

THE RESPONSIBLE OFFSHORE DEVELOPMENT ALLIANCE

IMPACT FEES FOR COMMERCIAL FISHING FROM OFFSHORE WIND DEVELOPMENT: CONSIDERATIONS FOR A NATIONAL FRAMEWORK

DECEMBER 2021

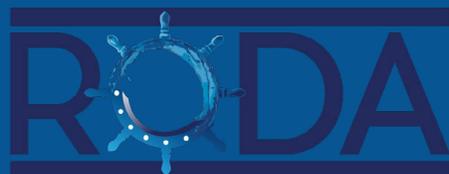




TABLE OF CONTENTS

PAGE	3	INTRODUCTION
	3	Background
	3	Purpose of Report
	4	Methods
	5	DEFINING THE STEPWISE APPROACH FOR REDUCING IMPACTS
	5	Avoidance
	5	Minimization
	6	Mitigation
	6	Impact Fees
	7	RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT
	7	Principles
	8	Authorization
	9	Administration
	9	Determination Process
	10	Calculation and Valuation Methodologies
	11	Qualifying Expenditures
	11	Eligibility
	12	CONSIDERATIONS FOR BEST PRACTICES
	12	Best Practices
	12	Practices to Avoid
	13	SUPPLEMENTAL INFORMATION
	13	Additional Resources
	13	Appendix A
	14	Appendix B
	20	Appendix C

Photo provided by Long Island Commercial Fishing Association.

BACKGROUND

United States fishermen, and those in industries dependent on fishing, strongly value continuity of their businesses and ability to produce sustainable, low-carbon protein. There is deep concern that the seafood industry and fishing communities will be enormously disrupted by the myriad of unknown impacts, and unknown scales of impacts, from offshore wind energy (OSW) development. In defining mitigation and compensation strategies to protect against and offset those impacts, the communities' sentiment can best be summed up by the following quote from a RODA member: "impact fees will never make the industry whole as much as continued fishing would."

RODA worked with a large cross section of fishing industry members to develop the following guidelines, best practices and factors for consideration regarding impact fees for the seafood industry from OSW. The methodology and process are described below.

These guiding principles may be informative if short term solutions are developed. However, long term remedies are required. Effective strategies to assess and distribute impact fees require a commitment to conduct full scientific and economic analyses and further develop these recommendations into a framework with the direct, substantial, and ongoing participation of fishermen and processors over the coming years.

Per the National Environmental Policy Act (NEPA), OSW projects must follow a stepwise path to reducing fisheries impacts, in this order:¹

1. Avoid the impact altogether by not taking a certain action or parts of an action
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action
5. Compensate for the impact by replacing or providing substitute resources or environments

This report will primarily focus on **impact fees** assessed on the OSW industry to compensate for losses to the fishing industry and communities from OSW development—i.e., the final "step" of impact reduction--after providing definitions associated with the preceding "steps."

PURPOSE OF REPORT

Providing guiding principles and a framework for impact fees is time-sensitive. As of fall 2021:

- Twenty-six OSW projects are already in various levels of pre-construction planning on the east coast;
- Two of these projects - Vineyard Wind and South Fork - already have compensation agreements in place in certain states;
- Additional Call Areas and leases are imminently planned for the New York Bight and Mid-Atlantic;
- The West Coast, Gulf of Maine, Gulf of Mexico, South Carolina, and Hawaii all have "Study" or Call Areas slated for commercial OSW development;
- States and BOEM have indicated that they will move forward quickly with the development of a framework for addressing impact fees; and
- The fishing industry, and fishing communities, maintain that they have been excluded from meaningful participation in these activities.²

¹ 40 CFR § 1508.20

² RODA and other fishing industry groups have submitted dozens of comment letters, available upon request, to federal and state agencies repeatedly asking for reasonable mitigation measures to protect the fishing industry.

INTRODUCTION

Currently there is no consistent agreed upon roadmap as to how impact fees will be authorized, valued, or allocated for OSW projects. A process must be implemented to ensure equality and predictability to both those who will be impacted (fishing industries) and those who are investing in new development (OSW developers).

It is paramount that fishermen, processors, fishing businesses, and fishing organizations³ be actively involved, from the beginning and throughout, in all efforts to design impact fee frameworks. This will improve buy-in from the seafood industry, ensure fair valuation and allocation of impact fees, and empower fishermen and processors in a process that has to date marginalized the great majority of those who will be impacted.

This report is intended to inform these efforts and establish an equitable process to alleviate losses. Identifying consensus positions among fishing community members is extremely time-consuming and requires their close involvement over the duration of a project. Due to anticipated federal and state timelines that do not accommodate the ability to do this effectively, RODA members have proactively offered principles upon which to adaptively build as OSW develops in U.S. regions.

METHODS

As a national organization of fishermen, processors, fishing businesses and fishing associations reliant on the sustainable harvest of seafood, RODA reached out to fishing industry leaders and their networks to solicit their feedback and knowledge on what is needed for impact fees for commercial fishing from OSW development.

RODA distributed a survey (Appendix A) and background information (Appendices B & C) to members and invited responses from any person affiliated with the commercial fishing industry. Following the collection of responses, RODA held seven webinars to gather additional feedback and clarification from survey results. Input provided through survey responses and webinars comprised:

- 65 individual survey responses submitted on behalf of thousands of associations, businesses, employees, family and community members, plus additional attendance on the webinars
- Industry members from California, Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Virginia and Washington participated
- Federal and state fisheries including Atlantic sea scallop, Atlantic surfclam, butterfish, black sea bass, Dungeness crab, fluke, hagfish, herring, horseshoe crab, Jonah crab, American lobster, mackerel, menhaden, monkfish, Pacific albacore, Northeast multispecies, ocean quahog, Pacific bait (anchovy), Pacific groundfish, sablefish, salmon, sardine, skate, spot prawn, squid (spp.), shrimp (spp.), whelk, whiting, and more are represented
- Survey participants operate both fixed and mobile gear, and work in the shoreside processing sector. Some recreational fishermen also submitted responses.

