

Senior Energy Advisor, Office of Governor Newsom

November 29, 2022

California Coastal Commission

California Energy Commission

California State Lands Commission

California Ocean Protection Council

California Department of Fish and Wildlife

**RE: California's Commercial Fishing Men and Women, and our Communities need the State's Further Support; Next Steps**

Dear Commissioners and Agency and Governor's Staff,

This letter represents the collective views of nearly every port-based commercial fishing association in California. Our requests for help are prompted by comments from State Agencies on BOEM's *Preliminary Sale Notice (PSN)* for Morro Bay and Humboldt Wind Energy Areas (WEA), BOEM's *Draft Mitigation Guidelines (Guidelines) for Commercial and Recreational Fishing*, consistency determinations (with conditions) made by the California Coastal Commission (CCC) on WEAs, and the recent California Energy Commission workshop on "*Assessing Sea Space for Offshore Wind Development*".

Seventeen fishing associations, comprising a majority of the State's fishermen, are represented by this letter. While we represent a clear majority, we make no claim to represent the opinions of *every* individual fisherman in the state. The California Harbormasters and Port Captains Association also supports this letter, the needs for fishery resilience being clear to its association members.

The term *fisherman* is used herein to represent both the fishing women and men of our state.

**What we need**

California's commercial fishermen are appreciative of many of the comments and recommendations State Agencies made to BOEM to mitigate the impacts on our ability to harvest a public trust resource and contribute the State's food security from Offshore Wind (OSW) development. Still, fishermen see that there remains the real possibility that the socioeconomic contributions that fishermen bring to the state, along with providing nourishing, low carbon-footprint food, will be crushed by OSW development.

### **California fishermen need your help:**

- The State must use all of its authority and influence to ensure that impacts to our operations are AVOIDED to the maximum extent possible. We, and others, have repeatedly commented to BOEM, that NEPA prioritizes avoidance over minimization and mitigation. Recent mapping exercises in and around the Humboldt and Morro Bay areas have provided an opportunity for fishermen to identify the extent of area which we deem to be important fishing grounds. These projects, and the outputs thereof, should be used by the State in identifying fishing grounds and protecting our abilities to access them. By protecting these essential fishing grounds, the State can increase the likelihood that we will have a future, and the ability of ALL Californian's to have access the state's living marine resources. The only access the vast majority of Californians have to those resources is through seafood we harvest for their benefit. Since BOEM is moving to an actual auction (December 6, 2022) our "avoid" comments are aimed at future Call Areas, and the State's OSW goals.

The *MINIMIZATION* of impacts can be helped by BOEM moving OSW projects into even deeper water, outside the 1,300-meter depth contour. Such a move will avoid most bottom-habitat based fisheries.

Tunas and swordfish are found past these depths, but those fisheries are sea- surface temperature-based and more episodic.

- The State can help us by ensuring that that OSW lessees are required to fully identify the range of direct and indirect, cumulative, and long-term impacts that their projects will have on California fisheries. This information should be included in the environmental review that will be

required of leases prior to consistency certification. Enforceable Fishing Community Benefit Agreements (FCBA which provide for enhanced fishing community resilience, are the goal. It is noted that the staff report for the CCC's consistency determinations for the two WEAs contained the clear message that OSW companies will be expected to enter into fishing agreements before Construction and Operating Plan consistency certification will be provided. Fishermen need the State to commit to actively enforcing the terms of these FCBA's.

