



# Fisheries Compensation Agreements & Offshore Wind

## 2024

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*This report is a product resulting from a project under award NA21OAR4170387 from the National Sea Grant College Program of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration. The statements, findings, and conclusions do not necessarily reflect the views of any of those organizations.*

## 1 Introduction

The offshore wind industry in the U.S. is growing rapidly. Off the coast of New England, the South Fork Wind wind farm is fully constructed and the Vineyard Wind 1 wind farm is currently under construction.<sup>1</sup> Revolution Wind, the first utility-scale wind farm serving Rhode Island and Connecticut, will begin offshore construction this year.<sup>2</sup> Several other projects off the New England coast are in various stages of the permitting process.<sup>3</sup> Fishers, however, have raised concerns about the impact offshore wind farms will have on the fishing industry.<sup>4</sup> These concerns include worries that wind farms will displace fishers from fishing grounds and harm fish habitat.<sup>5</sup> Due to these concerns, some offshore wind developers have agreed to establish various funds to compensate fishers for the impacts of offshore wind and generally support the coexistence of these two industries.<sup>6</sup> In Connecticut, lawmakers have shown interest in using these funds to address impacts to fisheries; a bill has been introduced in the Connecticut General Assembly that would require developers of offshore wind projects that will supply Connecticut customers with electricity to

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<sup>1</sup> See Michelle Lewis, *South Fork Wind Just Became the U.S.'s First Complete Utility Scale Offshore Wind Farm*, ELECTREK (Feb. 27, 2024), <https://electrek.co/2024/02/27/south-fork-us-first-complete-utility-scale-wind-farm/>; Miriam Wasser, *Vineyard Wind, Country's First Large-Scale Offshore Wind Project, Is Producing Clean Electricity*, WBUR (Jan. 3, 2024), <https://www.wbur.org/news/2024/01/03/vineyard-offshore-wind-massachusetts-first-power-clean-energy>.

<sup>2</sup> See *Revolution Wind Receives Final Approval from U.S. Department of the Interior*, REVOLUTION WIND (Nov. 20, 2023), <https://revolution-wind.com/news/2023/11/revolution-wind-receives-final-approval-from-us-department-of-the-interior>.

<sup>3</sup> See *Massachusetts Activities*, BUREAU OF OCEAN ENERGY MGMT., <https://www.boem.gov/renewable-energy/state-activities/massachusetts-activities> (last visited Feb. 9, 2024).

<sup>4</sup> See Miriam Wasser & Benjamin Storrow, *As Turbines Rise, Small-Scale Fishermen Have the Most to Lose*, WBUR (Oct. 14, 2021), <https://www.wbur.org/news/2021/10/14/offshore-wind-fishing>; Will Sennott & Anastasia Lennon, *Blown Away: Fishermen Endangered by Offshore Wind's Political Power*, PROPUBLICA (Apr. 18, 2023), <https://www.propublica.org/article/fishermen-endangered-offshore-wind-political-power>.

<sup>5</sup> See Wasser & Storrow, *supra* note 4; Sennott and Lennon, *supra* note 4.

<sup>6</sup> See, e.g., Letter from Lisa Berry Engler, Dir., Mass. Off. of Coastal Zone Mgmt., to Melanie Gearon, Manager, Permitting & Env't Affs., South Fork Wind, LLC attach. at 5–6 (July 15, 2021) [hereinafter Massachusetts South Fork Consistency Decision].

establish funds that would provide compensation if the project damages fisheries or the environment or if the project creates fewer jobs than the developer promised.<sup>7</sup>

This report will examine the fisheries compensation funds that developers have agreed to establish, issues related to enforcing these commitments, and potential alternative models for compensating fishers for the impacts of offshore wind. Section 2 will provide an overview of the funds that have been established by developers to date. Section 3 will examine issues related to enforcing developers' commitments to establish these funds. Finally, section 4 will present potential alternative ways to structure compensation for fishers from offshore wind developers.

## 2 Overview of Fisheries Compensation Funds

Fisheries compensation funds are funds that offshore wind developers have agreed to establish to provide compensation for direct impacts on fishers and to provide other benefits to fishing and coastal communities. Generally, developers enter into agreements with the relevant state in which they promise to establish these funds.<sup>8</sup> Developers usually agree to create multiple funds to serve different purposes; they typically establish at least two funds: one that compensates fishers of a given state for direct impacts from the project, such as loss of access to the project area or reduced harvests,<sup>9</sup> and one that provides more general support to the fishing or coastal communities of the state.<sup>10</sup> For example, in its agreement with Massachusetts, South Fork Wind agreed to establish a direct compensation fund that will compensate commercial and charter fishers for economic losses they suffer due to the project and a separate fund that will provide grants to support Massachusetts' coastal communities.<sup>11</sup> These grants could support activities like improving infrastructure that supports the commercial fishing industry, increasing training and apprenticeship opportunities in coastal industries, and providing marketing support for local sea food products.<sup>12</sup> Generally, the agreements provide some mechanism for transferring excess funds in the direct compensation fund to the fund that supports fishing or coastal communities in general.<sup>13</sup> Some developers have also agreed to create additional funds to provide support for fishers to upgrade their navigational equipment or access training opportunities or funds to support studies of offshore wind's impact on

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<sup>7</sup> See H.B. 5223, 2023 Gen. Assemb., Jan. Sess. (Ct. 2023).

<sup>8</sup> See, e.g., Massachusetts South Fork Consistency Decision, *supra* note 6, at attach.; Letter from Grover J. Fugate, Exec. Dir., R.I. Coastal Res. Mgmt. Council, to Walter Cruickshank, Acting Dir., Bureau of Ocean Energy Mgmt., James Bennett, Renewable Energy Program Manager, Bureau of Ocean Energy Mgmt. & Lars Pedersen, CEO, Vineyard Wind, LLC attach. at app. 25 (Feb. 28, 2019) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/vineyardwind/VW\\_FedConConcur\\_20190228.pdf](http://www.crmc.ri.gov/windenergy/vineyardwind/VW_FedConConcur_20190228.pdf) [hereinafter Rhode Island Vineyard Wind 1 Consistency Decision].

<sup>9</sup> See Letter from Jeffrey M. Willis, Executive Dir., R.I. Coastal Res. Mgmt. Council, to Elizabeth Klein, Dir., Bureau of Ocean Energy Mgmt., Karen J. Baker, Chief, Off. of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., & Ryan Chaytors, Program Dev. Dir., Sunrise Wind, LLC 6 (Sept. 7, 2023) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/sunrisewind/SW\\_FedConDecision\\_20230906.pdf](http://www.crmc.ri.gov/windenergy/sunrisewind/SW_FedConDecision_20230906.pdf) [hereinafter Rhode Island Sunrise Wind Consistency Decision] (noting that direct compensation fund is intended to compensate Rhode Island fishers for these types of impacts).

<sup>10</sup> See, e.g., Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8; Massachusetts South Fork Consistency Decision, *supra* note 6, at attach. at exhibit A-1, exhibit B-1.

<sup>11</sup> See Massachusetts South Fork Consistency Decision, *supra* note 6, attach. at exhibit B-1.

<sup>12</sup> See *id.*

<sup>13</sup> See, e.g., Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8; Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach.

fisheries.<sup>14</sup> Most developers have also established a separate process through which they will compensate fishers for lost or damaged gear.<sup>15</sup> Developers have agreed to establish various funds for different purposes.

These funds will be administered in a variety of ways. Typically, direct compensation funds will be held in escrow and administered by a third-party selected by the developer in consultation with the relevant state agency.<sup>16</sup> In some cases, for direct compensation funds, the funds will be paid to an entity established for the purpose of administering these types of funds, like the Rhode Island Fishermen's Future Viability Trust, a non-profit entity separate from the state established for the purpose of administering one of Vineyard Wind's funds.<sup>17</sup> When that is the case, the funds will be administered by this entity and a third-party administrator.<sup>18</sup> Some direct compensation funds have eligibility periods, meaning that those who may be interested in submitting a claim must apply during this period and will be able to submit a claim later only if they are deemed eligible.<sup>19</sup> Others provide that the third-party administrator may establish an eligibility period if she decides that it is necessary.<sup>20</sup> Eligibility criteria vary by fund,<sup>21</sup> and some agreements provide that the claims process will be developed later by the third-party administrator or that the administrator has the ability to

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<sup>14</sup> See, e.g., Letter from Jeffrey M. Willis, Executive Dir, R.I. Coastal Res. Mgmt. Council, to Elizabeth Klein, Dir., Bureau of Ocean Energy Mgmt., Karen J. Baker, Chief, Off. of Renewable Energy Program, Bureau of Ocean Energy Mgmt., James Bennet, Manager, Off. of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., & Ryan Chaytors, Project Dev. Dir., Revolution Wind, LLC attach. at app. 8 (May 12, 2023) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/revolution/RevWind\\_FedConDecision\\_20230512.pdf](http://www.crmc.ri.gov/windenergy/revolution/RevWind_FedConDecision_20230512.pdf) [hereinafter Rhode Island Revolution Wind Consistency Decision]; see Rhode Island Sunrise Wind Consistency Decision, *supra* note 9.

