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RE: Request for Information - Offshore Wind Energy Fisheries Mitigation Guidance, ID BOEM-2021-0083-0001, November 22, 2021

The Southern Shrimp Alliance (SSA) appreciates the opportunity to provide comments in response to this Request for Information regarding the document entitled: "*Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development, November 22, 2021"* (hereinafter "Guidance document") [1]. The following includes general comments followed by comments in specific response to the "*Information Sought*" identified in the Guidance document.

These comments include several important references to comments previously submitted by SSA including those submitted on July 26, 2021, in response to BOEM's Request for Interest, and those submitted on December 16, 2021, in response to BOEM's Call for Information and Nominations. For convenience, links to those two comments follow here:

https://www.shrimpalliance.com/wp-content/uploads/2021/07/SSA-Comments-on-BOEM-RFI-GOM-Wind-f-7-26-21.pdf

https://www.shrimpalliance.com/wp-content/uploads/2021/12/SSA-Comments-to-BOEM-Call-for-Information-Gulf-Offshore-Wind-12-16-21-f-1-1.pdf

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[1] https://downloads.regulations.gov/BOEM-2021-0083-0001/content.pdf

General Comments

Guidance document consultations. As described in the Guidance document, BOEM's goal is to develop, **in consultation with the National Marine Fisheries Service (NMFS) and affected coastal states** *"guidance for the mitigation of impacts from offshore wind energy projects to commercial and recreational fishing communities". (emphasis added)*

It is not clear in the Guidance document how or when such consultations with NMFS or affected coastal states will occur. Such consultations are extremely important given that NMFS and those state agencies with responsibility for fishery conservation and management are the primary government repositories of fisheries scientific and management expertise and information that will be essential for BOEM to develop Guidance that ultimately proves to be effective in achieving its stated goals. Further, SSA is unaware of any outreach to the shrimp fishery or other U.S. fisheries from NMFS or the affected coastal states that would serve to inform their consultations with BOEM on the development of this Guidance.

BOEM timeline. As explained below, fundamental elements of the current regulatory regime governing this process are in flux. In its December 16, 2021, comments submitted to BOEM, SSA raised concern that the timeline being contemplated by BOEM for implementing each stage and element of its process is not sufficient to accommodate adequate stakeholder engagement or to achieve the highest quality and integrity of the spatial management analyses, environmental reviews and consultations with partner agencies.

The fact that the current Administration, and more specifically the Council on Environmental Quality (CEQ), is in the process of making major substantive changes to the regulations implementing the National Environmental Policy Act (NEPA) that have profound implications for BOEM's overall process to develop offshore wind energy as well as its development of these Guidelines substantially adds to the concern that BOEM is simply moving forward too quickly and should reconsider its current timeline. Achieving this Administration's objectives to develop alternative energy sources may well prove to serve the nation's best interests, but only if it is done correctly – and that will take time.

NEPA regulatory dynamics – "*effects or impacts*". As noted, NEPA regulations have and continue to be subject to major divergent changes over the past two years. This has profound implications for BOEM's overall process to develop offshore wind energy in the Gulf as well as specifically with respect to its development of these Guidelines for mitigating the impacts of such development on U.S. commercial and recreational fisheries, including the Gulf shrimp fishery.

First, very significant substantive changes were made to the NEPA regulations through a final rule issued by the CEQ on July 16, 2020,[2] ("2020 regulations") which took effect on September 14, 2020, in response to directives set forth in Executive Order (EO) 13807 issued by President Trump on August 15, 2017.[3]

[2] https://www.federalregister.gov/citation/85-FR-43304
[3] https://www.federalregister.gov/citation/82-FR-40463

Importantly, those changes included *inter alia* major changes to the NEPA regulatory definition of "*effects or impacts*" (see text below). This definition is at the core of BOEM's environmental and economic reviews of offshore wind energy development projects in the Gulf pursuant to NEPA, other applicable federal statutes including *inter alia* the Endangered Species Act (ESA), the Marine Mammal Protections Act (MMPA), and the Magnuson-Stevens Fishery Conservations and Management Act (MSA), as well as its development of these Guidelines to mitigate such impacts on U.S. fisheries including the Gulf shrimp fishery.