We note that the FCBA aligns with the PFMC's comments and concerns expressed to BOEM on its PSN:

- We ask that the state fully commit to *adaptive management* for this new, untested, industrial development of our ocean. We were pleased to see increased emphasis on monitoring and adaptive management in the agencies' comments on the PSN. We ask that the state view these first five lease sites as *demonstration projects*. Please do not provide federal Coastal Zone Management Act Consistency Determinations for potential new WEAs until the five lease-area projects have been operational for at least three years. This will allow for the collection, evaluation and analysis of comprehensive data by independent scientists or institutions. It is our opinion that new leases should not be awarded in Oregon or Washington until this information is in-hand, though we do not know how much influence California can have over BOEM processes in other states.
- Please quickly move the new Working Group, as described and conditioned by the CCC, into action. It has already been six months since the Humboldt WEA was approved by the CCC. OSW lease awards are soon upon us. We strongly encourage the state to begin identifying a scope-of-work statement and establish how the various representative from stakeholders will be selected. These tasks can be accomplished prior to lease awards.
- The State should discourage BOEM from identifying additional Call Areas off California until the aforementioned data analysis is complete. We understand the California Energy Commission (CEC) final report *Offshore Wind Energy Development off the California Coast - Maximum Feasible Capacity and Megawatt Planning Goals for 2030 and 2045* established planning goals of 2 - 5 GW by 2030 and 25 GW by 2045. We submit that allowing sufficient time to thoroughly understand the environmental,

ecological and socioeconomic impacts of OSW facilities will allow the State to make informed choices in the future while not jeopardizing the CEC's 2045 goals and the timeline necessary to achieve those.

- Last, the State must require BOEM to conduct a full environmental review, in the form of an Environmental Impact Statement, of new proposed OSW sites off California, prior to future lease sales taking place. This EIS must include an analysis of cumulative impacts. An analysis and evaluation of at least three year's monitoring data in hand should greatly inform such an environmental review. Such review prior to leasing has broad support from fishermen and numerous ENGO's.

## **Context**

Please let us share the context of our concerns and needs.

OSW is impacting fishermen, now. It already casts a pall of uncertainty over our industry for business planning and investment, and creates community-level social anxiety. BOEM has now issued its Final Sale Notice with subsequent auction for five California OSW leases. The adoption of 2045 goals for OSW development by the California Energy Commission to produce 25 GW of power will require approximately an additional 2,500 square miles of ocean to be removed from most types of commercial fishing gear. Depending on *where* OSW turbines are placed, industrial development of this scale could devastate California's fisheries, fishing communities, and the food production/security that comes from that. Despite claims from BOEM about "working with fishermen", we do not feel consulted in a meaningful way about where to site OSW facilities with less impacts and how to AVOID impacts to our fisheries.

Further context includes our development of a Fishing Community Benefit Agreement (FCBA) template that has previously been communicated (February, 2022) to state agencies. An outcome of this has been the creation of two legal entities designed to provide a unified voice to engage future OSW lessees for mitigation discussions. The two entities are:

- 1) the *California Fishermen's Resiliency Association* (CFRA), for the area San Francisco Bay north to the Oregon border and,
- 2) the *Morro Bay Lease Areas Mutual Benefits Corporation* (MBLAMBC), for the Central Coast area.

The main goal of the FCBA is to use OSW annual mitigation funding to create programs at a regional, community level, to preserve and enhance the economic and social resilience of fisheries in the face of OSW development. Sufficient annual funding from OSW companies will be required to accomplish the fisheries resiliency goal. Claims for lost/damaged fishing gear would be validated and settled through claims made against the insurance policies which we presume OSW companies will be required to have in place.

We also see great potential for this industrialization of the ocean to create unwanted environmental costs, some of which may be irreversible.

From fishermen's point of view, a further context is that most OSW companies bidding on leases are solely or largely foreign-owned firms which are likely to have significant profits from California ratepayers and state and federal taxpayers (through incentives, subsidies, and grants). Fishermen largely see a dynamic wherein they are being displaced from historic, productive fishing grounds with loss of income and other impacts, while OSW companies profit from California ratepayers, rates possibly being guaranteed by government actions.

Fishermen see the need to transition to renewable energy. However, we want our voices heard and needs addressed as this transition occurs. This is only fair.