This report is intended to inform these efforts and establish an equitable process to alleviate losses. Identifying consensus positions among fishing community members is extremely time-consuming and requires their close involvement over the duration of a project. Due to anticipated federal and state timelines that do not accommodate the ability to do this effectively, RODA members have proactively offered principles upon which to adaptively build as OSW develops in U.S. regions.



Photo provided by Mike Conroy.

³ For the purposes of this report, the terms “fishermen,” “seafood industry,” and “fishing industry” are used interchangeably and include all sectors dependent on the commercial harvest of seafood.

DEFINING THE STEPWISE APPROACH FOR REDUCING IMPACTS

With OSW rapidly developing in the U.S., strategies to address impacts to fisheries and associated industries have been absent or fragmented to date.⁴ Comprehensive plans are needed for non-monetary mitigation and sufficient financial compensation.

To define the components of impact reduction that should ideally occur before a standard assessment of impact fees, seafood industry members provided the following principles to define the actions: avoidance, minimization, and mitigation.⁵

AVOIDANCE

Avoidance is siting OSW development in areas that are not fishing grounds. In general, this is defined as areas that are widely agreed will have no effect on commercial fishing operations or opportunities. For some regions, fishermen indicated this would mean no installations within 30 miles from shore or other boundaries associated with distance or water depth. In other regions, where fisheries range widely across multiple states and from nearshore to beyond the continental slope, identifying suitable OSW development areas will be complex and require careful consultation with affected fishery participants. Respondents also identified prioritizing the use of renewable energy sources other than OSW to achieve emissions and climate goals as an appropriate action to avoid impacts on long-standing, sustainable fisheries that provide significant benefits to the nation as a renewable source of healthy food, irreplaceable cultural heritage, and economic productivity.

MINIMIZATION

Minimization includes limiting the amount of OSW development, siting areas on grounds least fished and imposing as few restrictions (legal or de facto) to fisheries operations as possible. This also includes minimizing changes that happen from development, such as consolidating the amount of cables, incorporating transit lanes, working with fisheries participants, managers and scientists to minimize economic and environmental impacts, and prioritizing and leveraging technological advancements. For some industry members, small areas of tightly packed turbines with large (e.g. 10 miles) wide spacing between areas would be considered minimization. For others larger spacing (greater than 2 miles between turbines) would minimize impacts to operations. There is no “one-size-fits-all” when evaluating impacts to existing fisheries and associated industries, which emphasizes the critical need for meaningful engagement with fishery participants at all stages.

Decision makers should evaluate the following during site selection to minimize impacts:

- Direct/indirect loss of historically important fishing grounds
- Direct/indirect loss of predicted important future fishing grounds including projections related to changing ocean conditions
- Induced risk to safety at sea
- Direct/indirect loss of harbor space and infrastructure serving the seafood industry
- Potential for interactions with fishing gear
- Direct/indirect loss of dependent businesses/communities (such as processors, restaurants, and tourism)
- Impacts to long-running datasets which inform stock assessments or other aspects of the fisheries management process(es)
- Impacts to special management areas such as habitat closures, spawning closures, and other restricted areas
- Adverse impacts to Essential Fish Habitat (EFH)
- Adverse impacts to fish stocks, fish stock migratory patterns, and fish distribution
- Adverse impacts to migratory patterns and critical habitat of Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) protected species that interact with fisheries

This list is not exhaustive.

⁴ See Appendix B for summary of existing and potential fisheries compensatory mitigation frameworks for OSW development.

⁵ This report focuses primarily on impact fees but presents here preliminary principles for consideration for all phases of mitigation as received through survey responses. These should be further developed collaboratively with the fishing industry through supplemental efforts.

DEFINING THE STEPWISE APPROACH FOR REDUCING IMPACTS

MITIGATION

Mitigation refers to siting and project design principles specifically adopted to reduce impacts to fishing. It is not satisfied through compliance with standard mandatory health and safety regulations, although these are important. Monitoring is not mitigation unless it leads to actionable changes to maintain fishing effort and supporting industries. While the fishing industry strongly supported additional measures to ensure at sea safety, mitigation must also fully consider and account for the potential displacement and/or disruption of fisheries. Mitigation is furthermore not synonymous with compensation. These are actions that could be taken by OSW developers or federal or state decision makers.

Mitigation may include:

- Authentic consultation during the development of design, environmental review, and safety plans in all project phases
- Safety management system including transit corridors to, around, and through projects
- Technological improvements such as radar upgrades and cellular boosters
- Standardized, neutrally arbitrated processes for gear loss claims that fully replace lost gear and fishing time
- Project layouts, including turbine and cable placement, reflecting existing fishing practices unique to local or regional ecosystems based on early, thorough consultation
- Adaptive project design based on results of fish stock surveys and biological assessments, which must collect sufficient baseline data, persist throughout project life, and comply with recommendations of NMFS and other relevant fisheries managers
- Substantial bonds that would fully cover unforeseen impacts
- Co-development of plans with regional fishermen for materials relocation and removal during all project phases
- Improvements to port infrastructure that demonstrably benefit the seafood industry
- Fishery-specific actions that could offset effects of access loss, such as stock enhancement programs, management adaptations, or experimental fishing permits
- Right of first offer and reasonable acquisition of certifications or training for supply of available personnel and equipment to provide offshore services, when possible

This list is not exhaustive.

