



Responsible Offshore Development Alliance

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Jason Miner, Natural Resources Policy Advisor
Office of Governor Kate Brown
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Re: Bureau of Ocean Energy Management Oregon Intergovernmental Renewable Energy Task Force's Offshore Wind Energy Data Gathering and Engagement Plan

Dear Ms. Barminski, Mr. Miner, and Members of the BOEM Oregon Task Force,

The Responsible Offshore Development Alliance (RODA) hereby submits the following comments regarding the Bureau of Ocean Energy Management's (BOEM) Oregon Intergovernmental Renewable Energy Task Force's (Task Force) draft Offshore Wind Energy Data Gathering and Engagement Plan ("Engagement Plan"). Commercial fishermen that operate in Oregon's territorial sea and in federal waters adjacent to the territorial sea and the shoreside businesses they support are unanimous in their view that the planning processes for minimizing conflicts between offshore wind energy and fisheries are broken and ineffective (a view shared with their counterparts across the country). We therefore urge the Task Force to reconsider its approach to both its own process and the Engagement Plan, and to work closely with affected interests to develop a new model that fully identifies and addresses impacts to fishing and fishery resources before issuance of any leases. The current approach will not result in developing a new renewable resource without sacrificing one we already have and need.

RODA is a membership-based coalition of fishery-dependent companies and associations dedicated to improving the compatibility of new development with their businesses. Our approximately 170 members are comprised of fishing industry and community groups, vessels, and shoreside dealers in New England, the Mid-Atlantic, and the Pacific. RODA urges BOEM, developers, and other involved parties to work directly with fishing communities to develop science- and compatibility-based approaches to siting and designing offshore wind energy facilities. Any leasing of Outer Continental Shelf (OCS) lands for new activities is best approached with early engagement with and direct involvement from those who already depend on the same areas for their livelihoods. Only by working together to minimize conflicts at the outset of—and at all stages throughout—these processes can we ensure adequate protection of our living marine resources, habitats, and fishing fleets. This, in turn, will reduce risk to all parties.

The Task Force Cannot Make Successful Siting Recommendations without Fisheries Knowledge

The federal approach to offshore wind energy development planning removes areas from consideration that impact national security activities, viewshed, shipping, and other existing ocean uses before Call Areas are identified, resulting in fisheries being the remaining single most conflicting activity. In contrast with how these other uses are treated, only during late stages of the National Environmental Policy Act (NEPA) review process are impacts to fisheries and emerging conflicts assessed. Fisheries need to be an integral part of the process *before* key decisions and project investments are made, and leases are awarded; well-informed, data-based planning needs to occur now.

The Task Force Needs Expanded Fisheries Representation

As fishing industry representatives stated at the last Oregon Task Force meeting (and as BOEM has heard numerous times in other regions), fishermen remain concerned about the lack of representation of their sector on the Task Force. With just one seat for the National Marine Fisheries Service (NMFS), offshore energy interests far outweigh members with any understanding of the most important existing ocean use - and the one for which it is most difficult to achieve coexistence with offshore wind. However, legal standards require balancing of two statutes when there is not a clear synergy between them (in this case, the Magnuson Stevens Act and Outer Continental Shelf Lands Act). At a minimum, the Pacific Fishery Management Council (PFMC) should be formally invited to join the Task Force. Previous statements from BOEM indicate that this is prohibited due to its interpretation of Federal Advisory Committee Act restrictions on non-governmental participants. However, the Councils have long been deemed federal agencies for the purposes of the Administrative Procedure Act¹ and participated in Regional Planning Bodies (which did not receive FACA charters), therefore they are eligible for Task Force membership.

The Task Force Needs to Provide Opportunities for Public Input

Not only do fisheries lack representation on the Task Force, but there is no other opportunity to provide it with fisheries-related information either. A process that allows public comment only *after* a meeting concludes does not satisfy basic standards of government transparency. Fisheries management processes such as Pacific Fishery Management Council and Council Coordination Committee meetings provide multiple comment periods throughout and there is no reason the Task Force cannot afford the same process. Common sense dictates that allowing the most conflicted user group to provide information only after the Task Force has concluded deliberations facilitates uninformed decision-making and disenfranchisement, gravely prejudices outcomes, and lacks an element of due process.

¹ See Memorandum from Patrick J. Travers, NOAA Staff Attorney, to James W. Brennan, NOAA Deputy General Counsel, regarding Status of the Regional Fishery Management Councils as "Agencies" for Purposes of the Administrative Procedure Act (Nov. 30, 1976).

