

# CALIFORNIA FISHERMEN'S RESILIENCY ASSOCIATION

1118 6th St.  
Eureka, CA 95501

## Draft

## CFRA Fishing Community Benefit Agreement for Offshore Wind Development — Template

Draft Revised: December 27, 2023

This **Agreement** is between offshore wind power developers ( hereafter known as Developers ) and the California Fishermen's Resiliency Association Inc. ( hereafter known as CFRA, a California Mutual Benefit Corporation). This agreement between Developers and CFRA is for the following purposes:

1. To establish that the CFRA will function as the "Point of Contact" between Developers and the California Commercial Fishing Industry.
2. To promote long term beneficial cooperation between the developing offshore wind power industry and the established West Coast commercial fishing industry.
3. To enlist the efforts of Commercial Fishermen's Associations to minimize interactions with wind power operations, damage to wind power components including subsea covered electrical transmission cables, through the exercise of best practices, including timely reporting of any concerns and/or incidents involving wind power operations and infrastructure.
4. To minimize and mitigate "to a level of insignificance" the potential disruption of commercial fishing activities throughout their range by the planning, installation, operation, decommissioning and removal of all aspects and components of offshore wind power developments conducted by the Developer or the Developer's subcontractors or agents.
5. To negotiate the amount, and manage the collection and disbursements of yearly impact fee assessments provided by the Developer to CFRA for the entire term

of said project and/or lease, as compensation for the loss of commercial fishing grounds impacted by Developer.

## **RECITALS**

**WHEREAS**, the parties acknowledge that commercial fishing activities are coastal dependent uses receiving the highest priority under the California Coastal Act, and the Federal Coastal Zone Management Act, the continued viability of which is of critical importance to maintain historic fishing activities along the California Coast to the long term benefit of Coastal fishing communities and the public interest, and

**WHEREAS**, offshore wind power developments have the potential to impact qualified members of the CFRA regionally through the loss of fishing grounds to wind energy areas (WEA's), transmission and transit lanes and commercial fishing infrastructure within harbor areas within any California wind power area, and

**WHEREAS**, California's limited fishing grounds and commercial fishing port infrastructure are of continuing increasing value to fishermen, coastal fishing environmental justice communities and the public interest, and

**WHEREAS**, the parties acknowledge that the commercial fishing industry, represented by the CFRA, is subject to substantial economic pressures, is vulnerable to a range of regulatory, economic, and spatial impacts and that the cumulative effects of offshore wind power projects coupled with these other pressures may negatively impact qualified members of the CFRA, and

**WHEREAS**, California Senate Bill 286, passed on June 5, 2023, codifies in state law the requirement for a "statewide strategy for ensuring the offshore wind energy projects avoid and minimize impacts to ocean fisheries to the maximum extent possible, fully mitigate unavoidable impacts, and fairly compensate persons engaged in commercial fisheries....for economic impacts to ocean fisheries resulting from offshore wind energy projects".

**WHEREAS**, the wind power Developer(s) has determined it to be appropriate and has voluntarily agreed to provide compensation to the CFRA to mitigate the anticipated effects of the projects(s) on the qualified members of the CFRA, and

**WHEREAS**, it is the intent of this Agreement to provide an enforceable Agreement and the Developer(s) acknowledges that entering into this Agreement with CFRA, the CFRA members are relying on the good faith and representations by the Developer(s) within the State and Federal waters of California.

Now, therefore the CFRA and Developer(s) agree as follows:

## **Article 1. GENERAL PROVISIONS**

### **Section 1 - CFRA Operation Funding**

- A. The Developer shall upon receipt of a BOEM lease, deposit yearly for the term of the lease, a \$60,000 operational expense to the CFRA for balance of this contract and the duties contained therein. If additional Developers enter into this agreement and are granted leases from BOEM, then each additional Developer becomes responsible for the deposit of the yearly Operational Expense Fee (\$60,000) for administration of their CFRA Agreement. The yearly operational fee is subject to adjustment for inflation and increased or decreased operational expenses, through the terms of the lease(s).

### **Section 2 - Fisheries Liaison Officer**

- A. The Developer(s) will be responsible for funding the position of Fisheries Liaison Officer (FLO) as per California Coastal Commission Permit Condition #7. The CFRA Board of Directors will be responsible for the interview, screening and hiring of the Fisheries Liaison Officer. Both the CFRA Board of Directors and the Developer (s) will work collectively to develop protocols for the position of FLO. This individual will work through the Office of the CFRA in their duty as Fisheries Liaison Officer between the Developer(s) and all impacted fishermen operating near the development areas. If multiple developers secure BOEM leases, then the overall cost of employment for the Fisheries Liaison Officer will be divided equally by the number of Developers working within this or other CFRA Fishing Community Benefit Agreements (FCBA's). The parties agree that the cost of funding the Fisheries Liaison Officer will be reviewed periodically to adjust for workload, and cost of living adjustments.

### **Section 3 - Regional Management Committee**

- A. The CFRA, operating under the terms and conditions of the CFRA bylaws in conjunction with the Developer(s) shall form a Regional Management Committee(RMC) within thirty days following the receipt by the developer of a legally binding OSW lease from BOEM. If the Developer does not receive a lease, this agreement becomes void and is no longer in effect.
  
