



Bureau of Offshore Energy Management

January 7, 2022

Submitted online at Docket No. BOEM-2021-0083 at

RE: Docket No. BOEM-2021-0083 - Request for Information on Reducing or Avoiding Impacts of Offshore Wind Energy on Fisheries

To whom it may concern,

Please accept the following comments and recommendations responding to the "Request for Information; Guidance for Mitigating Impacts to Commercial and Recreational Fisheries from Offshore Wind Energy Development".

Who We Are

The Alliance of Communities for Sustainable Fisheries (ACSF) is a 20-year-old 501(c)(3) not-for-profit organization, founded for the purposes of educating the public on fisheries issues, connecting fishing men and women (collectively "fishermen") with their communities, and representing fishing interests in state and federal processes. The ACSF is a regional organization with commercial fishing leaders representing Monterey, Moss Landing, Santa Cruz, Morro Bay, Pillar Point, and Port San Luis on our Board of Directors. Port communities, several recreational fishing organizations, and the California Wetfish Producers Association (squid, sardines, etc), also have representation on our Board. Thus, the ACSF represents a cross-section of fishing and community interests in the Central Coast of California.

BOEM is requesting information in the following areas of *mitigation*. ACSF comments are below:

- 1) Project siting, design, navigation, and access to avoid, minimize, rectify, or reduce impacts.

ACSF: First we note that project siting, etc, is directly linked to safety issues.

Clearly working with the fishing industry BEFORE Call Areas are announced to incorporate fishermen's knowledge to AVOID and/or MINIMIZE impacts by siting OSW projects in the area of least disturbance to fisheries would be wise.

Unfortunately, it is too late for this to be a mitigation with regard to the Morro Bay and Humboldt Call Areas. Perhaps it can be used for any future West Coast Call Areas.

Such a consultation directly with fishery leaders would also reduce safety and navigation concerns. BOEM should not rely on its available data sets for knowledge of fisheries. To understand data sets and data voids, BOEM must develop relationships with regional fishery leaders. This will require time and should be considered a form of mitigation.

Other mitigations:

- Standardized, neutrally arbitrated processes for gear loss claims that fully replace lost gear and fishing time,*
- Project layouts, including turbine and cable placement, reflecting existing fishing practices unique to local or regional ecosystems based on early, thorough consultation.*
- Adaptive project design based on results of fish stock surveys and biological assessments, which must collect sufficient baseline data, persist throughout project life, and comply with recommendations of NMFS and other relevant fisheries managers.*
- Substantial bonds that would fully cover unforeseen impacts .*
- Co-development of plans with regional fishermen for materials relocation and removal during all projects phases.*
- Improvements to port infrastructure that demonstrably benefit the fishing industry.*
- Fishery-specific actions that could offset effects of access loss, such as stock enhancement programs, management adaptations, or experimental fishing permits.*
- Right of first offer and reasonable acquisition of certifications or training for supply of available personnel and equipment to provide offshore services, when possible.*

2) Safety measures to avoid, minimize, rectify, or reduce impacts.

ACSF: As discussed above, safety concerns and mitigation should be understood and incorporated before Call Areas are identified. Addressing these concerns after leases are awarded is frustrating, unproductive, and dangerous from the perspective of fishermen. Safety and navigation are directly linked. Distorted radar images due to turbine blade motion can be mitigated by funding to the fleet for new radar technologies. Other safety issues to be addressed include anticipating the movement of shipping and tow boat traffic that will be displaced by wind farms—fishermen do not want to be run down by this traffic or lose gear if it moves to fishing grounds. Concerns exist over the great distances

posed by floating OSW projects and the unique difficulty in using airborne rescue equipment near the giant turbines. There is little information about deep sea moored turbines; thus, BOEM should be very much in a listening mode to concerns about navigation through these future wind farms.

3) Environmental monitoring plan.

ACSF: While we are strongly convinced of the need for environmental monitoring, we are unclear as to why it is considered mitigation. We see wind farms as near-permanent structures. Is BOEM going to apply adaptive management principles to wind energy? What will BOEM do if the transmission cables in fact create EMF which harm sea life despite deep burial? What will BOEM do if the turbine array reduces upwelling? Or kills massive amounts of seabirds or whales? Or machine noise alters sea life migration patterns? This said, environmental monitoring could produce information that will influence the deployment of OSW projects for future Call Areas and future COPs. In that regard it could be considered a mitigation if it prevents environmental problems. Before/After monitoring of a potential site should be performed, beginning at least four years ahead of development to account for natural variability. A study control area of at least six square miles should be established in the center area of the wind farm as an enduring before/after monitoring site. All forms of sea life and geophysical features should be monitored.

