

Letter of Support

December 22, 2023

To the American Clean Power Association (“ACPA”):

We, the eleven Atlantic Coastal States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina (collectively, the “States”), write to express our shared vision for the design and development of a regional fund and associated claims process for an Atlantic Coast fisheries compensation mitigation framework resulting from potential impacts from offshore wind project activities.

The United States has established an ambitious goal to implement renewable energy as part of an effort to increase energy independence and to mitigate the changes in climate. Many Atlantic Coast states have also established renewable energy goals, some specifically committing to include offshore wind as part of their future energy plans. While endeavoring to meet these goals, the States are also committed to maintaining a vibrant and economically productive fishing industry that ensures the continued support of local economies into the future.

Under federal law, the U.S. National Environmental Policy Act (“NEPA”) requires any project to first avoid impacts, then minimize remaining impacts, before, finally, mitigating any remaining impacts. The Bureau of Ocean Energy Management (“BOEM”) in their draft *Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf Pursuant to 30 CFR Part 585* also notes that offshore wind developers must follow this hierarchy in relation to impacts on fisheries. Financial compensation is one manner of mitigation that can be and has been applied by offshore wind developers to the fishing community for offshore wind projects to date, when avoidance and minimization is not sufficient.

The States support establishing an equitable and effective claims process to disburse fisheries mitigation funds. To date, compensatory mitigation has been conducted on a project-by-project basis and has used varied calculation methodologies due to different state and developer preferences. The recent draft guidance from BOEM, however, proposes a more uniform calculation methodology that would produce consistent financial mitigation packages associated with federal permitting. The undersigned States believe that a regional approach to claims administration can support the equitable and effective administration of the resulting mitigation financial commitments for the fishing industries working along the Atlantic Coast, regardless of domicile, homeport state, or ports of landing. A centralized and transparent approach to administering compensatory mitigation funds will also increase administrative efficiencies to maximize compensation to affected businesses and individuals.

The States are working together to advance this shared vision of a consistent regional approach for the Atlantic Coast’s commercial and for-hire recreational fishing industries and supporting infrastructure through the conceptual development of a regional compensation fund (the “Fund”), to be managed by an independent Regional Fund Administrator (the “Administrator”).

The States have reached consensus on the need for an expert independent party to lead the design and development of an effective claims process and governance structure for the Fund that reflects input from all affected sectors, especially those most directly affected – fishing enterprises and infrastructure support.

The undersigned States have identified the following elements critical to the design, development, and establishment of the Fund. Those elements include but are not limited to:

- Representatives from the Atlantic Coast states, the fishing industry, and offshore wind developers should have a robust participatory role in the design and development of the Fund.
- Participation in this process or in the Fund may aid the States' review of offshore wind projects but shall not bind, restrict, nor otherwise affect any State authority, including under the Coastal Zone Management Act or otherwise applicable state or federal laws and regulations.
- Fisheries data are complex and unique across gear types, species, subregions, and ports of origin. Thus, data to support the claims process may be available from state, federal, and interstate management bodies and may require the Administrator to obtain permissions to receive verifiable supporting confidential data, develop tailored approaches to data-poor fisheries, and/or may require direct verifiable information from fishing and supporting businesses.
- Upon completion of the satisfactory design, development, and establishment of a regional claims process with robust and inclusive fishing industry engagement, the States support the use of this Fund as the primary means for reviewing and processing claims by fishing industry individuals and businesses, provided that such support is consistent with all applicable law.
- While the States work in good faith to establish the regional Fund and thereafter, each State has or may in the future establish project-by-project funds. Once the Fund is operational, States will make best efforts to transition from project-by-project funds to consistent use of the regional Fund, when they deem appropriate.
- The Fund will avoid duplicative compensation to the same party for the same harm in time, location, and kind.
- In the event Congressional or federal action is taken in the future to fund a similar effort to mitigate impacts to commercial and recreational fisheries from offshore wind development, the States agree to consider amending, transitioning, or sunseting this regional fund initiative.

To ensure that the design and development of the Fund is adequately resourced, funding has been sought from individual states, foundations, and the offshore wind industry. Several of the signatory states have committed funding to this effort, and this letter serves as a statement of support for additional funding contributions from the private sector consistent with the design and development elements described above and the specific financial resource elements included below:

- Entities contributing financially to the establishment of the Fund include the States, foundations, and ACPA (indirectly through its offshore wind members) (the “Funders”). The Funders may have fiscal oversight of and contractual arrangements regarding the use of those funds by the entity hired to design, develop, and establish the Fund. However financial contributors cannot have oversight or control over the substantive process or decisions of such entity regarding the structure or function of the Fund, except as consistent with the scope of work outlined in the Request for Proposals (RFP) used to procure such entity and the governance framework named in that RFP.
- Should any funding contributed for design, development, and establishment of the Fund be unspent for any reason, it should be returned equitably to the Funders on a pro rata basis.

The States appreciate the commitment and contribution of ACPA’s offshore wind developer members to this regional approach and look forward to the continued collaboration through the design, development, and establishment phases of this initiative. Working collaboratively across sectors will yield the most successful and durable outcomes for the coexistence of the fishing and offshore wind sectors.

STATE OF MAINE

DocuSigned by:
By Dan Burgess
3DE210881E8978D...

Name: Dan Burgess

Title: Director, Maine Governor's Energy Office

STATE OF NEW HAMPSHIRE

DocuSigned by:
By Jared S. Chicoine
639F981A30BF4EB...

Name: Jared S. Chicoine

Title: Commissioner, New Hampshire Department of Energy

COMMONWEALTH OF MASSACHUSETTS

DocuSigned by:
By Rebecca L. Tepper
DD88AEB881EB182...

Title: Secretary, Massachusetts Executive Office of Energy and Environmental Affairs

STATE OF RHODE ISLAND

DocuSigned by:
By Jeffrey M. Willis
A99F288B28D548A...

Name: Jeffrey M. Willis

Title: Executive Director, Rhode Island Coastal Resources Management Council

STATE OF CONNECTICUT

DocuSigned by:
By Katherine S. Dykes
F09EA86A1567479...

Name: Katherine S. Dykes

Title: Commissioner, Connecticut Department of Energy and Environmental Protection

STATE OF NEW YORK

DocuSigned by:
By Doreen Harris
7B7DD45DB1B548E...

Name: Doreen Harris

Title: President and CEO, New York State Energy Research and Development Authority

STATE OF NEW JERSERY

DocuSigned by:
By Shawn LaTourette
0EE31DC62BDD4E0...

Name: Shawn LaTourette

Title: Commissioner, New Jersey Department of Environmental Protection

STATE OF DELAWARE

By _____

Name: Shawn M. Garvin

Title: Secretary, Delaware Department of Natural Resources and Environmental Control

STATE OF MARYLAND

DocuSigned by:
By Paul G. Pinsky
FB316REA09FA130...

Name: Paul G. Pinsky

Title: Director, Maryland Energy Administration

DocuSigned by:
By Josh Kurtz
ADA07FC08FD048A...

Name: Josh Kurtz

Title: Secretary, Maryland Department of Natural Resources

COMMONWEALTH OF VIRGINIA

DocuSigned by:
By Jamie Green
0ACBD9C3554D478...

Name: Jamie Green

Title: Commissioner, Virginia Marine Resources Commission

STATE OF NORTH CAROLINA

DocuSigned by:
By Elizabeth S. Biser
B19900A67F1A1...

Name: Elizabeth S. Biser

Title: Secretary, North Carolina Department of Environmental Quality