

[Remarks received from Meghan Lapp by the Senate Fisheries Task Force, 3-29-19]

Federal Process Overview

1. In July 2010, President Obama signed Executive Order 13547, in what became known as National Ocean Policy. <https://obamawhitehouse.archives.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>. This policy, while mentioning other kinds of offshore energy development, primarily focused on marine spatial planning initiatives to form the groundwork for offshore wind farms as far as offshore energy was concerned. <https://obamawhitehouse.archives.gov/administration/eop/oceans/policy>.
2. Shortly afterwards, in November 2010, Secretary of the Interior Ken Salazar implemented “Smart from the Start”, an initiative designed to speed up offshore wind development. <https://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start-Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast>. It basically allows a wind developer to point and click to a spot on a chart and start the offshore wind leasing process. It is also called the unsolicited bid process. There is no consideration of pre-existing uses. It’s the wild west- the Oklahoma land rush. Run, plant your flag, and it’s yours. (Technically not yours yet but you start the identification and leasing process, which ends in a bidding auction). This can also happen if a state or state utility identifies an area- for example, a wind lease sited on squid grounds very important to RI vessels was initiated by the New York Power Authority. Because there is no comprehensive siting process, we end up with major conflicts on fishing grounds.
3. Contrast with oil and gas 5-year plan. <https://www.boem.gov/2017-2022-Proposed-Final-Program-FAQs/>. Some of us in the fishing industry met with (bipartisan) Congressional reps/staff and tried to get something similar to apply to offshore wind, for offshore wind to follow this type of format, but nobody was willing to craft the bill.
4. Now we have a new Administration. But the offshore wind push hasn’t changed, if anything it has intensified.
5. Commercial Fishing according to the Outer Continental Shelf Lands Act, as amended by the Energy Policy Act, is supposed to protect correlative rights on the OCS, prevent interference with reasonable uses of the OCS, as well as consider the use of the seabed for a fishery. <https://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf>. However, BOEM is completely ignoring this in favor of offshore wind companies. BOEM now has a new “Renewable Energy Path Forward” where exclusionary factors for preventing offshore wind development in a particular area do not include “fishing grounds”, but instead include within their criteria of “positive factors” for offshore wind leases “areas where industry- aka the offshore wind industry- has expressed interest” <https://www.boem.gov/Renewable-Energy-Path-Forward/>. So, the push to promote offshore wind farms at the expense of other pre-existing users, including those which are supposedly legislatively protected such as fishing, continues.
6. In 2017, President Trump signed an executive Order expediting environmental review of infrastructure projects. <https://www.whitehouse.gov/presidential-actions/executive-order-expediting-environmental-reviews-approvals-high-priority-infrastructure-projects/>. Offshore wind has until now been considered an infrastructure project. Pursuant to the National Environmental Policy Act, or NEPA, an environmental review has to occur for federal

infrastructure projects. This environmental review also includes impacts to the human environment, in the case of offshore wind the commercial fishing industry. This NEPA analysis is literally the only time in the BOEM process that commercial fishing is officially considered. Because of the way that BOEM has structured their NEPA reviews, they only conduct the full NEPA analysis- and therefore fisheries impact analysis- at the very end of the permitting process for a wind farm, rather than at the beginning of the process prior to issuing the lease. If the analysis was required at the prior to leasing stage, conflicts such as commercial fishing grounds could be investigated and used in a decision whether or not a lease on a particular site was appropriate or not. However, as the process now stands, the fishing industry is only considered at the 11th hour, making major changes to projects or re-siting of projects extremely unlikely or downright impossible. The new EO to further expedite NEPA review compounds the problem. RI commercial fishing businesses and municipalities, including Seafreeze Shoreside, Town Dock, the Rhode Island Fisherman's Alliance, Town of Narragansett and Narragansett Chamber of Commerce were party to a lawsuit focused on the (what we deemed) inappropriate timing of the NEPA analysis regarding the NY Wind Energy Area (now controlled by Norwegian state-owned company Equinor), along with other fishing industry interests and municipalities. <https://www.savingseafood.org/news/washington/scallop-fishing-industry-municipalities-sue-feds-ensure-seafood-interests-considered-ny-bight-wind-energy-project/>. The lawsuit was unsuccessful in that the judge ruled that because BOEM could technically still revoke the lease, our claims were not ripe for judgment. Essentially, we were told that until the wind farm is actually granted, we have no case. <https://atlanticscallops.org/fisheries-survival-fund-expresses-concern-over-recent-ruling-in-ny-wind-farm-case/>. By then, it is too late. This is a very backwards way to proceed, and puts RI commercial fishing interests in danger.

State Process Overlap

1. The biggest position the states play is in renewable energy mandates. No offshore wind farm can go forward without a power purchase agreement. Utilities are being essentially forced into these power purchase agreements through state renewable energy/offshore wind mandates. While the skids have been greased as far as the federal process goes, it is actually state renewable energy targets that are driving the incredible pace of offshore wind sales/development. <https://www.chron.com/business/energy/article/State-mandates-for-renewables-is-driving-new-13652699.php>. For example, MA has set a incredibly high target of 55% of renewable electricity by 2050, NJ has set a 50% goal by 2030, and NY has set a 100% renewable target by 2040. <https://www.governor.ny.gov/news/governor-cuomo-announces-green-new-deal-included-2019-executive-budget>, <https://www.chron.com/business/energy/article/State-mandates-for-renewables-is-driving-new-13652699.php>. In RI, Governor Raimondo has set a goal to increase RI's renewable energy portfolio 10-fold by 2020, which in February 2019 led to a 400 MW contract with Revolution Wind and the RI Public Utilities Commission, for example. <https://nawindpower.com/offshore-wind-contract-filed-with-r-i-regulators>. Without such ambitious goals, and subsequent requirements for state utilities, the offshore wind rush could not occur and a slower process would be possible.
2. As part of the Block Island Wind Farm, RI established the RI Ocean Special Area Management Project, or Ocean SAMP, to clearly designate a process for siting of offshore wind projects and

how those projects would interact with fishing interests. This Ocean SAMP was made a part of RI's Coastal Zone Management Plan, pursuant to the Coastal Zone Management Act.

