland, France, Germany, Ireland, Netherlands, Norway, Portugal, Spain, Sweden, and the U.K. (WindEurope 2022).

Until recently, there was no federal goal for OSW in the United States. However, in 2021, the Biden Administration established a target of 30 gigawatts (GW) of OSW capacity by 2030. In early 2022, the Administration announced a new and separate goal to deploy 15 GW of additional installed floating OSW capacity by 2035, which builds on the Administration's goal to deploy 30 GW of OSW by 2030. States across Southern New England and the Mid-Atlantic regions of the U.S. East Coast currently have over 43 GW in OSW energy goals, making these the fastest-growing areas for OSW development in the country. The current Atlantic OSW lease

areas from Massachusetts to South Carolina are shown in **Figure 1** below. Additional goals for the Gulf of Maine are expected to raise this goal further in a region where many areas suitable for OSW energy development are also utilized by other ocean users, including both commercial and for-hire recreational fishing (BOEM 2022).



Figure 1: Atlantic OSW lease areas in the Southern New England and Mid-Atlantic regions (BOEM, n.d.).

Currently, the United States has limited deployment of OSW with just two demonstration-scale OSW projects in operation: Ørsted's Block Island Wind Farm (30 MW) and Dominion's Coastal Virginia OSW pilot project (12 MW). However, several projects are planned to start construction in 2023. The American Clean Power Association (ACP)² estimates that by 2030 the OSW energy industry is expected to invest between \$28 and \$57 billion into the U.S. economy. With an expected annual economic output of \$12.5 to \$25.4 billion per year, depending on installation levels and the proportional supply chain growth during that time, project development,

² The "American Clean Power Association (ACP)" was formally known as the "American Wind Energy Association (AWEA)"; some of the sources used under that name are cited in this report.

construction, operations, and decommissioning efforts within the industry are expected to support between 45,000 to 83,000 jobs in the United States (AWEA 2020).

Status of Fisheries Socio Economics

The commercial fishing industry is a key part of both the economy and culture in much of the coastal United States, and the communities on the East Coast are no exception. According to the 2022 National Oceanic and Atmospheric Administration (NOAA) Fisheries Economics of the U.S. report, the seafood industry supported 1.2 million full- and part-time jobs and generated \$165.5 billion in sales, \$43.4 billion in income, and \$67.6 billion in value-added impacts nationwide as of 2019 (NOAA Fisheries, 2022a). Here, the commercial fishing industry not only directly supports those fishing, processors and dealers, but also influences multiple community- and state-level tourism, service, and marine infrastructure support industries. Less tangibly but importantly, the commercial fishing industry is integral to community identity, sense of place, and historic traditional use. The combined commercial fishing effort for coastal states from Maine to South Carolina accounted for 1.2 billion pounds of seafood, with a landed value of \$2.1 billion in 2019 (NOAA Fisheries 2022c).³ The year 2019 was chosen to reflect the most recent data available for both fishing landings and jobs data because it reflects the state of the industry before the impacts due to the COVID-19 pandemic and its ramifications on the supply-chain.

From Maine to South Carolina, the commercial fishing industry supports 360,000 jobs, including full-time and part-time careers supported directly or indirectly by the sale of seafood or purchases of inputs to the commercial fishing industry (NOAA Fisheries 2022b). The five states that produce most commercial fishing-related jobs in the region are Massachusetts (148,000), followed by New Jersey (52,000), Maine (46,000), New York (42,000), and Virginia (24,000).

The combined recreational fishing effort for coastal states from Maine to South Carolina accounted for \$3.1 billion in added value to this region in 2019 (NOAA 2022b). The recreational fisheries in this region brought in 156 million pounds of fish for personal consumption in 2019 (NOAA 2022c). Additionally, from Maine to South Carolina, the recreational fishing industry supports 46,500 jobs (NOAA 2022b). The five states that produce the most recreational fishing-related jobs in the region are North Carolina (16,900), followed by South Carolina (9,100), New York (4,700), New Jersey (3,900), and Virginia (3,100).

Extensive fisheries landing data can be found in NOAA Fisheries' annual Fisheries of the United States reports⁴. Additionally, estimated socioeconomic impacts of Atlantic OSW development can be found on NOAA Fisheries' Socioeconomic Impacts of Atlantic OSW Development page.⁵

³ <https://www.fisheries.noaa.gov/resource/document/fisheries-united-states-2022>. The report was published in 2022 using the most recently available data which is 2020 data.

⁴ *Ibid.*

⁵ <https://www.fisheries.noaa.gov/resource/data/socioeconomic-impacts-atlantic-offshore-wind-development>.

Offshore Wind Related Fisheries Compensation in the United States

Overview of current federal and state policy

While other countries have used financial compensation as mitigation for damages to fishing gear and lost fishing opportunities due to the development and operation of OSW, the United States currently lacks a standardized approach to fisheries compensatory mitigation that is consistently applied to all OSW projects. As the Bureau of Ocean Energy Management (BOEM) notes in its draft *Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585* (BOEM 2021b): “There are no existing Federal policies or laws explicitly and specifically requiring compensation of economic loss from displacement attributed to offshore energy installations.” Moreover, coastal states’ laws and policies concerning review of OSW projects differ. For example, authority under the Coastal Zone Management Act (CZMA) is limited. NOAA has advised that coastal states cannot require a federal agency or applicant to provide compensatory mitigation through CZMA reviews, although states may recognize such mitigation agreed to with a developer as suitable to address coastal effects. Consequently, CZMA review on its own is not a reliable means for the development and enforcement of fisheries compensation packages.

BOEM, however, does have independent authority to impose mitigation measures on entities that have an approved Construction and Operations Plan (COP). BOEM’s regulations authorize the imposition of terms and conditions on plans it approves, which may include compliance with mitigation measures (*see, e.g.*, 30 C.F.R. 585.633(a), 585.633(b)(2), and 585.628(f)). Notably, BOEM may require mitigation measures as conditions of COP approval that are in addition to applicant proposed measures and supported by findings in the project-specific environmental review required by the National Environmental Policy Act (NEPA).

Some states have used or are considering use of their various authorities to address potential adverse economic effects on the fishing industry. Thus, a state, if it has the authority to do so, could require an applicant to provide compensation that could be used to supplement those not covered by BOEM in approving a COP to address reasonably foreseeable effects identified through the NEPA review process.

Experience to date

To address fisheries and fishing impacts identified through review of OSW energy projects to date and in consultation with affected states, developers proposed and BOEM has approved different types of fisheries mitigation funds.⁶ The methodology to calculate the resulting mitigation packages differed by project and by state. These agreed-to mitigation packages included funds to offset direct economic impacts to the fishing industry, funds for research programs to better understand how fishing will be affected by OSW development, innovation funds to support adaptive fishing practices, and navigation enhancements and safety training to support the coexistence of the fishing and OSW energy industries. BOEM’s NEPA review and resulting Record of Decision incorporated these findings and the developer proposed funds.

⁶ For instance: BOEM, 2021a, *Record of Decision Vineyard Wind 1 OSW Energy Project Construction and Operations Plan*.

BOEM's COP approvals included enforceable conditions of approval for compensatory fisheries mitigation funds. This case-by-case, state-by-state approach resulted in differences for each project and in each state regarding data inputs, economic exposure methodology, and stakeholder engagement.

Individual developers have also established gear loss compensation funds to reimburse equipment losses and, in some cases, the resultant lost income from gear loss. However, inconsistencies between gear loss programs and approaches also exist.

Summary

OSW fisheries compensatory mitigation to this point has been variable by project and state due to different state jurisdictions and authorities and developers with different approaches regarding collection, administration, and disbursement of identified compensation funds. The creation of project-specific funds and administrators means fishermen may need to seek compensation from multiple entities under different rules. These differences emphasize the need to consistently address impacts to fishing industries regardless of homeport or state regulatory authorities and to create a unified approach to administering mitigation funds. The States are seeking ideas on how fund administration may best be done equitably and efficiently.

Call to Action

The States recognize the importance of developing OSW as a clean and robust renewable regional energy resource to help transition away from reliance on fossil fuels and retaining thriving fisheries and the sustainable economic benefits they have long provided as the backbone and integral part of the identity of many coastal communities. Accordingly, the States have been working together to develop a consistent regional approach for administration of financial compensation paid by developers to address adverse effects of OSW energy development on the U.S. Eastern Seaboard's (i.e., Atlantic Coast) commercial and for-hire recreational fishing industries. This approach is intended to serve all impacted along the Atlantic Coast, regardless of whether a fishing entities' particular state did or did not participate as part of the nine States' effort.

In June 2021, the States sent a letter to the Biden Administration expressing that the expansion of the OSW industry creates an unprecedented opportunity for the United States to capture significant economic development activity and build equity in coastal communities while improving air quality and increasing the options for energy diversity. The States stressed the importance of federal-state partnerships in realizing this opportunity and emphasized the shared federal-state responsibility to address critical areas of port infrastructure, permitting, research and development, fisheries support, and natural resource restoration and mitigation (Joint Governors Letter, 2021).

The States established a States working group that met periodically with BOEM and NOAA to inform them of the work. Based on these initial conversations, in November 2021 the States drafted a letter to BOEM to encourage the use of a standardized fisheries compensatory mitigation framework in COPs and Environmental Impact Statements (EIS) (Regional State Letter to BOEM, 2021). The States believe this approach would:

- Provide a uniform framework which is consistent, equitable, and transparent;

- Support increased efficiency and enhanced coordination with the potential to reduce uncertainty for OSW developers, states, regions, and fishing communities; and
- Encourage and provide a financial incentive for OSW developers to design projects in accordance with the mitigation hierarchy per the Council of Environmental Quality (CEQ) regulations (40 CFR 1508.1(s)).

In response to the States' letter, BOEM published a Request for Information (RFI) to obtain input from the public, especially the fishing community, on avoiding, minimizing, and compensating for impacts from OSW energy projects to commercial and for-hire recreational fisheries (BOEM 2021b). The comment period on the RFI closed on January 7, 2022, and a Draft Mitigation Guidance (BOEM Guidance) was released in June 2022 (BOEM 2022).⁷ This draft guidance outlines a basic framework for developers to follow as they develop their OSW projects to best avoid, minimize, and mitigate potential impacts on the fishing community.

