

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

November 12, 2021

Dear Director Lefton:

Following the June 4, 2021, letter to President Biden¹, the nine signatory regional Atlantic States ("States") convened to discuss the importance of federal-state partnership in realizing regional offshore wind development goals. More specifically, the States have focused on the need for and benefits of regional natural resource impact assessment and mitigation frameworks for reasonably foreseeable and demonstrated adverse impacts on marine resources, fisheries, habitats, and local cultures. As you are aware, the States have begun to collaborate on a fisheries compensation framework with the Bureau of Ocean Energy Management (BOEM) and NOAA Fisheries. Through this collaboration, BOEM has committed to use its existing authority with support by NOAA Fisheries and with stakeholder and public input to establish an agreeable, standardized compensatory fisheries mitigation framework by March 2022.

Our discussions to-date on compensatory mitigation efforts are informed by states' experiences with proposals to site and develop the nation's first commercial scale offshore wind farms. These discussions have highlighted the need for a preliminary framework for how compensatory mitigation should be addressed in our region, perhaps as a component of national guidance from BOEM for the U.S. offshore wind industry as a whole. Compensatory fisheries mitigation (or impact fees) negotiations to this point have largely varied due to the lack of an established standardized mitigation framework and criteria and resulting outcomes have varied across jurisdictions. This has resulted in inconsistencies in estimating impacts to fisheries and the agreed-upon funds used to compensate for such impacts. Additionally, due to the regional nature of commercial fishing, this approach may preclude distributions of compensatory mitigation to all affected parties, e.g., those who fish in federal waters in the project area, regardless of state regulatory jurisdiction, creating inequities for both the fishing and offshore wind development industries.

It is our understanding that BOEM intends to encourage offshore wind developers to use its standardized fisheries compensatory mitigation framework in preparing Construction and Operations Plans and environmental impact assessments. This approach would provide a uniform framework, methodology, criteria, and process for calculating economic impacts and commensurate compensatory mitigation for impacts to fisheries that is consistent, equitable, and transparent. It would also support increased efficiency and enhanced coordination and has potential to reduce uncertainty for offshore wind developers, states, regions, and fishing communities. Further, this approach would encourage and provide a financial incentive for offshore wind developers to design projects which apply the mitigation hierarchy of first avoiding potential impacts to fisheries, attempting to minimize impacts when avoidance is not possible, and then implementing compensatory mitigation measures as the final step in the process. This mitigation hierarchy would be in addition to other steps BOEM has taken to ensure that areas of greatest importance to commercial fishing are not leased.

¹ Joint Governors' Letter to the Biden Administration on Prioritization of Offshore Wind Development, June 4, 2021 (enclosed)

Through initial discussions, the States have identified the topics below for continued discussion with BOEM regarding its development of an efficient and effective compensatory fisheries mitigation framework. The States believe that these foundational topics require full consideration and discussion with BOEM, NOAA, and other federal agencies, as well as the fishing industry and offshore wind developers, in order to develop mutual understanding and agreement on a mitigation framework that will provide equity and certainty for affected fishing communities, state and federal agencies, and the offshore wind industry:

- Clarification of the pertinent federal and state agency authorities, jurisdictions, and processes to ensure that the compensatory fisheries mitigation framework is not incompatible with any applicable federal or state permitting or federal consistency review processes and does not limit or undermine state or federal authorities;
- Ensuring that offshore wind developers – per the National Environmental Policy Act (NEPA) – design projects in a way to first avoid potential impacts to fisheries and critical habitats, and where avoidance is not possible, minimize such impacts. Developers should ensure this is accomplished through robust and meaningful engagement with the fishing community that results in collaborative project design; then as necessary deploy mitigation measures, including compensatory mitigation, for impacts that cannot be avoided or reasonably minimized;
- Clarification of the scope of what should be considered in assessing compensatory mitigation, potentially including but not limited to: gear loss, temporary displacement during pre-construction surveys, temporary and permanent displacement during construction and post-construction operational constraints, decommissioning, shoreside, supply chain, and coastal community impacts, habitat and ecosystem impacts, short- and long-term impacts to fish stocks, and reasonably foreseeable cumulative impacts;
- Determining best available data sources and delineating appropriate methodologies and criteria for undertaking data assessments to determine effects on fisheries resources and valuation assessments to determine compensation estimates. This would take into consideration varying geographies, and data availability, and evaluate ways to incorporate new data into these approaches over time;
- Ensuring a schedule with milestones for early and regular engagement with and establishment of meaningful roles for members of the commercial and for-hire fishing industries in both the creation and implementation of the mitigation framework. The States are committed to working alongside BOEM to provide opportunities for input through existing channels (e.g., state working groups) and offer a stepwise process to vet questions and concerns, including prior to and during BOEM’s public comment periods;
- Identifying future data and monitoring needs to better inform assessment of long-term potential economic impacts and compensatory mitigation projections that are attributable to offshore wind projects and distinguishes these impacts from other separate and distinct impacts (e.g., climate change or monitoring methodology changes);
- Considering mechanisms (e.g., long-term bonding, insurance, and federal funding) that could provide a means to compensate for unanticipated, additional adverse long-term or later impacts that were unforeseen at the completion of pre-project compensatory mitigation agreements; and
- Developing an initial approach for establishing a central communication and funding mechanism that includes clarification of the stage at which collections will take place, and a framework for how the availability of funds would be communicated to affected parties and how the funds would be managed

and distributed (e.g., reasonable and readily available documentation for fishing communities to demonstrate loss).

The States thank you for your continued partnership on this issue and we are committed to providing the support and effort needed to ensure that this effort is successful, particularly related to necessary stakeholder outreach and engagement of the fishing communities and offshore wind development industry in the development of any guidance.

We look forward to continuing ongoing coordination with BOEM and NOAA, and your strong leadership in this endeavor.

Sincerely,

Katherine S. Dykes

Katherine S. Dykes, Commissioner
Connecticut Department of Energy and Environmental Protection

D L Burg

Dan Burgess, Director
Maine Governor's Energy Office

Patrick C. Keliher

Patrick C. Keliher, Commissioner
Maine Department of Marine Resources

Bethany A. Card

Bethany A. Card, Undersecretary of Environmental Policy and Climate Resilience
Massachusetts Executive Office of Energy and Environmental Affairs

Mark Sanborn

Mark Sanborn, Assistant Commissioner
New Hampshire Department of Environmental Services



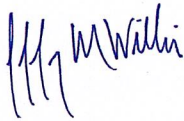
Shawn M. LaTourette, Commissioner
New Jersey Department of Environmental Protection



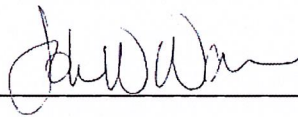
Rossana Rosado, Secretary of State
New York State Department of State



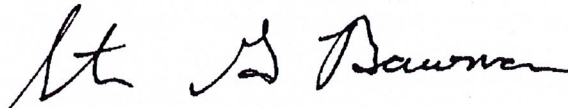
Doreen Harris, President and CEO
New York State energy Research and Development Authority



Jeffrey M. Willis, Executive Director
Rhode Island Coastal Resources Management Council



John Warren, Director
Virginia Department of Energy

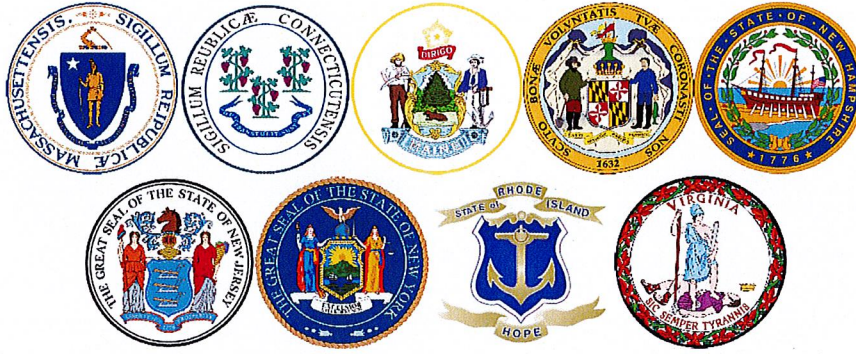


Steven G. Bowman, Commissioner
Virginia Marine Resources Commission

cc:

Janet Coit, Assistant Administrator, NOAA Fisheries
Jeffrey L. Payne, Ph.D., Director, NOAA Office for Coastal Management
David Kaiser, Senior Policy Analyst, NOAA Office for Coastal Management
Kerry Kehoe, Federal Consistency Specialist, NOAA Office for Coastal Management

Enclosure



Joint Governors' Letter to the Biden Administration on Prioritization of Offshore Wind Development

President Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue, N.W.
Washington DC 20500

June 4, 2021

Dear Mr. President:

The Governors who have cosigned this letter are greatly encouraged by your Administration's recently announced commitment to developing wind energy off the coast of the United States. The expansion of the offshore wind 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 importance of federal-state partnership in realizing this opportunity cannot be overstated, and we commend your Administration for the significant steps it has taken in recent weeks to address the critical areas of port infrastructure, permitting, research and development, fisheries support, and natural resource restoration and mitigation. We write both to thank you and provide recommendations to build on the significant momentum your Administration has created.

As a result of technological innovation, scale, and competition, offshore wind energy costs have fallen by more than 50% since 2016, to the benefit of both electricity users and the environment. Over the last decade, the industry has attracted world-class energy companies to develop America's offshore wind resources. As your Administration has highlighted, these companies are poised to create thousands of skilled jobs and unleash significant investment in our ports and accompanying U.S. supply chain services to build, operate, and maintain this new clean energy infrastructure. To revitalize our aging port infrastructure and deliver a new high-paying offshore wind workforce, we need continued federal leadership to prioritize the development of and provide a predictable long-term plan for the industry.

Realization of the offshore wind opportunity depends crucially on several variables, including the pace and uniformity of the federal permitting process, the degree of regional coordination among states, the

amount of available space in federal lease areas, the potential impacts on marine resources, and the availability of supporting infrastructure to deliver high-voltage power from project areas to the mainland. As such, we aim to collaborate across our states by consulting with each other on permitting challenges, natural resource consideration, identifying opportunities to coordinate schedules, and aligning construction timelines to meet states' respective clean energy targets. Doing so, we hope to utilize our joint resources to maximize the economic potential of the offshore wind industry for our country. We, the undersigned governors of Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Virginia appreciate that your Administration has prioritized the key areas below, and we offer the following strategies to support this unprecedented opportunity to build back better:

Set long term targets for Bureau of Ocean Energy Management (BOEM) lease area scoping and establishment that are informed by state clean energy goals. State offshore wind procurement targets are increasing, and there is a substantial deficit in identified regional wind energy areas. As demand for federal lease areas is driven almost entirely by state-mandated power purchase needs, we recommend that your Administration establish a timeline for identifying, characterizing, and auctioning new federal lease areas that can support the states' offshore wind procurement timelines. This would serve to facilitate the critical runway necessary for states to achieve their development targets on schedule.

Supplement interstate coordination during project design and permitting processes. We commend your Administration for its impressive target to complete the review of 16 Construction and Operations Plans (COPs) by 2025, which will serve the much-needed purpose of expediting and creating a predictable pathway through the federal permitting process. To ensure a sustainable coexistence with our coastal uses and natural resources, we request additional federal consultation with the states and increased regional leadership on addressing environmental, fishing, and maritime concerns during and after construction of facilities. We seek to provide more certainty to developers across projects in addressing legitimate interests in marine resources and maritime industries that will share space with this new industry.