Among those changes made in the 2020 regulations were those that appear to have substantially limited the substantive scope and effect of the definitions of "*cumulative impacts*", "*direct effects*" and "*indirect effects*". The implications of these changes appear to be that BOEM will not be required to consider the cumulative or indirect impacts of offshore wind energy development in the Gulf and even its consideration of "direct impacts" would be limited. This, of course, also has major implications for which impacts to U.S. fisheries these BOEM Guidelines will need to mitigate and how.

The current Administration's perspectives are clearly at odds with those changes made in the 2020 regulations. As a preliminary step taken pursuant to EO 13990 issued by President Biden on January 20, 2021,[4] CEQ issued an interim final rule delaying for two years the previous requirement in the 2020 regulations for agencies to propose changes to their existing NEPA supplemental procedures by September 14, 2021, in order to make their procedures consistent with the 2020 regulations.[5] This suggested at the time that the CEQ intended to make changes to the 2020 regulations in the interim.

Indeed, on October 7, 2021, CEQ issued a Proposed Rule ("2021 Propose Rule") that would repeal and revise several important changes that had been made in those 2020 regulations.[6] Included in the 2021 Proposed Rule is the restoration of the core substance of the crucial definition of "*effects or impacts*" to the pre-2020 text. This includes restoring the regulatory definitions of "*direct effects", "indirect effects"* and *"cumulative impacts"* to those which were essentially set forth in the original 1978 regulations (see text below).

Given the tenor of the rationale set forth in that 2021 Proposed Rule "*Supplementary Information*" - that the public comment period on the Proposed Rule was closed November 22, 2021 - and that according to the federal Unified Agenda a Final Rule is currently anticipated sometime in February, 2022,[7] it appears likely that the NEPA regulatory definition of "*effects or impacts*" that is so fundamental to BOEM's overall process and this Guidance will again be substantially revised.

This presents a serious conundrum to SSA and all stakeholders as to how to respond to this Request for Information on the Guidance document.

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[4] https://www.federalregister.gov/executive-order/13990

[5] https://www.federalregister.gov/citation/86-FR-34154

[6] https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21867.pdf

[7] https://www.regulations.gov/docket/CEQ-2021-0002/unified-agenda

Should SSA and other stakeholders operate under the assumption that the changes to the definition of "*effects or impacts*" set forth in the 2021 Proposed Rule will become final in the relatively near future, and that BOEM's process of wind energy development in the Gulf - including the development of this Guidance on mitigating the impacts of such development on the U.S. fishing industry including the shrimp industry - will be subject to that definition for at least the next few years?

In other words, what is the scope and scale of impacts of offshore wind energy development in the Gulf that will be required to be evaluated and mitigated? The differences between the definition set forth in the 2020 regulations and the 2021 Proposed Rule are quite substantial.

Not knowing the answer to these core questions confirms that the overall BOEM process including this Guidance for mitigating the impacts on U.S. fisheries including the shrimp fishery is premature and will remain so until the current regulatory foundation is definitively resolved. How can we provide thoughtful input on Guidance to mitigate impacts when we don't even know for sure what impacts will need to be mitigated pursuant to NEPA?

For the purpose of a convenient comparison, there follows that proposed revised definition of "*effects or impacts*" that would be set forth in the NEPA regulations at 40 CFR 1508.1(g) should the 2021 Proposed Rule become final:

> *"(g) Effects or impacts means changes to the human environment from the proposed action or alternatives and include the following:*
>
> *(1) Direct effects, which are caused by the action and occur at the same time and place.*
>
> *(2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.*
>
> *(3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.*
>
> *(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial."*

In contrast, there follows the current definition of "*effects or impacts*" set forth at 40 CFR 1508.1(g)

> *"Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.*
>
> *(1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.*
>
> *(2) A "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.*
>
> *(3) An agency's analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed."*

Comments in response to the "*Information Sought*" in the Guidance document.

