

Alliance of Communities for Sustainable Fisheries
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Mr. Doug Boren

August 1, 2022

Pacific Regional Director

Bureau of Ocean Energy Management

Sent electronically

RE: BOEM's Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Proposed Sale Notice (PSN)

Dear Mr. Boren

The Alliance of Communities for Sustainable Fisheries (ACSF) is a 20-year-old 501(c)(3) not-for-profit educational organization, founded for the purposes of connecting fishermen with their communities, and representing fishing interests in state and federal processes. The ACSF is a regional organization, with commercial fishing leader representatives from Monterey, Moss Landing, Santa Cruz, Morro Bay, and Pillar Point harbors, and Port San Luis, on our Board of Directors. The California Wetfish Producers Association (squid, sardines, etc), port communities, and several recreational fishing organizations, also have representatives on our Board. Thus, the ACSF represents a large cross-section of fishing and community interests for the Central Coast of California, including several directly affected ports by offshore wind (OSW) development. The term "fishermen" used herein refers to our fishing women and men.

The ACSF was instrumental in developing the consensus statement on Fishing Community Benefit Agreements (FCBA), discussed below.

First, please be advised that the ACSF generally supports comments on the PSN from the Pacific Fishery Management Council (PFMC), the Pacific Coast Federation of Fishermen's Associations (PCFFA), the Responsible Offshore Development Alliance, and the California Fishermen's Resiliency Association (CFRA). The ACSF will try to not be repetitive of these comments but we will provide emphasis and additional considerations or background. The ACSF will also provide its unique answers to the questions posed in the Federal Register Notice (FRN), section *IV.c(vi)*, on Community Benefit Agreements (CBA).

The ACSF appreciates that BOEM has decided to use the multi-factor bidding format.

How can BOEM responsibly expect complete comments on its PSN when the Environmental Assessment for Morro Bay has not been finalized and released?

The ACSF requests an answer to this question. Presumably the EA contains information relevant to the siting of OSW development.

The PSN contains insufficient details about the concept of Community Benefit Agreements

The ACSF joins other organizations requesting another public comment opportunity on CBA concepts after BOEM revises the PSN, but before the final Sale Notice is published. At least 30 days, please.

The PSN asserts the issuance of leases does not guarantee that a project will be built

The ACSF doesn't believe this. With the kind of money expected to be put forth in the bid process, we believe OSW companies do expect to build projects, though the details of those projects are not yet known.

Distinguishing Fishing Community Benefit Agreements from Community Benefit Agreements

Implicit in the PSN's proposal to use the multifactor bidding format and its inclusion of a credit as an incentive for OSW companies to enter into a CBA is the correct conclusion that fishermen will be the most impacted of any stakeholders. This fact is what led to the development of the FCBA template.

The FCBA is a type of CBA which fundamentally benefits fishermen collectively, and which also has secondary benefits to other segments of the seafood supply chain. The FCBA *template*, attached, sets forth principles and guidelines for goals and functions of FCBA's. The legal Entities proposed in the FCBA template will be managed by a fishermen's board (also including OSW and port representatives) with funding allocated according the FCBA principles. It is expected and desired that there will be significant spillover benefits to other sectors of the seafood supply chain to the extent that fishermen can keep fishing, bringing product over the docks. Processors, deckhands, fishing gear stores, seafood restaurants—all are expected to benefit.

This said, sectors of the seafood supply chain (processors for example) may have losses due to OSW that are so complex that a separate CBA must be made between the stakeholder and the OSW company. An example would be if a fish processing plant must lay off workers or even close altogether as a result of insufficient product deliveries.

The PSN asks if CBA's might be used for other groups or stakeholders who are not impacted by OSW development. The ACSF does not support expanding the definition and use of CBAs for groups or organizations that do not rely on the resources of the lease areas. However, as discussed below, there may be other mechanisms that can meaningly address requests from other groups.

Should BOEM proceed with expanding the use of CBAs, then the ACSF believes that 1) the percentage incentive must be much, much higher, and 2) any funding towards FCBA's or other seafood-related CBAs must not be reduced to accommodate non-fishing related organizations.