Offshore Wind Poses Major Conflicts with Fisheries

Due to the planned use of floating offshore structures for wind energy development off of the Oregon coast, lease areas will become de facto closures to fishing. Technology is evolving to minimize the footprint of the base of an offshore wind platform, but current proposed technologies still have mooring lines and flexible cabling that will make any type of fishing – fixed or mobile gear – unsafe and thus unlikely within a wind energy area (WEA). Offshore wind energy development in the Eastern Pacific is therefore a topic of extreme concern to the region’s fishermen and fishing-dependent communities. For fishermen who operate offshore Oregon, the potential impacts from WEAs and the conflicts that will compromise their ability to conduct the business of feeding the nation are numerous and significant. Some, but far from all, of the concerns held by fishing communities include:

- Environmental and ecosystem impacts, such as changes in species composition and risk of invasive species colonization;
- Access constraints with limited ability to simply “fish in other areas” due to complex regulatory restrictions under the Magnuson-Stevens Act, Endangered Species Act, and state laws;
- Accommodation of transit needs, marine radar functionality, and principles for safety at sea;
- Disruptions to critical scientific surveys and assessments that serve as the foundation for sustainable fisheries management;
- Lack of comprehensive understanding of the cumulative impacts of multiple project sites as well as multiple ocean management measures including Marine Protected Areas/marine sanctuaries and emerging offshore aquaculture;
- Impacts associated with effort displacement, such as changes in bycatch composition that will further constrain catch limits or increased fuel cost and emissions resulting from increased travel time to fishing grounds;
- Interactions between offshore energy activities and protected resources such as endangered whales and seabirds that drive severe restrictions to fishing operations;
- Increased competition for limited space in local ports and harbors, creating severe competition for shore side support facilities which are already scarce;
- Overwhelming demands on time and meeting fatigue for engaging in offshore wind-related efforts led by each project, state, and others, especially if no result is achieved;
- Coordination failures leading to state-specific mitigation requirements that fail to account for the regional nature of many fisheries and the movement of fish stocks; and
- An opaque permitting process wherein the key project design decisions are made by multiple state and federal agencies outside of the NEPA-mandated public process.

The breadth and scale of these impacts merits a precautionary approach to development based on thorough and in-depth analysis.

A Planning Process for Fisheries and Offshore Wind Has Not Yet Occurred

To repeat: the mooring systems and floating inter-array cables mean that gear types that can operate within a wind energy area will be severely limited for most commercial fishermen.

This conclusion is evident from even a basic understanding of fishing vessel operations and has been demonstrated in floating arrays installed in Scotland. Major Oregon fisheries and NMFS surveys that inform stock assessments will not be able to perform vital operations within an array. Since floating wind energy arrays will constitute de facto closures, siting is the single most important decision toward determining whether a project is compatible with fishing. Despite the importance of the siting process, members of the Task Force and others are rapidly and deliberately proceeding with siting activities without having even initiated contact with the impacted fishing groups.

The Task Force Is Continuing Business As Usual

As you are likely aware, fishing communities have repeatedly raised the issue of inadequate coordination for proposed offshore energy projects in Oregon. Regulators previously failed to address significant concerns over the WindFloat Pacific Project and OSU's PacWave South project. As far back as September 2015, BOEM issued a Request for Feedback on the State of the Renewable Energy Industry² and received multiple comments representing fishing interests including the Fishermen Involved in Natural Energy, Pacific Seafood Processors Association, Pacific Whiting Conservation Cooperative, Southern Oregon Ocean Resource Coalition, United Catcher Boats, Phoenix Processor Limited Partnership, and even the PFMC. These detailed comments universally stated opposition to BOEM's leasing process due to a lack of a clear, transparent structure for working with fishermen and raised many of the issues addressed in this letter; these have never been addressed as there has been no change to BOEM's approach or regulations.

Collaboration Occurs Too Late

The Engagement Plan is wholly inadequate for rectifying this failure. First and foremost, there is a fundamental difference between "engaging" and "listening." Simply checking the outreach box by holding meetings with fisheries representatives will not result in acceptable solutions. Fisheries participants and experts must be wholly integrated into every step of the planning process through true collaboration. Nor does it appear as though the Engagement Plan contemplates any outreach at all in the "initial" outreach stages (which phrasing should be revised, as outreach to wind interests has occurred for over a decade). Even when it does outline steps for contacting fishermen, key groups are absent such as the albacore fleet from Central and Southern California and Washington that fishes in these federal waters off Oregon.