Background and Further Regulatory Uncertainty. As we understand it, the purpose of this initiative is to develop specific guidance on implementing four of the five 'best management practices' identified in BOEM's July 2014 "*Final Report on Best Management Practices and Mitigation Measures"* for fisheries.[8]

As stated in the Guidance document, the Guidance for mitigating impacts on U.S. fisheries and the "Information Sought" focus on the following very important elements:

> *1. Project siting, design, navigation, and access to avoid, minimize, rectify, or reduce impacts.*
> *2. Safety measures to avoid, minimize, rectify, or reduce impacts.*
> *3. Environmental monitoring plan.*
> *4. Financial compensation for economic impacts expected on commercial or recreational fishing activities and support services when other measures have not adequately addressed the impacts.*

[8] https://www.boem.gov/sites/default/files/renewable-energy-program/Fishing-BMP-Final-Report-July-2014.pdf

However, substantially adding to the state of regulatory uncertainty is the fact the 2020 regulations also made major substantive changes to the NEPA regulatory definition of "*mitigation".* Consistent with those 2020 regulations and as indicated in the eCFR, the definition of "*mitigation*" set forth at 40 CFR 1508.20 was removed from the CFR on September 14, 2020 and has been repealed and replaced with the 'new' definition now set forth at 40 CFR 1508.1(s). (see text below)

Once again, for the purpose of comparison, the 'old' pre-2020 definition of "*mitigation*" that had been at 40 CFR 1508.20 is as follows:

> *§ 1508.20 Mitigation.*
>
> *"Mitigation includes:*
>
> *(a) Avoiding the impact altogether by not taking a certain action or parts of an action.*
>
> *(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.*
>
> *(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.*
>
> *(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.*
>
> *(e) Compensating for the impact by replacing or providing substitute resources or environments."*

In contrast, the 'new' definition of "*mitigation*" now at 40 CFR 1508.1(s) is as follows:

> *"Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects.* ***While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation****. Mitigation includes:*
>
> *(1) Avoiding the impact altogether by not taking a certain action or parts of an action.*
>
> *(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.*
>
> *(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.*
>
> *(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.*

(5) Compensating for the impact by replacing or providing substitute resources or environments" (emphasis added)

Of note, however, is the fact that the BOEM Guidance document itself cites the definition of "*mitigation*" at 40 CFR 1508.20 – the 'old' definition that was apparently repealed and replaced on September 14, 2020. This suggests that even BOEM is struggling under this highly dynamic regulatory regime. That said, based on the content of the BOEM Guidance document explaining what BOEM's Guidance 'can and cannot do', it appears that BOEM is relying on the 'new' 2020 regulatory definition of '*mitigation*'.

Furthermore, unlike the definition of "*effects and impacts*", the Biden Administration (CEQ) has yet to initiate a rulemaking to address this major substantive change to this definition of "*mitigation*" – although in its 2021 Proposed Rule CEQ has indicated that "*CEQ is engaging in a series of rulemakings to propose revisions to the 2020 NEPA Regulations".* We do not know if the definition of "*mitigation*" will be the subject of one of those rulemakings.

Therefore, given these circumstances, SSA will at this time operate under the assumption that the applicable definition of "*mitigation*" is that which is now set forth at 40 CFR 1508.1(s).

Of great significance to BOEM's overall process to develop offshore wind energy in the Gulf, and specifically to these Guidelines for mitigating impacts to U.S. fisheries, is the inclusion in the 'new' definition of mitigation of the statement highlighted in bold above: "***While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation****."*

The strict interpretation of the 2020 definition of "*mitigation*" including this sentence is that offshore wind energy industry is not required by NEPA to adopt any measures to mitigate the impacts of its activities on U.S. fisheries including the Gulf shrimp fishery whatsoever. Consequently, the applicable Guidance to be developed in part through this Request for Information will be just that; purely discretionary actions that may or may not be taken by offshore wind energy companies to mitigate the impacts of their activities on U.S. fisheries. While we admit to having little to no direct experience with the offshore wind energy industry, is there some reason to believe that the offshore wind energy industry will voluntarily adopt and implement measures set forth in this Guidance to mitigate the impacts on the Gulf shrimp industry given there is no legal requirement for them to do so?