IMPACT FEES

Impact fees are financial reparations for losses and risk of loss to fishing businesses and fishing-supported communities from OSW development. They should be used to make fishery participants and associated industries economically whole for impacts, that despite best efforts, truly cannot be avoided or mitigated over the course of the project (+/- 30 years). Processors dependent on those fishermen will likewise be affected. 'Impacts' include both direct and indirect impacts, as well as those associated with increased risk to fishing and the environment induced by OSW development. Financial reparations for fishing business losses should not be classified as "mitigation," but rather supplement efforts to fully reduce impacts as described above.



Photo provided by Hooked Up Seafood.

RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT

PRINCIPLES

Survey responses demonstrated broad agreement on the following guiding principles for development of an impact fees framework.

- **Compensation frameworks and determination policies must be transparent, holistic, and well-structured.**⁶ Because much of the seafood industry is regional in nature, impact fees must be coordinated and consistent amongst projects, include cumulative impacts, and be equitable across impacted fisheries and through the supply chain.
- **Regional approaches are necessary.** Offshore wind leases are in federal waters affecting federally (and state) permitted fisheries. Projects off a specific state or county likely affect fishermen and businesses across a region – including multiple states and the federal exclusive economic zone.
- **Cumulative impacts must be included in analysis.** Impacts are likely to happen beyond the footprint of a single wind energy project and with a multitude of projects in a region, cumulative impacts must be taken into account. Cumulative impact analysis must be programmatic and not simply additive. Impacts to biological resources such as migration and larval dispersal, at-sea safety, increased competition from displacement, and other effects are integrally linked to socioeconomics and must be accounted for in cumulative impacts analyses.
- **Impact fee frameworks must be based on science and economics.** Evaluation of OSW impacts to fisheries requires expanded, complex, and possibly novel methodologies that must incorporate multiple disciplines and data sets, including fishermen’s ecological knowledge. Expert fisheries scientists, independent economists, and social scientists must co-lead these efforts in full partnership with the seafood industry.
- **Design of a standard impact fee framework must not be rushed.** As data collection and analyses will take time, it is necessary to determine appropriate impact fee frameworks with affected fishermen and relevant regulatory authorities prior to lease issuance.⁷
- **Impact fee frameworks must allow for flexibility** as new data is collected, information learned and commercial scale OSW operations commence.
- **The principle of self-determination must be incorporated** in any framework for impact fees. Strategies should be designed to empower community-driven, implementable solutions that come from those directly impacted. Leadership must come from within the seafood community; top-down approaches will be ineffective.
- **Additional community fisheries benefit agreements (CFBAs) should be considered** under certain conditions specific to a project, fishery, or community. These should augment and supplement the framework approach. CFBAs should be encouraged and supported when appropriate.
- **Impact fee agreements should never limit the ability to participate in public and private processes**, such as requirements to enter into non-disclosure and non-disparagement agreements. Recipients of impact fee payments must not be required to endorse projects, nor be prevented from taking part in planning related to impacts avoidance, minimization, or mitigation. Additionally, there must be no developer ownership or control over activities or equipment funded by impact fees once allocated.

⁶ A framework should not replicate the existing Vineyard Wind 1 or South Fork Wind compensation plans as those are considered insufficient by the majority of the commercial sector.

⁷ Modified, possibly retroactive, approaches may be necessary to address leases already issued, and should follow the principles herein to the maximum extent possible.

RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT

AUTHORIZATION

The most effective approach would be for the federal government to require impact fees. OSW development in federal waters requires federal permits and will affect federally and non-federally permitted fisheries. Cumulative effects of multiple OSW projects need to be accounted for and mitigated.⁸ States have limited mechanisms to require impact fees and a state-by-state process will not be equitable for regional fisheries. However, input from the states should be included in the process.

Currently, the only regulatory mechanisms that may require impact fees are through states' federal consistency review authorities (Coastal Zone Management Act) or as part of BOEM's Record of Decision from the NEPA process. Each state that has conducted such a process has its own policies and procedures, which has resulted in widely differing outcomes. The variability in these processes itself is problematic, and regardless of the thoroughness of any state's effort, the same issues remain: impacted fishermen may not be sufficiently accounted for if they are homeported elsewhere, unrepresented on these working groups.

It should be noted that some fishing members recommended using a state-based process to streamline allocation if a federal process would be cumbersome. Several individuals also suggested utilizing state-based processes, where they exist, until a federal process is enacted as project permitting continues to advance.

Many in the fishing industry expressed opposition to negotiations with each developer on each project in each region. Such a process (as one that is currently taking place) was seen as ineffective, unpredictable, costly, and leading to unfair outcomes. An independent mediator to negotiate on behalf of fisheries or a fishery was suggested as a possible strategy to alleviate bad outcomes from one-by-one negotiations with each state or each developer. However, some fishing industry members did believe there were circumstances in which individual agreements should be negotiated directly with developers. This response was far more prevalent in regions where OSW is in earlier permitting stages, or where individual OSW projects are more geographically isolated from others. This could likely become a commonly accepted practice, if seen as a necessary, supplemental benefit to unusually impacted communities that would add to, rather than supplant, a national or regional level framework.

An additional recommendation is that a portion of government subsidies for OSW development should be used to protect the longevity of the seafood industry. The public expenditures toward OSW development are enormous compared to what will be necessary for impact fees.



Photo provided by Massachusetts Lobsterman's Association.

⁸ The mitigation report to the Secretary of Interior (see additional resources Clement et al. 2014) found that a “landscape approach to mitigation” is necessary to more efficiently, effectively, and responsibly manage natural and cultural assets stewarded by the Department.

RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT

ADMINISTRATION

Administration of funds must be by a trusted source. OSW developers should not be the administrator of funds, only the suppliers of such funds. Unfortunately, there is distrust that BOEM can adequately administer funds because the agency has limited fisheries expertise and respondents perceived such a role to conflict with BOEM's stated mission to develop the Outer Continental Shelf. If a federal agency must administer funds, National Marine Fisheries Service (NMFS) would be preferred by many, but not all, in the fishing industry.

Most respondents suggested a third-party trusted by the fishing industry should administer funds. Some suggested that regional fishing or fishery-specific associations could play this role.⁹ For smaller sectors that may not have associations, an external administrator may be preferred. There are examples of compensation funds administered by third parties that may be informative.¹⁰ However impact fees are administered, it is vital that funds provide direct payments to businesses that will experience financial loss and risk of loss.

Administration of funds are likely to be dependent on where the funding is from. Funds could be part of a lease sale or power purchase agreements, as a percentage of the power generation through the life of the project, or deposited into a separate fund by the owner of the lease through permit approval. Several respondents noted if funds were sufficient and administered correctly, they did not support one process over another. The role of the administrator is to process and disperse funds but determination should follow the transparent processes outlined below.

DETERMINATION PROCESS

Determination of lost fishing industry revenue from OSW interaction is a complex process. Methods to assess fisheries losses have not been universally agreed upon and have been contentious for both the seafood industry and OSW developers. Determination should use the best available data and methodology, allow for inclusion of the knowledge held by participants in each fishery, and allow for flexibility and adaptability as more information is learned about the interactions between fisheries and OSW. Because fisheries valuation can be immensely complicated, it is absolutely necessary to include fishery-recommended economists and social scientists.

Regardless of who administers funds, they should be calculated using a common framework. **A working group should rapidly convene to co-develop effective frameworks based on the participatory governance structures of the fishery management councils and NMFS advisory panels.**¹¹ The working group must be co-led by the fishing industry and its membership should include NMFS, fishery management councils, marine fisheries commissions, and independent or academic fisheries scientists. These are the leading experts and a group of this composition can provide coordination with existing practices in fisheries management and business operations.

In particular, data-poor fisheries are extremely vulnerable to insufficient calculations being used for determination of impact fees because fundamental data is sparse or lacking. Conservative estimates and calculations should be used to evaluate and protect the longevity of data poor fisheries.

Different fisheries, processors, and business types are likely going to require different frameworks. There will probably not be a one-size fits all solution. For example, vertically integrated fisheries (such as surf clam and ocean quahog on the east coast and Pacific whiting on the west coast) will require different approaches from ones with larger numbers of independent operators (such as the lobster, squid, and groundfish fisheries on the east coast and crab and pink shrimp fisheries on the west coast). In both cases, onshore, fishery-dependent infrastructure must also be considered.

⁹ Some suggested RODA although this concept has not been specifically discussed amongst our membership.

¹⁰ Examples provided by respondents included the September 11th Victim Compensation Fund or Deepwater Horizon Oil Spill Trust.

¹¹ Depending on Terms of Reference, a working group could be national or region-specific in scope.

RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT

Flexibility in impact fee frameworks and determination must allow for adjustments based on new information, unforeseen impacts, and adaptations to impacts. Evaluation of impact fees should be required pre- and post-construction, and every 2-5 years for the lifespan of the projects in the region, including decommissioning. Revisiting impact fee calculations will likely be fishery specific as more is learned about impacts to various species, efficiency changes to seafood operations, and other effects. This process may be similar to the way fishery management plans and stock assessments are updated by fishery management councils. Furthermore, impact fees must provide sufficient coverage from the onset for the life of the project (+/- 30 years). Transfer of ownership amongst energy companies must adhere to the policies and rules in place for the previous owners.

CALCULATION AND VALUATION METHODOLOGIES

Compensation must include 100% of revenue lost from direct displacement and other losses as described below. Within the footprint of a project, the amount of lost grounds will depend on many factors, including gear type and OSW technology selection for turbines and cables. Various safety considerations may also preclude vessels from being able to operate within a project area or may lead to changes in insurance coverage due to outright restrictions or cost prohibition. All of these legal and de facto exclusions, and associated with risk, should be considered in the valuation of economic loss from OSW development and payments should be upfront accounting for inflation. In addition, stranded capital, and efficiency metrics for lower catch levels, or less seafood for a plant to process will increase cost on a per unit basis. Loss of harvested seafood reduces direct income but also raises costs in proportion to total catch. Stranded capital of assets that are not fully depreciated is a direct loss to the owner of those assets.

Economic modeling to determine impact fees should consider the following:

- Revenue loss from direct displacement
- Induced costs associated with business, environmental and community risk
- Revenue loss from cumulative (not solely additive) impacts of multiple OSW projects
- Revenue loss from temporary or permanent fishing restrictions including gear removal and construction
- Revenue loss from impacts from OSW surveys including closures and changes in species behavior
- Increased competition on spatially consolidated fishing grounds that absorb displaced effort, including bycatch effects
- Changes in catch per unit effort (CPUE) resulting from fishing ground relocation
- Changes in target and nontarget species abundance, including consideration of life history traits such as larval dispersal, settlement, spawning, migration, and aggregation
- Gear and vessel loss, repair, or replacement
- Incurred costs of longer transit time
- Increased fuel use
- Loss of dock space
- Increased insurance costs
- Effects to dealers and processors incorporating economic multipliers¹²
- Losses to landings taxes or assessments used for fisheries management when applicable
- Welfare and “well-being” impacts to communities¹³
- Devaluation of businesses and diminished investment opportunities
- Losses from stranded capital, dead assets and payments owed on outstanding loans
- Losses from the historic investment in rebuilding of stocks, elective closures, buy-back programs and other sacrifices already made by the industry
- Funds or bonds in sufficient amounts that will cover fishery disasters induced by OSW if they occur