Nine States' Objective: Establish a Regional Fund Administrator for the Atlantic Coast

With the release of the Draft Fisheries Mitigation Framework, BOEM established that they can require the identification of funds for fisheries compensation under the Outer Continental Shelf Lands Act (OCSLA) if there is a need demonstrated through the NEPA process. BOEM furthermore notes in their draft guidance: "Funds may be established at the project level, company level (multiple projects), or regional multi-lessee level." However, BOEM has stated that they lack the regulatory authority to establish or administer a fund that would hold and manage the compensation funds. BOEM stated in the overview of its Draft Fisheries Mitigation Framework: "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." (BOEM, 2022)⁸

Recognizing this gap in authority, the States are collaborating to advance the establishment of a Regional Fund Administrator that is fair, equitable, and transparent for all Atlantic Coast commercial and for-hire recreational fishing entities and developers, regardless of where they port from or land their catch. This could serve as a single mechanism to file claims for displacement or losses from multiple projects adversely affecting fishing. To accomplish this, the States are operating with the following overarching goal:

To establish a credible regional administrator for managing and distributing fisheries compensatory mitigation funds for OSW for the U.S. eastern seaboard.

⁷ https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf

⁸ https://www.boem.gov/sites/default/files/documents/renewable-energy/Draft%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf

Process Identification

To advance the development of a Regional Fund Administrator, the States identified two working groups to discuss key topics related to fund administration:

- The Governance, Funding, and Engagement Working Group focuses on fund governance options, funding needed to establish an administrator, and stakeholder engagement process options.
- The Technical Working Group focuses on issues of losses and costs, eligibility, data integrity, and logistics of a claims and appeals process.

The workstreams of these two working groups have been informed by the public comments⁹ BOEM received on their Draft Fisheries Mitigation Guidance Document (BOEM 2022), including those raising concerns about the adequacy of the guidelines for fully accounting for all costs and losses.¹⁰ The States' working groups understand that BOEM's Fisheries Mitigation Guidance will largely inform developers on how to address impacts that otherwise cannot be avoided, minimized, or mitigated, under BOEM's independent authority to impose mitigation measures on entities that have an approved COP. Such fisheries compensatory mitigation would be paid into a yet-to-be-defined fund, but the guidance provides very limited direction on how such funds are administered and how monies are to be paid to those seeking claims for compensation. Thus, the States' focus is on a Regional Fund Administrator and how that administrator might manage the process for paying affected parties.

Figure 2 below seeks to characterize the scope and focus of this States' effort.

⁹ <https://www.regulations.gov/docket/BOEM-2022-0033>

¹⁰ Public comment concerns included but were not limited to "allotted time period" for when impacts could occur, shoreside multiplier being an underestimate, proposed "cumulative impacts" not being fully addressed, and assumptions that all fisheries can transition and full co-existence is possible regardless of gear type, ways of fishing, and size of vessel. For purposes of this Scoping Document, "cumulative impacts" are defined as in 32 CFR § 651.16. NEPA analyses must assess cumulative effects, which are the impacts on the environment resulting from the incremental impacts of the actions when added to other past, present, and reasonably foreseeable future actions.



Figure 2: Relationship of Compensatory Monies Into and out of a Fund

How compensatory mitigation is determined is not the focus of this Scoping Document, but the relationship between those funds and anticipated payments is important to acknowledge. The States note that any compensation funds associated with individual OSW projects would be the foundational source for creating a Regional Fund Administrator. Ideally, the amount paid into the fund to address economic impacts on fisheries, as determined in accordance with a methodology in BOEM's Guidance and any other applicable requirements (e.g., under other federal or state authorities) must be commensurate with, adequate to, and within the requirements of that identified funding to address what monies can be paid out in individual claims.

The States acknowledge that it is not clear at this time that funds that would be paid under BOEM's Guidance would be solely sufficient to address all impacts to fisheries that may result from development of OSW projects, for instance, those not foreseeable when the NEPA review is conducted. Thus, additional funding options may need to be considered. See just below in *Intended Purpose* for further considerations on this issue.

Separately from this RFI, the question of monies into the fund are being addressed in several ways. BOEM has issued draft guidance on how to determine fisheries compensatory mitigation appropriate for a proposed OSW project and has included payment of such compensation as mitigation to address identified adverse impacts on fisheries in the Record of Decision for OSW projects it has reviewed and approved. Individual states have or are engaging in reviews of specific proposed projects and have used or are considering use of state laws and policies on public utilities' purchase of energy, CZMA authority, or other authorities, to help ensure that the total compensation dollars paid is commensurate with the adverse effects on fisheries not

otherwise mitigated. Also, there are discussions among the OSW industry, some states, and elected officials about the potential for Administration and/or Congressional action to authorize use of some of the money paid by a developer for the federal lease for its OSW project for fisheries compensatory mitigation.

Due to the evolving process to define and establish compensatory fisheries mitigation, the States recommend that action is needed to establish an administrator of those funds. Limited examples of agreements exist to provide specific estimates of expected total compensatory mitigation funds collectively from all OSW projects along the Atlantic Coast at this time. However, the States assume that the total dollar value for a fund for the Atlantic Coast based on general review of the current, albeit limited number of agreements, could be in the \$100 millions of dollars.

SCOPE OF FRAMEWORK TO ADVANCE A REGIONAL ADMINISTRATOR

The States have identified and scoped out key topics and subtopics related to establishing a Regional Fund Administrator, described below. As noted in the RFI accompanying this scoping document, the states are inviting comment and may make changes to or refine this scope based on consideration of those comments received.

1. Intended Purpose of a Compensation Program

The States propose that the initial intended purpose of compensation would be to compensate for losses and increased costs incurred by individual fishing industry entities from impacts from OSW development for the duration of said losses and increased costs as borne by the industry.

The States propose this in keeping commensurate with the likely funds and amounts established under BOEM's Draft Fisheries Mitigation Guidance. The States recognize that there could be additional impacts assessed in State reviews and impacts not assessed in the NEPA document since NEPA focuses on reasonably foreseeable impacts only. Thus, due to unanticipated implications, funds based solely on BOEM guidance could be depleted before all valid claims are paid and this remains an uncertainty that will need to be addressed. In addition, the degree to which specific gear types are compatible with OSW, with what foundation types, at what turbine distance, and so forth is not known at time. Thus, the current draft BOEM Draft Fisheries Mitigation Guidance may not be sufficient to cover all losses and costs borne by the fishing industry or segments of it over the life of an OSW project¹¹. The States also recognize that depending on the dollars paid in and how the compensated claims are filled, funds may not be depleted through the claims process and excess or surplus monies that remain will require a determination of allocation. The States note that if there are excess funds, their distribution to other fishery-related uses would need to be determined. The States also conclude that if the BOEM's Fisheries Mitigation Guidance addresses for-hire recreational fishing losses and costs

¹¹ See public comments on this matter at <https://www.regulations.gov/docket/BOEM-2022-0033/comments>

in its recommended calculations, then for-hire recreational fishing could be compensated, along with the commercial fishing industry, in similar but appropriate fashion.

The States recognize the importance and high need for additional transition and resilience funds that would be distributed to help the fishing industry or specific fisheries/gear types of the industry transition adapt to the long-term presence of OSW on traditional fishing grounds. Resilience and transition funds would not be based upon demonstrable losses from impacts but rather support for the fishing industry to “keep fishing” considering a new large-scale ocean use. Some examples of such fundable activities might include but are not limited to:

- Cooperative research;
- Investments in supporting infrastructure (improvements in slips and docks, cold storage facilities, fuel docks, ice machines, etc.);
- Gear and vessel innovation (and trials for testing new fishing methods);
- Support for participation in management process;
- Funding to offset devaluation of businesses, including yessels, processing, permits;
- Permit banks;
- Resource enhancement; and
- Scholarship and internships.

Since it has not been determined how such additional monies can be secured or under which authorities this would exist, the States are prioritizing that the Regional Fund Administrator focus initially on individual compensatory mitigation based on claims due to losses or increased costs. However, the Regional Fund Administrator could expand its scope to fund transition, adaptation, and resilience if additional monies become available or as authorities are identified. This is a characteristic that the States could consider as this process moves forward to select a Regional Fund Administrator. The States also recognize that at a future point, the Regional Fund Administrator might seek to coordinate with or integrate funds already established for OSW projects in Massachusetts and Rhode Island.

2. Anticipated Losses and Costs

The States propose that an important function of the Regional Fund Administrator is to provide compensation to individuals and businesses in the fishing industry for losses and costs associated with OSW development. The States have identified at least some potential types of losses and costs for which compensation could be provided, as shown in **Table 1** below, though the States have not determined if sufficient data would be available to justify each of such losses and costs for which fishery nor if the compensatory mitigation funds from OSW projects will be sufficient to cover all quantifiable losses and costs. Gear loss and associated lost fishing effort are not included in **Table 1** since several gear loss programs are already established and being managed by the OSW developers themselves. However, the Regional Fund Administrator could undertake such efforts in the future, if desired and practicable. The development of OSW in U.S. waters is early in its development and there may be unanticipated and unforeseen losses or costs at this time. Thus, the Regional Fund Administrator will need to have the

flexibility to assess claims and potentially address new associated new types of losses and costs and adapt the program accordingly.

The States recognize that the Regional Fund Administrator will have to consider and address a range of costs and losses to different fisheries, geographic regions, gear types, and shoreside businesses. The States have discussed that some kinds of fishing and fishing gear may be compatible with OSW development and require compensation only during construction when fishing may not be allowed in the project areas. Some fishing and gear types may require additional funds beyond construction in the shorter term so the industry could adapt its fishing practices. Transitions may require compensation for losses while making changes: longer-term reductions in catch due to changes in fishing practices or gear types, the retrofitting of gear and vessels, and training of captains and crew. Additionally, some fishing could be incompatible with OSW altogether given fishing practices, gear type, and other factors giving rise to questions surrounding long-term compensation. The degree to which each of these scenarios plays out is not yet fully understood, but the States recognize flexibility is needed for the Regional Fund Administrator to adjust to future conditions. Please note that **Table 1** does not address the non-monetarily valued costs that changes in ocean use may impose on families, communities, and local fishing cultures.

Please note that the term "permit" is used in **Table 1** and the rest of the document, but is interchangeable with the term "license," as terms vary by state.