Taking this one step further, given the critical nexus between the definitions of "*mitigation*" and "*effects or impacts*", the 2020 definition of "*mitigation*" would appear to absolve the offshore wind energy industry from any responsibility under NEPA to mitigate the direct, indirect or cumulative impacts of their activities on other users of the Gulf of Mexico as well as those impacts on vulnerable marine species and habitats some of which the Gulf shrimp fishery is held accountable for. Separately, however, we do expect that the offshore wind energy industry will remain subject to the requirements of other applicable statutes including the ESA, MMPA and MSA.

Context: At this stage in BOEM process it is impossible for SSA to precisely describe much less quantify in any detail the economic or environmental impacts on the Gulf shrimp fishery of offshore wind energy development in the Gulf. Given the limited information we have about what the nature, scale and scope of this development will be, all we can do is to identify 'reasonably foreseeable' impacts to be avoided, minimized, and compensated for.

In our previous comments to date we have attempted to characterize what is at stake in terms of the economic scale and scope of the Gulf shrimp fishery and those many Gulf coast communities that depend on it, as well as those sensitive species populations and habitats the health of which the shrimp industry is held accountable for under the ESA and MSA. As noted below, such economic data on the shrimp fishery is likely inadequate at this time for the purpose of quantifying specific impacts and financial compensation.

Notwithstanding the regulatory dynamics and uncertainties described above, SSA believes that to be properly evaluated and mitigated, impacts should be categorized and evaluated in the following manner.

- Direct site-specific
- Direct cumulative
- Indirect site-specific
- Indirect cumulative

Direct site-specific impacts include, just as examples, the displacement from well documented traditional productive shrimp fishing grounds due to construction/siting of turbines and transmission lines, displacement from access to shoreside infrastructure, threats to maritime safety, etc. These may be temporary as in case of displacement from shrimp fishing grounds due to dredging activities associated with transmission lines, or can they be permanent due to siting of turbines on traditional shrimp fishing grounds. Direct site-specific impacts also relate to the configuration of turbines and the inter-array of electric cables relative to shrimp fishing activity, navigation and other marine activities competing to occupy the same shrinking space.

Indirect impacts include, among others, adverse impacts on the population status of species for which the shrimp industry is held accountable as well as on localized habitats and the associated ecosystems locally and Gulf wide. These have been discussed in detail in SSA's previous comments.

All of those direct and indirect impacts can also occur cumulatively through the collective impacts of multiple offshore wind energy development projects in the Gulf. Cumulative effects can also result from the impacts generated by wind energy development combined with such human-induced stressors as oil and gas development, pollution (dead zone), marine traffic, other commercial and recreational fisheries, aquaculture operations, military activities, etc.

SSA reiterates that many of these impacts from virtually all other relevant marine activities in the Gulf can best be evaluated through the application of the state-of-the-art spatial management tools including suitability modeling developed by NOAA's the National Centers for Coastal Ocean Science (NCCOS).

Comments in Specific Response to Information Sought

1. General Approach

- *Should BOEM develop mitigation guidance for some or all of the four topic areas below and how should they be prioritized?*

  SSA requests that BOEM develop mitigation guidance for all four of the topic areas outlined in the Guidance document to include: 1. Project siting, design, navigation, and access, 2. Safety measures, 3. Environmental Monitoring plan and 4. Financial compensation. SSA requests that BOEM give these equal priority as they are all existential to the Gulf shrimp industry.

- *Are there specific strategies, process steps, and engagement components for minimizing impacts and obtaining information requested in the topic areas?*

  In its previous comments and correspondence with NOAA regarding strategies and process, SSA has requested the following:

  1. The application of state-of-the-art spatial management tools in collaboration with NOAA to ensure transparent and objective siting decisions that are based on the best scientific data and other information available.

  2. The conduct of an environmental review process that is in full compliance with the National Environmental Policy Act (NEPA) mandates to provide sufficiently detailed and robust environmental information on both the cumulative and site-specific impacts of this action in order to adequately support the full range of decisions to be made.