¹² Reports from the Science Center for Marine Fisheries (SCMFIS) have been conducted on US longfin squid and the combined surfclam and ocean quahog fisheries. The study found from 2013-2017, the average economic multiplier of US longfin squid was 7.64. Reports available at https://scemfis.org/wp-content/uploads/2020/03/LFS_EI_Report.pdf and https://scemfis.org/wp-content/uploads/2020/02/Ec_Impact-tjm_rm2.pdf

¹³ For example, if a loss of ~21% of the surfclam industry in Atlantic City causes that supply chain to become economically unviable, strategies must exist to compensate at an entire community level.

RECOMMENDATIONS FOR IMPACT FEES TO ADDRESS OSW DEVELOPMENT

Valuation estimates should occur at the vessel, company, and fishery levels. Inputs may include:

- Industry economic data for annual production (landing receipts from previous 5 years, previous 10 years, or other¹⁴) for all currently licensed commercial fishermen, including consideration of inflation
- Industry economic data from processors and dealers of production values
- Industry documentation of capital assets, equipment, gear, and other fishery-related investments
- Assessment of “fair market value” through economic multiplier analyses
- Future lost revenue for the duration of the project, including decommissioning
- Costs from increased transit time, fuel, insurance, vessel equipment and provisions, and safety incidents, and other operational impacts

QUALIFYING EXPENDITURES

As the use of impact fees may be restricted to certain activities, respondents suggested the following funding priorities:

- Direct payments to vessels and businesses from revenue lost
- Loans for investments in boats and other capital assets
- Safety equipment
- Gear replacement
- Vessel repairs
- Business costs such as insurance, fuel, berthing, and electronics
- Infrastructure improvements such as unloading docks/hoisting, ice machines, cold storage, and gear storage
- Community outreach programs such as apprenticeships, scholarships, and fishing organizations
- Cooperative research with fishermen’s direct involvement

Some, not all, industry members supported the following qualifying expenditures:

- Seafood marketing programs
- Gear innovation
- Training programs
- Buy-back programs
- Permit banks

ELIGIBILITY

For harvesters, including vessels that catch and process at sea, compensation should be based on permits and historic use. Permit holders with historic fishing experience will be eligible for impact fees. Survey responses varied with regard to recommendations of eligibility, ranging from anyone with a permit, to fishermen with five, ten, or more than ten years of historic fishing in an area.

It must be noted that basing impact fees on historic use will most severely impact young or recent entrants to a fishery. Additionally, OSW development is likely to dissuade new entrants to fisheries particularly if they are not able to be supported by impact fees based upon historic landings data. These challenges will need to be addressed through additional funding streams, but should not diminish the compensation to current participants to offset their own impacts.

For processors (including vessels that process at sea), shoreside infrastructure and support services, compensation should be issued to those dependent on seafood landed or delivered to processors in project areas and fisheries impacted by OSW development. Qualification may be determined by economic multipliers and receipts or market valuation of manufactured products.

¹⁴ Sectors undergoing stock rebuilding may need to utilize different time series, particularly if OSW development will reverse or impair these ongoing efforts.

CONSIDERATIONS FOR BEST PRACTICES

BEST PRACTICES

- A truly effective standardized approach will require legislation and considerable time.
- An inclusive, collaborative working group co-led by the fishing industry should be immediately convened to initiate development of impact fee frameworks. It must be afforded sufficient time to establish credible scientific and economic methodologies.
- Impact fees should be developed utilizing the precautionary principle and adjusted as more is learned. A starting assumption should be that OSW project areas constitute full closures to fishing.
- Port Access Route Studies (PARS) and other navigation studies should be standardized (while taking regional differences into account), thorough, cumulative, and unprejudiced. These should provide accurate calculations for increased fuel costs, necessary safety improvements, crew welfare, and other considerations that will inevitably lead to increased costs for the fishing industry.
- Calculations should be based upon years of highest annual revenue (for at-sea and shoreside operations).
- Community fishery benefit agreements (CFBAs) may be appropriate in certain regions. These would provide additional layers to a national framework when appropriate for impacted sectors and should be required by a state as part of its CZMA review.¹⁵
- Impact fees must never be conflated with the critical steps of avoiding, minimizing, and mitigating impacts to fishing.

PRACTICES TO AVOID

- Fishing industry members from the same sector or region should not be subjected to having to do multiple negotiations. Reliance on a state-by-state process leaves out fishermen with permits from other states and creates barriers to cumulative impacts approaches. Current processes incentivize states to only consider their own fishermen, if anyone at all. These parties are already competing with subsidized energy companies who may be operating within the same state, limiting the state's ability to serve as a neutral arbiter. Federal fisheries are, generally, regional in nature, requiring multi-state, regional and federal processes. It is noted that not all fisheries that are conducted in federal waters are managed by NMFS. This needs to be addressed in future conversations and working groups.
- Impact fees must be based in the best possible scientific and economic data and independent from external political pressure from OSW proponents.
- Effort and funding required to conduct valuation, monitoring, or other related analyses should not come out of available funding for impact fees.
- Impact fees should not be put into a “slush fund” for a small collection of potentially impacted users; rather, they should be accessible to all impacted fishing businesses.
- Unfortunately, many fisheries are expecting reductions in the size of the fleet due to OSW development. Fleet reduction should not be a goal of any impact fee strategy.



Photo provided by Mike Conroy.