As further context, California fishermen have prepared for mitigation discussions in creating, by consensus, the FCBA template, or set of principles, attached and discussed further below. Fifteen California port-based commercial fishing organizations and one large ports association signed the "Industry Letter", also attached, to state agencies supporting FCBA principles. Following this template, Central Coast fishermen have formed a 501-c-6 organization, the "Morro Bay Wind Lease Area Mutual Benefit Corporation" (MBLAMBC), and port-based fishing associations from San Francisco north to the Oregon border have formed their regional organization, the "California Fishermen's Resiliency Association" (CFRA). Both of these new organizations generally follow the FCBA principles. Both organizations are inclusive of all fisheries and have mechanisms to address out of area vessels which have fished in the proposed lease areas.

As will be shown, these legal Entities are the primary, appropriate vehicle for Community Benefit Agreements as proposed in the PSN.

Responding to PSN proposed lease boundaries: Habitats that must be avoided

The PFMC letter explains at length the Council's deep concerns should OSW development damage sensitive benthic habitats vital to the life cycles of fisheries. The ACSF strongly supports the recommendations made to BOEM by the PFMC on protecting and excluding important habitats.

The necessity of preserving scientific survey routes. Combined with safety/navigation corridors, maximum benefits can occur from the area

The ACSF notes that the California Coastal Commission's (CCC) federal consistency determination placed a condition on BOEM: provide for a navigation/safety corridor through the WEA. Additionally, the CCC staff report to the Commission expressed concern about the real potential for OSW leases and development to interfere with or fully prevent the collection of stock assessment data that have been collected over decades. Scientists from the National Marine Fisheries Service (NMFS) have also voiced deep concern. Quoting from the NMFS comment letter on the Morro Bay draft EA about the importance of these surveys:

"Each year NOAA's National Marine Fisheries Service (NMFS) conducts several large-scale scientific surveys along the U.S. West Coast necessary to monitor and assess the populations of fishery stocks, marine mammal stocks, and threatened and endangered species, as well as their
Enclosure 2: NMFS, NOAA's IOOS Program, and NWS Comments on BOEM's Morro Bay Draft EA
13 habitats, in the California Current Large Marine Ecosystem (also see Gallo et al.34).
Extending from Canada to Mexico this ecosystem supports valuable fisheries (e.g., hake, rockfishes, salmon, anchovy, tuna), as well as protected species (e.g. whales, pinnipeds, sea turtles). Productivity of the ecosystem is highly variable and responsive to large-scale oceanographic forcing (e.g., El Niño/La Niña cycles and the Pacific Decadal Oscillation).

NMFS (as well as other federal and state resource managers, academic institutions, and research organizations) rely on data from these mission-critical surveys to assess the current state of the ecosystem, inform sustainable management of fisheries stocks, develop management actions to conserve protected species, and understand and predict the impacts of climate change on living marine resources. In any one year, NMFS conducts approximately eight to twelve large-scale surveys along the West Coast. (See Table 3 and Figures 3 and 4 below.) These surveys are conducted in areas included in the WEA and future lease areas."

To preserve as much of the integrity as possible of these surveys, the ACSF requests that for the Morro Bay WEA, a line at 35 degrees, 35 minutes north latitude 4 nm's in width, centered on that latitude, not be leased but rather serve as a combined scientific stock survey and safety/navigation corridor. For the Humboldt WEA, we request that a similarly-purposed corridor be placed at the 40-55 latitude line, also at 4nm's in width. These corridors would run across the entire WEA's.

It is highly important for fisheries scientists and managers to secure the long-running continuity of stock assessment survey routes and data. Failure to secure this date will lead to scientific uncertainty which leads to reduced quotas which leads to reduced value in the limited-entry permits fishermen hold. The ACSF believes it is likely that NMFS will make a similar request.

The USCG PARS on-going study notwithstanding, fishermen generally feel that an east-west safety/navigation corridor centered in the middle of these WEA's will serve them well.

The relationship between BOEM's draft Mitigation Guidelines and Community Benefit Agreements (CBA)

The ACSF seeks clarity as to the relationship, if any, between BOEM's concept of CBA's as described in the FRN/PSN, and mitigations as proposed in its DRAFT Mitigation Guidelines. In particular, how does the list of impacts shown in the draft affect establishing compensation amounts contemplated by CBA's? It appears from these guidelines that compensation is for claims by individual fishing businesses. It is important to note that a FCBA is about collective impacts and fishing community-wide mitigation strategies to enhance fleet resilience.