4. Financial compensation for economic impacts expected on commercial or recreational fishing activities and support services when other measures have not adequately addressed the impacts.

ACSF: To be clear: BOEM must exhaust the remedies of AVOID, MINIMIZE, and non-financial MITIGATIONS before financial compensation is discussed. Please make no mistake: fishermen would rather have their fishing grounds protected and available than have money compensation that can never fully account for the many ways they will experience loss.

Nevertheless, since BOEM is requesting information on compensation-mitigation concepts, the ACSF offers the following:

Significant socioeconomic impacts to fisheries and communities will result from the way BOEM has proceeded thus far in identifying Wind Energy areas, is proposing awarding leases, and from the actual construction and operation of OSW projects. These impacts include, but are not limited to:

1. Direct/indirect loss of historically important fishing grounds
2. Direct/indirect loss of predicted important future fishing grounds including projections related to changing ocean conditions

3. *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*
4. *Direct/indirect loss of harbor space and infrastructure serving the fishing industry*
5. *Potential for interactions with fishing gear and/or loss of gear in the WEA and service vessel traffic lanes during survey work and both construction and operational phases*
6. *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*
7. *Direct/indirect loss of dependent businesses/communities (such as marine supply stores, processors, restaurants, and tourism generally)*
8. *Loss of community identity as fishing culture is replaced by a large industrial project*
9. *Impacts to long-running 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.*
10. *Impacts to special management areas such as habitat closures, spawning closures, and other restricted areas*
11. *Adverse impacts to Essential Fish Habitat (EFH)*
12. *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*
13. *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*
14. *Negative economic, social, and environmental effects of fishery displacement and compaction*
15. *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*
16. *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*

17. *Costs incurred from the necessity of hiring legal counsel to represent fishermen's interests*
18. *Uncertainty exists around insurance coverage for commercial fishing vessels which transit or attempt to fish inside a wind farm*
19. *Loss of fishable area due to shipping and barge traffic patterns changing in response to wind farms*
20. *Loss of fishable area which may incur due to safety/security zones being imposed around wind farms by the USCG*
21. *There will be distinct impacts from site surveys on fishing activity*
22. *Reduced value of fishing permits as opportunity is lost*
23. *Unforeseen impacts due to the experimental nature of very deep water floating turbines*
24. *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.*
25. *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.

For direct compensation to individual fishing businesses, loss valuation estimates will be exceedingly complex and should occur at the vessel and fishery level. Data inputs may include:

- *Receipts of best landing years (previous 10 years) for all currently licensed commercial fishermen, considering inflation*
- *Receipts from dealers of landings value based on spatial analysis*
- *Receipts from capital assets, equipment, gear, and other similar investments*
- *Assessment of "fair market value" through economic multiplier studies*
- *Future lost revenue for the duration of the project*
- *Costs from increased transit time, fuel, insurance, vessel equipment and provisions, and safety incidents*

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

The ACSF perceives the line of BOEM questions and data-gathering is one-dimensional when an additional approach is required. BOEM's interest appears to be in figuring out how to compensate fishermen and other supporting businesses for their losses due to loss of fishing opportunity.

This approach is needed but it is not enough. It does not address the future of fishing.

On-going funding is also needed to create additional resilience in fishing businesses and their communities. This form of compensation should go to providing infrastructure and in reducing costs to fishing business and other programs to make up for lost spatial opportunity and to keep fishermen fishing, bringing seafood products to the docks. Providing for future needs will also be complex, but with clear desired outcomes.

Addressing these twin approaches, the great majority of California's port-based commercial fishing organizations (CFO's) which will be affected by OSW development 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 man and woman in the state, we do feel that our collective view represents the great majority of the State's CFO's.