  3. Consultations with NOAA regarding adverse effects on Essential Fish Habitat (EFH), and responses to any recommendations received from NOAA for conserving such habitat as required by section 305(b) of the Magnuson-Stevens Fishery Conservation and Management act (MSA).

  4. Consultations with NOAA regarding impacts to endangered and threatened species as required by section 7 of the Endangered Species Act (ESA) including the preparation of a comprehensive Biological Opinion assessing the cumulative effects on all affected species.

  Further, SSA reiterates its concern that the speed with which BOEM is moving forward in this process will undermine the quality of the scientific data and other information available as well as the quality of the spatial management and other analyses of this data and information. BOEM must seriously reconsider the timeline it is currently following in order to ensure that it is sufficient to accommodate adequate stakeholder engagement and to achieve the highest quality and integrity of the spatial management analyses, environmental reviews and consultations.

Still further, the fact that it is impossible for SSA to precisely describe or quantify the economic or environmental impacts on the Gulf shrimp fishery of offshore wind energy development in the Gulf at this time indicates that it has been provided with insufficient information on the specific development plans BOEM and the offshore wind energy industry have for the Gulf. This includes many details including the specific size, location and configurations of turbine arrays and transmission lines, and turbine and transmission line technologies, etc.

At this time all we know is that wind energy development in the Gulf will involve some unknown number, location, configuration and technologies of turbines, inter-array electric cables, and transmission lines in a massive area comprising approximately 29,901,285 acres of the central and western Gulf. SSA provided BOEM with the complete shrimp fishing effort data set scaled from low to high levels of effort plotted on that nearly 30-million-acre area. We have again attached that same map to these comments – please see Appendix 1. That is the best we can do at this point, but clearly far more precise spatial planning must take place for turbine, inter-array electric cable, and transmission line siting and configuration with respect to the shrimp fishery and with respect to the full range of other human activities and ecological elements, all of which will be 'competing' for less space.

With that in mind and with respect to "engagement components", BOEM must consider providing the shrimp industry with far more information regarding the specific details of the siting, configuration, technologies, and other aspects of offshore wind energy development in the Gulf if we are going to be able to engage at a meaningful level in this process. That information should be provided in part through BOEM's facilitation of direct engagement and dialogue between the shrimp industry and the offshore energy development industry.

- *Should the topics be addressed from a national or a regional perspective and why?*

  SSA believes that these topics should be addressed in part through the establishment of national policies and objectives for offshore wind energy development including those pertaining to BOEM's environmental reviews and each element of 'mitigation', and that these national policies must be sufficiently flexible to enable them to be applied regionally recognizing the essential need to accommodate relevant regional differences.

2. Project siting, design, navigation, and access

We do not have sufficient knowledge or understanding of what the specific practical design, technological or operational alternatives for turbines, transmission lines and other components of offshore energy generation and transmission are. Nor do we expect that BOEM or the offshore wind energy industry have sufficient knowledge or understanding of what the specific practical technological or operational alternatives are for prosecuting an economically viable shrimp fishery.

While all of the elements identified in the Guidance document are crucial, as are other, unidentified elements of shrimp fishing operations, it seems impossible given the limited information at hand for any of the parties – the shrimp industry, the offshore wind energy

industry or BOEM - to identify project design criteria. At this point – and perhaps even after more information is received - the simplistic answer is that project design criteria should avoid impacts to shrimp fishing. And, given the shrimp fishing effort data we have provided (see Appendix 1), we believe that criteria can be met.

With respect to BOEM's questions regarding evidence-based criteria, perhaps that information exists and can be inferred from experiences in other regions or nations and with other fisheries, but the Gulf shrimp industry certainly does not have any evidence-based knowledge or expertise at this point in the process.

Therefore, again, BOEM must provide a process whereby the shrimp industry can become sufficiently educated on all of these critical elements and decision points so that it can provide BOEM with meaningful input on how best to avoid, minimize or compensate for impacts.

