



ATLANTIC MARINE BIRD
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atlanticmarinebirds.org

Marine Spatial
Planning (MSP)
Working Group

Compensatory Mitigation for Birds: Opening a Dialog

NYSERDA State of the Science Side Meeting - July 26, 2022

Caleb Spiegel

AMBC coordinator
US Fish & Wildlife Service

Shilo Felton

Senior Scientist
Renewable Energy Wildlife Institute

Holly Goyert

AMBC Marine Spatial Planning WG Lead
Senior Wildlife Biologist, AECOM



MSP Working Group



- One of 5 active AMBC Working Groups
- **Focuses:**
 - Identify, compile, utilize info to understand bird abundance, distribution, & movement at sea
 - Inform management & conservation decisions related to marine spatial planning (currently: offshore wind emphasis)
- **Representative Actions:**
 - NW Atlantic Seabird Catalog (precursor)
 - Atlantic Marine Assessment Program for Protected Species (AMAPPS)
 - Tracking projects
 - Technical review & recommendations - BOEM Avian Survey Guidelines



Coordinator: Holly Goyert (holly.goyert@aecom.com)



Definitions



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- **Mitigation:** Actions to **avoid, minimize, restore &/or compensate** for loss (e.g., bird 'take') of ecological resource due to an activity
- **Compensatory Mitigation:** Replacement, substitution, enhancement, protection of ecological resources to **offset anticipated** losses caused by a permitted activity; Counteracts impacts that can't be avoided/minimized → "*No net loss*"
- **Take: ESA (Sec 3):** "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"
MBTA (16 U.S.C. 703): Pursue, hunt, capture, kill, possess, sell, barter, purchase, ship/transport, export, import, carry (or attempt to)



Mitigation Hierarchy

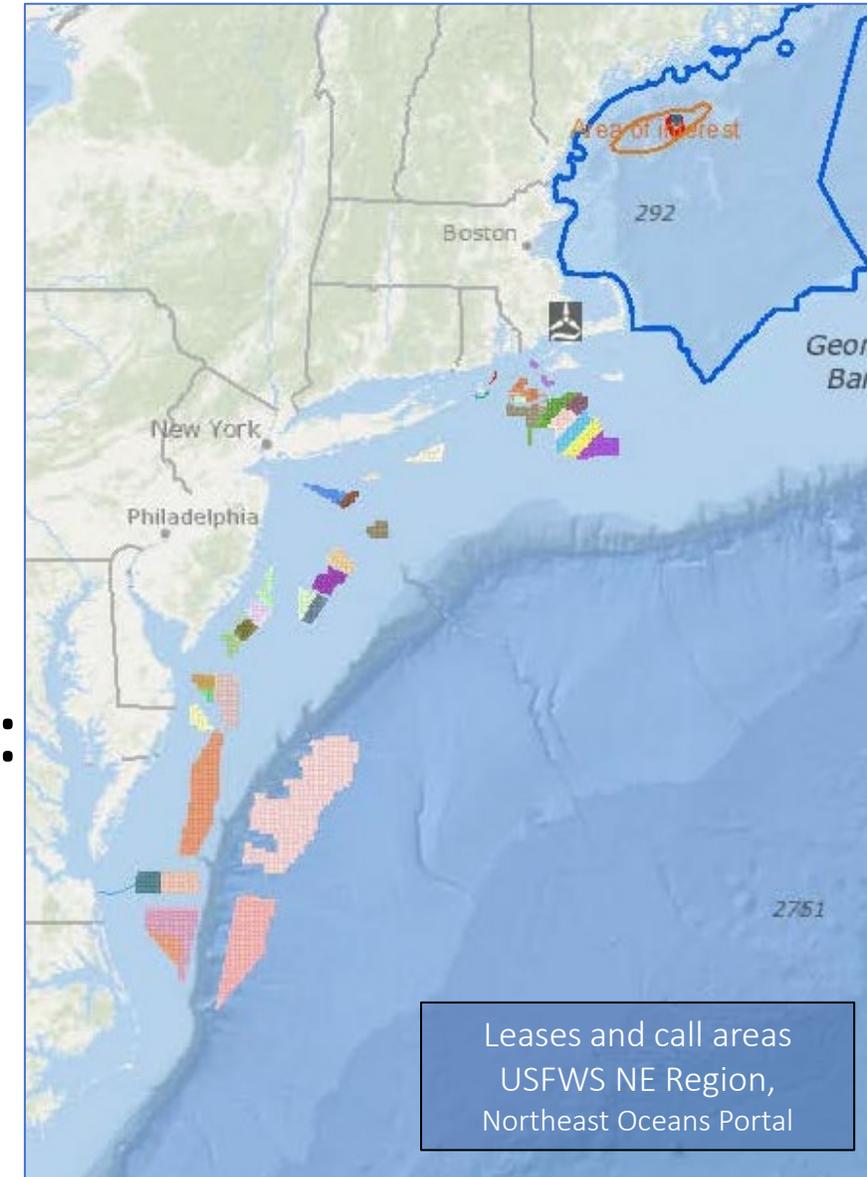


Background - Why Open a Dialog?