Table 1: Potential losses and costs to be considered for compensation for project areas, including transmission/cable routes affected by OSW development

Potential lost revenue due to:
<ul style="list-style-type: none"> • Displacement from a fishing area • Surveys of the lease or project areas • Pre-construction • During construction • Post-construction (operations and maintenance) • Decommissioning • Up or downstream effects to shoreside fishing businesses • Transition from highly productive to less productive fishing ground • Reduced catch in lease areas • Devaluation of fishing business (vessel, shoreside, etc.) • Permit devaluation

Potential increased costs due to:
<ul style="list-style-type: none">• Need to acquire new or modified gear• Need to acquire new or modified navigation equipment (e.g., radar)• Increased fishing effort (i.e., slower towing in an array, more time to haul traps within an array, etc.)• Transit time/cost around arrays or to new fishing areas• Increases in insurance costs• Dockage and offloading fees, as there is potential for competition for limited space in ports and harbors to increase.¹²

How private insurance claims may relate to the compensation fund is another question that needs further consideration. Insurance held by either a fishing business or OSW project, or both, may cover certain kinds of damages: for example, those related to collisions and allisions between a fishing vessel and a cable or other OSW infrastructure. Insures, on the other hand, are highly unlikely to cover losses associated with dislocation from fishing areas. The Regional Fund Administrator will need to establish processes to ensure that no party seeks to file duplicative claims for losses by seeking insurance claims and then also payout through a compensatory mitigation fund.

3. Regional Geographic Scope

The States propose implementing a regional approach to fund administration under which a single Regional Fund Administrator develops claims processes and distributes funds for all or most compensatory fisheries mitigation dollars paid to address impacts to fisheries from construction, operation, and decommissioning of OSW projects along the U.S. Atlantic Seaboard.

The States believe that such an approach will increase fairness, transparency, and efficiency across projects and states, lower administrative cost through scale, provide greater consistency for all, streamline processes and procedures, address the aggregating impacts of changes in ocean use from OSW, and aid in helping the fishing industry adapt to fishing with OSW projects in the water.

Given the differences in fisheries, fishing industries, and the States' interests in the Gulf of Mexico and the West Coast, as well as the sheer complexity of all U.S. coastal states engaging in this kind of organizing effort, the States are not seeking a national approach at this time but

¹² This may include revenue loss to the extent transient fishing operations are unable to secure berthing or other shoreside facilities in those ports and harbors.

recognize this effort could be the foundation to inform the Regional Fund Administrator in other areas.

4. A Unified Regional Fund

The States propose that the Regional Fund Administrator distribute compensation based on a common set of rules and procedures applicable to OSW energy projects for the region rather than a project-by-project approach to achieve efficiency, economies of scale, and account for the regional nature of fishing.

The States recognize that the fisheries compensatory mitigation paid to date is now held by more than one bank or comparable financial institution. The States propose that the Regional Fund Administrator be authorized to initiate and accept transfer of this money from future and if possible, current fund holders to the regional compensation fund for distribution using a common and consistent approach. The States recommend that developers, to the extent possible, use one or a limit number of fiduciaries to minimize the transaction costs of a Regional Fund Administrator having to develop and legally prescribe the relationship between itself and numerous fiduciaries.

The States have considered that a Regional Fund Administrator might function as manager of multiple approaches. This might include a single Regional Fund Administrator who would manage a fund of funds, meaning that funds for various OSW projects would be managed by a single administrator but would be distributed based on different rules established by each payor. This is like how many community foundations operate, serving as single manager of multiple family and other funds, each with their own rules and goals. However, the States have not endorsed this approach because it would likely decrease efficiency and fairness above today's status quo of project-by-project approaches.

5. Key Qualities of an Administrator

The central function of the Regional Fund Administrator would be to manage and distribute fisheries compensatory mitigation funds to address impacts of OSW energy development along the East Coast of the United States. The States propose that the Regional Fund Administrator be designed, and its functions carried out to ensure:

- Strong fiduciary control;
- Credibility in the eyes of stakeholders;
- Rigorous conflict-of-interest policies;
- Competency and efficiency in managing funds;
- Sustainability for the foreseeable future;
- Timeliness and maximization of funds paid out;
- Minimization of administrative costs and burdens;
- Prevention of waste, fraud, and abuse;
- Extensive fishery industry experience, knowledge, and understanding;

- Effective collaboration with stakeholders; and
- Ability to provide technical assistance to stakeholders.

6. Key Tasks of an Administrator

Regional Fund Administrator tasks identified by the States are outlined in **Figure 3** below.

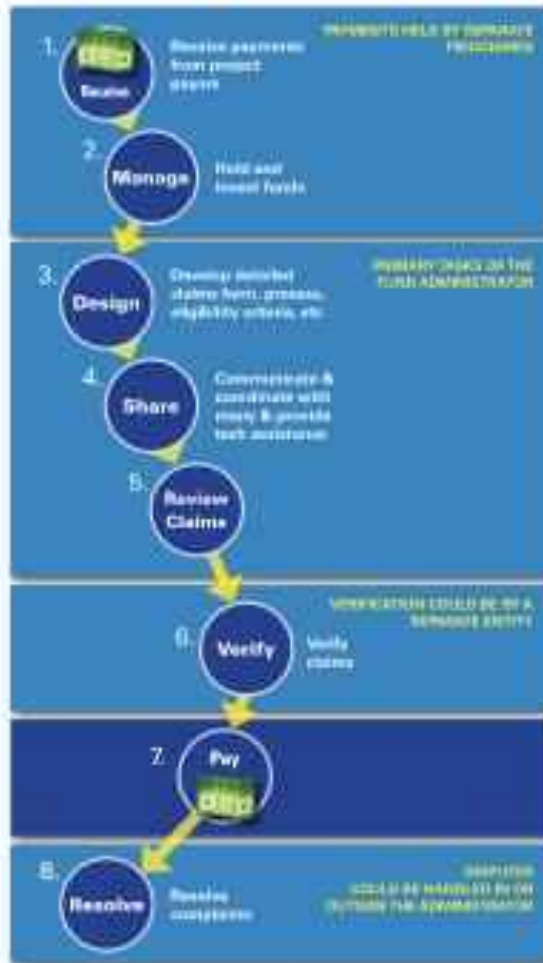


Figure 3: Potential Tasks for A Regional Fund Administrator

In the context of the tasks outlined in **Figure 3**, the States suggest the following of the Regional Fund Administrator:

- Funds in aggregate would be held by one or as few independent fiduciary institution(s) as possible (Holders of Funds such as banks or investment funds).

- The Regional Fund Administrator would have the authority to enter contractual arrangements with Holder(s) of Funds to transfer monies to the Regional Fund Administrator in some periodic or other predetermined and agreed upon manner, as needed to pay eligible claims for compensation and costs related to administration of the fund. The Regional Fund Administrator will be subject to payor conditions for release of funds (timing of release, for instance).
- The Regional Fund Administrator would primarily be responsible for designing detailed claims processes to review, and for verifying and qualifying claims, and paying claims to eligible claimants. Verification of claims would likely take place by a separate entity with ready access to state and federal fisheries data or deep knowledge of fisheries.¹³
- The Regional Fund Administrator would need to share information about the Fund, how to access the claims process, and provide technical assistance to claimants.
- The Regional Fund Administrator will develop an appeals process, defined under clear and likely limited conditions. This process could be managed by the Regional Fund Administrator or separately by another entity.

The States have considered two possible options for how to take the next steps in developing the detailed eligibility criteria, claims process, review timelines, forms, and other related processes, described below. Either of these options would require robust stakeholder engagement and inputs from interested parties.

- **Option 1: Design First, Hire Second.** The States, in consultation with the fishing industry and OSW developers, would complete the detailed design and process work for establishing the Regional Fund Administrator prior to the Regional Fund Administrator being selected. The Regional Fund Administrator would then have a prescribed and detailed set of tasks to accomplish and serve primarily in a ministerial or trustee role, with limited decision making with respect to how to manage the process. This approach would require sufficient funds and expertise to establish such a complex entity.
- **Option 2: Hire First, Design Second.** The States would establish a final or interim governing body which, in consultation with the fishing industry and OSW developers, would then select and hire the Regional Fund Administrator. In turn, the Regional Fund Administrator would work with the States, fishing, and OSW industries, to finalize details of how the compensation fund would operate in accordance with the basic approach outlined in this Scoping Document and as refined based on consideration of responses to this Scoping Document's associated RFI. Under this option, the Regional Fund Administrator would have a more significant - if not lead - role in designing how the compensation fund would be managed.

¹³ One developer, for instance, has contracted with a reputable fishing association to verify claims given their extensive knowledge of fishing, fishing records, and fishing data.

7. Technical Considerations for Fund Administration and a Compensation Framework

The primary technical responsibilities of the Regional Fund Administrator include determinations of funds eligibility by verifying claims, details for which are described below.

7.1. Eligibility for Compensation

Regarding eligible claimants, the States propose that permit holders that can prove their eligibility would be compensated for qualified losses and costs. In addition to permit holders and vessel crew members, shore-side fisheries-related businesses (processors, manufacturers, distributors, and haulers of seafood products) would be eligible for compensation if their claims demonstrate that their businesses experienced loss of income due to unrecovered economic activity resulting from displacement of fisheries in the OSW energy project area. The project area is intended to include the turbine array area, including inter-array cabling, any OSW related substations, and export cables from the array to landfall.

Eligibility could be determined by the selected Regional Fund Administrator based on the BOEM Fisheries Mitigation Guidance and structured input from appropriate stakeholders such as the commercial fishing industry, NOAA, academic institutions, and OSW industry experts. An individual's eligibility to file a claim could be based on a variety of factors, including proof of recent use of an identified fishing location and/or historical spatial and temporal fishing data for a period (e.g., 3 or 10 years), yet to be determined.

7.2. Evidence of Impacts and Burden of Proof

The evidence of impacts could fall squarely and solely on the fishing industry, making it difficult if not impossible to support a claim. The reasons for imperfect evidence are numerous: limitations to existing fisheries data, limitations to methodologies for identifying fishing with existing data (i.e., NOAA's fishery footprints), lack of spatially precise data, COVID impacts on fishing, fluctuations in market demand, state and federal fishery management actions, climate change impacts, and others. Thus, the evidence required for claims needs to be practical and achievable and not overly burdensome nor prohibitive of making a reasonable claim. There will also have to be an established and legally justifiable and defensible burden of proof that should be reasonable and achievable for legitimate claims.

Overall, the claims process will need to be simple as possible, fair, transparent, limit the administrative burden and transaction costs on all parties, reduce potential gaming and fraud, and resolve uncertainties and data limitations in the fishing industry's favor.