Full Environmental Review Must Occur at the Onset of Siting

As stated above, fisheries concerns cannot be adequately addressed through the NEPA process alone as it is currently implemented. BOEM only conducts a full EIS at the late stages of project permitting, and decision points in the EIS are limited to those with a federal nexus. In reality, most project decisions occur at the state level. This point has been raised repeatedly by Oregon fishing groups and others, including in the responses to BOEM's 2015

² 80 Fed. Reg. 58786 (Sept. 30, 2015).

Request for Feedback and even through a lawsuit focused on a New York Bight lease area.³ Transparent and inclusive planning needs to occur either separately to the NEPA process in conjunction with the way project decisions are made, or incorporated through an early EIS focused on WEA identification. Moreover, BOEM should not consider unsolicited bids from prospective wind energy developers. Fishing groups have consistently raised this request to BOEM through public comments, petitions for rulemaking, through litigation, and all other available channels – notably including a request directly from the New England Fishery Management Council. An unsolicited bid is, by nature, an end-run around any effective public multi-sectoral public process as it predisposes decisions based on mere reliance that a private party has done its due diligence.

Interstate Coordination is Lacking

No information has been provided regarding how Oregon, California, and potentially Washington will coordinate efforts. For example, the wind resource south of Cape Blanco has been identified as the area of the Pacific Coast with best wind resources. This area is near the Humboldt Call Area off California and they are ecologically interrelated. In order to understand the cumulative environmental and economic impacts of state-specific projects, these processes need to be coordinated and not conducted in isolation.

Federal Waters off Oregon Need A Full and Inclusive Marine Spatial Planning Process

In the development of its Territorial Sea Plan (TSP), the State of Oregon made a diligent effort to work with partners including fisheries experts to understand uses of state waters. This was largely an effective example of planning for multiple ocean uses. However, the original TSP focused primarily on state waters (to 3 nm) and significant work will be required to both fully expand it to federal waters and to update the data relevant to fishing activities. Oregon’s federal consistency review will apply to offshore projects with reasonably foreseeable effects on coastal resources, but is neither intended nor allowed to influence project design as per NOAA’s National Ocean Service. Moreover, experience in other states has shown that this occurs too late in a project to minimize conflict and is not an effective replacement for comprehensive front-end planning for federal waters projects.

Significant Advances in Research and Data Must Occur before Siting

The Engagement Plan anticipates collecting the “best available data and information... to inform decisions about whether to begin the leasing process for OSW.”⁴ To be clear, there is not sufficient data or analysis describing fisheries’ spatial needs in federal waters off of Oregon to inform offshore wind siting activities at the present time. A significant investment of time and resources will be required to create even a minimally defensible scientific record. This effort will require multiple parts and time-consuming novel data collection and research.

³ *Fisheries Survival Fund v. Jewell*, 2018 WL 4705795 (D.D.C. Sept. 30, 2018).

⁴ Page 9 line 16-17.

Analytical and Engagement Capacity of Government Agencies Must Increase

Due to global markets and political interest, offshore wind energy development is well-funded, but fisheries management and science are not. It is imperative to ensure that scientific experts, regulatory entities, and fishermen themselves are adequately funded to perform the research and engagement needed to effectively inform planning, and this critical work is not left to better funded but less knowledgeable entities.

Science Products and Processes Must Include Fishermen

Fishery management agencies have greatly improved the scientific record through cooperative research with the fishing industry, and both entities understand that the best knowledge and evidence comes from these collaborative partnerships. At the same time, other recent ocean zoning activities have excluded fishermen's participation in practice or by design. Simply put, fisheries-related scientific products and processes that do not directly include industry experts will not produce credible nor correct results. There needs to be a bottom-up effort to work with fishermen to create a trustworthy process for science and research; this will be far more extensive than simply backfilling existing processes and data sets.

Data and Associated Products Must Use Appropriate Time Series and Data Sets

As stated above, all due care must be taken to ensure the most recent, accurate, and comprehensive data is used for siting decisions. Due to environmental, market, and other conditions, the data used for prior offshore energy planning activities (such as that used for the WindFloat Project in 2013) is no longer descriptive of current fishing activity and fisheries resources. Certain fisheries data sets also have significant limitations and the Task Force must work with fisheries experts such as the industry, NMFS, and PFMC to interpret the utility of those data sets. For example, AIS (and even VMS in many cases) is not adequate to describe vessel traffic patterns as those data greatly underrepresent actual activity.

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RODA urges Task Force members to insist on full, early engagement of fishing experts in all deliberations relating to offshore wind in Oregon. Thank you for your consideration of these comments.

Sincerely,



Annie Hawkins, Executive Director



Lane Johnston, Programs Manager
Responsible Offshore Development Alliance