¹⁵ Several fishing associations in California have begun to develop a framework for CFBAs. This process should be supported as it follows the principle of self-determination for those regions.

SUPPLEMENTAL INFORMATION

ADDITIONAL RESOURCES

Clement, J.P. et al. 2014. A strategy for improving the mitigation policies and practices of the Department of the Interior. A report to the Secretary of the Interior from the Energy and Climate Change Task Force, Washington, D.C., 25 p.

Industrial Economics, Inc. and The Massachusetts Ocean Partnership (2009) [Developing a Framework for Compensatory Mitigation Associated with Ocean Use Impact on Commercial Fisheries](#)

Lane, D.E. and Stephenson R.L. (1998) [A framework for risk analysis in fisheries decision-making](#) *ICES Journal of Marine Science*, 55(1), 1-13.

APPENDIX A

OPEN-ENDED SURVEY QUESTIONS POSED TO MEMBERS OF THE FISHING INDUSTRY

1. If NEPA requires the following step-wise path: 1) avoid, 2) minimize, 3) mitigate, 4) compensate; what type of actions should be considered “avoidance”?
2. If NEPA requires the following step-wise path: 1) avoid, 2) minimize, 3) mitigate, 4) compensate; what type of actions should be considered “minimization”?
3. What measures, if any, should an agency or developer take to “mitigate” project impacts BEFORE considering impact fees?
4. How would you define “compensation”/impact fees?
5. How should impact fees/compensatory mitigation be authorized? (ex. lease sales, federal regulation, state regulation, individual opt-in, other)
6. Who should administer impact fees?
7. What activities should impact fees support? (examples: payments for direct displacement, revenue loss, private research funding, gear or vessel improvements, protected dock space, safety measures, gear innovation, seafood marketing, permit banks, other)
8. What activities should impact fees NOT support? (examples: payments for direct displacement, revenue loss, private research funding, gear or vessel improvements, protected dock space, safety measures, gear innovation, seafood marketing, permit banks, other)
9. How should impact fees be calculated?
10. What factors should determine eligibility for receiving impact fees?
11. Are there other principles, guidelines or recommendations you would like to make?
12. Are current practices for impact fees working? Why or why not?

APPENDIX B

Supplemental background information distributed with surveys.

POTENTIAL APPROACHES FOR IMPACT FEES TO FISHING INDUSTRY FROM OFFSHORE WIND

Per the National Environmental Policy Act (NEPA), offshore wind projects must follow a stepwise path to reducing fisheries impacts, in this order (40 CFR § 1508.20):

1. Avoid the impact altogether by not taking a certain action or parts of an action
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action
5. Compensate for the impact by replacing or providing substitute resources or environments

Mitigation refers to siting and project design principles specifically adopted to reduce impacts to fishing. It is not satisfied through compliance with standard mandatory health and safety regulations, although these are important. Mitigation is also not synonymous with compensation. Financial reparations for fishing business losses are termed **impact fees**, not “mitigation.”

Compensation frameworks and determination policies must be **transparent, holistic, and well-structured**. Because much of the fishing industry is regional in nature, impact fees must be coordinated and consistent amongst projects, include cumulative impacts, and be equitable across impacted fisheries and through the supply chain.

As data collection and analyses will take time, it is necessary to determine appropriate impact fee frameworks with affected fishermen and relevant regulatory authorities prior to lease issuance. It may be appropriate to supplement baseline regional impact fees with Community Fisheries Agreements depending on specific circumstances.

Impacts Fees must cover residual losses from:

- Direct displacement from fishing grounds (exclusion zones or de facto closures)
- Increased cost (or catch per unit effort) due to navigating to/from other fishing grounds, including increased competition in non-developed marine space
- Increased insurance or waterfront use costs
- Losses to dealers and shoreside processing facilities

Overarching Principles:

1. *Impact fees to be assessed and required only after reasonable efforts to mitigate through project siting/design.*
2. *Mitigation not to be defined as meeting health and safety or monitoring requirements.*
3. *Preferred terminology of “impact fee” over “compensatory mitigation” in order to distinguish from environmental and operational mitigation measures and to comport with standard approaches in other industries.*
4. *Any framework for impact fees must strictly incorporate the principle of self-determination—i.e., fishermen must be empowered to determine how funds are appropriately allocated.*

FISHING INDUSTRY RECOMMENDATIONS

To be completed pending industry survey results and included in final report.

CURRENT AND POTENTIAL METHODS

There are no explicit federal requirements to compensate for impacts from OSW development to fishing businesses. To date, impact fees have only been considered or implemented through: (1) Coastal Zone Management Act review processes; and (2) ad hoc agreements. They could also be required by: (3) power procurements; (4) OSW lease sales; (5) BOEM’s NEPA process; or (6) creation of a new federal contingency fund.

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1. Coastal Zone Management Act (CZMA)

What: If a state has such review authority, and it has laws or policies for compensation of impacts to the fishing industry, developers will work with the state to determine impact fees. States review a project under coastal zone management policies in two circumstances:

- The state has identified Geographic Location Descriptions (GLDs) in federal waters that include OSW areas, and NOAA has approved those GLDs; or
- A developer voluntarily submits to a state's CZM review.

The only state that expressly requires compensation for fishing industry impacts is Rhode Island. There is no specific framework for determining how the impact fees will be calculated. NOAA's National Ocean Service, which oversees the federal CZM program, has asserted that states' requirements of such fees are not legally enforceable policies. This interpretation, if upheld, means that compliance with state measures is voluntary on the part of the developer.

When: during the state's preparation of its consistency determination, usually during the Final EIS review.

