

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management
Office of Renewable Energy Programs

May 27, 2020

**Guidelines for Providing Information on Fisheries Social and Economic Conditions
for Renewable Energy Development on the Atlantic Outer Continental Shelf
Pursuant to 30 CFR Part 585**

Guidance Disclaimer

Except to the extent that the contents of this document derive from requirements established by statute, regulation, lease, contract, or other binding legal authority, the contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding legal requirements, related agency policies, and technical issues.

Cancellation

This guidance document cancels and supersedes the previous guidance entitled, “Guidelines for Providing Information on Fisheries Social and Economic Conditions for Renewable Energy Development on the Atlantic Outer Continental Shelf Pursuant to 30 CFR Part 585,” dated October 20, 2015, and will remain in effect until cancelled.

I. Introduction to Guidelines

As part of its approval of plans for the siting of a facility, structure, or cable proposed for a renewable energy project on the Atlantic Outer Continental Shelf (OCS), the U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM) requires information on social and economic conditions, including recreational and commercial fishing activities, such as fishing seasons, locations, and types of fisheries, that could be affected by the lessee’s proposed activities (see: 30 CFR 585.611(b)(7) for a Site Assessment Plan (SAP); 30 CFR 585.627(a)(7) for a Construction and Operations Plan (COP); and 30 CFR 585.646(b)(7) for a General Activities Plan (GAP)). This information will assist BOEM in complying with the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. § 1337(8)(p)), the National Environmental Policy Act (NEPA) and other relevant laws. If the necessary information is not submitted in a SAP, COP, or GAP, this may result in delay, disapproval, or additional terms and conditions of approval of a plan. BOEM recommends the lessee develop a fisheries engagement strategy, including a fisheries communication plan, to acquire data to meet the information requirements for SAPs, COPs, and GAPs.

Effective communication is the foundation for fisheries-related best management practices. In addition to helping to satisfy regulatory requirements, information acquired through a fisheries communication plan will allow a lessee to fully consider the impacts of construction and operation of its proposed facilities on fishing resources in designing its project, formulating mitigation measures as needed, and monitoring their effectiveness.¹

These guidelines provide recommendations for complying with information requirements outlined in the regulatory provisions listed above. BOEM provides recommendations for conducting and reporting the results of other baseline collection studies, including fishery resources and benthic habitats, in separate guidelines (<http://www.boem.gov/National-and-Regional-Guidelines-for-Renewable-Energy-Activities>).

These guidelines may be updated periodically based upon public feedback and evaluation by BOEM staff.

II. Authority and Regulations

BOEM has statutory obligations under the OCSLA to ensure any on-lease activities protect the environment, conserve natural resources, prevent interference with reasonable uses of the U.S. exclusive economic zone, and consider the use of the sea or seabed as a fishery. BOEM also has statutory obligations under NEPA (42 U.S.C. §§ 4321 *et seq.*) to evaluate social and economic impacts of a potential project. Under BOEM's regulations, BOEM must coordinate with relevant Federal agencies, including, in particular, those agencies involved in planning activities that are undertaken to avoid conflicts among users and maximize the economic and ecological benefits of the OCS (30 CFR 585.102(a)(5)).

In order for BOEM to evaluate impacts to social and economic conditions of the fishing industry, a lessee's SAP, COP, or GAP should demonstrate how those conditions were considered and impacts assessed, both quantitatively and qualitatively (see 30 CFR 585.606, 621, 641), and should provide potential methods to avoid or mitigate impacts (see 30 CFR 585.610(a)(8); 626(b)(15)).