<sup>15</sup> See, e.g., Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach.; Letter from Lisa Berry Engler, Dir., MA Off. of Coastal Zone Mgmt., to Rachel Patcher, Chief Dev. Officer, Vineyard Wind LLC attach. at exhibit B (May 22, 2020) (on file with MA Off. of Coastal Zone Mgmt.), <https://www.mass.gov/doc/offshore-wind-vineyard-wind-boem-usace-action-5-22-20-signed-with-attachments/download> [hereinafter Massachusetts Vineyard Wind 1 Consistency Decision]; Letter from Lisa Berry Engler, Dir., MA Off. of Coastal Zone Mgmt., to Mark Roll, Avangrid Renewables attach. (Nov. 9, 2023) (on file with MA Off. of Coastal Zone Mgmt.) <https://www.mass.gov/doc/offshore-wind-park-city-wind-fcr-decision-11-9-23-revised-and-signed-with-attachments/download> [hereinafter Massachusetts New England Wind Consistency Decision].

<sup>16</sup> See, e.g., Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach. at exhibit A-1; Massachusetts Vineyard Wind 1 Consistency Decision, *supra* note 15.

<sup>17</sup> See Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8; Letter from Jeffrey M. Willis, Exec. Dir., R.I. Coastal Res. Mgmt. Council, to Elizabeth Klein, Dir., Bureau of Ocean Energy Mgmt., Karen J. Baker, Chief, Off. of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Kenneth Kimmell, Vice President, Offshore Wind Dev., Avangrid Renewables, Mark Roll, Fed. Permitting Manager, Offshore Wind Dev., Avangrid Renewables attach. (Oct. 19, 2023) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/newengland/NEWind\\_FedConDecision\\_101923.pdf](http://www.crmc.ri.gov/windenergy/newengland/NEWind_FedConDecision_101923.pdf) [hereinafter Rhode Island New England Wind Consistency Decision]; Letter from Jeffrey M. Willis, Exec. Dir., R.I. Coastal Res. Mgmt. Council, to Elizabeth Klein, Dir., Bureau of Ocean Energy Mgmt., Karen J. Baker, Chief, Off. of Renewable Energy Programs, Bureau of Ocean Energy Mgmt., Jennifer Flood, Permitting Dir., SouthCoast Wind Energy LLC & Kyle Cassidy, Marine Sci. Permitting Manager, SouthCoast Wind Energy LLC attach. (Dec. 19, 2023) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/southcoast/SCW\\_FedConDecision\\_12-19-23.pdf](http://www.crmc.ri.gov/windenergy/southcoast/SCW_FedConDecision_12-19-23.pdf) [hereinafter Rhode Island SouthCoast Wind Consistency Decision].

<sup>18</sup> See Rhode Island New England Wind Consistency Decision, *supra* note 17; Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.

<sup>19</sup> See, e.g., Massachusetts South Fork Consistency Decision, *supra* note 6.

<sup>20</sup> See, e.g., Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach.

<sup>21</sup> Compare *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, VINEYARD WIND, [https://static1.squarespace.com/static/5a2eac32be42d64ed467f9d1/t/65c0f8f3bcf5dd555687c9b9/1707141707145/VW1+FCM+Program\\_2.5.24.pdf](https://static1.squarespace.com/static/5a2eac32be42d64ed467f9d1/t/65c0f8f3bcf5dd555687c9b9/1707141707145/VW1+FCM+Program_2.5.24.pdf) (last visited Feb. 14, 2024), with Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach. at exhibit A-3.

add additional requirements or conditions to the direct compensation program that are consistent with the agreement.<sup>22</sup> In contrast, the funds that generally support coastal or fishing communities will be administered in a number of ways. Some will be administered by the Rhode Island Fisherman’s Future Viability Trust.<sup>23</sup> Although the Rhode Island Fisherman’s Future Viability Trust originated from Vineyard Wind’s agreement with Rhode Island, other developers have agreed to have this entity oversee their Rhode Island funds as well.<sup>24</sup> Others will not use the Rhode Island Fisherman’s Future Viability Trust, but will follow a similar structure; they will establish an entity separate from the state to hold the funds, and an advisory council will determine which projects to support using these funds.<sup>25</sup> One fund that supports the fishing community broadly is structured as a trust where a government official serves as trustee and administers the trust with advice from an advisory panel.<sup>26</sup> Others are held in escrow and administered by a government official, the Massachusetts Division of Marine Fisheries Director, for example, and an advisory council.<sup>27</sup> Table 1 provides more detailed information about each of the funds developers have promised to create so far.

### 3 Enforcement of Fisheries Compensation Funds

Federal and state governments may enforce the developers’ commitments to create compensation funds. The federal government may be able to use its authority to enforce compliance with the conditions it includes in a key approval for offshore wind projects to compel developers to honor these obligations, while the states may be able to use contract law and the Coastal Zone Management Act to accomplish the same end.

Since the federal government has exclusive authority over the outer continental shelf,<sup>28</sup> it plays a key role in offshore wind development. There are two main federal agencies with authority over offshore wind activities: the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE).<sup>29</sup> Generally speaking, BOEM is responsible for administering the outer continental shelf renewable energy leasing program and approving plans for outer continental shelf renewable energy projects, while BSEE has the authority to enforce applicable laws

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<sup>22</sup> See, e.g., Massachusetts New England Wind Consistency Decision, *supra* note 15; Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach.

<sup>23</sup> See Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8.

<sup>24</sup> Rhode Island New England Wind Consistency Decision, *supra* note 17; Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.

<sup>25</sup> See, e.g., Letter from Jeffrey M. Willis, Exec. Dir., R.I. Coastal Res. Mgmt. Council, to Amanda Lefton, Dir., Bureau of Ocean Energy Mgmt., James Bennett, Renewable Energy Program Manager, Bureau of Ocean Energy Mgmt. & David Hardy, CEO, Ørsted Offshore North America attach. at app. 30 (July 1, 2021) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/windenergy/dwsouthfork/SFWF\\_FedConsistencyDecision\\_20210701.pdf](http://www.crmc.ri.gov/windenergy/dwsouthfork/SFWF_FedConsistencyDecision_20210701.pdf) [hereinafter Rhode Island South Fork Wind Consistency Decision]; Rhode Island Sunrise Wind Consistency Decision, *supra* note 9, at attach.

<sup>26</sup> See Massachusetts Vineyard Wind 1 Consistency Decision, *supra* note 15.

<sup>27</sup> See, e.g., Letter from Lisa Berry Engler, Dir., MA. Off. of Coastal Zone Mgmt., to Megan Eakin, Permit Manager, Revolution Wind, LLC attach. (My 10, 2023) (on file with MA. Off. of Coastal Zone Mgmt.), <https://www.mass.gov/doc/offshore-wind-revolution-wind-farm-fcr-signed-decision-5-10-23/download> [hereinafter Massachusetts Revolution Wind Consistency Decision].

<sup>28</sup> See 43 U.S.C. §§ 1332(1), 1333(a); see also *Parker Drilling Mgmt. Servs. Ltd. v. Newton*, 139 S. Ct. 1881, 1887 (2019) (noting that the Outer Continental Shelf Lands Act “affirmed that the federal government exercised exclusive control over” the outer continental shelf).

<sup>29</sup> See Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 88 Fed. Reg. 6376, 6378 (Jan. 31, 2023).

and regulations related to outer continental shelf renewable energy development.<sup>30</sup> Before an offshore wind developer can begin activities on their leased area, BOEM must approve their Construction and Operations Plan, a plan describing the developer’s proposed activities and planned facilities.<sup>31</sup> BOEM may set terms and conditions that the developer must incorporate into their plan.<sup>32</sup> BSEE’s regulations require that lessees comply with these terms and conditions.<sup>33</sup> If they fail to do so, BSEE may issue them a notice of noncompliance which will state how they failed to comply, what they must do to come into compliance, and the timeframe to come into compliance.<sup>34</sup> If a lessee fails to act on the order of noncompliance within the time frame set by BSEE, BSEE may issue them a cessation order—an order requiring that the lessee stop all activities on the lease—or pursue cancellation of the lease.<sup>35</sup> BSEE may also assess civil penalties against a developer if they violate BSEE’s regulations and fail to correct the violation after receiving notice from BSEE.<sup>36</sup> Since these regulations require that developers adhere to the terms and conditions in their plan approvals, BSEE may be able to seek civil penalties from a developer if they violate these terms and conditions.<sup>37</sup> As such, BSEE can require that developers comply with the terms and conditions BOEM includes in its approval of the developer’s Construction and Operations Plan.

So far, BOEM has conditioned its approval of each of the Construction and Operations Plans it has approved for New England projects on the developers establishing the fisheries compensation funds they committed to create.<sup>38</sup> As such, if any of these developers fail to establish these funds, BSEE

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<sup>30</sup> *See id.*

<sup>31</sup> *See* 30 C.F.R. § 585.620 (2023).

<sup>32</sup> *See id.* § 585.628(f)(1).

<sup>33</sup> *See* 30 C.F.R. § 285.105(d) (2024) (providing that lessees must “[c]omply with the terms, conditions, and provisions . . . of all plans, revisions, and other approvals”).

<sup>34</sup> *See id.* § 285.400(b)–(c).

<sup>35</sup> *See id.* § 285.400(d); *see also id.* § 285.401(a) (providing that BSEE may issue cessation orders for failure to comply with applicable regulations, provisions of a plan, or BOEM approval); *id.* § 285.437 (describing process by which the Secretary of the Interior may cancel leases); *id.* § 285.402(a) (describing the effect of a cessation order).