Please be advised that efforts have already begun to form the Entities, likely federally recognized 501-c-3 or c-6 organizations, referenced in the template, to manage impacts to fisheries from OSW development. These new Entities will be founded on principles of inclusion and represented democracy for our fishing interests. The Entity will be the CF negotiator with OSW companies for financial compensation, as well as other types of mitigation, and will distribute both initial one-time direct funding as well as funding that continues through the term of the lease aimed at strengthening fleet resilience.

New Entities are proposed at this time for northern California and another for California's Central Coast. It is envisioned that the governance structure of each of these will be similar though the fisheries represented on each Board may be different. Varying levels of benefits will be available to all who fish in the region.

California fishermen want BOEM to use every legal means to secure fishing industry-to-OSW industry Fishing Community Benefit Agreements. These will attempt to compensate fishermen by providing for individual losses, and in primarily securing resilience in the industry that keeps fishermen fishing, providing seafood products to their communities and to the nation.

BOEM can also be helpful by providing guidance to OSW companies about what California fishermen want, as represented by the following principles:

Summary Principles for a FCBA and managing Entity:

- *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*
- *FCBA's apply to regions of one or more commercial fishing associations, within an identified distance to the cable landing location or other geographic points*
- *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*
- *There is a need to address both initial impacts and long-term funding*
- *Legal "Entities" (ie a 501-c-3 or c-6 type organization) with 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*
- *FCBA's are Fishing industry-to-OSW industry agreements, with the managing Entity led by fishing representatives*
- *The FCBA includes communication protocols between industries to ensure a long-term constructive relationship*
- *FCBA's must allow for amendments to address new impacts as they become known*
- *OSW developers may need to provide more than one mutual, or community, benefit agreement to cover various impacts that will occur to other stakeholders and communities.*

We also note that the report issued by the Responsible Offshore Development Alliance (RODA) "Impact Fees for Commercial Fishing from Offshore Wind Development: Considerations for a National Framework" contains a set of principles which are largely consistent with those found above.

BOEM states that its Guidance Can:

- Recommend minimum standards/best practices/guidance for fisheries mitigation processes (including processes for filing claims, timing of initial proposals, etc.).
- Recommend minimum standards/best practices/guidance on the methodology for determining the sufficiency of funds to compensate fishing communities for negative economic impacts arising from offshore wind energy development activities approved by BOEM.

- Propose measures that could result in fair, equitable, and predictable methodologies used by developers for mitigating impacts of offshore wind energy resulting from all offshore renewable energy projects.
- Enforce compliance with contributions proposed by the lessee that were part of the approved Construction and Operations Plan (COP) or other appropriate plan approval, regardless if said contributions were required by a state

ACSF: We welcome BOEM providing generalized guidance for Industry-to-Industry negotiation, with the understanding that it is not prescriptive, but guidance, subject to regional needs and the nuances of negotiation. Some guiding principles may be applied across the nation, but regional differences in approach must be respected. The ACSF also welcomes state agency assistance in using its authorities to encourage/require OSW developers to enter into fishing community compensation agreements. We believe that assuring the resilience of fishing communities is a shared goal.

BOEM asks how can the guidance provide parameters for the inherent uncertainties posed by OSW, including as climate-related ocean changes may occur. The ACSF believes that just as fish stocks are managed conservatively when uncertainty exists, so should OSW compensation, both in amounts large enough to accommodate change, as well as the need for FCBA's to provide the ability to be amended.

In the FCBA template, eligibility for compensation is determined by the democratically elected Board of Directors of the new managing Entity, representing a variety of fisheries, with provisions for appeals. For on-going community resilience, benefits such as improved fishing infrastructure, lower ice and fuel costs, new entrant training, gear innovations and experimental fisheries, etc, will benefit all fishermen.

As an example of what is possible, we note that one OSW developer, Trident now Castle Wind, reached out in advance of a lease to the Morro Bay and Port San Luis CFO's and negotiated an early version of a FCBA with provisions for both initial compensation and funding towards long-term sustainability.

Thank you for considering the comments of the Alliance of Communities for Sustainable Fisheries on various mitigations that will be needed for OSW to integrate with the fishing industry.



Alan Alward

Co-Chair



Frank Emerson

Co-Chair

Attachment: Draft Fishing Community Benefit Agreement Template

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CA Coastal Commission

CA State Lands Commission

CA Energy Commission

CA Department of Fish and Wildlife