7.3. Administrative Fees

The States are continuing to consider and are not proposing a specific mechanism or percentage fee for covering administrative costs of the Regional Fund Administrator at this time.

The States suggest the Regional Fund Administrator will need to fund its operations in an efficient manner. Preferably, administrative fees are covered outside of the mitigation funds to protect those funds for maximum payout to eligible claims.

Given the limited examples of funds established to date, there have been at least two different approaches for administrative costs that might serve as examples. In one project, monies for establishing and funding the Regional Fund Administrator's activities were not set aside up front but are born by the OSW developer as a separate cost and this expectation was built into the overall agreement between the state and developer.

In another example, the agreement requires that the earnings (e.g., interest) accrued on the escrow account (where compensation funds are deposited) would cover the costs to establish and implement the distribution of funds. The costs are not covered outright by the principal (money placed in the fund) but by the earnings on the funds. That agreement requires specified return rates for the escrow account. The Regional Fund Administrator is required to review the financial status of the escrow account annually. If the costs to administer the fund exceed the income earned in three consecutive years, the developer is required to cover the deficiency. In any case, administrative funds for the Regional Fund Administrator should be covered to avoid imposing undue costs on States, those seeking claims, or others as part of the claims process.

7.4 Data Verification

Due to the complexity of data sharing and confidentiality agreements, the States propose that the Regional Fund Administrator utilize existing entities with data access and sharing already in place, to the extent practicable, rather than trying to build that capacity in-house and enter into new data sharing and confidentiality agreements with existing data providers.

To verify claims, access to confidential fisheries data will be necessary. If the Regional Fund Administrator were to directly be responsible for claim verification, an agreement with NOAA Fisheries allowing the Regional Fund Administrator access to confidential fisheries data would be required, which may introduce legal conflicts if the Regional Fund Administrator does not have a prior agreement with NOAA Fisheries. Any data sharing would have to be consistent with applicable law, including Section 402 of Magnuson Stevens Fishery Conservation and Management Act.

The States have recognized the potential difficulty of obtaining such an agreement and an existing entity (e.g., NOAA Fisheries, state agencies, the Atlantic States Marine Fisheries Commission, or the Atlantic Coastal Cooperative Statistics Program) that already handles confidential fisheries data should be employed to carry out the claim's verification step. NOAA Fisheries and/or State agencies could act as this entity; however, staffing issues, agency mandates and policies, and challenges with receiving outside funds to cover staff costs may preclude them from serving in the data verification role. The States themselves could each serve this role since State Fishery agencies typically have access to data.

However, this approach might be cumbersome and inefficient since multiple agencies would need to be consulted in certain cases, causing increased administrative costs and untimely delays in the evaluations of claims. Alternatively, the Regional Fund Administrator could contract with an entity that already has established data agreements in place such as the Atlantic States Marine Fisheries Commission (ASMFC) or the Atlantic Coastal Cooperative Statistics Program (ACCSP). Entities with these data agreements already handle numerous sources of confidential fisheries state and federal data and would be able to verify individual

claims. Overall organizational mission objectives and staffing needs would have to be evaluated to ensure this need can be successfully met.

8. Appeals Process

The States propose that the details of such grievance processes be designed by the Regional Fund Administrator once established, with oversight from its governing body and advisory boards.

The Regional Fund Administrator could serve as an appeals manager authorized to consider and make decisions on grievances or disputes raised in the compensation process by a claimant, such as ones over eligibility or compensable losses and costs. Such appeals could also be handled externally through an appeals manager, administrative board, or other impartial entity.

9. Governance Structure

A governance structure must be established to provide oversight of Regional Fund Administrator to ensure the administrator properly executes their responsibilities and that the compensation program sustainably fulfills its designated purpose.

In general, the States assume there are four core elements to the overall Regional Fund Administrator structure: 1) Funds consisting of money paid by developers for impacts from individual OSW projects, likely held by a bank or similar fiduciary; 2) a Governing Board with oversight over the Regional Fund Administrator; 3) the Regional Fund Administrator; and 4) stakeholder and expert advisory boards. The States have identified several potential models for the governing board and stakeholder advisory functions which are discussed below.

The Governing Board would hold at least the following duties:

- Select the Regional Fund Administrator;
- Review the Regional Fund Administrator's performance periodically;
- Replace the Regional Fund Administrator for cause;
- Approve overall processes and procedures established by the Regional Fund Administrator;
- Select the auditor and receive and review annual audits;
- Conduct fiscal oversight to ensure the efficient and effective administration of the claims process;
- Solicit, review, and accept new members to the Governing Board; and
- Advise, if not approve, the membership and role of advisory bodies.

The Governing Board would need to have a clear legal status, by-laws, conflict of interest statements, and other governance elements. The Governing Board would need to include the following general three elements: 1) membership, 2) legal status, and 3) relation to the Regional Fund Administrator.

9.1. Governing Board Membership

The States propose the following options for Governing Board Membership in addition to a robust advisory process described further below. How initial board members are appointed, who makes on-going appointments to the board, the exact board composition, board member terms, and other matters have not been determined at this time.

Option #1: State-Led. Membership of the Governing Board would be made up of representatives from states along the Atlantic Coast whose fishing enterprises would be foreseeably affected by OSW development. The States also propose a meaningful advisory role for affected stakeholders including the commercial and for-hire recreational fishing industries and OSW energy developers.

Option #2: Fisheries Led. Membership of the Governing Board would be made up of representatives from the fishing industry including fishing and shoreside fishing-related businesses. The Board membership would need to consider diversity in fishing gear type, fishery, and geography though broader representation could be addressed through the advisory process. Clear conflict-of-interest policies would be in place to avoid the appearance or reality of self-dealing. There would need to be a meaningful advisory role for non-fishing stakeholders such as states and wind energy developers.

Option #3: Co-Led. Membership of the Governing Board would be made up of representatives from the fishing industry and from the states. To ensure a reasonably sized Board, the states might select Board membership from sub-regions and have those seats rotate across states over time. The Board might include one independent entity, with no association to any affected sector (OSW, fishing, or state government), to chair the board and provide an "odd number" of total seats. The fishing industry seats might also use a geographic distribution to ensure broad-based representation. Clear conflict-of-interest policies would be in place to avoid the appearance or reality of self-dealing.

9.2. Governing Board Relation to the Regional Fund Administrator

The States note that the Regional Fund Administrator could be an existing or newly established entity which would be retained under contract by the Governing Board

The Governing Board would enter a contract with the Regional Fund Administrator. Likely, the States would need to include seed or initial money for the Regional Fund Administrator to allow it to begin its operations prior to contracting with individual project fund holders. By contract, the Regional Fund Administrator's term would be for a set period (e.g., five years), and renewable upon capable performance. The Regional Fund Administrator would need to have the legal status to receive and distribute money, enter contracts, and carry out the day-to-day business functions set forth in this Scoping Document. Although the Regional Fund Administrator could be created as a legal entity specific for the role described herein, the expense and time needed to establish such a new entity make that approach less desirable than retaining the services of a Regional Fund Administrator with basic processes and systems needed to do the job already in place. The States invite comments on existing entities, types of entities, such as trusts, and other legal arrangements by which the functions and fiduciary obligations of the Regional Fund Administrator could be effectively, efficiently, and accountably implemented.

9.3. Limitations

The States have discussed that the Governing Board would not likely have the authority to require a developer to distribute their compensatory mitigation fund through the Regional Fund Administrator because there is currently no single known federal or state statutory authority to do so. The States could choose to utilize their procurement authorities and other state authorities to encourage or require use of the Regional Fund Administrator. In addition, the efficient and effective administration of fisheries compensatory mitigation by a Regional Fund Administrator would likely provide incentives for OSW developers to participate. Other enticements could include but not be limited to bidding and operation fee credits and state procurement incentives or encouragements.

9.4. Advisory Boards, Committees or Panels

Through the process of establishing a Regional Fund Administrator, clear responsibilities and guidelines for the administrator will be identified. Once the Regional Fund Administrator is established, the States propose that regional or sub-regional advisory panels or committees consisting of fishing industry members and OSW developers could be created to advise the Governing Board. OSW developer participation in advisory boards should be limited to those with leases. The States have discussed that these advisory panels or committees would not have decision making responsibilities like a fiduciary board. The advisory board(s) would provide advice and insights from their members' experience and make recommendations to ensure that the fund stays on track to meet the needs of both the fishing and OSW industries.

The advisory panel or panels would advise on:

- Design of the overall claims process;
- Eligibility criteria;
- Claims processes and procedures;
- Implementation and execution;
- Appeals process;
- Periodic review of the Administrator's performance and activities; and
- Dispute resolution or confirmation of claims.

The advisory panel or panels would need to consider how to solicit ideas and concerns from the full range of gear type users, fisheries, and regions potentially affected by OSW development and use the expertise of the following entities in an inclusive manner as they carry out their responsibilities:

- Organized commercial fishing associations;
- Organized for-hire recreational fishing associations;
- The range of gear types, fisheries, and regions potentially affected by OSW development;
- State marine fishing agencies;

- Regional bodies such as the Fisheries Management Councils and Atlantic States Marine Fishery Commission;
- Federal agencies including NOAA Fisheries and BOEM;
- Research institutions; and
- Subject matter experts in oceanography, fisheries science, socioeconomics, and other disciplines pertinent to the Regional Fund Administrator's responsibilities

Because fisheries are highly regional and often unique in nature, such advisory boards will have to consider sub-regional differences and needs. The States also discussed that subregional (Gulf of Maine, southern New England, New York Bight, Mid-Atlantic, Carolina Long Bays, etc.) expertise and nested approaches could be part of the Regional Fund Administrator's advisory structure.