BOEM will review the submitted SAP, COP, or GAP and any relevant supporting information to determine if the plan contains the information necessary to conduct

¹ This guidance document addresses only one of the recommendations from the BOEM Mitigation Measures project: Best Management Practice #1 – Fisheries Communication and Outreach Plan (Ecology and Environment, Inc. 2014). This guidance was informed by BOEM-sponsored workshops with developers and fishermen summarized in a report entitled, "Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf" (Ecology and Environment, Inc. 2014), *available at* <http://www.boem.gov/OCS-Study-BOEM-2014-654/>. Additionally, these guidelines follow common practices in European offshore wind energy development to foster outreach and interaction between offshore wind and fisheries (see FLOWW 2014, available at <https://www.sff.co.uk/wp-content/uploads/2016/01/FLOWW-Best-Practice-Guidance-for-Offshore-Renewables-Developments-Jan-2014.pdf>). In addition to common practice in Europe.

BOEM’s technical and environmental reviews. Upon completion of BOEM’s technical and environmental reviews and other reviews required by Federal laws, BOEM may approve, disapprove, or approve with modifications the lessee’s SAP, COP, or GAP.

Relevant regulatory provisions for lessees within 30 CFR Part 585 Subpart F include the following:

	Information Requirement	Type of Plan	Regulatory Citation
1.	Your plans must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that does not unreasonably interfere with other uses of the OCS and uses best management practices.	SAP, COP, and GAP	30 CFR 585.606(a)(3) & (6) (SAP); 30 CFR 585.621(c) & (f) (COP); and 30 CFR 585.641(c) & (f) (GAP).
2.	You must submit with your plans a list of agencies and persons with whom you have communicated, or with whom you will communicate, regarding potential impacts associated with you proposed activities. This description must contain the contact information and the issues discussed.	SAP, COP, and GAP	30 CFR 585.610(a)(13) (SAP), 30 CFR 585.626(b)(17) (COP), 30 CFR 585.645(b)(14) (GAP)
3.	You must submit additional project-specific information requested by BOEM.	SAP, COP, and GAP	30 CFR 585.610(a) (17) (SAP), 30 CFR 585.626(b) (23) (COP), and 30 CFR 585.645(b)(16) (GAP)
4.	You must provide a description of the social and economic conditions of commercial and recreational fisheries that could be affected by the activities proposed in the plan.	SAP, COP, and GAP	30 CFR 585.611(b)(7) (SAP); 30 CFR 585.627(a)(7) (COP); and 30 CFR 585.646(b)(7) (GAP)
5.	BOEM may require additional information during the review of the plans and failure to provide the information may result in the disapproval of the plan.	SAP, COP, and GAP	30 CFR 585.613(d) (SAP); 30 CFR 585.628(e) (COP); 30 CFR 585.648(d) (GAP)

Elements of these guidelines may be required under the terms and conditions of a specific lease or grant. A lease or grant may also have requirements that differ from or add to regulatory requirements and recommendations discussed in these guidelines. To the extent that there is a conflict between the terms of the lease or grant and these guidelines, the terms of the lease or grant and the applicable regulatory section(s) should be followed in lieu of this guidance.

III. Recommended Practices for Outreach to Commercial and Recreational Fisheries

The following practices will help facilitate effective communication with potentially affected fishermen so that lessees can better meet BOEM's informational needs for SAPs, COPs, and GAPs.

Early Communication with BOEM and Stakeholders

Early communication between the lessee and BOEM allows for the discussion of objectives and expectations regarding the assessment of project impacts to fishery socio-economic conditions. BOEM's lease and grant terms often require that lessees and grantees submit a pre-construction survey plan and schedule a pre-survey meeting with BOEM. As part of this meeting, BOEM recommends that the lessee be prepared to discuss a fisheries engagement strategy, including a proposal for a fisheries communication plan. Initial outreach to the fishing community should begin before the development of survey plans to avoid, minimize, or mitigate impacts during site characterization and assessment activities.

BOEM also strongly encourages outreach to individual state fishery management agencies and regional fishery management organizations during the development of a fisheries communications plan. Lessees should strive to resolve any issues or disagreements that arise with fishery management agencies and organizations with respect to the contents of a fisheries communications plan.