Once again, given the scale and scope of needed stakeholder engagement including education, as well as of the required environmental reviews, SSA reiterates its increasing concern that BOEM is not providing a realistic timeframe to actually achieve its mitigation objectives.

3. Safety measures

With respect to the questions set forth in the Guidance document under this section, BOEM must consult and collaborate with those state, federal and international authorities that have fundamental responsibilities for ensuring the safety of vessels and life at sea. As we understand it, however, those responsibilities with respect to offshore wind energy are not entirely clear to us, and it is our impression that fisheries in other regions (where offshore wind energy development is much further along than in the Gulf) perceive that direct, assertive engagement by those authorities has been less than sufficient.

Given that, SSA believes BOEM must initiate a process to bring these authorities and their expertise together to develop an overall 'safety plan' for the development of offshore wind energy in the Gulf at all stages of development and operation. This planning process must include close consultations with the shrimp fishing industry and all other private and government entities that operate vessels or facilities in the Gulf.

More specifically, the shrimp fishing industry is concerned, of course, with a wide range of specific aspects of such development that affect safety including but not limited to:

- Any activities associated with the dredging and installation of transmission lines
- Any activities associated with the construction and operation including servicing of turbines and inter-array electric cables in or in the vicinity of active shrimp fishing grounds or in areas where shrimp vessels normally transit to fishing grounds.
- The size and configuration (spacing, design) of turbine arrays and inter-array cables that serve to displace and compress fishing activity and vessel traffic (shipping, offshore oil and gas, military) into smaller more confined space.
- Interference with radar functionality.

- Proper lighting and marking of all elements of the facility including on navigational charts.

And, importantly, we must anticipate that additional unforeseen safety issues will emerge as this development moves forward.

4. Environmental Monitoring plan

- *What data should be collected to understand fishery performance (e.g., changes in catch, transit, and/or fishing itself) in and around offshore wind facilities? What methods should be used to analyze such data?*

  NOAA routinely collects shrimp catch (landings) data and has since 2004 collected extensive and precise electronic data on shrimp fishing effort throughout the Gulf including the current "Call Area" the analysis of which can differentiate between transiting and actual fishing activity.

  The analysis of this data must be one core element of the collaboration by BOEM and NOAA to apply state-of-the-art spatial management and suitability modeling methodology developed by NOAA's NCCOS to evaluate the suitability of offshore wind energy siting and other decisions.

  SSA wishes to stress that there are many more data elements of an 'environmental monitoring plan' that must be properly collected and analyzed in order to sufficiently understand and mitigate the impacts of offshore wind energy development in the Gulf than just those identified in the single Guidance document question set forth above.

5. Financial compensation

<u>General comments</u>. Through its questions set forth in the Guidance document under this section BOEM has identified a number of very important issues regarding financial compensation for those impacts of offshore wind energy development on U.S. fisheries that could not be avoided or minimized.

Many of these questions transcend the minimal practical experience SSA has with offshore wind energy development in the Gulf at this stage of the process. In that respect, it seems apparent that answers to many of these questions can be inferred from or at least informed by the actual experience with offshore wind energy development in other U.S. regions and internationally where offshore wind energy development is much further along than in the Gulf. All we can do at this point is to try to imagine.

SSA reiterates that many of such impacts -and the need for financial compensation of those impacts -can be very substantially avoided and minimized in the first place if BOEM limits the siting of turbines to areas where there is no shrimp fishing effort – i.e., in areas deeper than the 90-100 meter contours or in areas identified on the map of the location and relative intensities of shrimp fishing effort presented in SSA's December 2021 comments to BOEM. That map,

which was produced at SSA's request by the NCCOS, identifies many areas within the CALL Area where shrimp fishing effort is low or non-existent. (see Appendix 1)

By prioritizing avoidance and minimization, BOEM can minimize the need for compensation. Mandating that offshore wind energy companies are held responsible for mitigation including providing such financial compensation will incentivize their efforts to avoid and minimize the impacts in the first place. A failure to mandate that responsibility for financial compensation will have the obvious opposite effects of disincentivizing avoidance and minimization.