References

- American Wind Energy Association (AWEA). 2020. *U.S. OSW Power Economic Impact Assessment, Prepared by the American Wind Energy Association, March 2020*. Available online at: https://supportoffshorewind.org/wp-content/uploads/sites/6/2020/03/AWEA_Offshore-Wind-Economic-ImpactsV3.pdf. Accessed October 27, 2022.
- BOEM (Bureau of Ocean Energy Management). N.d. *Atlantic OSW Lease Area*. Retrieved from: <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM-NY-BiH-DCS-Renew-Energy-Lease-Area.pdf>.
- BOEM. 2021a. *Record of Decision Vineyard Wind 1 OSW Energy Project Construction and Operations Plan, 92 pp.* Available online at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Final-Record-of-Decision-Vineyard-Wind-1.pdf>. Accessed October 28, 2022.
- BOEM. 2021b. Request for Information Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from OSW Energy Development. Available online at: <https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-Fisheries-Guidance.pdf>. Accessed October 27, 2022.
- BOEM. 2022. Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585. Available online at: https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT-Fisheries-Mitigation-Guidance-08232022_0.pdf. Accessed October 28, 2022.
- BOEM. 2022. Overview Gulf of Maine Request for Interest (RFI) Company Nominations. Retrieved from [Gulf of Maine | Bureau of Ocean Energy Management \(boem.gov\)](https://www.boem.gov/sites/default/files/documents/renewable-energy/Gulf-of-Maine-Request-for-Interest-Company-Nominations-Overview.pdf).
- Danish Energy Agency (DEA). 2018. *OSW and Fisheries in Denmark*. Available online at: <https://ens.dk/sites/ens.dk/files/Globalcooperation/offshore-wind-and-fisheries-in-dk.pdf>. Accessed October 28, 2022.
- FLOWW. 2015. *FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Disruption Settlements and Community Funds*. Available online at: <https://www.thecornwall.co.uk/media/3776/floww-best-practice-guidance-disruption-settlements-and-community-funds.pdf>. Accessed October 28, 2022.
- Joint Governors Letter. 2021. Available online at: <https://www.nyflwg.com/wp-content/uploads/2021/11/Fishing-Compensation-Letter-to-BOEM.pdf>. Accessed October 27, 2022.
- Massachusetts Executive Office of Energy and Environmental Affairs, Office of Coastal Zone Management (CZM). May 2020. *Memorandum of Agreement, Vineyard Wind 1 Fisheries Mitigation*. Available online at: <https://www.mass.gov/info-details/massachusetts-division-of-maine-fisheries-offshore-wind#external-resources>. Accessed October 28, 2022.

Appendix 10: Regional Fiduciary Administrator Scoping Doc

- NOAA Fisheries. 2022a. *Fisheries Economics of the United States 2019*. Available online at: https://media.fisheries.noaa.gov/2022-07/FEUS-2019-final-v3_0.pdf. Accessed November 10, 2022.
- NOAA Fisheries. 2022b. "Fisheries Economic of the United States - Explore the Data." Available online at: <https://www.fisheries.noaa.gov/data-tools/fisheries-economics-united-states>. Accessed November 10, 2022.
- NOAA Fisheries. 2022c. "Landings Data Query". Available online at: <https://foss.nmfs.noaa.gov/apex/foss/f?p=215:11:12216369545845::NO>. Accessed October 27, 2022.
- Regional State Letter to BOEM. 2021. Available online at: <https://www.nvfwg.com/regional-state-letter-to-boem-regarding-fisheries-conservation/>. Accessed October 27, 2022.
- Rhode Island Coastal Resources Management Council (CRMC), July 2021, *CRMC Federal Consistency review of the South Fork Wind project*. Available online at: <http://www.crmc.ri.gov/windenergy/windouthfork.html>. Accessed October 28, 2022.
- WindEurope. 2022. *OSW Energy 2022-Mid Year Statistics. August 2022*. Available online at: <https://windeurope.org/intelligence-platform/product/offshore-wind-energy-2022-mid-year-statistics/>. Accessed October 27, 2022.

For Immediate Release: December 12, 2022

Nine Atlantic Coast States Release Request for Information to Inform Establishment of a Regional Fisheries Compensatory Mitigation Fund Administrator

Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and Virginia (the States) have been advancing an initiative to establish a regional fund administrator for fisheries compensatory mitigation which would provide financial compensation for economic loss from offshore wind development off the Atlantic Coast. Recognizing the importance of sustaining a vibrant fishing community that can coexist and thrive alongside offshore wind energy development, the States have released a Request for Information (RFI) aimed at receiving input from impacted members of the fishing industry, offshore wind developers, corporate and financial management entities, as well as interested members of the public, to inform efforts to establish a regional fisheries compensatory mitigation fund administrator.

This effort supports the implementation of the Bureau of Ocean Energy Management's (BOEM) [Draft Fisheries Mitigation Framework](#) in a fair, equitable, and transparent manner for impacted Atlantic Coast fishing industry members and offshore wind developers. The States' RFI seeks feedback on concepts and proposals on how to best establish a single regional administrator for the Atlantic Coast to collect, hold, determine eligibility, and dispense funds for economic losses to affected fishing industry members. The States are focused on ensuring that a regional administrator also engages appropriately with both the fishing and offshore wind industries. To that end, the States developed the RFI and accompanying Scoping Document with input from representatives of the fishing and offshore wind industries, including support from the Responsible Offshore Development Alliance (RODA) and other fishing industry leaders, to help engage with and understand concerns from the broader industry.

Responses to the RFI are due by 5pm Eastern Standard Time on January 31, 2023. Visit the following website for additional information and to download the Scoping Document and RFI: <https://offshorewindpower.org/fisheries-mitigation-project>

Kris Ohleth, Director of the Special Initiative on Offshore Wind, can provide contact information for each of the States' representatives for this issue. kris@offshorewindpower.org

Background

Since June 2021, the States have worked closely together, including issuing [a letter to the Biden Administration](#) expressing that the expansion of the offshore wind industry creates an unprecedented opportunity for the United States. The letter emphasized the shared federal-state responsibility to address critical areas of port infrastructure, permitting, research and development, fisheries support, and natural resource restoration and mitigation. Carrying forward this partnership, in November 2021, the States sent [a letter to BOEM](#) to encourage the development of a standardized fisheries compensatory mitigation framework. In June 2022, BOEM issued the draft framework for mitigating impacts to commercial and recreational fisheries.

The Special Initiative on Offshore Wind (SLOW) and the Consensus Building Institute (CBI) have been convening and facilitating the States' discussions on a regional approach to fisheries compensatory mitigation. SLOW and CBI will continue to support this critically important effort as consultation with the fishing and offshore wind development industries continues.



Commonwealth of Virginia
Marine Resources Commission
For Immediate Release: December 13, 2022



Responsible Offshore Development Alliance

Virginia Partners with Fishing Industry to Inform Offshore Wind Compensation Fund Effort

Richmond, VA. Tuesday, December 13, 2022 – Today, nine Atlantic Coast States released a request for information (RFI) to receive feedback on a regional administrator for fisheries compensatory mitigation from offshore wind development. [[Available here](#)]

The Commonwealth of Virginia acknowledges the great value of the commercial fishing industry and the need for their engagement in potential offshore wind development as early as possible. The Virginia Marine Resources Commission (VMRC) is responsible for the management of Virginia's marine and aquatic resources, including the responsibility to ensure our historic seafood industry is maintained as economically healthy and sustainable. VMRC has been working toward encouraging early avoidance of fisheries resources with the goal of a coexisting relationship between renewable energy development and commercial fishing.

Through the Virginia Coastal Zone Management Program, the Commonwealth has supported the Responsible Offshore Development Alliance (RODA) to coordinate a critical group of commercial fisheries advisors to provide initial feedback on the States' scoping effort and RFI. RODA is a coalition of fishery-dependent companies, associations and community members committed to improving the compatibility of new offshore development with their businesses. RODA is uniquely positioned to facilitate the involvement from the commercial fishing industries in the New England, Mid Atlantic, Gulf of Maine and Pacific regions as they relate to offshore wind development.

"As providers of sustainable seafood, our members are deeply invested in protecting U.S. fisheries and are grateful to the Commonwealth of Virginia for the opportunity to participate in initial discussions of this state-led effort. It is essential that impacted parties have a central role in designing and administering strategies that will most effectively mitigate impacts of offshore wind, and we look forward to continuing to refine an equitable and appropriate compensation strategy," said Lane Johnston, Programs Manager at RODA.

"The commercial fishing community are stewards of their resources and we as Virginians have a responsibility to ensure their equities are considered as we embrace an all-of-the-above energy plan that includes offshore wind. Our goal to ensure the Commonwealth has a reliable, affordable, clean and growing supply of power can be possible while protecting the jobs of our important fishing industry," said Acting Secretary of Natural and Historic Resources Travis Voyles.

It is paramount that the fishing industry, as recipients of any mitigation and compensation strategies, are involved in designing a fair and appropriate regional compensation fund and administration process. The Commonwealth is committed to ensuring the fishing industry is an acknowledged equity throughout the development of offshore wind and through the design process of the RFI. The Commonwealth looks forward to hearing from all industry voices through the RFI comment period.

Virginia Contacts:

Todd Janeski, VA Ocean Fisheries Coordinator (tjaneski@vcu.edu)

Rachael Peabody, Director of Policy, VA Marine Resources Commission (rachael.peabody@mrc.virginia.gov)

RODA Contact:

Lane Johnston, Programs Manager (lane@rodafisheries.org)

Appendix 12: 230301_FAs Regional Fund meetings

Date	Who	What	FA	Fisheries Advisors
9/21/22	FSF & RODA	Reach out to prospective FA	FSF	Fisheries Survival Fund
9/29/22	NSC & RODA	Reach out to prospective FA	NSC	Northeast Seafood Coalition
10/5/22	GSSA & RODA	Reach out to prospective FA	GSSA	Garden State Seafood Association
10/5/22	The Town Dock & F	Reach out to prospective FA	MLA	Massachusetts Lobstermen's Association
10/5/22	RODA & fishermen	Reach out to external fisheries leaders		
10/7/22	MLA & RODA	Reach out to prospective FA		
10/7/22	Maine Lobstermen's	Reach out to prospective FA		
10/14/22	FAs	Introduction to Regional Compensation fund with fishign advisors		
10/18/22	FAs & States	States' introduction of fund to fishing advisors		
10/27/22	VA, CBI & RODA	review inital steps with FAs		
11/9/22	Gloucester Fishing	Understanding other fishery-lef fiduciary programs		
11/10/23	RI Fishermen's Vial	Understanding other fishery-lef fiduciary programs		
11/10/23	Oregon Fishermen'	Understanding other fishery-lef fiduciary programs		
11/15/22	FAs	Fund Administrator Fisheries Advisors Brief on RFIO		
11/16/22	RODA & fishermen	Reach out to external fisheries leaders		
11/18/22	FAs	internal fisheries advisors discussion on draft RFI - develop edits		
11/21/22	FAs & 4 States	Discussion of RFI		
1/4/23	RODA & CBI	Check in re. RFI review		
1/9/23	RODA membership	RODA hosted webinar to recieve feedback on RFI		
1/11/23	RODA membership	RODA hosted webinar to recieve feedback on RFI		
1/17/23	FAs	Reivew final comment on RFI		
1/19/23	RODA & CBI	check in re. RFI review		
1/24/23	Lane & fishermen	Reach out to external fisheries leaders		
1/31/23	FAs & States	Review RFI comments from FAs		
2/1/23	RODA & CBI	check in re. next steps		
2/10/23	VA, CBI & RODA	Prep for Pocantico		
2/14/23	VA & RODA	Prep for Pocantico		
2/14-2/15	FAs	Attend Pocantico meeting		
2/15/23	VA & RODA	Reflections on Pocantico		
2/24/23	RODA & CBI	Reflections on Pocantico and next steps		
2/27/23	FSF & RODA	Reflections on Pocantico		
3/1/23	FAs	States anticipated next steps and FAs involvement		

Regional fisheries compensation from offshore wind development (OSW)

While the intention behind the development of this RFI and a regional administrator for fishing compensation is well founded, the RFI attempts to solve certain aspects that are not, and should not be, within the scope of a regional fund as presented.