<sup>36</sup> *See id.* § 285.400(f).

<sup>37</sup> *See id.* §§ 285.105(d), 285.400(f).

<sup>38</sup> *See* BUREAU OF OCEAN ENERGY MGMT., U.S. DEP’T OF THE INTERIOR, CONDITIONS OF CONSTRUCTION AND OPERATIONS PLAN APPROVAL LEASE NUMBER OCS-A 0501 72 (2021), [https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/VW1-COP-Project-Easement-Approval-Letter\\_0.pdf](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/VW1-COP-Project-Easement-Approval-Letter_0.pdf) [hereinafter *Vineyard Wind 1 Construction and Operations Plan Approval*]; BUREAU OF OCEAN ENERGY MGMT., U.S. DEP’T OF THE INTERIOR, CONDITIONS OF CONSTRUCTION AND OPERATIONS PLAN APPROVAL LEASE NUMBER OCS-A 0486 86–87 (2023), [https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Cond%20of%20COP%20Appr\\_REV%20OCS-A%200486\\_0.pdf](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Cond%20of%20COP%20Appr_REV%20OCS-A%200486_0.pdf) [hereinafter *Revolution Wind Construction and Operations Plan Approval*]; BUREAU OF OCEAN ENERGY MGMT., U.S. DEP’T OF THE INTERIOR, CONDITIONS OF CONSTRUCTION AND OPERATIONS PLAN APPROVAL LEASE NUMBER OCS-A 0517 60 (2022), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/SFWF-COP-Terms-and-Conditions.pdf> [hereinafter *South Fork Wind Construction and Operations Plan Approval*]. The Department of the Interior, which houses BOEM, recently announced its approval of Sunrise Wind. BUREAU OF OCEAN ENERGY MGMT., U.S. DEP’T OF THE INTERIOR, ET AL., RECORD OF DECISION: SUNRISE WIND PROJECT CONSTRUCTION AND OPERATIONS PLAN 55 (2024) [hereinafter *SUNRISE ROD*]. BOEM, however, has not yet issued a Construction and Operations Plan Approval Letter for Sunrise Wind, nor has it issued final conditions for the Construction and Operations Plan’s approval. *See Sunrise Wind*, BUREAU OF OCEAN ENERGY MGMT., <https://www.boem.gov/renewable-energy/state-activities/sunrise-wind> (last visited Mar. 28, 2024) (including a link to the Record of Decision, but not to a Construction and Operations Plan Approval Letter or conditions for the Construction and Operations Plan’s approval). The Anticipated Conditions of Construction and Operations Plan Approval included in the Record of Decision, though, would require Sunrise Wind to establish the funds it agreed to create for Rhode Island and Massachusetts. *SUNRISE ROD*, *supra*.

may take action to require that they see these commitments through.<sup>39</sup> If BOEM conditions future Construction and Operations Plan approvals on developers establishing the funds they have committed to creating, BSEE will be able to enforce these obligations as well.<sup>40</sup> The federal government, by conditioning Construction and Operations Plan approvals on developers establishing fisheries compensation funds, has the ability to require that developers create the promised funds.

State governments also have some ability to enforce the developers' obligations through contract law and the Coastal Zone Management Act. In most cases, the developers entered into agreements with a state agency in which they agreed to establish these funds. As such, the state agencies can use contract law to enforce the developers' obligation to establish these funds, so long as the requirements of the applicable state's contract law have been met.<sup>41</sup> Contract law, therefore, may provide one avenue for states to enforce the developers' commitments.

The Coastal Zone Management Act may provide another avenue for states to nudge developers to comply with their commitments to create fisheries compensation funds. Under the Coastal Zone Management Act, states may develop management programs—comprehensive statements of goals, policies, and standards for use of the coastal zone<sup>42</sup>—which they submit to the Secretary of Commerce for approval.<sup>43</sup> After the Secretary approves the state's management program, the Act requires that certain federal activities must be consistent with the approved management program.<sup>44</sup> Specifically, any applicant for a federal license or permit for any activity or any person who submits a plan for the exploration, development, or production of any area leased under the Outer Continental Shelf Lands Act “affecting any land or water use or natural resource of the coastal zone” of the state must certify that such activities will be consistent with the management program and comply with the legally binding policies in the management program.<sup>45</sup> No federal agency may grant a permit or license for such an activity until the state concurs with the applicant's certification, is presumed to concur due to its failure to act, or the Secretary of Commerce concludes that “the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.”<sup>46</sup> As such, the Coastal Zone Management Act gives states power over the fates of projects subject to this consistency review process.

Along with the ability to prevent federal agencies from licensing or permitting activities by objecting to the consistency certification, the Coastal Zone Management Act's implementing regulations give states some continuing authority to ensure that such activities comply with the state's management program. Under these provisions, the state may contact the federal government and request remedial action if a license or permit applicant's activities are “being conducted or [are] having an effect on

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<sup>39</sup> See 30 C.F.R. §§ 285.400–401 (2024).

<sup>40</sup> See *id.*

<sup>41</sup> See RESTATEMENT (SECOND) OF CONTRACTS § 1 (AM. L. INST. 1981) (defining a contract as “a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty.”); *id.* § 17 (noting that, generally, “the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.”); *id.* § 3 (defining agreement as “a manifestation of mutual assent on the part of two or more persons.”).

<sup>42</sup> See 16 U.S.C. § 1453(12) (defining “management program”).

<sup>43</sup> See *id.* § 1454.

<sup>44</sup> See *id.* § 1456(c).

<sup>45</sup> See *id.* §§ 1456(c)(3)(A)–(B), 1453(6a).

<sup>46</sup> See *id.*

any coastal use or resource substantially different than originally described” and, as a result, are no longer consistent with the management program.<sup>47</sup> A state may also request that the federal government take action if a person who submits a plan fails to substantially comply with their approved plan and this failure affects coastal uses or resources in ways that are inconsistent with the management program.<sup>48</sup> For federal license or permit applicants, if the federal government finds that “the activity affects any coastal use or resource substantially different than originally described” and, therefore, is no longer consistent with the enforceable policies of the management program, the applicant must submit a new or amended consistency certification or “comply with the originally approved certification.”<sup>49</sup> For plan submitters, if the federal government determines that the submitter failed to substantially comply with their approved plan, the submitter must “come into compliance with the approved plan” or submit a new or amended plan and a new consistency determination.<sup>50</sup> For both activities that require a federal license or permit and activities covered in an outer continental shelf plan, the Act’s implementing regulations provide procedures states may use to ensure that these activities are carried out in accordance with their management programs.

Fisheries compensation funds have a complicated relationship with the Coastal Zone Management Act. States cannot require that developers provide monetary compensation through the consistency review process.<sup>51</sup> A state, therefore, could not object to a consistency certification solely because the developer did not provide monetary compensation.<sup>52</sup> Both the state and the developer, however, can agree to a compensation package as one way for the developer to achieve consistency.<sup>53</sup> Massachusetts and Rhode Island have both recognized that the fisheries compensation funds offshore wind developers have agreed to create are an important part of ensuring that these projects are consistent with their management programs.<sup>54</sup> As such, if a developer fails to establish fisheries

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<sup>47</sup> 15 C.F.R. § 930.65(b)–(c) (2024).

<sup>48</sup> *See id.* § 930.85(b).

<sup>49</sup> *See id.* § 930.65(d)–(e).

<sup>50</sup> *See id.* § 930.85(c). Note that the regulations direct states to contact the Minerals Management Service if they believe a person is not complying with an approved plan and provide that the Minerals Management Service will determine whether the person has failed to comply with their plan. *See id.* § 930.85(b)–(c). BSEE, however, has taken over the Minerals Management Services enforcement responsibilities. *See* SEC’Y OF THE INTERIOR, ORDER NO. 3299, AMENDMENT NO. 2, ESTABLISHMENT OF THE BUREAU OF OCEAN ENERGY MANAGEMENT, THE BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT, AND THE OFFICE OF NATURAL RESOURCES REVENUE (2011); Reorganization of Title 30—Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 88 Fed. Reg. 6,376, 6,377 (Jan. 31, 2023) (noting that the relevant official within the Department of the Interior determined that outer continental shelf renewable energy activities reached the threshold required by Secretary’s Order No. 3299 to transfer renewable energy inspection and enforcement authority to BSEE and noting that the rule accordingly reassigns certain authorities to BSEE); DEP’T OF THE INTERIOR, 219 DM 1, DEPARTMENTAL MANUAL 1 (2022).

<sup>51</sup> *See* Letter from Joelle Gore, Chief, Stewardship Div., Off. for Coastal Mgmt., Nat’l Oceanic & Atmospheric Admin., to Grover Fugate, Exec. Dir., R.I. Coastal Res. Mgmt. Council 4 (Feb. 12, 2020) (on file with R.I. Coastal Res. Mgmt. Council), [http://www.crmc.ri.gov/samp\\_ocean/20200212\\_NOAA\\_Approval\\_OSAMP.pdf](http://www.crmc.ri.gov/samp_ocean/20200212_NOAA_Approval_OSAMP.pdf).

<sup>52</sup> *See, e.g.*, Massachusetts New England Wind Consistency Decision, *supra* note 15, at 2; Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17, at 4.

