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The Need for Fisheries Community Benefit Agreements with OSW

What is a Fisheries Community Benefit Agreement (FCBA)?

A FCBA is a legally binding agreement made between an OSW company which is bidding on a BOEM-advertised lease (or which has been awarded a lease) for the opportunity to build a wind farm, and one or more commercial fishing organizations (CFO's) whose members regularly fish the waters of the project area, including electrical cable routes to shore and any security/safety zones which may surround these projects. These CFO's may form a legal *entity* that will be inclusive of the many different fisheries and represent one or more CFO's. If the OSW company is not awarded a lease, the FCBA with that company is void. The term of the FCBA shall be equal to the term of the OSW lease and any extensions or transference thereto, and include site assessment impacts and decommissioning.

FCBA and the resulting management "Entity" are proposed to be structured similar to the best features of other successful industry-to-industry models such as the Central Coast and South Bay Joint Cable/Fisheries Liaison Committees and the Joint Oil/Fisheries Committee of Southern/Central California. The Entity must have legal stature as a 501-c-3, c-6, or similar organization.

When is a FCBA Needed?

The principals of impact AVOIDANCE, MINIMIZATION, and NON-MONETARY MITIGATIONS should be considered for all aspects of an OSW project prior to COMPENSATION-MITIGATION discussions. Make no mistake: fishermen would rather have their areas of opportunity preserved than have financial compensation for the loss. However, with the siting, size, and scope of proposed OSW developments there will be unavoidable impacts to the commercial fishing industry. **Thus, since BOEM has no legal ability to require any compensation agreement, a FCBA must be required as part of a Coastal Zone Management Act consistency determination/certification and/or state or federal development permits, or state leases.** FCBA discussions are most fully informed when an OSW project's Construction and Operating Plan is known. This said, many impacts will be known prior to that phase, allowing for the basic outline of an agreement to be set earlier, subject to amendment as more is known. A FCBA should ideally be in place prior to a lease being executed as impacts to commercial fishing will occur immediately during the Site Assessment. Fish Surveys required by the FCBA should begin before and during the Site Assessment.

A comprehensive list of impacts is attached as an appendix.

Addressing these impacts will involve a complex negotiation and will likely be more an art-form than science in achieving a fair deal for both industries.

Purpose of a Fisheries Community Benefit Agreement

Potential purposes of a FCBA are many, and likely to be more fully informed when potential impacts are better understood. At minimum, the FCBA would have the ability to be amended upon the receipt of new information.

The FCBA would:

- 1) Provide a mechanism for claims to be evaluated and paid for fishing gear damaged or lost due to OSW structures or activities;
 - 2) Provide *one-time* compensatory-mitigation to all regional fishermen as well as additional compensation for all fishermen directly impacted by the Wind Energy Area and cable route(s);
 - 3) Provide an *annually funded* fishing community fund, based on a percentage of the OSW lease sales (or another formula to be determined) that will enable local-level projects and programs which provide economic resilience and sustainability to the region's fisheries and related businesses. Annual funding would begin at the site-assessment phase and continue for the life of the lease; and,
 - 4) The fishing community fund may also support larger state-wide industry-led organizations which work to benefit and sustain in-state wild-capture fishing communities and seafood. This work is essential to the State's food security, thereby benefitting all California fishermen and related businesses.
 - 5) Establish the basis for a long-term constructive relationship between OSW companies, fishermen, and impacted communities.
- Funding to be adjusted for inflation annually.

Examples of uses of annual funding to enhance the economic resilience of fisheries may include: lower costs of mooring, fuel, and ice for active fishermen; assist local cities or port/harbor districts in acquiring and maintaining fisheries-related infrastructure (eg, ice machines, cold storage, hoists, dock repairs, etc); provide training programs to develop new entrants to the fisheries; local promotion of seafood via seafood markets and festivals; provide vessel safety equipment; support for participation in fisheries management; retain consultants and legal services as needed; create strong communication tools among the fishing community for information-sharing; enhance direct marketing; provide community outreach on the sustainability of California fisheries; commission science products, economic impact reports, public opinion polls; and, support development of innovative gears and/or experimental fishing permits.