Example: [Rhode Island Ocean SAMP](#)

Pros:

- A state is incentivized to look after its fishing industry
- The fishing industry has some legal recourse to collect impact fees
- Developers appear motivated to work with states to provide fees if policies are in place

Cons:

- Most states do not have the appropriate mechanisms in place: need review authority for a project and impact fee policies
- NOAA has indicated that CZMA does not provide states the authority to require if and how much impact fees should be
- A state, at most, only has authority to look after itself and its own fishing businesses. Fishermen from any state may operate in federal waters; this can lead to inconsistent impact fees coastwide
- How impact fees should be calculated has not been agreed and requires significant effort to adopt policies in each state

2. Ad Hoc Agreements (Community Fisheries Agreements)

What: Developers and fishing industry members may elect to enter into private agreements where developers compensate for future lost revenue. Negotiations for these types of agreements are often between mediators or attorneys and may not follow transparent or inclusive processes.

When: Typically before lease or power contract is obtained. **Example:** [Castle Wind](#) (see page 31 summary), City of Morro Bay & Morro Bay Commercial Fisherman's Organization, Port San Luis Commercial Fishermen Association ("Fishermen's Agreement" portion is confidential)

Pros:

- Can provide direct payments to impacted local fishermen
- Execution outside of regulatory bounds can promote flexibility of terms
- Could be additive to regional baseline approaches
- Can be readily specialized to local priorities
- Fishermen likely to have a more direct role in agreement terms than if brokered through a state or federal agency
- Can provide future certainty if executed early in lease process

Cons:

- Not typically transparent process
- Difficult or impossible to encompass every impacted fisherman, may disrupt community
- May limit an individual's ability to participate in public process through non-disclosure stipulations
- Does not address cumulative impacts
- Likely to be specific to one developer or project without transferability
- Not many examples; poorly incentivized under regulatory and leasing processes
- Opt-in model (not required)

3. Power procurements

What: When a power purchase agreement (PPA) is reached, the purchaser (usually a state) could require the developer to include fisheries impacts payments as a condition of the contract. Again, this is a state-by-state process and a framework for impact fees has not been determined.

When: During the PPA negotiations. **Example:** [NYSERDA Fisheries Mitigation Plan](#) (note "Fisheries Compensation Plan" portion is optional)

Pros:

- Provides more flexibility for developers to fund impact fees as cost may be incorporated in bid for power price
- Could provide certainty for fishermen earlier in the process than if addressed much later through CZMA or NEPA

Cons:

- Generally (not always) PPAs are highly competitive among developers and states based on price; adequate compensation plans may thus be disincentivized unless consistent throughout a region
- The impact fees for fishermen may be directly passed on to the ratepayer
- State power regulatory bodies are typically not well suited to understand fishery needs
- No state has required this approach to date
- Does not address cumulative impacts

4. Payments Deriving from Lease Sales

What: Certain parties have expressed interest in allocating a portion of a lease area's auction price to fisheries impact fees. Past efforts have focused on mechanisms to distribute this funding to states, which would determine priorities of which fisheries impact fees are only one possibility.

When: At new lease auction. *Example:* [RISEE Act](#) (for coastal restoration; not impact fees)

Pros:

- Could constitute significant resources given extremely high lease prices
- Cost not passed to ratepayer through power contract
- Provides certainty of funds relatively early in lease process

Cons:

- Requires legislation
- Competes with other coastal interests of states, such as the revenue sharing program for coastal restoration under the Gulf of Mexico Energy Security Act
- Funding amount dependent on additional future leases occurring
- Likely difficult to require of existing leases
- Allocation mechanisms could be complex and uneven across states

5. BOEM's NEPA Process and Record of Decision

What: NEPA allows a federal agency to require impact fees as part of a Record of Decision to mitigate the environmental (including socioeconomic) impacts of an action. BOEM could incorporate procedures for assessing and paying impact fees into its guidance or Best Management Practices.

When: During last step of permitting process. *Example:* BOEM's requirement of \$3 million for impact fees to states other than MA & RI in Vineyard Wind I Record of Decision.

Pros:

- Would not require new legislation or regulations
- Would be equitable and predictable
- Potentially longer timeline to calculate appropriate amounts once project details are known
- Could incentivize impact reduction through project design rather than upfront impact fee assessment on lease

Cons:

- BOEM has provided no justification or framework for using this mechanism
- Timing late in process could result in uncertainty throughout project development
- BOEM has limited fishing expertise on staff, would need to work directly with fishing industry (or through NMFS) to better understand impacts and need

SUPPLEMENTAL INFORMATION: APPENDIX B

6. Federal Fishermen's Contingency Fund (currently used for oil & gas)

What: Every year, BOEM Secretary charge royalties on oil and gas leases to create a de facto insurance fund for fishery loss claims

- Administered by NMFS, payment amounts set annually by BOEM/DOI Secretary
- Compensation based on 50% of gross income lost, not profits
- Requires commercial fishermen to file report within 15 days of returning to port after discovering the damage or loss, and can only file one claim in an area
- Amount in fund can never exceed \$2,000,000 and no developer can be charged more than \$5,000 per year per permit

Pros:

- Unbiased claims review with no developer participation
- Administered by fishery experts, not energy experts
- Predictable process and uniform across projects

Cons:

- Requires legislation
- Only applicable to oil and gas
- Differing spatial scales of OSW from oil and gas, different number of developers may not make this directly translate
- Only covers impacts associated with gear loss

COMPONENTS OF VALUATION

Types of losses for consideration:

- Direct vs. indirect impacts
- Lost fishing revenue: gear removal, temporary closures, increased pressure on other fishing grounds due to displacement, changes in target species abundance
- Gear or vessel loss/repair
- Incurred costs of longer transit time, loss of dock space, increased insurance costs