<sup>53</sup> *See* Letter from Joelle Gore, Chief, Stewardship Div., Off. for Coastal Mgmt., Nat’l Oceanic & Atmospheric Admin., to Grover Fugate, Exec. Dir., R.I. Coastal Res. Mgmt. Council, *supra* note 51.

<sup>54</sup> *See, e.g.*, R.I. SouthCoast Wind Consistency Decision, *supra* note 9, at 2 (“CRMC has determined the conditions mutually agreed to by the CRMC and the Developer, in combination with the Developer’s proposed compensatory mitigation and other mitigation measures, allow the proposed activity to be consistent with the enforceable policies of the Rhode Island coastal management program.”); Letter from Lisa Berry Engler, Dir., MA Off. of Coastal Zone Mgmt., to Ryan Chaytors, Sunrise Wind, LLC 2 (Oct. 6, 2023) (on file with MA Off. of Coastal Zone Mgmt.), <https://www.mass.gov/doc/offshore-wind-sunrise-wind-federal-consistency-determination-with-attachments-10-6-23/download> [hereinafter Massachusetts Sunrise Wind Consistency Decision] (noting that Massachusetts’s enforceable

compensation funds as promised, the project may no longer be consistent with the state's management program. The state, therefore, may be able to use the process established in the Act's implementing regulations to have the federal government require the developer to either establish these funds or submit a new consistency determination.<sup>55</sup> The delicate status of fisheries compensation agreements in the federal consistency review framework, however, may pose challenges for a state attempting to use this process in this way.<sup>56</sup> It is important to note, too, that if the developer chooses to submit a new consistency determination that does not call for creating fisheries compensation funds, the state would not be able to object simply because the developer failed to provide monetary compensation.<sup>57</sup> Even if a state objects to a new consistency certification, the state does not have the final say on whether federal agencies may grant the project its licenses and permits; the Secretary of Commerce may still allow federal agencies to issue these federal approvals if she finds that the activities are "consistent with the objectives of [the Coastal Zone Management Act] or [are] otherwise necessary in the interest of national security."<sup>58</sup> The Coastal Zone Management Act's implementing regulations, therefore, may provide states with some leverage to ensure developers create the promised fisheries compensation funds, but they have some key limitations.

Both the federal government, through BSEE's ability to enforce conditions of plan approvals, and state governments, through contract law or the Coastal Zone Management Act consistency review process, may enforce developers' commitments to establish fisheries compensation funds.

#### 4 Alternative Models for Fisheries Compensation Funds

Currently, there are multiple efforts to try to standardize the process of developers compensating fishers for the impacts of offshore wind development. Eleven East Coast states, including Connecticut, have come together to try to create a "consistent regional approach" to administering the financial compensation offshore wind developers provide to address adverse impacts to the fishing industry.<sup>59</sup> At the national level, Senator Whitehouse has released a discussion draft of a bill that would require offshore wind developers to pay into a federal fund to compensate those impacted by offshore wind development.<sup>60</sup> If either of these efforts are successful, they could impact how developers compensate fishers going forward.

The states' effort focuses on the administration of the compensation developers provide to fishers.<sup>61</sup> Under the current approach to compensating fishers, the compensation and related processes have

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policies required mitigation for impacted fishers and that "CZM and Sunrise Wind, LLC can mutually agree upon a monetary compensation package to meet the applicable enforceable policies."

<sup>55</sup> See 15 C.F.R. §§ 930.65, 930.85 (2024).

<sup>56</sup> See Letter from Joelle Gore, Chief, Stewardship Div., Off. for Coastal Mgmt., Nat'l Oceanic & Atmospheric Admin., to Grover Fugate, Exec. Dir., R.I. Coastal Res. Mgmt. Council, *supra* note 51.

<sup>57</sup> See, e.g., Massachusetts New England Wind Consistency Decision, *supra* note 15, at 2; Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17, at 4.

<sup>58</sup> 16 U.S.C. § 1456(3)(A)–(B).

<sup>59</sup> See *Nine Atlantic Coast States Final Scoping Document*, SPECIAL INITIATIVE ON OFFSHORE WIND (Apr. 13, 2023), [https://offshorewindpower.org/wp-content/uploads/2023/04/RFA\\_RevisedScopingDoc\\_FINAL.pdf](https://offshorewindpower.org/wp-content/uploads/2023/04/RFA_RevisedScopingDoc_FINAL.pdf); *Fisheries Mitigation Project*, SPECIAL INITIATIVE ON OFFSHORE WIND, <https://offshorewindpower.org/fisheries-mitigation-project> (last visited Feb. 16, 2024) (specifying that Delaware and North Carolina have joined this effort, bringing the number of states involved from nine to eleven).

<sup>60</sup> See *Discussion Draft*, SHELDON WHITEHOUSE U.S. SENATOR FOR R.I., [https://www.whitehouse.senate.gov/imo/media/doc/collaborate\\_act\\_discussion\\_draft.pdf](https://www.whitehouse.senate.gov/imo/media/doc/collaborate_act_discussion_draft.pdf) (last visited Feb. 16, 2024).

<sup>61</sup> See *Nine Atlantic Coast States Final Scoping Document*, *supra* note 59, at 7.



varied by state and by project, leading to concerns that fishers will have to seek compensation from “multiple entities under different rules.”<sup>62</sup> The states’ proposal would establish a Regional Fund Administrator, an entity that would take money from the financial institutions holding the fisheries compensation funds and distribute them to eligible fishers under a common claims process developed by the Regional Fund Administrator.<sup>63</sup> Although there may be benefits to creating a single claims process for fishers, the states face a major obstacle in this effort: “there is currently no single known federal or state statutory authority” for the Regional Fund Administrator to require a developer to disburse money from their fisheries compensation fund.<sup>64</sup> Despite this hurdle, the states have moved forward with efforts to retain a firm to serve as a Regional Fund Administrator and design a claims process.<sup>65</sup> If the states successfully establish a Regional Fund Administrator, it may shape how current and future funds are administered along the East Coast.

Senator Whitehouse’s bill discussion draft would also establish a more uniform system for compensating those impacted by offshore wind development. This proposal would create an “Offshore Wind Energy Fisheries Compensation Fund” that the Secretary of Commerce could use to “compensate eligible recipients for losses caused by the planning, pre-construction survey, construction, maintenance, operation, and decommissioning of offshore wind energy projects.”<sup>66</sup> The proposal would require developers to pay into this fund in amounts determined by a formula set by the Secretary of the Interior in consultation with the Administrator of the National Oceanic and Atmospheric Administration.<sup>67</sup> “Eligible recipients” include communities, stakeholders, and tribal interests in the United States that use the lease area or “resources harvested from” that area if that use is directly adversely impacted by offshore wind development in the lease area or “regional association[s], cooperative[s], non-profit organization[s], commission[s], or corporation[s]” in the United States that serve such communities, stakeholders, or tribal interests.<sup>68</sup> If an eligible recipient, however, “has or will receive” compensation for their claim under a “community benefit agreement,” their payment from the federal fund will be reduced by the amount they received under the agreement. As such, if these fisheries compensation funds are deemed community benefit agreements, fishers would not be able to claim compensation twice for the same claim; if they received payment from the fund previously established by the developer, their payment from the federal fund would be reduced accordingly.<sup>69</sup> Senator Whitehouse also proposes the creation of a uniform gear loss claims process and grant programs to support research on offshore wind’s impacts on fisheries and “research into technologies that support the coexistence of offshore wind energy development and other ocean users,” including fishers.<sup>70</sup> This proposal would create uniform federal processes for requiring developers to provide compensation for impacted stakeholders, such as fishers, and for administering that compensation.

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<sup>62</sup> See *id.*

<sup>63</sup> See *id.* at 17, 19–20.

<sup>64</sup> See *id.* at 29.

<sup>65</sup> See *id.* at 30; *Regional Fund Administrator for an Offshore Wind Fisheries Mitigation Fund*, NYSERDA, [https://portal.nyserdera.ny.gov/CORE\\_Solicitation\\_Detail\\_Page?SolicitationId=a0r8z000000GKKKB](https://portal.nyserdera.ny.gov/CORE_Solicitation_Detail_Page?SolicitationId=a0r8z000000GKKKB) (last visited Feb. 16, 2024).

<sup>66</sup> See *Discussion Draft*, *supra* note 60, at 63–64.

<sup>67</sup> See *id.* at 66–68.

<sup>68</sup> See *id.* at 73–74.

<sup>69</sup> See *id.*

<sup>70</sup> See *id.* at 74–77, 77–78, 81–82; *Whitehouse Releases Discussion Draft of Bill to Improve Offshore Wind Development Process*, SHELDON WHITEHOUSE U.S. SENATOR FOR R.I. (Jan. 9, 2024), <https://www.whitehouse.senate.gov/news/release/whitehouse-releases-discussion-draft-of-bill-to-improve-offshore-wind-development-process>.

While compensatory mitigation for fishers has typically been provided on a state-by-state and project-by-project basis so far, there are both state and federal efforts to create a more standardized process.

## 5 Conclusion

Many offshore wind developers have agreed to create funds to compensate fishers for the impacts of their projects and provide other benefits to coastal or fishing communities.<sup>71</sup> Both the federal government and state governments may be able to enforce the developers' commitments to create these funds.<sup>72</sup> So far, these funds have been designed in a case-by-case manner, but both state and federal actors have shown interest in trying to standardize this process.<sup>73</sup>

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<sup>71</sup> See, e.g., Massachusetts South Fork Consistency Decision, *supra* note 6, at 2; Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8.