The fishing advisors have consistently and strongly asked the states to clarify how a regional fund will be funded, as that will inform what the fund can and cannot do. The States have relegated the inputs to the fund to the BOEM Guidance Document which is still in draft. Assuming BOEM's Guidance¹ correctly quantifies the measurable losses and costs associated with impacts from OSW, compensation amounts can only represent these measurable losses. BOEM is constrained by reviewing and quantifying impacts so hypothetical "transitional costs" will be outside the scope of their NEPA analyses.

The States have power in this process to help make their fishermen whole. BOEM cannot force developers to pay compensation, nor force them to pay into a regional fund. But BOEM responds to the needs of the States because state PPAs are used as justification for the Purpose and need of the COP review under NEPA.

This RFI is presented to be directly responsive to the BOEM Guidance and therefore can only be set-up for individual compensation payments. Should the States want to set-up a fund to address resiliency and transitional funding, they need to develop a complementary, continual fund stream to do so.

I. Purpose is too broad

For clarity and specificity, the purpose of the Administrator should be for paying claims for compensatory mitigation for losses and costs to individual fishing industry entities for as long as those losses and costs are borne by that entity. Given this specific purpose, the States must address the fundamental problem that the amount of money coming in from BOEM's process - especially if their allowed period of calculating loss is limited to 5 years post construction and the proposed multiplier for up and downstream shoreside income loss remains incredibly undervalued as the draft Guidance proposes - will be woefully insufficient to cover costs and losses that will be borne by at least some fisheries beyond 5 years.

Recommended RFI purpose: The States propose that the intended purpose of compensation would be to compensate for losses and increased costs incurred by individual fishing industry entities from impacts from offshore wind development, as determined by NEPA environmental impact analyses, for the duration said losses and increased costs are borne by the industry.

II. States must identify complementary funding source for fisheries resiliency

The concern remains that additional monies must be invested in the fishing industry to aid the industry's resilience and transition towards coexistence. These monies are by nature separate from monies identified by BOEM for quantification of losses from project (or multiple projects')

¹ "Guidance" is not regulation meaning the developers do not need to adopt the mitigation and compensation recommendations as prescribed by the Guidance.

impacts. Resilience funds could be used for investments in supporting infrastructure, gear and vessel innovation (or trials of such), equipment change, offsetting the devaluation of businesses, vessels, processors, permits, cooperative research, resource enhancement and scholarships and internships.

If States commit to requiring resiliency funds, a regional fund (as proposed by this RFI) could be expanded to hold such monies. But this would need additional development and time. The purpose of this complementary “fund” could be:

The States propose that the intended purpose of resiliency compensation would be to support the fishing industry in the transition to coexistence with the long-term presence of offshore wind projects.

Principles of State supported resiliency funds:

1. Monies must be tied to a continual funding source.
2. States need to act as a collective: Monies for resilience and a transition to coexistence will only work if every state supports such an effort.
3. Not all States have the same mechanisms to implement a funding stream, but:
 - a. If this is going to be a regional thing, the States need to collectively decide how they are going to get there
 - b. If not, each State needs to work within their own legislation to identify how they will get there.

III. Insufficiencies of BOEM's Guidance

The RFI cites the BOEM Fisheries Mitigation Guidance as for “how overall impacts are valued in the NEPA mitigation framework and what monies may be required in the final COP decision documents” and the State effort is to address how claims for those monies are paid out. Based on the draft Guidance, we are extremely concerned that the final Guidance will not sufficiently value impacts to fisheries from projects.

BOEM has not responded to the public comments on the Guidance, nor have we any indication that they will address the significant issues there. These are relevant to how an Administrator will pay out funds and need to be known prior to setting up such an entity. **CAUTION: This all hinges on BOEM getting it right and we do not have strong faith in this given the draft Guidance...**

In particular, there are a number of shortcomings that need to be pointed out in regards to this RFI.

1. Cumulative impacts not addressed

The whole point of going to regional compensation is because there are REGIONAL CUMULATIVE impacts. The Administrator should be able to utilize the regional/unified integrated framework as a way to allow for the integration of cumulative losses into claims.

2. Allotted time period

The RFI refers to compensation for losses and increased costs incurred for an "allotted time period". If this is in regards to the coverage of revenue exposure over 5 years post construction (Y1=100%, Y2=80%, Y3=70%, Y4=60%, Y5=50%) this is woefully insufficient and not based on economic or scientific reasoning, at least not identified in the Guidance.

Again, this will be relevant information to know when designing a Regional Administrator and a claims process.

3. Shoreside and multiplier incredibly undervalued

1-2% shoreside multiplier is completely ridiculous and frankly insulting. Clearly this needs to be addressed if compensation is going to protect the shoreside industry. Here is an example for one species, SCMFIS Longfin Squid multiplier report: https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf

4. Assumption all fisheries will be able to transition and assumption of coexistence

Similar to the allotted time period problem above, the Guidance and RFI assume that all fisheries will be able to coexist at some future time with OSW. Particularly as the step-down post construction amounts indicate, it is assumed that fisheries will be able to operate within a wind array which:

- a. May simply never happen for certain gear and vessels
- b. Will definitely take longer than 5 years should fleets need to completely overhaul their vessels, gear, MANAGEMENT plans and other associated business costs.

This really should be for the life of a OSW project, or there needs to be other continuing revenue streams aimed at the transitional part of adaptation.

In the RFI, types of payments available for vessels that are incompatible with OSW altogether need to be identified.

IV. Lost Revenue/Increased Costs Table

This is good and includes a lot of the financial impacts OSW will have on fishing but BOEM isn't quantify all these costs. If the money going into this fund is only going to be money that BOEM analyzes/approves in its NEPA review of the COP, and if BOEM does not evaluate all of these things and put a dollar amount on them, then the fund will be set up to pay for impacts that it doesn't have money for. This will create one of two things: 1. A run on the bank as people realize this and the fund will get depleted quickly, or 2. The fund Administrator will have to put limits on how much can go to a single payout.

We have to start talking about assessing/quantifying buy-outs for businesses that can't adapt (on the water or shoreside that are no longer viable).

V. Gear Loss Claims

Gear loss policies need to be simple and consistent throughout the coast.

We have not had a chance to think about if or how this should be integrated with this Fund.

VI. Burden of Proof

The burden of proof remains on the fishing industry. This will be impossible to do given multiple factors, including covid, market demand, inflation, climate change AND offshore wind development. Rather, there should be a clear cut determination of what funds are going to cover (and not cover) before all of the administration and management of money is decided.

(The burden of proof will be even more difficult for the recreational sector.)

VII. Eligibility

“Shoreside businesses both up and downstream” and loss of income due to “unrecovered economic activity” is too broad. This could include restaurants and banks and other entities in fishing communities that have a customer base that is the commercial fishing industry.

“Shore-side fisheries-related businesses” would be more accurate and match the BOEM Guidance attempts to quantify.

VIII. Inclusion of recreational compensation

Recreational/for-hire should only be included in the fund if they have an independent source of funding. Trying to squeeze recreational compensation out of the BOEM five-year sliding scale set-aside commercial fishing vessel lost revenue model doesn't work.

First, BOEM does not quantify recreational losses and developers/BOEM often say that recreational fishing will benefit from OSW development. Second, demonstrating losses and the claims process will be nearly impossible for recreational fishermen. Should recreational compensation be considered, it should be under resilience/transition to coexistence funds.

This Regional Administrator could possibly be used to administer funds if funds were kept in separate accounts and the recreational sector was consulted for development of a framework to dispense such funds. (We do not have the expertise to advise on eligibility for the recreational sector.)

IX. Administrative Fees

The limited dollars available for compensation should not go to “associated help needed from state staff or regional commission staff.”

X. Governance

As the harmed party, the fishing industry should be responsible for all decisions relating to the fund. The States should not have universal or even majority control over the fund.

Preferred alternative: Fishing industry-only board

- 3 processors
- 3 commercial captains
- 3 at-large (to fill missing geographic, gear type, vessel size, sector representation)

Alternative 2: Blended board

- 3-4 fishing industry representatives
- 3 state representatives

- 1 independent

*Developers should have no decision-making seat on the Governing Board. Fishermen do not sit on offshore wind project boards, why would a developer sit on a fishing compensation board?

XI. Appointment to Governing Board

The RFI fails to identify how members will be appointed to the Governing Board. Because we strongly believe that the Board must be wholly or partially composed of fishing industry representatives, it is necessary to define who will have the authority to appoint Board members.

XII. Money management and investments

There is nothing in the RFI about money management yet that is a huge portion of the role for the Administrator. Boundaries around and/or decision-making processes about money management should be developed or solicited for input.

XIII. Preamble does not match what the fund can do (as written)

The first 7.5 pages sets up the background on OSW and fisheries, leading the reader to believe that the purpose of the fund is indeed to transition to coexistence. As presented in the RFI, the fund is simply not set up to do this. Therefore we think this should be significantly pared down to the following paragraphs, unless the States include complementary fundings stream for fisheries resilience:

Mitigation negotiations to this point have been state-led by necessity and variable due to different developers with different approaches, limited experience and established practices in this new realm, and a lack of a regional mitigation framework for collection, administration, and disbursement of identified compensation funds. The creation of separate funds and administrators means fishermen may need to seek compensation from multiple entities under different rules, creating complexity, inefficiency, and potential inequities for fishermen depending on which home or landing port they frequent.