Duration of funding:

- Construction: fishing closures during installation
- Lifetime of project: permanent (operational or abundance reduction/loss) or semi-permanent (i.e. conditions reduce number of fishable days) displacement
- Decommissioning: closures during decommissioning

Basis of Valuation:

- Receipts from dealers of landings value (based on spatial analysis)
- Receipts from equipment vendors, for lost gear, etc.
- Methodology to assess and establish "fair market value": landings, dealers, shoreside & value-added processing

MECHANISMS FOR ADMINISTERING

When:

- Upfront
- Yearly/periodically over course of project (ex. 30 years)

Who (administrator)

- 3rd party trust
- Fishing industry controlled trust (new or existing associations or other structure)
- Developer controlled
- Developer (direct payments)
- State (or federal) controlled trust
- Set-aside programs

How (payouts)

- Claims-based
- Direct payments

SUPPLEMENTAL INFORMATION: APPENDIX B

HOW FEES MAY BE USED

Stipulations in final agreements will likely define what compensatory mitigation funds can be used for based on approval by the administrator. Impact fees and grants may support the following:

- **Direct Impacts:** Gear loss, business losses, access restrictions;
- **Redesign:** Design, construction and modification of commercial fishing vessels
 - » Including but not limited to increased fuel efficiency, reduced carbon emissions, improved stability and capability of supporting sustainable fishing practices, such as harvesting and on-board storage and processing methods;
- **Innovation:** research, development, acquisition and deployment of advanced technologies:
 - » Including but not limited to sonar, radar, radio communications, satellite and global position and other locating and tracking devices;
- **Marketing:** Seafood marketing and seafood promotion programs;
- **Cooperative research:** Industry-driven science related to offshore wind or other fisheries topics;
- **Buyouts** to reduce capacity or retire fishing vessels/permits; or
- **Permit banks** or other new entrant set-asides.

ELIGIBILITY

Most impact fees to date are proposed to be claims-based; once an individual or business submits a claim, evaluation will occur to determine if the claim meets the eligibility requirements.

Eligibility requirements are variable and could include:¹

- Valid state/federal commercial fishing permit;
- Valid vessel registration and applicable registrations;
- Residence or business registration in a certain state;
- Membership in a third-party organization that may administer impact fees;
- Documentation of state/federal tax status;
- Documented landings history;
- Gear replacement or dealer receipts; and
- Acceptance of terms and conditions, legal rights, liability waivers, or other agreements.

¹ List adopted from NYSERDA “Draft Fisheries Compensation Overview” document.

APPENDIX C

Supplemental background information distributed with surveys.

OVERVIEW OF EXISTING IMPACT FEE ARRANGEMENTS

Vineyard Wind I project (to RI):

- Compensation Fund: \$4.2 million
 - » Initial payment of \$1 million within 60 days following financial close
 - » Annual payments over 29 years total \$3.2 million
 - » Administered by a 3rd party selected by Vineyard Wind. Administration costs will be paid directly by Vineyard Wind.
 - » Fishermen and companies can submit claims of direct impacts or losses during any phase of the project
 - » Claims review and decision process established by Vineyard Wind. VW will seek input from FAB on the claims review and approval process.
 - » Paid claims will be accompanied by a release of liability for future claims.
 - » Excess funds (determined by claims administrator) may be rolled over to RI Fishermen's Future Viability Trust
- Rhode Island Fisherman's Future Viability Trust: \$12.5 million
 - » For improvements in fishing vessels, fishing methods and gear
 - » Deployment of navigational equipment, financial support for individual fishermen, investments in updated safety equipment and payments for increased insurance costs
 - » Annual payments of 5 equal installments of \$2.5 million per year.

Vineyard Wind I project (to MA):

- Compensation Fund: \$19.2 million
 - » A \$19.2 million direct, downstream and cumulative (upstream) compensation fund to be held in escrow to compensate for any claims of direct or indirect impacts on Massachusetts vessels or Massachusetts fisheries interests in the Project area
- Fisheries Innovation Funds: \$1.75 million
 - » Studies on the potential impacts of OSW on fisheries resources, improvements in vessels and gear, development of new technology to improve navigation, development of alternative gear and fishing methods, optimization of vessel systems and technology upgrades

Vineyard Wind I project (to other states):

- Compensation Fund: \$3.3 million
 - » According to BOEM, "direct compensation fund to be held in escrow to compensate for any claims of direct, downstream, and cumulative (upstream) impacts from other affected states including Connecticut, New Jersey, and New York vessels or fisheries interests in the Project area for the 30-year life of the Project
 - » First seen in BOEM's Record of Decision, no other details have ever been shared

South Fork Wind (RI)

- Commercial Fisheries Compensation Fund: \$4.25 million
 - » Intended for claims of direct impact to compensate Rhode Island fishermen for loss of access or reduction of harvest
 - » \$3.5 million compensation to commercial and for-hire charter fishing operations for mitigative impacts arising from direct impacts/losses from the construction and operation of SFW
 - » \$750,000 fund direct impacts/losses from decommissioning
- Coastal Community Fund: \$950,000
 - » To provide grants for initiatives supporting the general betterment of coastal communities in RI

SUPPLEMENTAL INFORMATION: APPENDIX C

Individual (Ad Hoc) Agreements

- Publicly announced: Castle Wind - City of Morro Bay & Morro Bay Commercial Fishermen's Organization, Port San Luis Commercial Fishermen Association
 - » Percentage of power to Morro Bay, funding for fishermen's group, etc. (Community benefit agreement has been agreed upon prior to lease auction.)
 - » Exact terms confidential
- Others may exist but unknown/undisclosed if so

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