The FCBA should also define key relationships between the developer and fishermen. This can include: Industry to industry communication protocols; a consultation requirement; agreed upon traffic corridors; first right of refusal for certain job opportunities; coordinated safety/emergency response; job training; 24-hour problem/emergency hotline; gear replacement if conflicts with OSW hardware or operations occur; collaborative fish stock surveys; biological assessments; and a bond held for unforeseen impacts.

All of these programs are meant to enhance **resilience** in the fleet by lowering fishing costs, increasing profitability, and in other ways to keep people fishing despite a loss of fishing opportunity caused by OSW development. The MB and Humboldt Wind Energy Areas (WEA's), nearly 600 square miles of productive ocean, will be removed from seafood supply. We are aware of other areas of interest to BOEM and the California Energy Commission are being considered. Should these areas result in OSW leases, California will suffer a further loss of fishing opportunity.

When FCBA yearly fund contributions sustain seafood production, other elements of the seafood supply chain (deckhands, processors, retailers, restaurants, etc) will benefit. These programs will help keep up seafood deliveries to the communities; however, make no mistake, removing nearly 600 square miles from production will lessen seafood production.

Hypothetical FCBA Implementation-Governance Structure of Administering Entity

California's commercial fishing industry can look to existing successful FCBA-like agreements to inform the governance structure of an entity (Entity) formed to administer the terms of a FCBA.

These industry-to-industry agreements should be negotiated between the local port fishing associations as represented by the Entity, and the OSW company, not by any State Agency; however, both BOEM and State agencies can be helpful by requiring that OSW lessees enter into FCBA's following the principles listed above.

Such an Entity could have the following features:

The Entity is guided by a Board of Directors (Board). The composition of the Board and its responsibilities are to be determined. For discussion purposes, the board of directors would be founded on democratic representation of fishing interests formed to negotiate with OSW the terms of a FCBA. This Entity will also be the managing body to receive and distribute both one-time impact and annual funds. The Entity may include CFO's outside the immediate project area but which have members who have a history of fishing in the OSW project area; however, the CFO's closest to the OSW development shall form the majority of voting directors of the board. The OSW company(s) funding the FCBA could have one or more non-voting representatives on the board, as well as one non-voting representative of each harbor/port administration(s). The FCBA would provide for funding in phases as negotiated between the parties, for the duration of the lease. As described, above, there shall be an initial one-time mitigation-compensation fund, as well as an annual fund. Impacts are expected to be felt by fishermen beginning with the initiation of the Site Assessment and Surveys. Initial mitigation-compensation will be for anticipated future losses due to OSW displacement for active fishermen.

The Entity to hire a manager or executive director to manage its day-to-day affairs, under the direction of the Board.

The Entity will be the communication liaison between the OSW and commercial fishing industries. Good relations are desired.

The Entity and OSW lessee shall provide for well-defined employment or contracting opportunities for fishermen to use their mariner skills and vessels in support of OSW construction, research, and operations.

The FCBA shall describe a process to provide for initial, one-time direct payments to fishery participants via the local port CFO's operating through the Entity's Board of Directors. Any such payments will be negotiated between the Entity Board and OSW company representatives. Fishermen who do not home-port in the directly affected ports shall be able to make claims provided they show income losses to the Board due to displacement by the OSW development. The past window of time to show fishing activity inside the WEA and cable route(s) shall begin ten (10) years prior to the signing of the FCBA, and take into account interference in fishing activity due to the pandemic.

A percentage, to be determined, of an annual FCBA fund may be directed in support of local, State, regional, and/or national commercial fishing and/or seafood promotion, conducted by

recognized non-profit industry organizations, supplied on a grant-request basis. Priority shall be given to local/State organizations.

The Board shall manage the fund by creating programs such as described above, and through considering grant requests initiated by fishery participants and/or community requests for additional, worthy programs or projects that have a supportable connection to commercial fishing.

Since FCBA's may be negotiated prior to the completion of a construction and operations plan (COP), the FCBA should provide a mechanism for amendment when new information and/or impacts to commercial fishing is made available which have impacts to commercial fishermen that need to be accounted for.

In-the-event-that there is more than one OSW lease and FCBA in the region, the Entity can either administer all FCBA's concurrently, or by separate processes.

The Entity shall provide an annual informational report on its programs and expenditures to OSW company(s) funding the FCBA(s) and to the California Coastal Commission.