...

With the release of the Draft Fisheries Mitigation Framework, BOEM established that they can require the identification of funds for fisheries compensation under OCSLA if there is a need demonstrated through the National Environmental Policy Act (NEPA) process. However, both BOEM and NOAA have stated that they lack the regulatory authority to establish or administer a fund that would hold and manage the compensation funds. Recognizing this gap in authority, the States are collaborating to advance the establishment of a fund administrator that is fair, equitable, and transparent for commercial and recreational fishermen and developers.

XIV. Timeline for feedback:

- We would greatly benefit from another week to provide more concrete recommendations
- The RFI should be available for public comment for at least 8 weeks.

Justification: At least 5 open federal comment periods on OSW (DEIS, strategy, and guidance documents), 2 fishery council meetings, and holidays.

9 East Coast States - Request for Information for a Compensation Administrator

- [Scoping document](#) - *what the states are proposing*
- [RFI](#) - *specific questions on the scoping doc*
- Submit comments by email to: comments@offshorewindpower.org with the Subject Line: Regional Fund Administrator RFI no later than **5:00 PM EST on February 7th, 2023.**

DETAILED VERSION - Key Points for RODA members consideration:

While the intention behind the development of this RFI and a regional administrator for fishing compensation is well founded, the Scoping Document needs further development with impacted fishing industry participants.

This framework should not set precedent for other regions. Robust engagement with local industries and communities would need to occur to determine if a similar framework would be appropriate elsewhere. There likely will be preferences for varied structures in different regions.

We address the topics raised in the Scoping document and RFI. When responding, we **encourage you to offer a clear and concise statement of your support**, or lack thereof, for the concepts and approach outlined in the documents.

Highlighted = please include your own thoughts, and inform RODA about what we are missing.

Benefits of a Regional Administrator:

A predictable process for compensation claims, administered by one entity could be beneficial:

- No more negotiations with each project developer
- Provides a “one-stop shop”, no matter what state you are from
- Provides equity for compensation payments
- Any eligible entity can make a claim, no one is left behind/left out of the process
- It sets precedence that compensation should be part of a mitigation strategy - **but we do not want compensation to supersede first avoidance, minimization and mitigation.**

High-Level Concerns:

I. Inefficiencies of BOEM’s Mitigation Guidance

- The RFI cites the BOEM Fisheries Mitigation Guidance as the method for funding. We are **extremely concerned** that the final Guidance will insufficiently value impacts/fisheries and use insufficient timeframes for impacts.
- BOEM has not yet responded to the public comments on the Guidance, nor have we any indication that they will address the significant issues there.
- BOEM only quantifies impacts through NEPA. The extent of all losses from offshore wind are not fully accounted for - such as impacts to biological resources, ecological services, and cumulative impacts. We recognize that quantifying some of these are difficult but there is some information available. BOEM Guidance comes up short in the following ways:
 - Inadequate cumulative impacts assessment

- Shoreside economic losses and multipliers¹ are incredibly undervalued
- Anticipated time period for claims (post construction) is too short
- Assumes that all fisheries will be able to transition and assumption of coexistence
- The fund hinges on BOEM getting it “right” and the draft Guidance fell short.
- II. Cumulative impacts not addressed**
 - The whole point of regional compensation/administrator is because there are regional and cumulative impacts that need to be supported. The Administrator should be able to utilize a regional fund to integrate cumulative losses into compensable claims.
- III. Definition/goal of compensation is not consistent between different groups:**
 - Is it to make fishermen and the dependent community whole? Is it to only pay for direct losses from OSW projects? Is it to reduce risk for developers? What funding does/doesn't it include? We recommend stating a clear definition in the Scoping Doc.
- IV. Regulatory authority still lacking**
 - There is no requirement nor legal authority for a developer to use a regional fund. This needs to happen at the federal or state level.
- V. Scoping document/RFI development process**
 - Thank you for consulting fishing advisors (in a limited capacity), including RODA staff.
 - The fishing industry is very diverse and public comment is not the best way for the industry to design a framework.
 - Development of the Scoping Document was state-driven and not inclusive, nor transparent.
- VI. Difference between losses and resiliency funds**
 - The States recognize the need for resiliency funds but remain silent on how funding for that will be acquired. (See VII)
 - These monies are separate from monies identified as losses from a project.
- VII. Commitment from the States to require complimentary resilience funds**
 - The Scoping document clearly recognizes the need for resiliency funds, separate and distinct from funding for losses.
 - A mechanism to require resiliency funds has not been identified but the fishing industry is willing to work with the States to identify how to achieve this.
 - Resiliency funds should be funded continually.
 - Consideration must be given of how to incorporate approved projects into the process.

Reflections on the Scoping Document:

¹ Examples of multiplier studies: 1) Murray, T.J. 2020. Economic Impacts of Reduced Uncertainty Associated with Fishery Management Actions with Summer Flounder, Report to the Science Center for Marine Fisheries, June 2020, available at https://scemfis.org/wp-content/uploads/2020/06/Econ_Flounder_2020.pdf; 2) Scheld, A.M. 2020. Economic Impacts Associated with the Commercial Fishery for Longfin Squid (*Doryteuthis pealeii*) in the Northeast U.S., Report to Science Center for Marine Fisheries, August, 2020, available at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf.

1. Purpose

Support the intended purpose of a compensation program: to compensate for losses for a period of however long those losses are felt by the industry.

Question from the RFI: What role, if any, should the Regional Fund Administrator play in managing additional transition and resilience funds?

It is pre-emptive to discuss if a Regional Administrator should manage resiliency funds because: a) there is no commitment from the States or BOEM to require (nor have the developers elected to commit) this type of funding; b) extensive consultation with the fishing industry on parameters for resiliency funds needs to occur first. This needs thoughtful development.

2. Anticipated Losses and Costs

- We are concerned that funds held will be inadequate to cover all the revenue losses/costs identified in Table 1 (pg. 12-13).
- Stranded capital and permit valuation needs to be included in Table 1.
- Losses should be calculated at the fishery, state and port levels, and include consideration for previous management restrictions that impacted catch.

Gear Loss Claims

Question in the RFI: Should a separate gear loss claims process also be regionalized under the purview of this administrator? Please provide your rationale for the inclusion or exclusion of such a process to be handled by a Regional Fund Administrator.

We support a standardized, accessible and uncomplicated gear loss claims process. RODA has heard support for both inclusion and exclusion of a gear loss program under a Regional Fund, **please add your own thoughts.**

Inclusion of recreational compensation

The recreational/for-hire should only be included if they have an independent source of funding, separate advisory body and have been thoroughly consulted for development of a framework to dispense such funds (this is outside our expertise).

BOEM does not quantify recreational losses and developers/BOEM often say that recreational fishing will benefit from OSW development. Further, demonstrating losses and the claims process will be nearly impossible for recreational fishermen. Should recreational compensation be considered, it should be under a separate fund earmarked for that sector.

3. Regional Geographic Scope

There are significant benefits from a “one-stop” shop for compensation claims. Consideration could also be given to ‘sub-regional’ funds that adhere to a consistent claims process.

4. A Unified Regional Fund

Same as 3. Regional Geographic Scope, but the fund must be set up to sufficiently pay for impacts. If money is going to run out, one of two things will occur; 1) A run on the bank as people realize this and the fund will get depleted quickly; or 2) The Administrator will have to put limits on how much can go to a single payout.

Consideration must be given to the duration of impacts to different fisheries, some may be impacted only during construction time frames – while others may have long-standing impacts throughout the operational timeframe of the project. A Regional fund must be flexible to account for this.

5. Key Qualities of an Administrator

Good, especially “extensive fishery industry experience, knowledge, and understanding.”

6. Key Tasks of an Administrator

The main task of the Administrator should be “Pay” (Figure 3, p. 15), rather than to design a claims process

Support for Option 1: Design First, Hire Second

There is no “shelf-ready” entity capable of administering regional funds. We strongly urge the States to work with the fishing industry, fisheries economists and scientists to design the entire framework - everything from claims process to governance - rather than potentially hiring an ill-fitting entity.

Money management and investments

There is nothing in the RFI about money management, yet that is likely an important role for the Administrator. Boundaries around and/or decision-making processes about money management should be developed or solicited for input.

7. Technical Considerations

7.1 Eligibility for Compensation

Support for the broader definition of eligibility in the RFI compared to the BOEM Draft Mitigation Guidance. We strongly urge the Governance Board and Fishing Advisory Boards to address this early.

7.2 Burden of Proof

The RFI correctly points out the difficulties associated with demonstrating loss that will befall the fishing industry.

Questions from the RFI: some ideas provided, please add your own thoughts

What additional data sources could be considered to aid in proving economic loss associated with offshore wind development for eligible groups? Possible ideas:

Vessel owners - Logbooks, landing receipts, whatever documentation is required if your business model includes direct-to-consumer sales

Deckhands - very complex but perhaps w-2s, 1099s, anything proving employment.

Dealers - tickets

Processors -

Other dependent community members -

Question from the RFI: What datasets and/or approaches may be appropriate to use when determining eligibility for shoreside industries and others that may not have the same level of documentation as commercial fishing operations? please add your own thoughts

7.3 Administrative Fees

Administrative fees should not be paid out of principal funds to protect the maximum payout to eligible claims.

- Developer(s) should bear the cost of the Administrator
- A portion of earnings which accrue on the escrow account could be used to support Administrative fees, but the amount must be capped. Funds beyond the cap should be for the benefit of the impacted parties.

7.4 Data Verification

Support employing existing fishery data management organizations for the verification process, but they will require financial support for this work which should not be taken from the compensation funds (similar rationale as stated in 7.3 Administrative Fees).

8. Appeals process

Appeals process needs to have strong fishing industry oversight, by the governing or advisory boards.

9. Governance Structure

9.1 Governing Board Membership

Support for a Co-Led Board. Representatives from the fishing industry should be diverse - by region, fishery, gear type(s), and across the harvesting supply chain (e.g. vessel captains, owners, dealers, processors and fisheries-related businesses).

The RFI fails to identify how members will be appointed to the Governing Board.

We reiterate and support the exclusion of developers from decision-making seats on the Governing Board.

9.2 Board relation to the Administrator

There is no existing entity set-up to administer funds with adequate regional fisheries knowledge. Therefore we caution the States from looking for an existing entity.