<sup>72</sup> See *supra* Section 3.

<sup>73</sup> See *Nine Atlantic Coast States Final Scoping Document*, *supra* note 59, at 1; *Whitehouse Releases Discussion Draft of Bill to Improve Offshore Wind Development Process*, *supra* note 70.

Table 1

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
Vineyard Wind	R.I.	Direct Compensation	\$4.2 million <sup>74</sup>	To compensate for claims of direct impacts to Rhode Island fisheries or vessels in the Vineyard Wind project area <sup>75</sup>	Administered by a third-party selected by Vineyard Wind, in consultation with the Rhode Island Coastal Resources Management Council and the Fishermen’s Advisory Board, an advisory body to the Rhode Island Coastal Resources Management Council made up of fishers and seafood processors <sup>76</sup>	Yes <sup>77</sup>	For fishers to be eligible, they must (1) own or operate a commercial fishing vessel homeported in Rhode Island, (2) provide a copy of a valid 2023 NOAA Fisheries commercial fishing permit, (3) provide a copy of a current government issued vessel registration showing one’s ownership of the vessel, or a copy of a	Not specified

<sup>74</sup> See Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8.

<sup>75</sup> See *id.*

<sup>76</sup> See *id.*; 650-20 R.I. Code R. § 05-11.3(E) (defining the Fishermen’s Advisory Board).

<sup>77</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
							vessel lease agreement, (4) have documented fishing activity in the project area in at least three of the years from 2016 to 2022, and (5) have documented annual revenue from fishing for those three years <sup>78</sup>	
		R.I. Fishermen's Future Viability Trust	\$12.5 million <sup>79</sup>	To further the continued viability of Rhode Island's fishing industry by providing funds to address concerns about safety and	Fund will be administered by the Rhode Island Fisherman's Future Viability Trust, a non-profit entity separate from	N/A	Funds may be used for any project that furthers the purpose of the Trust <sup>82</sup>	Not specified

<sup>78</sup> See *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, *supra* note 21. Although Vineyard Wind provides a single list of eligibility criteria, it notes that there are three separate escrow accounts for fishers in Massachusetts, Rhode Island, and Other States (Connecticut, New York, and New Jersey). See *id.*; see also Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8 (stating that the direct compensation fund will compensate claims of direct impacts to “Rhode Island vessels or Rhode Island fisheries”).

<sup>79</sup> See Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8.

<sup>82</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				effective fishing near the Vineyard Wind project area and near wind farms in general. For example, funds may be used to support improvements in vessels and gear, purchasing safety equipment, and developing new gear types <sup>80</sup>	the state, established as part of the agreement. The developer will pay the legal costs of establishing this non-profit up to \$50,000. The Fishermen's Advisory Board will determine the structure and composition of the Trust's board. This board will then decide which projects the Trust will fund <sup>81</sup>			
	MA	Direct Compensation	\$19,185,016 <sup>83</sup>	To compensate fishing businesses (both fishers and shoreside fishing	Administered by a third-party chosen by Vineyard Wind	Yes <sup>86</sup>	For fishers to be eligible, they must (1) own or operate a	Not specified

<sup>80</sup> See Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8.

<sup>81</sup> See *id.*

<sup>83</sup> See Massachusetts Vineyard Wind 1 Consistency Decision, *supra* note 15.

<sup>86</sup> See *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, *supra* note 21.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				related businesses) for economic losses caused by the project <sup>84</sup>	in consultation with the Massachusetts Executive Office of Energy and Environmental Affairs <sup>85</sup>		commercial fishing vessel homeported in Massachusetts, (2) provide a copy of a valid 2023 NOAA Fisheries commercial fishing permit, (3) provide a copy of a current government issued vessel registration showing one's ownership of the vessel, or a copy of a vessel lease agreement, (4) have documented fishing activity in the project area in at least three of the years from	

<sup>84</sup> *Id.* at attach. at 3, Exhibit A at 8.

<sup>85</sup> *Id.* at attach. at Exhibit B.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
							2016 to 2022, and (5) have documented annual revenue from fishing for those three years <sup>87</sup>	
		Massachusetts Fisheries Innovation Fund	\$1.75 million <sup>88</sup>	“[T]o support programs and projects that ensure safe and profitable fishing continue as Vineyard Wind and future offshore wind projects are developed in North Atlantic waters” <sup>89</sup>	The fund is administered as an expendable trust; the Director of the Massachusetts Division of Marine Fisheries will serve as trustee and will serve as the chair of an advisory panel which will advise her on expenditures <sup>90</sup>	N/A	Funds may be used for any project that furthers the purposes of the Fund <sup>91</sup>	To the maximum extent practical, these funds will be distributed to entities in municipalities with fishing ports in proportion to the port’s share of landings from the

<sup>87</sup> See *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, *supra* note 21. Although Vineyard Wind provides a single list of eligibility criteria, it notes that there are three separate escrow accounts for fishers in Massachusetts, Rhode Island, and Other States (Connecticut, New York, and New Jersey). See *id.*; see also Massachusetts Vineyard Wind 1 Consistency Determination, *supra* note 15, at attach. at 3 (noting that the purpose of the direct compensation fund is to compensate for claims from “Massachusetts fishing businesses”).

<sup>88</sup> See Massachusetts Vineyard Wind 1 Consistency Determination, *supra* note 15.

<sup>89</sup> See *id.* at attach. at 3.

<sup>90</sup> See *id.*

<sup>91</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
								project area <sup>92</sup>
Other States (CT, N.Y., N.J.)		Direct Compensation	\$3.3 million <sup>93</sup>	Compensate for impacts of the project on vessels and fisheries interests in Connecticut, New York, and New Jersey <sup>94</sup>	Administered by a third-party chosen by Vineyard Wind <sup>95</sup>	Yes <sup>96</sup>	For fishers to be eligible, they must (1) own or operate a commercial fishing vessel homeported in Connecticut, New York, or New Jersey (2) provide a copy of a valid 2023 NOAA Fisheries commercial fishing permit, (3) provide a	Not specified

<sup>92</sup> See *Declaration of Trust: The Commonwealth of Massachusetts the Vineyard Wind Fisheries Innovation Expendable Trust*, MASS (June 24, 2021), <https://www.mass.gov/doc/6242021-declaration-of-trust-vineyard-wind-1-fisheries-mitigation/download>.

<sup>93</sup> See BUREAU OF OCEAN ENERGY MGMT., U.S. DEP'T OF THE INTERIOR, U.S. ARMY CORPS OF ENG'RS, U.S. DEP'T OF DEF., NAT'L OCEANIC & ATMOSPHERIC ADMIN., U.S. DEP'T OF COM., RECORD OF DECISION: VINEYARD WIND 1 OFFSHORE WIND ENERGY PROJECT CONSTRUCTION AND OPERATIONS PLAN 93 (2021), <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Final-Record-of-Decision-Vineyard-Wind-1.pdf>; *Frequently Asked Questions, VINEYARD WIND FISHERIES COMPENSATION FUNDS*, <https://vw1fisheriescomp.com/frequently-asked-questions/> (last visited Mar. 1, 2023).

<sup>94</sup> See BUREAU OF OCEAN ENERGY MGMT. ET AL., *supra* note 93; *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, *supra* note 21.

<sup>95</sup> See *Frequently Asked Questions*, *supra* note 93 (noting that Vineyard Wind has established three direct compensation escrow funds: one for Massachusetts fishers, one for Rhode Island fishers, and one for Connecticut, New York, and New Jersey fishers. These three funds are all administered by the same third-party administrator); *see also* Massachusetts Vineyard Wind 1 Consistency Determination, *supra* note 15, at exhibit B (providing that Vineyard Wind 1 will select the third-party administrator for the direct compensation fund in consultation with the Massachusetts Executive Office of Energy and Environmental Affairs); Rhode Island Vineyard Wind 1 Consistency Decision, *supra* note 8 (providing that Vineyard Wind will select the third-party administrator for the direct compensation fund).

<sup>96</sup> See *id.*



Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
							copy of a current government issued vessel registration showing one's ownership of the vessel, or a copy of a vessel lease agreement, (4) have documented fishing activity in the project area in at least three years from 2016 to 2022, and (5) have documented annual revenue from fishing for those three years <sup>97</sup>	

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<sup>97</sup> See *Vineyard Wind 1 Fisheries Compensatory Mitigation Program*, *supra* note 21. Although Vineyard Wind provides a single list of eligibility criteria, it notes that there are three separate escrow accounts for fishers in Massachusetts, Rhode Island, and Other States (Connecticut, New York, and New Jersey). See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
South Fork Wind	R.I.	Compensation Mitigation Fund	\$4.25 million <sup>98</sup>	To compensate Rhode Island commercial and charter fishers for direct impacts caused by the project <sup>99</sup>	The funds will be held in escrow by a bank or similar financial institution, and a technical assistance provider will oversee administration of the fund and review eligibility applications and claims. <sup>100</sup> South Fork Wind will select both the bank and the technical assistance provider, subject to the R.I. Coastal Resource Management	Yes <sup>102</sup>	To be eligible, one must (1) own the vessel at issue or have a federal or state fishing permit to operate the vessel, (2) must have a homeport in Rhode Island or be a resident of or business in Rhode Island, and (3) demonstrate a history of fishing in the project area in the three years prior to seeking eligibility and have suffered a direct impact	Payment amount will be based on an applicant's historical activity in the project area (those with higher value historical landings in the project area will receive more than those with lower value historical landings), the number of eligible applicants, and preservation of funds for

<sup>98</sup> See Rhode Island South Fork Wind Consistency Decision, *supra* note 25, at attach. at app. 30 at 3–4.