The ACSF will comment separately on the draft Guidance, but for this discussion, please know that we find the list of impacts to fisheries to be wholly insufficient, for individuals and communities.

Clarification needed for CBA qualification

The FRN states:

"The second bidding credit proposed would allow a bidder to receive a credit of 2.5% of its cash bid in exchange for an existing CBA or a commitment to enter into a new CBA with a community or stakeholder group whose use of the geographic space of the Lease Area, or whose use of

resources harvested from that geographic space, is directly impacted by the Lessee's potential offshore wind development."

There are a lot of concepts packed into that long sentence.

First, as we will expand on in the questions section, a 2.5% credit to incentivize bidders to enter into a CBA with fisheries participants is not a sufficient incentive and does not reflect the level of impacts that will occur. The bid credit for having a CBA in place should be at least 15%. The lease must also be clear that the majority of the value of the bid credit must actually be spent towards one or more CBAs, and in a timely manner.

Second, the "or a commitment to enter into a new CBA" must be clarified and made more certain. Bidders must show evidence of an agreed-to and signed CBA within 90 days of bid award, and certainly prior to a SAP being approved. The CBA must address and satisfy the rational concerns and impacts identified by fishery participants. If they do not, their bid should be set aside.

Further yet, *"...or whose use of resources...is directly impacted..."* Clarification through examples is needed. It would seem that seafood buyers/processors will be included. True? Passenger-carrying Recreational Fishing Vessels fish in the WEA and will be displaced, so can it be assumed they will qualify for loss-compensation? What about seafood restaurants that sell products from the WEAs, or from the cable routes? What about city or harbor districts that have impacts from a loss of seafood landings, or on their infrastructure? What about other community groups, such as environmental organizations? And tribes? We further suggest, for clarification, that "the use of resources" be expanded to include "economically benefitting from the use of resources".

Section IV.c(vi): "General Questions Regarding CBA Credits"

How should BOEM evaluate the agreements?

The ACSF led an effort last winter to gather the views of California's commercial fishermen. The two documents, attached, represent the collective opinion of the fleet on the purpose and goals, and general structure of a FCBA, made industry-to-industry between CF and OSW companies. These documents (FCBA template and the Industry letter) can also be found at www.alliancefisheries.org, under "News".

BOEM should evaluate CBAs proposed by lessees according to the set of principles outlined in the FCBA template. Note that some benefits to for-hire recreational fishing vessels will also occur through the programs described in the FCBA (such as discounted fuel).

Importantly, CBA's additional to the FCBA may be needed to adequately evaluate different impacts to sections of the seafood supply chain, as discussed above.

On what metrics should BOEM evaluate CBA's?

The FCBA template describes these metrics, features, and principles:

- FCBA's apply to regions of one or more Commercial Fishing Organizations, within an identified distance to the cable landing location or other geographic points
- OSW to fund contributions to create continuing economic and community resilience in fisheries to compensate for losses due to OSW development. Gear loss claims will be handled through the fund. Funding could come from a percentage of the annual OSW operator lease fee, or through some other formula representing fishery impacts.
- FCBA's are inclusive of all fisheries and participants who operate in waters used by OSW, whether they home-port or land products in the region, or not
- FCBA's may address both initial impacts and long-term funding, for the duration of the lease.
- Legal "Entities" (ie a 501-c-3 or c-6 type organization) with a board of directors founded on democratic representation of fishing interests to be 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 CFOs 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 Entity will be created prior to any FCBA negotiation.
- FCBA's are Fishing industry-to-OSW industry agreements, with the managing Entity led by fishing representatives.
- Compensation-mitigation shall be negotiated between the industries in good faith. While various data sets and other sources of fishing history and economic information should contribute to determining levels of compensation, it is recognized that impacts to commercial fisheries and related communities are highly complex, with a deep reach.
- The FCBA includes communication protocols between industries to ensure a constructive long-term relationship.
- FCBA's must allow for amendments to address new impacts as they become known.
- OSW developers may need to negotiate more than one benefit agreement to cover *various* impacts that will occur to other stakeholders and communities.

BOEM should evaluate CBAs and proposed CBAs in reference to these principles.

How can BOEM verify actions to be undertaken pursuant to a CBA?