Given that, SSA also reiterates its requests for BOEM to collaborate with NOAA on the application of the state-of-the-art spatial management tools including suitability modeling for conducting truly comprehensive evaluations of potential sites for offshore wind energy production and transmission that is based on data - not only on the shrimp fishery, but on virtually all other relevant marine activities and sensitive species and habitats in the Gulf.

SSA also reiterates its recommendation that BOEM facilitate and contribute to the development of a national policy for mitigating the impacts of offshore wind energy development to include a national policy and process for requiring the offshore wind energy industry to financially compensate fisheries for impacts that could not be avoided or minimized for the life of any project. That such a requirement does not already exist is disturbing and placing the burden on the U.S. fishing industry including the Gulf shrimp industry to privately 'negotiate' financial compensation with offshore wind energy companies on a project-by-project basis is completely untenable and will certainly result in unfair and insufficient compensation.

As SSA has previously suggested, the Fishermen's Contingency Fund[9] established at 43 U.S.C. 1841 and administered by NOAA provides a potential, albeit limited, model, and a convenient statutory vehicle, for developing a more broadly designed financial compensation policy and program tailored to the impacts of offshore wind energy development.

While we respectfully recognize that BOEM may have only limited tools available to it under the current statutory and regulatory regime, it seems apparent that the development of non-binding Guidance through the synthesis of inputs from disparate stakeholders from the Gulf region (including SSA), many of which have very limited experience or expertise with offshore wind energy development or operations, through a public comment period and a workshop is unlikely to generate a satisfactory result.

And still further, SSA reiterates its concerns raised earlier in these comments that the state of uncertainty in the regulatory regime including especially with respect to the NEPA regulatory definitions of "*effects or impacts*" and "*mitigation*" which are at the very core of this Guidance initiative make it very difficult if not impossible for SSA, other stakeholders and, in fact BOEM itself, to develop guidance for mitigating the impacts of offshore wind energy development on U.S. fisheries when we can't be entirely sure what '*mitigation'* will actually mean – or what impacts can even be considered for mitigation.

[9] *See* 50 CFR Part 296, Pub. L. 97-212, 43 U.S.C. 1841 *et seq.*

Economic data. SSA has generally found federal economic data on the shrimp fishery to be insufficient notwithstanding the fact that it is the most valuable in the Gulf and among the most valuable in the nation. Gulf Coast States do collect disparate sets of economic data, and perhaps that could be synthesized for purposes of a Gulf-wide analysis.

For example, SSA found it necessary to reference in its previous comments to BOEM economic data presented in a 2019 NOAA FEIS pertaining to a regulatory action for the use of turtle excluder devices in the shrimp fisheries. The point being, there does not appear to be any central repository for comprehensive, up-to-date economic data on the Gulf shrimp industry.

Anticipating that such data will be essential to quantifying such impacts, SSA requests that BOEM consult and collaborate with NOAA and State agencies to develop and implement a specific plan for collecting and analyzing such data that meets a set of predetermined objectives.

Such data collection objectives must include *inter alia* that the data must be collected at a sufficient level of detail and quality to quantify impacts on the shrimp industry, and to further design compensation mechanisms at the individual vessel, vessel owner and crew levels – as well as compensation for the full scope of upstream and downstream shoreside businesses that are at the core of the Gulf shrimp industry and the communities that depend on them.

As it has previously, SSA stresses that the economic impacts on the Gulf shrimp industry caused by offshore wind energy development in the Gulf will not be limited to the coastal States bordering the Call Area (Louisiana and Texas). Shrimp fishing vessels hailing from ports in Mississippi, Alabama and Florida consistently fish within the Call Area at different times of the year, and those vessels also depend on the essential services provided by shrimp processors and other upstream and downstream shoreside businesses located in those three States. In fact, the impacts of offshore wind energy development in the Call Area will be felt extensively throughout the Gulf in all five States. Therefore, BOEM must ensure that it collects and analyzes data from all of those affected elements of the shrimp industry in all of these affected areas at the State, Interstate (Gulf of Mexico Marine Fisheries Commission) and Federal levels.

