

## **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.