The ACSF appreciates this question. Certainly, asking the fishery participants in the managing Entity, as proposed in the FCBA principles, if they are satisfied that the letter and spirit of the CBA are being fulfilled would be a place to start. There may be a role for state agencies in assuring a satisfactory agreement. We also note that the FCBA contemplates reporting each year to the CA Coastal Commission on the activities of the FCBA and its management. Transparency will help with verification. A yearly report to BOEM could also be provided.

If BOEM grants a bidding credit for a CBA, at what point in BOEM's renewable energy leasing process must a CBA be executed?

Ideally, prior to a lease being awarded. This said, we believe that within 90 days of lease award would be satisfactory. In no event should a CBA be executed at or after SAP approval. The ACSF asserts that impacts from the impending lease sales have already dampened the future of commercial fishing on the west coast, and certainly in the regions close to the WEA's. Further, most fishermen believe that despite the best of communication protocols, impacts and displacement (losses!) due to site assessment and characterization activities will occur.

Should the two CBA credits BOEM discussed above be combined?

No. It will be enough of a challenge to qualify other CBA beneficiaries beyond direct impacts to fishermen.

Should executed CBAs be posted publicly?

Yes.

What disclosures/certifications should be required to be part of any CBA? Anything else BOEM should take into consideration when evaluating the use of CBA's?

BOEM must firmly focus on those who will be directly impacted by the loss of fishing opportunity and the landing of seafood products.

WRT other considerations, we do not believe that BOEM can or should expand the use of CBAs to other groups which may feel they have more remote needs, or who just feel that some of the OSW company's money should go to worthy causes of many sorts. This said, and importantly, the ACSF does believe that OSW companies would reduce risk and enhance community good will by voluntarily creating some sort of yearly funding mechanism. The OSW companies can create their own goals, metrics, and application process for this funding.

Bottom line: BOEM should, must, take actions to assure that those most effected will receive mitigation funding, primarily aimed at creating fisheries resilience to compensate for losses and increased costs associated with OSW development.

Should BOEM explicitly allow a Lessee's CBA to include payments into a mitigation or innovation fund?...If so, what metrics should BOEM use to evaluate whether the use of the funds is acceptable in meeting OCS Lands Act goals such as leading to expeditious and orderly development of the OCS?

WRT the creation of a fund, the ACSF suggests it be called a "Compensation and Fisheries Resilience Fund". Such a fund is a primary feature/requirement of the FCBA. Funded each year of the lease's duration and adjusted for inflation, it would be managed in a manner similar to the Central California Joint Cable/Fisheries Liaison Committee and the South Bay Cable Fisheries Liaison Committee. A draft management structure is found in the FCBA template. The ACSF believes that the primary goal should be that the final agreement satisfy both the fishing industry and OSW developers. If that is not being achieved then BOEM and California state agencies (eg the CCC, SLC) should use their permit and condition authority to make this happen.

WRT "...orderly development and goals of the OCS", The ACSF supports this observation and comment from the PCFFA's letter on the PSN:

"When Congress passed the Outer Continental Shelf Lands Act ("OCSLA") it specifically included a policy statement. 43 U.S.C. §1332(2) states, "this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected." It is well established that fishing is not a right; but rather a privilege granted to properly permitted and licensed individuals. As such, Congress appears to be saying that fishing on the outer Continental Shelf should not be affected. It is beyond dispute that deployment of OSW facilities will not only affect fishing; but it will have profound impacts on the fishing industry and our nation's food security."

We further note that FCBA's and resulting funds are a band-aide applied to the wound that is loss of fishing grounds. FCBA's will help to keep people fishing, and hopefully allow young fishermen and new entrants to envision a future in fishing in California.

Is offering a bidding credit to enter into a CBA the most effective method to encourage similar types of agreements between developers and stakeholders or community groups, or is there a more effective format BOEM should consider?

The ACSF is not knowledgeable as to the details and interpretations of the OCSMA to know what tools BOEM has at its disposal.

Unless it was misunderstood, ACSF representatives heard from Mr. Boren (7/19/22) that BOEM has no authority to require CBA's other than for stakeholders who are directly affected by the loss of access to fishing in the leased areas. If that is the case then other non or less affected groups could make their case for compensation, such as described in #7, above. Or, perhaps state agencies could use their authorities to require such expanded CBA's.