Consider setting long-term targets for offshore wind ports that can support the scale and timeline of state procurement targets. As recent targeted commitments by your Administration show, the offshore wind industry provides a significant opportunity to revitalize our ports, invest in manufacturing, and develop a specialized workforce. However, for states to procure, permit, and construct 30 GW of offshore wind by 2030 and for BOEM to sign off on 16 COPs in 4 years, significant port infrastructure and space will need to be added to stage and service the offshore wind projects in a very short time. We commend your Administration for making available funding opportunities through the U.S. Department of Transportation (USDOT) and the Department of Energy (DOE), and we recommend as a next step that these agencies adopt a long-term planning approach for port development that can help support clean energy needs. This way, construction bottlenecks in shared lease areas can be minimized or avoided by creating solutions that can be developed in advance of need.

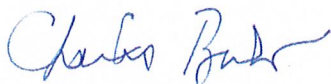
Ensure adequate transmission capacity. No offshore wind project can provide power to the grid without the supporting infrastructure to transmit high-voltage electricity to the mainland. As multiple states share common Wind Energy Areas, and in some cases the same regional power

system, transmission planning and development are best organized through regional, multi-state coordination. To meet offshore wind procurement targets while minimizing cost, we urge your Administration to: 1) instruct the Federal Energy Regulatory Commission to direct regional system operators to initiate policies that encourage collaboration across transmission systems and stimulate investment in the planning and development of offshore transmission as soon as possible; 2) as touched upon in your Administration's March 31st American Jobs Plan announcement, consider modifications to federal regulatory processes that would improve access to critical USDOT corridor "rights-of-way" to support the efficient and cost-effective onshore routing of offshore wind cable infrastructure, and; 3) direct BOEM to clearly articulate the process of permitting offshore transmission infrastructure. Together, these actions would greatly assist states and the federal government in developing an optimal framework for accommodating injections of offshore wind power onto the onshore electricity system.

Provide support for other marine industries and users. To advance offshore wind energy development in an environmentally responsible way that ensures renewable energy coexists with natural resources, ocean users, and communities, including fishermen and the tribes, we urge the federal government to provide leadership on regional natural resource impact assessment and mitigation frameworks for demonstrated negative impacts on marine resources, fisheries, and local cultures. Additionally, funding and prioritization from the Administration is needed to support the monitorization of the Commerce Department's scientific surveys that inform fisheries' quotas and regulation (specifically those conducted by the National Oceanographic and Atmospheric Administration and the National Marine Fisheries Service), adapting precedent from other industries in the Gulf of Mexico where appropriate.

We once again express our gratitude for your commitment to offshore wind. We hope the White House considers and adopts these strategies as a priority and coordinates these efforts together with relevant federal agencies and states. To this end, we look forward to working closely with your Administration to discuss agency-specific recommendations as this industry begins taking shape so that we can maximize the local and national benefits from this unprecedented opportunity.

Sincerely,



Governor Charlie Baker, Commonwealth of Massachusetts



Governor Ned Lamont, Connecticut



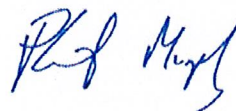
Governor Janet Mills, Maine



Governor Larry Hogan, Maryland



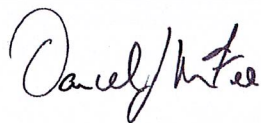
Governor Christopher Sununu, New Hampshire



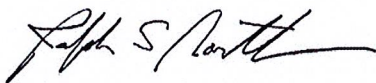
Governor Philip Murphy, New Jersey

A handwritten signature in black ink, appearing to read "Andrew Cuomo".

Governor Andrew Cuomo, New York

A handwritten signature in black ink, appearing to read "Daniel McKee".

Governor Daniel McKee, Rhode Island

A handwritten signature in black ink, appearing to read "Ralph S. Northam".

Governor Ralph Northam, Virginia