<sup>99</sup> See *id.* at attach. at app. 30 at 4.

<sup>100</sup> See *id.* at attach. at app. 30 at 5, Exhibit A-1.

<sup>102</sup> See *id.* at attach. at app. 30 at 5.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					Council's approval <sup>101</sup>		from the project <sup>103</sup>	future applicants <sup>104</sup>
		Coastal Community Fund	\$950,000 <sup>105</sup>	To support Rhode Island's coastal communities <sup>106</sup>	A non-profit entity separate from the state will be established; once established the money for this fund will be released to this entity to be managed by an Advisory Council <sup>107</sup>	N/A	Projects must serve the fund's objectives and be approved by the Advisory Council <sup>108</sup>	Not specified
	MA	Direct Compensation Fund	\$2.1 million <sup>109</sup>	To compensate Massachusetts commercial and charter fishers for	The funds will be held in escrow by a bank or similar	Yes <sup>112</sup>	To be eligible, one must (1) hold a valid state fishing	Payment is based on historical activity in

<sup>101</sup> See *id.* at attach. at app 30 at 4.

<sup>103</sup> See *id.* at attach. at app. 30 at Exhibit A-3. The final eligibility criteria may vary slightly as the technical assistance provider has the authority to establish an eligibility form that is “substantially in the form” of the model provided in the agreement, and the technical assistance provider has the authority to add “such additional terms and conditions for the Direct Compensation program as are required to fulfill its purpose” as long as these additional terms are consistent with the agreement and the materials attached to it. See *id.* at attach. at app. 30 at 4.

<sup>104</sup> See *id.* at attach. at app. 30 at 5.

<sup>105</sup> See *id.* at attach. at app. 30 at 4.

<sup>106</sup> See *id.* at attach. at app. 30 at Exhibit B-1.

<sup>107</sup> See *id.* at attach. at 5–6, Exhibit A-2.

<sup>108</sup> See *id.* at attach. at app. 30 at 6.

<sup>109</sup> See Massachusetts South Fork Consistency Decision, *supra* 6, at attach. at 3–4.

<sup>112</sup> See *id.* at attach. at 5.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				direct impacts caused by the project <sup>110</sup>	financial institution, and a technical assistance provider chosen by South Fork, subject to the Massachusetts Executive Office of Energy & Environmental Affairs approval, will oversee administration of the fund and review both eligibility applications and claims <sup>111</sup>		permit, (2) have a homeport in Massachusetts or be a resident of or a business in Massachusetts, and (3) demonstrate their vessel operated in the project area in the three years before they apply for eligibility and that they have suffered a direct impact caused by South Fork Wind <sup>113</sup>	the project area (those with higher value historical landings in the project area will receive more than those with lower value historical landings), the number of eligible applicants, and preservation of funds for future applicants <sup>114</sup>

<sup>110</sup> See *id.* at attach. at 3–4.

<sup>111</sup> See *id.* at attach. at 3, 5–6, Exhibit A-1.

<sup>113</sup> See *id.* at attach. at Exhibit A-3. The final eligibility criteria may vary slightly as the technical assistance provider has the authority to establish an eligibility form “substantially in the form” of the model included in the agreement and to “establish such additional terms and conditions for the Direct Compensation Program as are required to fulfill its purpose” as long as they are consistent with the agreement and the materials attached to it. See *id.* at attach. at 5.

<sup>114</sup> See *id.* at attach. at 6.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
		Coastal Community Fund	\$200,000 <sup>115</sup>	To provide funding for projects that support the co-existence of fishing and offshore wind <sup>116</sup>	The funds will be held in an escrow account by a bank or similar financial institution; <sup>117</sup> projects must be approved by the Director of the Massachusetts Division of Marine Fisheries <sup>118</sup> after she consults with an advisory council consisting of representatives of different sectors in the fishing/seafood industry <sup>119</sup>	N/A	Must further the objectives of the fund and be approved by the Director after she consults with the advisory council <sup>120</sup>	Not specified

<sup>115</sup> See *id.* at attach. at 4.

<sup>116</sup> See *id.* at 2.

<sup>117</sup> See *id.* at attach. at 3–4, 6.

<sup>118</sup> See *id.* at attach. at 4 (defining “Director” as the Director of the Division of Marine Fisheries).

<sup>119</sup> See *id.* at attach. at 6.

<sup>120</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
Revolution Wind <sup>124</sup>		Navigation Enhancement and Training Program	\$300,000 <sup>121</sup>	Support upgrades to navigation equipment, training, and experiential learning opportunities to promote the co-existence of fishing and offshore wind <sup>122</sup>	South Fork Wind will administer this program itself <sup>123</sup>	Not specified	Not specified	Not specified
	R.I.	Direct Compensation Fund (Federal Waters)	\$12 million <sup>125</sup>	Compensate Rhode Island commercial and charter fishers for impacts from the project <sup>126</sup>	Funds will be held in an escrow account by a bank or similar financial institution; <sup>127</sup> a	If technical assistance provider determines it is necessary	One must (1) hold a valid state fishing or landing permit, (2) have a homeport in	Based on claimants historical activity in the project area (those

<sup>121</sup> See *id.* at attach. at 3.

<sup>122</sup> See *id.* at 2.

<sup>123</sup> See *id.* at attach. At 3–4.

<sup>124</sup> As a condition of its Construction and Operations Plan Approval, Revolution Wind must also provide funds sufficient to cover claims by fishers from states other than Massachusetts and Rhode Island in its direct compensation program. See BUREAU OF OCEAN ENERGY MGMT., U.S. DEP’T OF THE INTERIOR, CONDITIONS OF CONSTRUCTION AND OPERATIONS PLAN APPROVAL LEASE NUMBER OCS-A 0486 86–90 (2023), [https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Cond%20of%20COP%20Appr\\_REV%20OCS-A%200486\\_0.pdf](https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Cond%20of%20COP%20Appr_REV%20OCS-A%200486_0.pdf) (requiring Revolution Wind to establish a “direct compensation program” to compensate “commercial and for-hire fishermen impacted by the Project” and specifying that the amount in this fund must be determined based on Table 3.9-12 in the Revolution Wind Final Environmental Impact Statement); OFF. OF RENEWABLE ENERGY PROGRAMS, BUREAU OF OCEAN ENERGY MGMT., REVOLUTION WIND FARM AND REVOLUTION WIND EXPORT CABLE PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT 3.9-21 tbl.3.9-12 (2023) (listing revenue from ports outside of Massachusetts and Rhode Island). The Construction and Operations Plan Approval, however, does not specify how this fund must be administered or even the exact amount that must be included in this fund—it provides a formula the developer must use once the year of construction and five-year post construction date for the project are known. As such, it is not included in this table.

<sup>125</sup> See Rhode Island Revolution Wind Consistency Decision, *supra* note 14.

<sup>126</sup> See Rhode Island Revolution Wind Consistency Decision, *supra* note 14.

<sup>127</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					technical assistance provider will oversee fund administration and review eligibility applications and claims; <sup>128</sup> the bank and technical assistance provider will be selected by Revolution Wind, subject to the R.I. Coastal Resources Management Council's approval <sup>129</sup>		Rhode Island or be a resident of or business in Rhode Island, and (3) demonstrate a history of the vessel operating in the project area in the 3 years prior to eligibility and having incurred a direct impact from the project <sup>130</sup>	with higher value historical landings will receive more than those with lower value historical landings), number of eligible applicants, losses attributable to the project, and preservation of funds for future applicants <sup>131</sup>
		Coastal Community	\$300,000 <sup>132</sup>	To support Rhode Island's	The Fund will be established	N/A	Must further the fund's	Not specified

<sup>128</sup> See *id.*

<sup>129</sup> See *id.*

<sup>130</sup> See *id.* The final eligibility criteria may vary slightly as the technical assistance provider has the authority to establish an eligibility form “in substantially the form” of the model included in the agreement, and the technical assistance provider may “establish such additional terms and conditions for the Direct Compensation Program as are required to fulfill its purpose” as long as they are consistent with the agreement and the materials attached to it. *Id.*

<sup>131</sup> See *id.*

<sup>132</sup> See *id.* at 6.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
		Fund (Federal Waters)		coastal communities <sup>133</sup>	as an entity separate from the state of Rhode Island. The money will be disbursed to this entity; <sup>134</sup> an advisory council will review project funding requests <sup>135</sup>		objectives and be approved by the advisory council <sup>136</sup>	
		Navigational Enhancement and Training Program (Federal Waters)	\$333,333 <sup>137</sup>	Provide navigation equipment to commercial and charter fishers, provide training and experiential learning to those navigating in the project area, and encourage “positive co-existence”	Administered by Revolution Wind; <sup>139</sup> Revolution Wind will establish a voucher system for the navigation component. <sup>140</sup>	N/A	To qualify for navigation a fisher must be eligible for direct compensation and not already possess the specified navigation equipment <sup>141</sup>	For navigation equipment, \$10,000 for fishers with a commercial vessel or inspected for-hire vessel and \$5,000 for those with

<sup>133</sup> See *id.* attach. at app. 8.