Additionally, the PSN contemplates that financial contributions per a CBA wouldn't begin until the facility started to generate revenues. This is unfair and unacceptable. BOEM must recognize that economic harm began occurring as soon as it published its first California Call for Information. This act immediately cast a pall of uncertainty over fisheries. It has made economic planning very difficult if not impossible, and slowed investment. Moreover, fishermen believe, based on experience with other types of survey work, that this work will disrupt and displace fisheries during the site assessment and characterization phase. Thus, impacts to fisheries are an immediate concern and offsetting financial contributions should begin at minimum at the beginning of the site assessment and characterization phase.

Please reflect that most if not all start-up businesses have costs before they have income.

The CBA percentage incentive must represent a real spending commitment

The ACSF also requests that the final Sale Notice stipulate that a percentage of the CBA bid credit be committed to actual funding of the CBAs. 80% is suggested, similar to the commitment for workforce development credits.

Thank you for considering comments from the Alliance of Communities for Sustainable Fisheries.



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California Coastal Commission

California Energy Commission

State Lands Commission

California Department of Fish and Wildlife

Pacific Fishery Management Council

ACSF Board of Directors

California Coastal Commission

February 9, 2022

State Lands Commission

California Energy Commission

Sent electronically

RE Creating a template and managing Entity to address unwanted, adverse impacts on California's fisheries from Offshore Wind Development

Dear Commissioners,

We the undersigned commercial fishing organizations (CFO's) support the concepts found in the attached Fishing Community Benefit Agreement (FCBA) template. While we do not claim to represent the interests of *every* commercial fishing (CF) man and woman in the state, we do feel that our collective view represents the great majority of the State's CFO's which will be impacted by offshore wind (OSW) development. The term "fisherman" is used herein to be inclusive of our fishing men and women.

Fishermen have (and will continue to) press BOEM to effectively AVOID, MINIMIZE, and MITIGATE the impacts of offshore wind (OSW) development to commercial fisheries and seafood supply from the size and location of Wind Energy Areas (WEA's). These efforts have been frustrating and largely unproductive. The two California WEA's portend BOEM lease awards, soon, with the high likelihood that more California Call Areas will be identified in the months to years to come.

This letter and attached draft template discuss compensation-mitigation for the effects of losing fishing grounds. Please know that we would rather be allowed to continue to have access to our traditional fishing grounds than to have monetary compensation. This effort could be likened to taking out an insurance policy: no one wants losses from OSW, but if/when there is a loss, there should be a mechanism to make a claim.

Efforts have already begun to form the "Entities", legally organized under California and federal law, referenced in the template, to help manage impacts to

fisheries from OSW development. These new Entities will be founded on principles of inclusion and represented democracy for our fishing interests aimed at creating fleet and community resilience. The Entity will be the CF negotiator with OSW companies for financial compensation, as well as other types of mitigation and communications, and will distribute both initial one-time funding that may be provided as well as funding that continues through the term of the lease. The main purpose of the Entity and funding is to preserve and enhance fleet resilience in the face of lost fishing opportunity. We seek to keep people fishing and keep seafood products being delivered to our communities and the state, despite obstacles.

There may be more than one Entity in California to address regional needs and differences. However, it is envisioned that the purpose and governance structure of each of these will be similar. Varying levels of benefits will be available to those who fish in the region. It is also hoped that this template may also be useful for future offshore aquaculture projects that, if permitted for development, disrupt and displace fisheries.

Included in the FCBA template is a list of impacts to commercial fishermen and our communities from OSW development. This list represents known impacts, but there may be other impacts that become known when the OSW developers submit Construction and Operations Plans, as well as once operations begin; therefore, any FCBA's that are negotiated in advance must have the ability to be amended.

We ask that the California Coastal Commission, the State Lands Commission, and the California Energy Commission, use all available authorities to support the state's commercial fishing men and women by requiring OSW developers to negotiate FCBA's in good faith with the Entities. The principles set forth in the FCBA template should guide the negotiation. Such state authorities could include those found under the Coastal Zone Management Act's consistency determinations and certifications, as well as direct project permit conditions, and/or State Lands leases. We believe such support is consistent with the language of California's Coastal Act.

We hope that it is helpful to the Coastal, State Lands, and Energy Commissions to hear the consensus voice of California's commercial fishing men and women on

how compensation and other mitigation should occur if OSW takes over large sections of our traditional fishing grounds. Please note that the State's Association of Harbormasters is also supporting our effort, benefits to our small craft harbors being clear.