### **BOEM avoids responsibility to protect fisheries and our food security from harm**

A glaring feature of BOEM'S Draft Mitigation Guidelines is the disclaimer that the agency can't force OSW companies to provide mitigation, including compensatory mitigation, for impacts and losses that will be inflicted on fishermen and their communities. It follows, therefore, that the Guidelines are populated by terms like "may", "should consider". "Recommendation" and "recommended" show up 23 times. "Should consider" appears 20 times with "suggest", "may", "encourages", and "reasonable efforts", also making BOEM's point of no force or effect of law. "Must" and "shall" are nowhere to be found in the text of these Guidelines. It would be a gross understatement to say that fishermen are profoundly disappointed that our federal government would enable private developers to push aside historic ocean stakeholders (us!) without holding foreign-owned OSW companies accountable for their actions.

State agencies commented,

*“We support the effort to develop the Guidance, as it provides insight into BOEM’s recommendations for considering and addressing impacts to fisheries.”*

This state comment gives us pause. We found BOEM’s Guidance to be wholly inadequate. We would support the effort to *improve* it, if it was in the context of requirements on developers. This does not seem to be in the cards.

As the Proposed Sale and Final Notices for lease sites off California show, BOEM does have the ability to adopt a “multi-factor” bidding format and provide monetary and non-monetary incentives for OSW companies to enter into “community benefit agreements” (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.” We assume the fishing community and the organizations which represent them would qualify. Although encouraging in concept, it is discouraging that BOEM suggests only a 5.0% non-monetary bid credit for these CBAs, while not requiring that 5% of lease bid value be actually spent on a CBA. This signals BOEM’s deep lack of understanding of the degree of impacts fisheries will suffer, which is also reflected in BOEM’s Guidelines. It also flies in the face of significant comments from legislators, agencies, and stakeholders that such a bid credit should be a minimum of 10%.

It is encouraging to note that comments on these documents from the California’s members of Congress with an interest in OSW development, and the developer Castle Wind<sup>1</sup>, also show an understanding of the challenges facing fishermen and our communities, and offer constructive recommendations.

### **Questions about the state’s new Working Group (WG), as conditioned by the California Coastal Commission**

The CCC conditionally concurred with BOEM’s request for a consistency determination to conduct lease sales in the Morro Bay and Humboldt WEAs. Condition 7(c) requires BOEM to work with the CCC and other Agencies “*to develop and facilitate a working group consisting of fishing organizations and representatives from different regions/ports of the state, representing different*

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<sup>1</sup> We give a tip of the hat to Castle Wind. As a prospective lease bidder, since 2016 European-owned Castle has directly engaged with fishermen in the Morro Bay and Port San Luis area to avoid, minimize, and mitigate their project’s likely costs and impacts to regional fisheries, should it win a lease.

*fisheries and gear types, and in both the commercial and recreational sectors, lessees and state and federal agency staff. The working group will develop a statewide strategy for avoidance, minimization and mitigation of impacts to fishing and fisheries that prioritizes fisheries productivity, viability, and long-term resilience.”*

A number of questions exist for which California’s commercial fishermen needs the State agencies to answer or resolve:

- 1) What is the relationship, if any, between the BOEM’s Mitigation Guidelines, CBAs as described in the FSN, and the Coastal Commission’s condition as described above?
- 2) CCC Condition 7 (c) tasks the WG with developing “a statewide strategy for avoidance, minimization and mitigation of impacts to fishing and fisheries that prioritizes fisheries productivity, viability, and long-term resilience.” Will this be released for public review and comments before it is finalized? How will fishery representatives be selected? May we respectfully suggest that the organizations the Alliance of Communities for Sustainable Fisheries, CFRA, the Pacific Coast Federation of Fishermen’s Associations, MBLAMBC, the Commercial Fishermen of Santa Barbara, and the Responsible Offshore Development Alliance, be allowed to select one member each for the working group. For recreational fishing, the Golden Gate Sportfishing Association for charters and Coastside Fishing Club for private anglers could provide representation recommendations.
- 3) Will this working group be the place that the parameters of compensatory-mitigation are identified? If so, the working group should include a fisheries social scientist and a fisheries economist, at least as consultants to the group, in our opinion.
- 4) What is the expectation for the working group to be up and running and what is the proposed timeline for having an end product? We feel a sense of urgency.
- 5) Noting that the BOEM’s Final Sale Notice includes the concept of an additional 5% bid credit for impacted landside stakeholders, fishermen request that any analysis about the nature of these impacts be kept

separate from working group discussions on mitigations for fishermen who will be directly impacted by OSW development.