<sup>134</sup> See *id.*

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> See *id.* at 6.

<sup>139</sup> See *id.*

<sup>140</sup> See *id.*

<sup>141</sup> See *id.*



Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				between offshore wind and the fishing community <sup>138</sup>			For training, one must be eligible for direct compensation <sup>142</sup>  Revolution Wind will also hold a simulator session where private anglers, charter captains, and commercial fishers can navigate through a simulated windfarm <sup>143</sup>	an uninspected for-hire vessel. <sup>144</sup>  For training, \$1,000. <sup>145</sup>
		Revolution Wind Study Fund	\$300,000 <sup>146</sup>	To fund a study on the potential impacts of	Revolution Wind will make	N/A	Will fund a study to assess the project's	Up to \$300,000 <sup>150</sup>

<sup>138</sup> See *id.* attach. at app. 8.

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> See *id.*

<sup>145</sup> See *id.*

<sup>146</sup> See *id.* at 6.

<sup>150</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
		(Federal Waters)		Revolution Wind to commercial fishing <sup>147</sup>	the funds available <sup>148</sup>		impacts on commercial fishing <sup>149</sup>	
		Direct Compensation Fund (State Waters)	\$3,050,000 (actual amount may vary based on number of days of active cable installation) <sup>151</sup>	To compensate commercial and charter fishers for direct impacts from the installation and decommissioning of Revolution Wind's export cables <sup>152</sup>	Revolution Wind will establish the Rhode Island Fishermen's Future Viability Trust 3 which will establish a claims process; the Trust will hire a technical assistance provider to pay claims and oversee the fund; Revolution Wind will pay \$200,000 towards the	Not specified <sup>154</sup>	Not specified <sup>155</sup>	Not specified <sup>156</sup>

<sup>147</sup> See *id.* attach. at app. 8.

<sup>148</sup> See *id.*

<sup>149</sup> See *id.*

<sup>151</sup> See Revolution Wind, LLC, No. 2021-07-005 (R.I. Coastal Res. Mgmt. Council Feb. 8, 2023), [http://www.crmc.ri.gov/windenergy/revolution/2023\\_0221\\_RevWind\\_CableDecision.pdf](http://www.crmc.ri.gov/windenergy/revolution/2023_0221_RevWind_CableDecision.pdf).

<sup>152</sup> See *id.*

<sup>154</sup> See *id.*

<sup>155</sup> See *id.*

<sup>156</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					Trust's operating costs <sup>153</sup>			
		Coastal Community Fund (State Waters)	\$200,000 <sup>157</sup>	To provide grants for the "general betterment of coastal communities in Rhode Island" <sup>158</sup>	The Coastal Community Fund will be established as a non-profit <sup>159</sup>	N/A	Not specified <sup>160</sup>	Not specified <sup>161</sup>
	MA	Direct Compensation Fund	\$6.425 million <sup>162</sup>	To compensate commercial and for-hire fishers for direct impacts from the project <sup>163</sup>	Funds will be held in escrow by a bank or similar financial institution; <sup>164</sup> the technical assistance provider will oversee administration of the fund and review eligibility	Technical assistance provider will decide whether one is necessary	One must (1) have a valid state fishing or landing permit, (2) have a homeport in Massachusetts or be a resident of or business in Massachusetts, and (3) demonstrate a history of	Based on historical activity in the project area (those with higher value historical landings in the project area will receive more than those with lower

<sup>153</sup> See *id.*

<sup>157</sup> See *id.*

<sup>158</sup> See *id.*

<sup>159</sup> See *id.*

<sup>160</sup> See *id.*

<sup>161</sup> See *id.*

<sup>162</sup> See Massachusetts Revolution Wind Consistency Decision, *supra* note 27, at 2.

<sup>163</sup> See *id.* at attach. at 5.

<sup>164</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					applications and claims <sup>165</sup>		operating in the project area in the three years prior to eligibility and a direct impact caused by the project <sup>166</sup>	value historical landings), the number of eligible applicants, and preservation of funds for future applicants <sup>167</sup>
		Coastal Community Fund	\$400,000 <sup>168</sup>	To support Massachusetts coastal communities <sup>169</sup>	Funds will be held in escrow by a bank or similar financial institution; the Director of the Massachusetts Division of Marine Fisheries, after consulting with an advisory council, may	N/A	Must further the fund's objectives and be approved by the Director of the Massachusetts Division of Marine Fisheries after she consults with the	Not specified

<sup>165</sup> See *id.* at attach. at Exhibit A-1, 5–6.

<sup>166</sup> See *id.* at attach. at Exhibit A-3. The final eligibility criteria may vary slightly as the technical assistance provider has the ability to create an eligibility form “in substantially the same form” as the model attached to the agreement and “to establish such additional terms and conditions for the Direct Compensation Program as are required to fulfill its purpose” as long as they are consistent with the agreement and the materials attached to it. *Id.* at attach. at 5.

<sup>167</sup> See *id.* at attach. at 6.

<sup>168</sup> See *id.* at 2.

<sup>169</sup> See *id.* at attach. at Exhibit B-1.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
Sunrise Wind					approve or reject projects seeking funding <sup>170</sup>		advisory council	
		Navigation Enhancement and Training Program	\$500,000 <sup>171</sup>	Support upgrades to fishers' navigation equipment, professional training, and experiential learning opportunities <sup>172</sup>	Administered by Revolution Wind <sup>173</sup>	Not specified	Funds may be used only to pay approved vouchers under the program <sup>174</sup>	Not specified
	R.I.	Direct Compensation Program	\$16.938 million <sup>175</sup>	To compensate Rhode Island commercial and for-hire fishers for direct impacts from the project <sup>176</sup>	Funds will be held in escrow by a bank or similar financial institution; a technical assistance provider will oversee administration of the fund and	Technical assistance provider will determine whether one is necessary <sup>178</sup>	One must (1) have a valid state fishing or landing permit, (2) have a homeport in Rhode Island or be a resident of or business in Rhode Island, and (3)	Based on historical activity in the project area (those with higher value historical landings in the project area will

<sup>170</sup> See *id.* at attach. at 4, 6.

<sup>171</sup> See *id.* at 2.

<sup>172</sup> See *id.*

<sup>173</sup> See *id.* at attach. at 7.

<sup>174</sup> See *id.* at attach. at 7.

<sup>175</sup> See Rhode Island Sunrise Wind Consistency Decision, *supra* note 9.

<sup>176</sup> See *id.* at attach. at ¶ 9.

<sup>178</sup> See *id.* at attach. at ¶ 11.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					review eligibility applications and claims <sup>177</sup>		demonstrate a history of operating in the project area in the three years prior to eligibility and have suffered a direct impact from the project <sup>179</sup>	receive more than those with lower value historical landings), number of eligible applicants, losses attributable to the project, and the preservation of funds for future applicants <sup>180</sup>
		Coastal Community Fund	\$300,000 <sup>181</sup>	To support Rhode Island's coastal communities <sup>182</sup>	The Fund will be established as an entity separate from the state of Rhode Island; <sup>183</sup>	N/A	Must further the fund's purpose and be approved by	Not specified

<sup>177</sup> See *id.* at attach. at ¶¶ 11,13, Exhibit A-1.

<sup>179</sup> See *id.* at attach. at Exhibit A-3. The final eligibility criteria may vary slightly as the technical assistance provider has the ability to create an eligibility form “in substantially the form” as the model attached to the agreement and “to establish such additional terms and conditions for the Direct Compensation Program as are required to fulfill its purpose” as long as they are consistent with the agreement and the materials attached to it. *Id.* at attach. at ¶¶ 10–11.

<sup>180</sup> See *id.* at attach. at ¶ 15.

<sup>181</sup> See *id.* at 6.

<sup>182</sup> See *id.* at attach. at Exhibit B-1.

<sup>183</sup> See *id.* at attach. at ¶ 19.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					the money will be disbursed to this entity; <sup>184</sup> an advisory council will review requests for funding. <sup>185</sup>		the advisory council <sup>186</sup>	
		Navigation and Training Program	\$333,333 <sup>187</sup>	Help commercial and charter fishers acquire navigation equipment, and provide training and experiential learning opportunities to those navigating in the Ørsted/Eversource joint venture wind lease area <sup>188</sup>	Administered by Sunrise Wind	N/A	To be eligible for navigation equipment, one must be eligible for direct compensation and not already possess the specified navigation equipment <sup>189</sup>  To be eligible for training, one must be eligible for direct	For navigation equipment, up to \$10,000 for those with commercial vessels or inspected charter vessels and up to \$5,000 for those with uninspected charter vessels <sup>192</sup>

<sup>184</sup> See *id.* at attach. at ¶ 4.

<sup>185</sup> See *id.* at attach. at ¶ 21.

<sup>186</sup> See *id.* at attach. at ¶ 21.

<sup>187</sup> See *id.* at 6.

<sup>188</sup> See *id.* at attach.

<sup>189</sup> See *id.* at attach.

<sup>192</sup> See *id.* at attach.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
							compensation <sup>190</sup>  To be eligible for experiential learning (windfarm simulator session), one must have a valid saltwater fishing license and be a private angler, charter captain, or member of the commercial fishing industry <sup>191</sup>	For training, up to \$1,000 <sup>193</sup>
		Funding for an Impacts Study	\$50,000 <sup>194</sup>	To fund a study on the project's impacts on private recreational	Administered by Sunrise Wind <sup>196</sup>	N/A	Will fund one study of these impacts <sup>197</sup>	Up to \$50,000 <sup>198</sup>

<sup>190</sup> See *id.*

<sup>191</sup> See *id.* at attach.