9.3 Limitations

Should a Regional Administrator be (correctly) set-up and the preferred method for compensation dispensation, the framework must be codified by the feds or States.

Question from the RFI: How might States encourage developers' participation in directing their compensatory mitigation to a regional fund?

States must work to codify this Administration process to protect their fishing industries.

9.4 Advisory Boards

Advisory Boards are good. These should be developed prior to hiring of an Administrative entity to inform the design of the claims process, eligibility, implementation of claims process, appeals process, expectations of the Administrator, dispute resolution process, money management and investment guidance.



Responsible Offshore Development Alliance

Fisheries Compensation Informational Meeting

Background

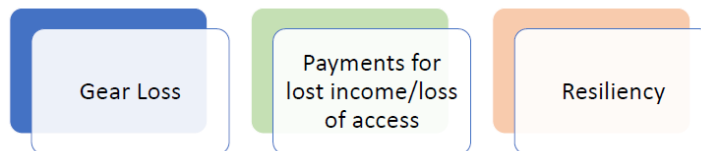
There is no explicit federal requirement to compensate fishing businesses for losses incurred from offshore development.



State of Play

- Compensation discussions and proposals are happening
- Moving fast at the federal, state, and region levels

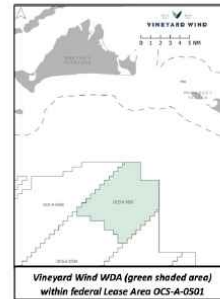
Generally center around:



Existing agreements - Vineyard Wind

- WDA Compensation Program**
- RI Compensation Fund: \$4.2 million for claims
 - Claims of direct impacts or losses
 - Review and approval process established by VW, with input from FAB
 - Paid claims include release of liability for future claims
 - Excess funds rolled over to RI Viability Trust
 - MA Compensation Fund: \$19.2 million for claims
 - Claims of direct or indirect impacts on MA vessels or MA fisheries interests in Project
 - Other States (CT, NJ, NY) Compensation Fund: \$3.3 million for claims

- RI Fishermen’s Future Viability Trust: \$12.5 million
 - improvements to fishing vessels, fishing methods and gear
- MA Fisheries Innovation Funds: \$1.75 million
 - Studies on fisheries resources, gear and vessel innovation, new technology.



Existing agreements – South Fork

- RI Fisheries Compensation Fund: \$4.25 million
 - \$3.3 million for claims
 - \$750,000 for direct impacts/losses from decommissioning
- MA Compensation Fund: \$2.1 million

- RI Coastal Community Fund: \$950,000
 - For the general betterment of coastal communities in RI
- MA Coastal Community Fund: \$200,000
- “Navigational Enhancement and Training Fund” claims: \$300,000



Front burner discussions

- Revolution Wind & Sunrise Wind
 - Presented at the MA FWG
 - Based on revenue exposure analysis conducted by WHOI

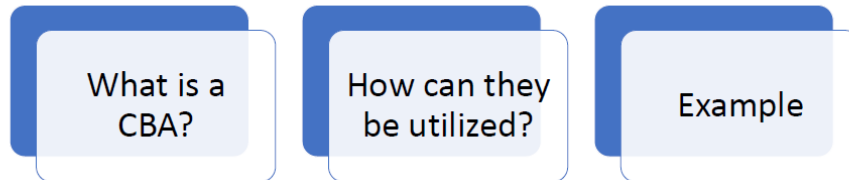
	Revolution	Sunrise
Subtotal MA commercial direct effects potential exposure	\$1, 245,000 value/revenue	\$2,234,000 value/revenue
Total impacts MA commercial with multipliers	\$2,744,000	\$5,252,000

From Jan 23 MA FWG meeting presentation

- Dominion Energy
 - Discussions are beginning with the state to understand losses to active fisheries in that project area



Community Benefit Agreements



Bid Credits and Operating Fees

“The value assigned by BOEM, expressed in monetary terms, to the factors or actions demonstrated, or committed to, by a bidder at a BOEM lease auction during the competitive lease award process.”

Bid Credits

- Part of the bid made during the lease auction
- Developer gets a "discount" off bid, with the promise that they will provide something else - in this case: fisheries compensation.
- Funds would be diverted from the Treasury for fisheries compensation, without requiring legislative action.

Operating Fees

- Each project is required to pay **annual** operating fees to the Treasury - rents, royalties, etc. 30 CFR 585.506
- A portion of operating fees could be put towards fisheries compensation in the form of an operating fee credit
- Could provide a continual source of funding
- Unsure if BOEM could redirect these fees to somewhere else than the Treasury.



Operating Fee/Fee Credit Calculation

based on 30 CFR 585.506

Nameplate Capacity of the wind facility:	1,028 MW
Capacity Factor	0.4 (40%)
Average regional wholesale power price of \$40/megawatt hour (MWh)	\$40
Operating fee rate	0.02

$$\text{Annual Operating Fee} = 1,028 \text{ MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{ Power Price} \times 0.02 = \$2,881,689.60$$

From NY Bight FSN – 1/14/22 @ p 7.

An annual operating fee credit – based on 10% - would amount to roughly \$288,000 per GW/year.





Food for thought: Bid Credits and Operating Fees

- Potentially elegant and simple.
- Simply a diversion of funds from Treasury.
 - Is this fair?
 - Anticipated response: status quo means the cost of compensation will be passed on to the ratepayer.
- Bid credits would be unpredictable and at the whim of the market.
- How do you ensure/incentivize avoidance, minimization and mitigation **before** compensation?
- What percentage - of bid or operating fee- are we talking about?
- What if there is not enough money generated to cover losses?
 - Who decides?
 - With bid credits you don't have an opportunity to go back to the auction.
- What about auctions/sales that have already occurred?
 - Will new auctions be able to cover already leased projects?
- How long are these funds expected to cover?
- Will this account for cumulative impacts?



California Final Sale Notice

- Two CBA bid credits included
 - Lease Area Use Community Benefit Agreement Bid Credit

Offers lessees a 5% bid credit for establishing a Lease Area Use CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee's potential offshore wind development

If each winning bidder took advantage of this – \$37.8M would not be paid to the Treasury

No financial commitment required

- General CBA Bid Credit



Gulf of Mexico
Proposed Sale
Notice

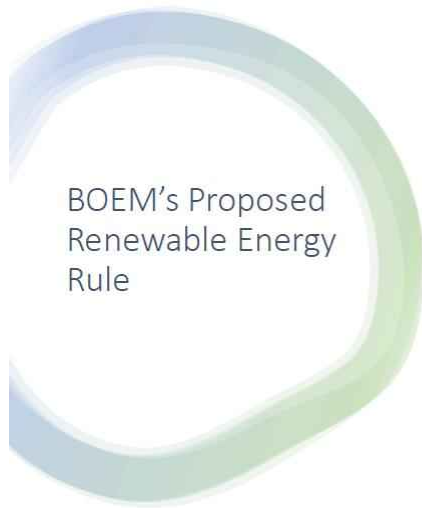
- Fisheries Mitigation and Related Benefits Bidding Credit:

Offers lessees a 10% bid credit for a commitment to establish and contribute to a fisheries compensatory mitigation fund, or to contribute to a similar existing fund, to compensate for potential negative impacts to commercial and for-hire recreational fisheries

Must Address:

- Gear loss or damage; or
- Lost fishing income in GOM wind energy Lease Areas

Financial commitment required



BOEM's Proposed
Renewable Energy
Rule

- Addresses the topic of multiple-factor auctions (and the use of bidding credits)
- Otherwise not very helpful

East Coast States Regional Fund Administrator



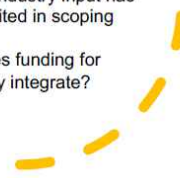
Food for
thought:
Regional Fund
Administrator

Benefits

- One-stop shop
- Predictable and consistent
- Regional approach
 - Not state or project negotiations (costly and long)
 - Helps address the problem of vessels landing in multiple states
- Might capture claimants who would otherwise fall through the cracks of one-off agreements

Concerns:

- BOEM mitigation guidance is insufficient
- Sufficiency of bid credits and operating fees is unknown
- Cumulative impacts are still not going to be quantified and covered
- No requirement for a developer to use a regional fund
- Fishing industry input has been limited in scoping process
- How does funding for resiliency integrate?



Relevant Legislation



Tonko – Offshore Energy Modernization Act

Introduced - December 2022.

Framework would:

1. Establish the Offshore Renewable Energy Compensation Fund in the US Treasury
 - 10% of revenues received from royalties, fees, rents, bonuses and other payments from any lease, easement, or right-of-way
 - Separate area accounts
2. Claims (verified) that can be paid out of the fund:
 - Lost or damaged gear, or
 - Lost income
3. Claimants
4. Provide for Mitigation Grants under certain circumstances
5. Establish an Advisory Group



Markey/Moulton draft bill

Not yet introduced - teased December 2022.

Details unknown

Framework would:

1. Establish a trust fund titled “Fisheries Compensation Fund for Offshore Wind Energy” in the U.S. Treasury Department;
2. Collect funds from offshore wind lease sales through the use of a multifactor auction format;
3. Establish fisheries compensation fund advisory committees within regional NOAA fisheries offices, to be composed of experts and stakeholders;
4. Develop regional criteria for eligible compensation claims, through the consideration of regional variance, peer-reviewed science, fisheries economics and ecological knowledge of the fishing community; and
5. Develop a process by which fishermen may apply for and receive compensation for regionally eligible expenses.



McGuire – SB 286 (California)

Amended on March 22nd. Working its way through the State Senate

Framework would:

1. Establish the Offshore Wind Energy Resiliency Fund
2. Establish the California Offshore Wind Energy Fisheries Working Group
3. Require a statewide strategy related to impacts to ocean fisheries – due 1/1/26
4. Compensatory mitigation framework
 - Payments required by lessees determined by the working group; but must include:
 - 10% of rents charged to the lessee to resiliency
 - Compensation for personal property losses cause in OSW projects
 - Lost economic activity due to reduced fishing grounds
 - Monitoring
 - Financial assistance to coastal cities and counties
 - Financial assistance to tribal communities
 - Support for workforce training/retraining
 - States costs
 - No payments – no SLC lease



Thank you!

- Happy to take any questions or address any concerns.

- If you have feedback or potential topics for a future meeting on fisheries compensation, please email Lane (Lane@rodafisheries.org) and/or Mike (Mike@rodafisheries.org).