On behalf of:

Supporting organizations

Alliance of Communities for Sustainable Fisheries

Alan Alward, Co-Chair

Crescent City Commercial Fishermen's Association

Rick Shepard, President

Trinidad Bay Fishermen's Association

John Provolt, President

Humboldt Fishermen's Marketing Association

Harrison Ibach, President

Shelter Cove Fishing Preservation Association, Inc

Jake Mitchell, President

Salmon Trollers Marketing Association of Noyo

Tony Cannia, President

Bodega Bay Fishermen's Marketing Association

Lorne Edwards, President

San Francisco Crab Boat Owners Association

John Barnett, President

Santa Cruz Commercial Fishermen's Marketing Association

Mike Hubbell, President

Moss Landing Commercial Fishermen's Association

Tom Hart, President

Monterey Commercial Fishermen's Association

Mike Ricketts, President

Morro Bay Commercial Fishermen's Organization

Tom Hafer, President

Port San Luis Commercial Fishermen's Association

Chris Pavone, President

Commercial Fishermen of Santa Barbara

Christopher Voss, President

San Diego Fishermen's Working Group

Pete Halmay, President

California Association of Harbormasters and Port Captains

Andrea Lueker, President

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BOEM

CA Department of Fish and Wildlife

Fisheries Community Benefit Agreements

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 security/safety zones which may surround these projects. 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.

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.

Summary Principles for a FCBA

- FCBA's apply to regions of one or more CFO's, within an identified distance to the cable landing location or other geographic points
- OSW to fund contributions to create continuing economic and community resilience in fisheries to compensate for losses due to OSW development; funding could come from a percentage of the annual OSW operator lease fee, or through a similar formula.
- FCBA's are inclusive of all fisheries and participants who operate in waters used by OSW, whether they home-port or land products in the region, or not

- FCBA's should address both initial impacts and long-term resilience funding
- Legal "Entities" (ie a 501-c-3 or c-6 type organization) with a board of directors founded on democratic representation of fishing interests to be 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 most impacted by the OSW development shall form the majority of voting directors of the board. The Entity will be created prior to any FCBA negotiation.
- FCBA's are Fishing industry-to-OSW industry agreements, with the managing Entity led by fishing representatives.
- Compensation-mitigation shall be negotiated between the industries in good faith. While various data sets and other sources of fishing history and economic information should be used to determine levels of compensation, it is recognized that impacts to commercial fisheries and related communities are highly complex, with a deep reach.
- The FCBA will include communication protocols between industries to ensure a constructive long-term relationship.
- FCBA's may address the phases of OSW development and must allow for amendments to take into account new impacts as they become known.
- OSW developers may need to negotiate more than one benefit agreement to cover *various* impacts that will occur to other types of stakeholders and communities.

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, a FCBA should be required as part of a Coastal Zone Management Act consistency determination or 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 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.

The types of impacts to fisheries from OSW are found below.

Economic modeling to determine impact fees should consider the following known impacts, risks, and uncertainties:

1. Direct/indirect loss of historically important fishing grounds and predicted important future fishing grounds including projections related to changing ocean conditions
- 2) Induced risk to safety at sea, including turbines creating distorted radar contacts and the great distance for USCG or other rescue help to arrive considering aircraft may not be able to operate near turbines.
- 3) Direct/indirect loss of harbor space and infrastructure serving the fishing industry

4. Potential for interactions with fishing gear and/or loss of gear in the find farms and service vessel traffic lanes during survey work and both construction and operational phases.
5. Increased costs and time at sea to avoid wind farms, including impacts to boats drifting at night which will have to run 1-2 hours upwind from wind farms not to drift into them. Additionally, west coast WEAs located northwest of ports will force fishing to the south which will make returning to Port more difficult when facing prevailing headwinds. Increased time at sea is always a safety concern.
- 6) Direct/indirect losses to dependent businesses/communities (such as marine supply stores, processors, restaurants, and tourism generally).
- 7) Loss of community identity as fishing culture is replaced by a large industrial presence.
- 8) Impacts to long-running scientific datasets which inform stock assessments or other aspects of the fisheries management process(es). This impact will create scientific uncertainty about the status of stocks which can only lead to reduced harvest quotas.
- 9) Impacts on special management areas such as habitat closures, spawning closures, and other restricted areas, including Essential Fish Habitat.
- 10) Adverse impacts to fish stocks, fish stock migratory patterns, and fish distribution, including concerns around any diminishment of ocean upwelling due to reduced wind speeds caused by wind farms, and from impacts from the potential for noise pollution.
- 11) Adverse impacts to migratory patterns and critical habitat of Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) protected species that interact with fisheries.
- 12) Negative economic, social, and environmental effects of fishery displacement and compaction into remaining open habitats.
- 13) Loss of fishable area to certain gears due to submarine cable routes to shore, impacts from the process of burying cables, with the uncertainty of EMF disturbance to sea life.