Given that BOEM requires both a description of the social and economic conditions of potentially impacted commercial and recreational fisheries and a demonstration that a lessee has avoided unreasonable interference with competing uses of the OCS, a lessee's failure to initiate an effective fishery engagement strategy early in its lease term could delay BOEM's approval of the SAP, COP, or GAP. A lessee's failure to submit necessary information in a SAP, COP, or GAP may also result in disapproval or additional terms and conditions of approval of a plan.

Review of Information Resources

In developing a fisheries communication plan, BOEM recommends that lessees review the following documents in order to understand the importance of fisheries community engagement and benefit from lessons learned.

- Ecology and Environment, Inc. 2014. Development of Mitigation Measures to Address Potential Use Conflicts between Commercial Wind Energy Lessees/Grantees and Commercial Fishermen on the Atlantic Outer Continental Shelf Report on Best Management Practices and Mitigation Measures. A final report for the U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Renewal Energy Programs, Herndon, VA. OCS Study

BOEM 2014-654. Available at <http://www.boem.gov/OCS-Study-BOEM-2014-654>.

- The Fishing Liaison with Offshore Wind and Wet Renewables Group (FLOWW). 2014. FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison. Available at <https://www.sff.co.uk/wp-content/uploads/2016/01/FLOWW-Best-Practice-Guidance-for-Offshore-Renewables-Developments-Jan-2014.pdf>
- Virginia Coastal Zone Management Program. 2015. Collaborative Fisheries Planning for Virginia's Offshore Wind Energy Area. Available at <http://www.deq.virginia.gov/Programs/CoastalZoneManagement/CZMIssuesInitiatives/OceanPlanning/FishingandVirginiaOffshoreWind.aspx>
- National Marine Fisheries Service's (NMFS) Office of Science and Technology, provides a baseline understanding of fishery social and economic conditions which is available at <https://www.st.nmfs.noaa.gov>. Their Human Dimensions Program maintains community profiles, social indicators, and social and cultural studies.
- In 2015, BOEM and NMFS completed an assessment of fisheries revenue from BOEM's wind energy areas and potential impacts from fishing disruption in those areas. This report, published in February 2017 and entitled "Socio-Economic Impact of Outer Continental Shelf Wind Energy Development on Fisheries in the U.S. Atlantic," is posted on BOEM's renewable energy study webpage: <http://www.boem.gov/Renewable-Energy-Completed-Studies/>.

Together, these resources will significantly aid a lessee in

- identifying fishery stakeholders who conduct activities in its lease and project staging areas;
- understanding the nature and magnitude of fishery economic activity within its lease and project staging areas;
- predicting how a lessee's proposed activities may affect fisheries operations; and
- developing a fisheries communication plan.

Fisheries Communication Plan

BOEM recommends that lessees develop, discuss with BOEM, and implement a project-specific fisheries communication plan. This plan should identify at least two people responsible for communications between the lessee and the fishing community: a fisheries liaison (FL), who would serve as the lessee's primary point of contact typically employed directly by the lessee; and a fisheries representative (FR), who would serve as the fishing community's primary point of contact for communicating its concerns to the lessee.

BOEM recommends the lessee, represented by the FL and in cooperation with the FR, draft the fisheries communication plan. This plan should outline the specific methods for engaging with and disseminating project information to the local fishing community, as well as other associated stakeholders, throughout each phase of the project. To the greatest extent practicable, the plan should describe how the lessee intends to engage with the various fishing constituencies that are active within a project area. For example, the project area may be used by fishermen from ports where major activity related to construction would take place, as well as distant ports that are unaffected by shore-based activities. Lessees may contact BOEM for assistance in identifying potentially affected fisheries. Early communication ensures that the fishing community has an opportunity for meaningful input into all phases of development. BOEM recommends that the fisheries communication plan include, at a minimum:

1. The identification of the FL, or a description of the process that the lessee will follow to identify its FL, and the scope of work that the FL would undertake. BOEM recommends that the FL serve as the lead public outreach representative from the lessee to the fishing industry. The FL should communicate with fishermen groups, and ensure timely dissemination of information regarding all project activities. The FL should organize meetings, as necessary, in order to garner fishermen's views of project effects on their industry and navigational rights, and communicates fishermen concerns to management. The FL should work directly with one or several FRs, who have specific knowledge and understanding of the local fishing communities' concerns. The FL, in consultation with the FR, should develop a stakeholders list, including relevant fishery community individuals, officials, and organizations for future communication efforts.
2. The identification of the FR(s), or a description of the process the lessee will follow to identify an FR, and the scope of work that the FR will undertake. Because of the possibility for conflicts of interest, either real or perceived, BOEM recommends that the FR not be an employee of the lessee. However, the individual's work as the FR may be funded by the lessee, or by fishing organizations. The FR should have the trust of the fishing industry to be represented, be selected by members of the fishing community, and provide unbiased representation of the fishing community. The FR should be available throughout the planning and construction phases of the project. The FR should provide the lessee, via the FL, with guidance on fishing activity in the area and an understanding of particular fishing sensitivities, including the different environmental and biological concerns related to impacts from offshore wind development in the region. Therefore, the FR should be knowledgeable about the different fishing sectors, seasons, key species, fishing patterns, and gear types, and have fishing experience in the region. The FR should help the FL disseminate project information to the FR's constituency and provides feedback to the FL regarding the success or failure of various best management practices and/or mitigation methods employed by the lessee. The FR should communicate any potential conflicts to the FL immediately.

In addition to a description of FL and FR responsibilities, a fisheries communication plan may include the following elements:

- A list of potentially affected fisheries;
- Communication methods and tools, including but not limited to:
 - a project-sponsored 24-hour phone service for project information;
 - access to information via the internet, email/social media, and/or local or industry-specific newspapers/publications for disseminating project information;
 - activities designed to educate the public, with emphasis on fisherman and boaters education on construction issues and other alerts;
 - meetings or open houses held on a regular basis to keep the fishing industry abreast of current project status; and
 - identification of specific methods for communicating with fishermen at sea.
- Measures under consideration to reduce potential impacts to fishery resources and operations; and
- Potential methods to monitor effectiveness of impact-reduction measures.

BOEM Guidance Document Statement

BOEM issues guidance documents to clarify and provide information about legal requirements, related policies, and technical issues, such as recommended data and formats for various submittals. This guidance document sets forth policy on and interpretation of statutory, regulatory, lease, contractual, or plan approval provisions or technical issues to provide additional information regarding BOEM's approach to managing its renewable energy program. Except to the extent that provisions of this guidance document derive from requirements established by statute, regulation, lease, contract, or other binding legal authority, they do not have the force and effect of law and are not meant to bind the public in any way. If you wish to use an alternate approach that you believe is consistent with the governing statute and regulation, we recommend you contact BOEM in advance.

While this guidance document includes recommendations and guidance, the recommendations and guidance provisions may be made mandatory through a lease stipulation or condition of approval from BOEM. If you are issued a plan, permit, or other authorization from BOEM with a condition of approval or a lease with a stipulation requiring compliance with this guidance document or identified portions thereof, you must implement those portions or all aspects of this guidance document, if particular aspects are not singled out in the stipulation or condition of approval. Under such circumstances, you must implement and comply with this guidance document (or identified portions thereof) regardless of whether the terms within the guidance document would otherwise be a recommendation or request (e.g., use of the term "should" in the guidance document will be considered "must" if required by the lease stipulation or condition of approval).

Paperwork Reduction Act Statement

These guidelines provide clarification, description, or interpretation of requirements contained in 30 CFR 585, Subpart F. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. OMB has approved the information collection requirements in the 30 CFR 585, Subpart F regulations under OMB Control Number 1010-0176, respectively. These guidelines do not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.