<sup>193</sup> See *id.* at attach.

<sup>194</sup> See *id.* at 6.

<sup>196</sup> See *id.* at attach. at ¶ 8.

<sup>197</sup> See *id.*

<sup>198</sup> See *id.*



Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				fisheries in the project area <sup>195</sup>				
	MA	Direct Compensation Program	\$9.788 million <sup>199</sup>	To compensate commercial and charter fishers for direct impacts from the project <sup>200</sup>	A bank or similar financial institution will hold the funds in escrow; <sup>201</sup> a technical assistance provider will oversee administration of the fund and review eligibility applications and claims <sup>202</sup>	Technical assistance provider will determine if one is necessary <sup>203</sup>	One must (1) hold a valid state fishing or landing permit, (2) have a homeport in Massachusetts or be a resident of or business in Massachusetts, and (3) demonstrate a history of operating in the project area in the three years prior to eligibility and have suffered a direct impact	Based on historical activity in the project area (those with higher value historical landings in the project area will receive more than those with lower value historical landings), number of eligible applicants, and preservation of funds for

<sup>195</sup> See *id.* at attach. at ¶ 8.

<sup>199</sup> See Massachusetts Sunrise Wind Consistency Decision, *supra* note 54.

<sup>200</sup> See *id.* at attach. at 5.

<sup>201</sup> See *id.* at attach. at 3.

<sup>202</sup> See *id.* at attach. at 5–6, Exhibit A-1.

<sup>203</sup> See *id.* at attach. at 5.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
							from the project <sup>204</sup>	future applicants <sup>205</sup>
		Coastal Community Fund	\$1 million <sup>206</sup>	To support Massachusetts coastal communities <sup>207</sup>	A bank or similar financial institution will hold funds in escrow; <sup>208</sup> the Director of the Massachusetts Division of Marine Fisheries, in consultation with an advisory council, will review requests for funding <sup>209</sup>	N/A	Must further the objectives of the fund and be approved by the Director after she consults with the advisory council <sup>210</sup>	Not specified
		Navigation Enhancement and	\$500,000 <sup>211</sup>	To help commercial and charter fishers	Administered by Sunrise Wind <sup>213</sup>	N/A	For navigation equipment, one must be eligible	For navigation, up to

<sup>204</sup> See *id.* at attach. at Exhibit A-3. The final eligibility criteria may vary slightly as the technical assistance provider has the ability to create an eligibility form “in substantially the same form” as the model attached to the agreement and “to establish such additional terms and conditions for the Direct Compensation Program as are required to fulfill its purpose” as long as they are consistent with the agreement and the materials attached to it. *Id.* at attach. at 5.

<sup>205</sup> See *id.* at attach. at 6.

<sup>206</sup> See *id.* at 2.

<sup>207</sup> See *id.* at attach. at Exhibit B-1.

<sup>208</sup> See *id.* at attach. at 3–4.

<sup>209</sup> See *id.* at attach. at 6.

<sup>210</sup> See *id.*

<sup>211</sup> See *id.* at 2.

<sup>213</sup> See *id.* at attach. at 7.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
		Training Program		purchase navigation equipment and to provide training and experiential learning opportunities to fishers navigating in the Ørsted/Eversource joint venture wind lease area <sup>212</sup>			<p>for direct compensation and not already have the specified forms of navigation equipment<sup>214</sup></p> <p>For training, one must be eligible for direct compensation<sup>215</sup></p> <p>For experiential learning (a session at a windfarm simulator), one must have a valid saltwater fishing license and be a private angler, charter captain, or member of</p>	<p>\$10,000 for those with a commercial vessel or inspected for-hire vessel and up to \$5,000 for those with un-inspected for-hire vessels</p> <p>For training, up to \$1,000</p>

<sup>212</sup> See *id.* at attach.

<sup>214</sup> See *id.*

<sup>215</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
New England Wind							the commercial fishing industry <sup>216</sup>	
	R.I.	Direct Compensation Fund	\$4,373,638 <sup>217</sup>	To compensate commercial and charter fishers for economic losses caused by developing the lease area <sup>218</sup>	Administered by the previously established Rhode Island Fishermen’s Future Viability Trust and a third-party administrator hired by the trust <sup>219</sup>	Trust and administrator responsible for developing claims process and may be able to include one if they deem it necessary <sup>220</sup>	Trust and administrator responsible for establishing claims process <sup>221</sup>	Trust and administrator responsible for establishing claims process <sup>222</sup>
		Funding to Support Commercial and Charter Fishers	\$500,000 <sup>223</sup>	To support Rhode Island commercial and charter fishers <sup>224</sup>	Administered by the Rhode Island Fishermen’s	N/A	May be used for anything that furthers the Trust’s purpose <sup>226</sup>	Unknown

<sup>216</sup> See *id.*

<sup>217</sup> See Rhode Island New England Wind Consistency Decision, *supra* note 17.

<sup>218</sup> See *id.*

<sup>219</sup> See *id.*

<sup>220</sup> See *id.*

<sup>221</sup> See *id.*

<sup>222</sup> See *id.*

<sup>223</sup> See *id.*

<sup>224</sup> See *id.*

<sup>226</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
					Future Viability Trust <sup>225</sup>			
	MA	Compensatory Mitigation Fund	\$5,859,471 <sup>227</sup>	To compensate Massachusetts fishing businesses for impacts caused by the project <sup>228</sup>	The funds will either be deposited in an escrow account managed by a third-party administrator or deposited in a regional fund to compensate fishers impacted by East Coast offshore wind developments, if such a fund is established; <sup>229</sup> if the funds are deposited in a regional fund, they will be reserved to pay	Not specified— if funds deposited in an escrow account, third-party administrator or will establish a claims procedure and may be able to include one if they deem it necessary <sup>231</sup>	Not specified— third party administrator, if used, will establish a claims procedure <sup>232</sup>	Not specified— third-party administrator, if used, will establish a claims procedure <sup>233</sup>

<sup>225</sup> See *id.*

<sup>227</sup> See Massachusetts New England Wind Consistency Decision, *supra* note 15, at 2 (Nov. 9, 2023).

<sup>228</sup> See *id.* at attach. at 3.

<sup>229</sup> See *id.* at attach. at 3.

<sup>231</sup> See *id.* at attach. at 4.

<sup>232</sup> See *id.* at attach. at 4.

<sup>233</sup> See *id.*

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
South Coast Wind					claims from Massachusetts fishers and businesses <sup>230</sup>			
		Massachusetts Fisheries Innovation Fund	\$1.5 million <sup>234</sup>	To support projects that ensure safe and profitable fishing remains viable as the presence of offshore wind in the Northern Atlantic increases <sup>235</sup>	Not specified	Not specified	Not specified	Not specified
	R.I.	Direct Compensation Fund	\$250,000 <sup>236</sup>	To provide direct financial mitigation to commercial and charter fishers who operate in the portion of one of the project's export cable corridors that overlaps with Rhode Island's 2011 and 2018	Funds will be paid to the R.I. Fishermen's Future Viability Trust; the Trust, along with a third-party administrator selected by the Trust, will establish a claims process	Not specified	Not specified	Not specified

<sup>230</sup> See *id.*

<sup>234</sup> See *id.* at 2.

<sup>235</sup> See *id.* at attach. at 4.

<sup>236</sup> See Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17, at 5.

Developer	State	Fund	Fund Amount	Fund Purpose	Administration	Eligibility Period?	Eligibility Criteria	Payment Amount Information
				GLD areas <sup>237</sup> (those areas outside state waters where Rhode Island still has the ability to review projects for consistency under the Coastal Zone Management Act) <sup>238</sup>				
		Funding to Support Commercial, Charter, and Recreational Fishers Generally	\$30,000 <sup>239</sup>	To support R.I. commercial, charter, and recreational fishers <sup>240</sup>	Funds will be paid to the R.I. Fishermen’s Future Viability Trust <sup>241</sup>	N/A	These funds may be used for any purpose that fulfills the purpose of the Trust <sup>242</sup>	Not specified

<sup>237</sup> *Id.* at. attach.

<sup>238</sup> See 16 U.S.C. § 1456 (c)(3)(A)–(B) (giving states’ the ability to review for consistency with their enforceable policies plans for the development, exploration or production from any area leased under the Outer Continental Shelf Lands Act and applications for federal licenses or permits to conduct activities outside the coastal zone “affecting any land or water use or natural resource of the coastal zone”); 15 C.F.R. § 930.53(a) (2023) (requiring states create a list of federal license or permit activities the state wants to review for consistency and “describe the geographic location” of “areas outside the coastal zone where coastal effects . . . are reasonably foreseeable” if the state decides to review activities outside the coastal zone for consistency); § 930.74 (requiring that states that anticipate coastal affects from Outer Continental Shelf activities include Outer Continental Shelf plans that describe in detail federal permit or license activities affecting the coastal zone in their lists of activities they want to review for consistency).

<sup>239</sup> See Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.

<sup>240</sup> See Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.

<sup>241</sup> See Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.

<sup>242</sup> See Rhode Island SouthCoast Wind Consistency Decision, *supra* note 17.