- 14) Impacts to fishermen from time consuming public and private processes required to avoid, minimize and mitigate harmful OSW developments which cause a loss of fishing time and production.
- 15) Costs incurred from the necessity of hiring legal counsel and consultants to represent fishermen's interests.
- 16) Uncertainty exists around insurance coverage for commercial fishing vessels which transit or attempt to fish inside a wind farm
17. Loss of fishable area due to shipping and barge traffic patterns changing in response to wind farms
18. Loss of fishable area which may incur due to safety/security zones being imposed around wind farms by the USCG
19. There will be distinct impacts from site surveys on fishing activity
20. Reduced value of fishing permits as opportunity is lost or quotas are reduced
21. Unforeseen impacts due to the experimental nature of very deep water floating turbines
22. Cumulative impacts of individual impacts will likely exceed the simple sum of the parts. This is especially so when considering that many fisheries are coast-wide. Thus, closing other areas of the west coast for large wind farms can affect other regions through fishery displacement, and/or depression of the industry as a whole. Likewise, cumulative impacts must be measured from the combination of leases that may occur in a single WEA.
23. OSW ambitions for coastal waters creates enormous uncertainty within fisheries, creating difficulty in business planning and in attracting future generations of fishermen

Other impacts will likely be identified. There may also be a few benefits which stem from OSW development, such as improvements to harbor facilities and reduced fuel costs (from higher volumes of fuel used) which fishermen may appreciate.

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

It is also important to understand the lop-sided nature of this issue. The OSW industry, Federal and State government, and many ENGO's trumpet the benefits of OSW while fishermen have virtually no resources and are uniquely unsuited to defending themselves in the political arena.

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:

- 1) 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); and,
- 2) Provide an *annual* community fund based on a percentage of the OSW lease (or another formula to be determined) that will enable local-level projects and programs providing resilience and sustainability to the region's fisheries and related businesses; and,
- 3) The community fund will 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.

Funding to be adjusted for inflation annually.

Examples of uses of annual funding 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 (ie, ice machines, 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; provide cold storage facilities; retain consultants and legal services as needed; create strong communication tools among the fishing community for information-sharing; 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 create **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. Should both the MB376 and Humboldt areas be fully developed, nearly 600 square miles of productive ocean will be removed from seafood supply. We are aware of other areas of interest to BOEM being considered north of San Francisco. 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 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 organizations 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 most impacted by 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 a first right-of refusal 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 shall 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.

The California Coastal Commission's Role

The Coastal Commission should prioritize *avoidance* of conflicts between OSW and the State's seafood harvesters. Only those conflicts which are unavoidable should be allowed, and those *minimized* to the extent practicable. *Mitigation* measures should then be required. One mitigation measure which should be required are fish stock surveys done as part of the Site Assessment using the BACI (Before After Control Impact) research format, conducted by an independent academic institution but funded by the OSW developer.

For the conflicts which remain, which are likely to be significant for fishermen, the Coastal Commission should require compensatory-mitigation agreements with commercial fishermen's port associations as a condition for its approval of BOEM's consistency determination/certification under the Coastal Zone Management Act (CZMA). As such, it would be appropriate for BOEM to indicate in the proposed sale notice that such an agreement will be *required*. The Coastal Commission has broad authority under the California Coastal Act and the CZMA to protect economic as well as environmental and biological interests in the ocean, and has a responsibility to express this expectation clearly to developers and the industry as a whole.

The Coastal Commission will have a second opportunity to require FCBA's when Coastal Development Permit approval is sought by individual developers.