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- **Offshore Wind Growing Rapidly:**
 - > 20 permitted, leased, or being planned
 - First large-scale facilities in next couple of years
- **Science Incomplete, but Growing:**
 - To date - No finding of impacts *BUT* new science, technology & data efforts = ↑ understanding
 - Turbines in the water = new information
- **Avoidance/Minimization Options Limited:**
 - Once wind turbines constructed = few viable options
...Especially for cumulative impacts
- **Effective Comp. Mitigation Takes Time:**
 - Requires stakeholder input, planning processes





Background - AMBC MSP Working Group Meeting

- **Virtual meeting*** - May 14, 2022: ***Notes & .ppts available on request**
~40 participants: Fed & state agencies, NGOs, industry, academia
- **Objectives:**
 - Discuss WG interest in mitigation related to offshore wind energy development
 - Learn how states incorporate monitoring & mitigation requirements into leasing processes (e.g., Power Purchase Agreements)
- **Presentations:**
 - The Conservation Fund (Nick Morgan): Mitigation solutions
 - NYSERDA (Kate McClellan-Press): Environmental Mitigation & Monitoring Planning
 - NJDEP (Reneé Reilly): Offshore Wind Research and Monitoring Initiative (RMI)
- **Outcomes:** Current mitigation = avoidance & minimization (monitoring) only
 - Started outline mitigation needs & associated mitigation/monitoring project ideas

Background - Precedent for Compensatory Mitigation

- **Onshore wind impacts → raptors & T&E:**

Bald & Golden Eagle Protection Act & ESA (USFWS)

- **State Offshore Renewable Energy**

Certificates (OREC):

NY & NJ require development of mitigation plans

-“mitigation hierarchy should be an organizing principle...”

(NYSERDA OREC Solicitation, Appx. E)

- **BOEM draft *Guidelines for Mitigating Impacts to Commercial***

& *Recreational Fisheries*: “BOEM recommends that the lessee consider establishing a compensation process if a project is likely to result in lost income to commercial and recreational fisheries.” (Section E)





Meeting Objectives

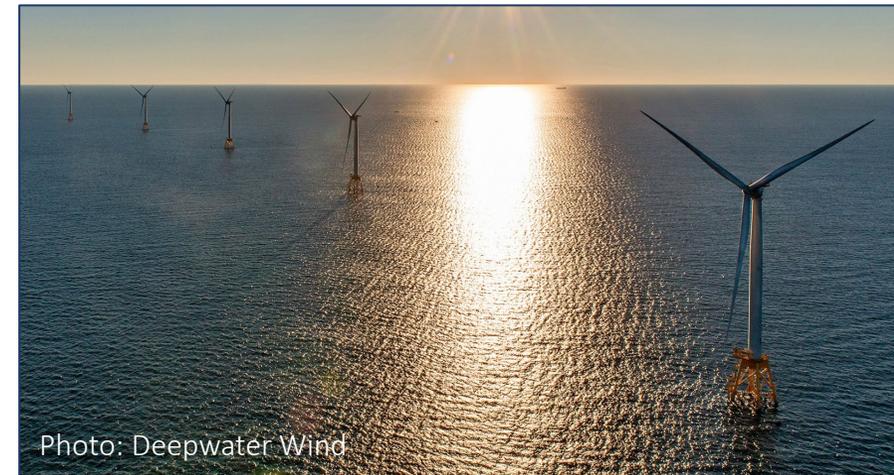


- **Initiate a dialog on considerations for proactive compensatory mitigation planning:** including examples of mitigation from other industries, and regulatory agency policy
- **Review & discuss MSP Working Group efforts to identify conservation actions:** applicable for compensatory mitigation
- **Identify potential partners, roles, & mechanisms**
- **Discuss next steps for informing future planning processes:** including interest in continued MSP-facilitated dialog & action

We will not develop a compensatory mitigation plan or advocate for a specific process or projects

Intended Outcomes

- 1) ↑ proactive discussions among stakeholders
- 2) ↑ consideration in environmental planning
- 3) Initial input on considerations, issues & components to incorporate if/when plan developed for birds:
 - MSP WG: will continue to coordinate in near term
 - Submit reccs to BOEM, USFWS, States, RWSC?



Agenda Review

Presentations

- 1:15 Considerations and challenges for effective compensatory mitigation plans
Aspen Ellis (University of California, Santa Cruz)
- 1:30 USFWS perspective: Examples from land-based wind and considerations for offshore wind - Stephanie Vail-Muse (USFWS)
- 1:45 Example of a pooled research fund to inform wind-wildlife mitigation
Shilo Felton (Renewable Energy Wildlife Institute)



Facilitated Discussion

- 2:00 Challenge-driven approach to brainstorm conservation solutions to offset impacts (Shilo)
- 2:15 Identify potential partners, roles, and mechanisms to fund compensatory conservation (Caleb)
- 2:25 Next steps for drafting a compensatory mitigation plan (Caleb)