With respect to the completeness of datasets, the standard mandated by National Standard 2 of the MSA and implementing regulations for all U.S. fisheries including 'data-poor' fisheries is for the use of "best scientific information available" which includes economic data.[10] This must be the standard applied by BOEM.

Types of Impacts for which compensation to the shrimp industry must be provided.

As previously stated, these impacts must be evaluated and mitigated according to the four impact categories of: 1) Direct site-specific, 2) Direct cumulative, 3) Indirect site-specific and 4) Indirect cumulative. These include but are not limited to the following.

[10] *see* 16 U.S.C. 1851(a)(2), 50 CFR 600.315

- Financial losses measured in terms of the value of total shrimp catch as well as loss of catch efficiency (Catch Per Unit Effort (CPUE)) caused by any displacement, temporary or permanent, from traditional fishing grounds resulting from any pre-construction, construction, operation and servicing and repair of any offshore energy production facility, including inter-turbine array electric cables, as well as any such permanent or temporary displacement resulting from dredging and installation of energy transmission lines to shoreside facilities. It is noted that any reductions in CPUE will result in net vessel revenue loss.

- Financial losses measured in terms of the value of total shrimp catch, the loss of catch efficiency (CPUE) and associated net revenue loss, or the loss or damage to shrimp fishing gear, equipment or vessels resulting from any debris on the seafloor generated by any offshore wind energy activities including debris from the damage or destruction of any offshore wind energy facility, cable, transmission line or any other associated equipment caused by severe weather or maritime accident. As noted in previous SSA comments, it does not appear that current wind turbine engineering and technology is sufficient to withstand the wind speeds or wave heights generated by Category 5 hurricanes which frequent the Gulf including the Call Area.

- Financial losses measured in terms of the value of total shrimp catch and/or the loss of catch efficiency (CPUE) and associated net revenue loss, associated with any costs of gear modification, gear design, or any other changes in fishing practices necessary to adapt to a more restricted fishing environment caused by, for example, the location, size, and configuration of offshore wind energy facilities.

- Financial losses resulting from the shrimp fishery being displaced and compressed into increasingly smaller areas in competition with each other which will, by definition, result in reductions in CPUE and, thus, net vessel revenues.

- Financial losses of upstream and downstream shoreside businesses resulting from the losses in the total value and volume of shrimp catch and/or reductions in shrimp fishing CPUE.

- Financial losses of shrimp fishing vessels as well as upstream and downstream shoreside businesses resulting from the displacement from and loss of access to waterfront space and facilities caused by competition from the offshore wind energy development industry.

In addition to these impacts, there may be impacts on the shrimp industry that result from the adverse impacts offshore wind energy development may have on sensitive species and ecological habitats the health of which the shrimp industry is otherwise held accountable for through various regulatory restrictions imposed on its operations pursuant to the ESA and MSA. Any sensitive species population that is depleted and any sensitive ecological habitat that is damaged by offshore wind energy development – either on a site-specific (direct) or cumulative basis – may lead to the imposition of additional costly regulatory restrictions on the shrimp

fishery. The offshore wind energy industry must be held accountable for those costs to the shrimp industry as well.

Further, there are other potential impacts on the shrimp industry that that are less understood in the Gulf at this stage of the process, but which have emerged from the experiences of other U.S. fisheries with offshore wind energy development in other regions of the U.S. As just one example, depending on the size, location, and configuration (e.g., spacing, layout, transit corridors) of any given wind turbine array, fishermen may be forced to navigate longer distances to fishing grounds and back to port and thereby incur higher fuel costs and perhaps greater threats to their safety. The offshore wind energy industry must also be held accountable for these additional costs to the shrimp industry.

Finally, compensation for all such impacts that cannot be avoided or minimized must be provided throughout the life of the project.

As always, the Southern Shrimp Alliance greatly appreciates BOEM's engagement and consideration of our inputs in this process which is truly existential to the Gulf shrimp industry. Please let us know if you have any questions. We look forward to our continued engagement.

Sincerely,

John Williams,
Executive Director

Appendix 1: Shrimp Fishing Effort Data Plotted on BOEM Call Area Map with Contours