http://www.crmc.ri.gov/samp_ocean.html;

<https://seagrant.gso.uri.edu/oceansamp/documents.html>. This Ocean SAMP established a Fisherman's Advisory Board (FAB) to advise RI CRMC as to fishing concerns/interactions with the wind project. Through the Coastal Zone Management Act, RI can request and be granted federal consistency review, i.e., if a project in federal waters impacts the economy of the state of RI, RI can require that the project be compliant with RI's Coastal Zone Management Plan, including the Ocean SAMP. This is what just occurred with the Vineyard Wind project and RI CRMC "approval" of the project. Therefore, the FAB advises the RI CRMC as to whether or not an offshore project is compliant regarding fisheries. Should a plan be ruled non-compliant, the case is federally referred to NOAA, who administers the Coastal Zone Management Act.

<https://coast.noaa.gov/czm/act/>. Only parts of the SAMP are federally binding, however.

Vineyard Wind Incident

3. The Block Island Wind Farm is entirely in state waters. As such, the FAB was originally comprised of typical vessel types/fishermen affected by a state waters project. When the focus became offshore wind farms in federal waters, which will affect an entirely different set of users, the FAB was not reconstituted. The most affected fishery in and adjacent to the VW project area is the summer squid fishery, which the port of Point Judith is heavily reliant upon, in terms of both vessels and dealers/processors. However, there was no dealer/processor representation on the FAB, nor was there representation from the offshore squid fishery. (See attached dealer/processor letter to RI CRMC and RI commercial fishing industry petition). The RI fishing industry and community most affected was not allowed a seat at the negotiating table.
4. Rundown of VW mitigation proposal timeline/numbers: in January 2019, Vineyard Wind offered a \$6.2 million fisheries compensation and mitigation plan to the RI fishing industry to compensate for industry losses due to their project. See attached. <https://www.providencejournal.com/news/20190117/vineyard-wind-offers-62m-to-compensate-ri-fishermen>. This plan was decried by both RI senators, as well as the FAB. Negotiations continued after this, but not publicly. Those not on the FAB were unaware of a second deal, negotiated by the FAB and Vineyard Wind on Feb. 15, 2019. In this deal, the RI commercial fishing industry was compensated a total of \$4.2 million over 30 years, with a \$12 million trust fund administered by a board to be decided by the FAB and CRMC which will can be used for anything pursuant to the purpose of the trust, which is stated to be providing safety in fishing in/around wind energy areas and VW project. See attached and http://www.crmc.ri.gov/windenergy/vineyardwind/Agreement_RIFFVT.pdf. Therefore, this trust money cannot be used for compensation for losses, but its fate will be determined by FAB members. RI DEM has valued the Vineyard Wind project area at \$35 million, without shoreside economic multipliers to account for dealers/processors and other land-based commercial fishing and support businesses. http://www.dem.ri.gov/programs/bnatres/fishwild/pdf/FishValue_VWCOP.pdf. When shoreside economic impacts are considered, the Vineyard Wind project area is a much higher value than \$35 million. However, even at this, the current "mitigation plan" does not come close to actual

losses that RI businesses would suffer, and the direct compensation money is even less than the January proposal.

5. Public involvement timeline: The FAB negotiated privately with Vineyard Wind, with the final proposal/agreement reached on Feb 15. The FAB called a private meeting with the fishing industry on Feb 21 to discuss the deal that had been reached; this meeting was informal and not a public meeting. In fact, state representatives and media who came to attend were barred from entry. On that same day, Feb 21, CRMC signed the final deal with Vineyard Wind, subject to FAB and CRMC approval, based on the Feb. 15 deal. See http://www.crmc.ri.gov/windenergy/vineyardwind/Agreement_RIFFVT.pdf. On Feb 23, a Saturday, the FAB held its final meeting on the Vineyard Wind mitigation proposal. This was the first public meeting held regarding the Feb. 15 mitigation deal, in fact the first public meeting held since the final deal was released, and many RI squid fishermen, as well as fishermen engaging in other fisheries, attended to voice opposition to the deal. However, they were not allowed by CRMC or the FAB to give public comment. There was only one comment allowed to be given in opposition to acceptance of the final Vineyard Wind proposal, but the FAB chairman did not allow the speaker to give rationale for this objection, despite allowing prolonged comments supporting the deal. This led to outcry from fishermen attending the meeting in opposition. See <https://www.ecori.org/renewable-energy/2019/2/24/fishermens-board-approves-controversial-compensation-deal>, see minute mark 24:40 onwards. The final CRMC meeting held to consider the Vineyard Wind plan occurred on Feb 26, just five days after the final deal had been made public. Despite objections from many affected RI fishermen and shoreside businesses, including the three RI squid processor/dealers who had not been allowed to participate in the negotiations, RI CRMC approved the Vineyard Wind Fisheries Mitigation Proposal. See also attached letters and petition. Commercial fishermen, who are often at sea for a week or more at a time, were not given proper time or opportunity to engage in the process regarding the final Vineyard Wind deal, nor were shoreside businesses given ample time to engage accountants, financial advisors, or legal representation in any final negotiations that involved the valuation of their expected financial losses.