### **The use of FCBA's may leave some issues unresolved**

A large question relates to the consequences of fishing effort displacement. Presumably fishermen fish areas that have productive habitats and are economically feasible. When displaced, it seems likely that fishing effort will be moved to more distant areas, of less quality habitat, and possibly concentrated. This potential dynamic must be closely monitored, and is yet another reason why the first OSW leases should be viewed as *demonstration* projects, and studied.

FCBA's do not address impacts to recreational anglers and commercial fishing passenger vessels. We believe that, given the distance from shore, OSW farms will not have as significant an impact on recreational angling as it will on commercial fishing. However, they may be impacted by to-shore cable routes. Mitigation for recreational fishing may need to be a separate negotiation with OSW companies.

A question exists about impacts to land-side fishing related businesses, such as buyer/processors. In theory, the degree to which a FCBA provides resilience that keeps seafood being landed, processors will benefit. However, it is unknown if there will still be a loss of volume of seafood. Thus, processors may need to negotiate with OSW companies and demonstrate their expected losses. Or, seafood restaurants and processors could make claims to new "community impact funds" designed to address land-side impacts.

While funding that may occur to the regions through FCBA's is intended to provide economic benefits to compensate for the loss of fishing opportunity, it could be that some individual fishermen will want to be compensated directly for the duration of their fishing careers. These fishermen may preserve the right to negotiate individually with OSW companies to make their case for a claim.

Finally, the coastwide nature of some important fisheries means that each OSW region may be utilized by commercial boats homeported in other areas, perhaps even out-of-state, and vessels from the local ports may be impacted by OSW developments in other areas or states. The FCBA template addresses this point, but further discussion may be needed.

### **Supporting commercial fishing resilience is to support diversity and inclusion**



The most fundamental principle of the FCBA template is to establish long term funding that ensures and enhances fishery *resilience*. The degree to which this can be accomplished is the degree that our seafood products will still be landed and support the other land-based elements of the supply-chain, e.g. deck hands, processors, restaurants, marine supply stores, and markets.

It only requires a cursory assessment of the seafood supply chain to recognize that it is heavily represented in people of color. Seafood processing is an example: many of these skilled jobs are good-paying, with benefits.

Further, many fishery-dependent communities of the North Coast are economically challenged, if not disadvantaged.

The degree to which fisheries are diminished is the degree that the State's goals for enhancing diversity and equity are undermined.

### **There is a legal context for protecting fisheries**

There are numerous provisions in state and federal law that are designed to protect the fishing industry. The Coastal Act, Fish and Game Code, Magnuson-Stevens Fishery Conservation and Management Act, Outer Continental Shelf Lands Act, etc. You have at your disposal numerous tools which you can call upon to serve the fishermen and women you have entrusted to harvest a public trust resource for the benefit of ALL Californians. We remain committed to working with you in furtherance of the ideas, suggestions and requests contained in this letter.

### **Conclusion**

California has the opportunity to lead the nation in providing a roadmap which could increase the likelihood of OSW and fisheries co-existing. It can also show how impacts which can't be avoided can be minimized and mitigated to ensure the long-term viability and resilience of its fisheries. Fishermen need the state to further step up to this challenge, as identified in the "needs" section, above.

Thank you for considering comments and recommendations from California's commercial fishing men and women.

**Submitted On behalf of these 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

California Fishermen's Resiliency Association

Ken Bates, 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 Wetfish Producers Association

Mark Fina, Executive Director

California Association of Harbormasters and Port Captains

Andrea Lueker, President

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