- B. Regional Management Committee Fishermen Membership — Each Regional Management Committee shall consist of a minimum of five members and a maximum of seven. At least one Member shall be an Officer of the corporation. At least two members shall be CFRA Board Members of fishing associations, with voting membership in the corporation, that are located in the geographic region or county(s) affected by the anticipated FCBA and the anticipated impacts that the FCBA is designed to address. Up to four additional members shall be port fishing association members chosen by those port fishing associations in the geographical region or county(s) affected by the FCBA. If the Board finds the need to establish a regional Management Committee in an area, region, port or California County where:
  - a. There exist no qualifying port members association as per section 3.2:
  - b. The member port association has less than a 90% membership of local port fishermen:
  - c. The Board determines that diverse, important or emerging fisheries are under-represented within the member port association area:

The Board, may, at its sole discretion, enlist, recruit, and/or solicit nominations from individual non-association fishermen with residential status in the affected area or county and who operate their fishing business within the affected port or region, and cause the formation of a Regional Management Committee consisting of a minimum of five members and a maximum of seven members. At least one member shall be an officer of the corporation and at least two members shall be CFRA Board Members of fishing associations, with “voting member” (status) membership in the corporation that are located in or near the geographic region or county(s) affected by the anticipated FCBA and the anticipated impacts that the FCBA is designed to address. Up to four additional members may be non-port association individuals qualifying under this section and elected to the Regional Management Committee by a three quarter vote of the CFRA Board of Directors.

### C. Regional Management Committee Term Limits

- 1. CFRA officers serving on Regional Management Committees are limited in term as per Section 4.3 - Selection and Tenure of Office.

2. Individuals qualifying under section 4.17 or individuals chosen by port fishing associations in the geographical region or county(s) affected by the FCBA shall each serve three year terms with a maximum term limit of twelve years without interruption. Any Regional Management Committee member may be removed under Section 4.6 "Removal of Directors by the CFRA Board of Directors.
3. Regional Management Committee decisions shall be subject to final approval by the Board, unless the Board has specifically designated a power that may be undertaken without such approval. In the case where development spans the offshore areas of multiple California regions or counties, the regional management committee will contain fishermen members representing each affected area or region as per section 3b. In the case of OSW cables crossing multiple regional or county port fishing association fishing grounds, the impacts of those cables shall be the subject of a separate FCBA negotiated and administered by those local fishing port associations, non-inclusive of OSW wind farm development contained within a single county offshore area.

D. RMC Developer Membership — Each RMC shall have at least one, and up to two OSW project managers employed directly by the OSW development company responsible for representing the OSW developer(s) in any given region in which an OSW project is located. Each individual development company is entitled to one vote on the RMC. The developer(s) seats are not open to developer's subcontractors, agents, or proxies. Each regional management committee administering an OSW project agreement(s), may, at the committee's pleasure, include one non-voting RMC position representing a State of California Agency directly involved with the permitting of OSW projects

#### **Section 4 - Purpose of Regional Management Committees**

The Board shall appoint, by resolution, Regional Management Committees for the following purposes:

- A. To negotiate industry-to-industry Fishing Community Benefit Agreements ("FCBA" or "FCBAs") using the CFRA FCBA contractual template on behalf of the Corporation, subject to the oversight of the CFRA legal counsel and approval by the Board of Directors. For purposes of this section an FCBA shall consist of any agreements negotiated between fishing and non-fishing industries for the purposes of mitigating impacts of non-fishing development and/or activities that would potentially interfere with the fishing industry.
- B. To manage all aspects of each industry-to-industry Fishing Community Benefit Agreement for the entire lifespan or term of the agreement so negotiated, subject to review for compliance with CFRA bylaws and protocols.

- C. As per section 4.17 of the CFRA bylaws, Regional Management Committees are required to keep accurate minutes of each meeting of the committee and are responsible to the Board of Directors to submit and archive all meeting minutes for public access.
- D. A quorum for a Regional Management Committee shall consist of five out of the total seven regional management committee members.
- E. To administer any and all mitigation funds received in connection with the FCBA's negotiated by the regional committee, within the CFRA grant disbursement guidelines as established by the corporation Board of Directors. The funds shall be used to create long term resilience in Coastal Fishing Communities. These may include:
  - a. Improve or replace commercial fishing infrastructure, including ice and cold storage, docks, slips, fuel facilities, haul out facilities, gear storage, fuel and ice subsidies
  - b. Finance industry meetings, socioeconomic reports, operational expenses of commercial fishermen's organizations, training programs for new entrants, local seafood promotion, safety grants, and community outreach
  - c. Finance fishery science products, fisheries management participation, experimental fishing proposals
  - d. The funds shall be distributed as per CFRA protocols and guidelines established by the CFRA Board of Directors.

**Section 5 - Yearly Impact Fee Assessment Schedule**

- 1. Yearly impact fees shall be negotiated with the Developer(s) prior to the receipt of a BOEM lease.
- 2. Impact fees are to be deposited into the CFRA Impact Mitigation Fund as follows:
  - a. 10% of total balance within thirty days of receipt of BOEM lease
  - b. 40% of total balance at the beginning of site assessment activities
  - c. The remaining 50% at the commencement of construction/installation (COP) on site and/or cable transmission lane.
  - d. 100% of the negotiated total balance of yearly impact assessment fees is due each successive year for the term of the BOEM lease or complete decommissioning and removal of all wind power components from the lease site, cable lane, and community fishing grounds

## **Section 6- Determinations of impact fee assessments**

1. Impact fee assessments may be determined by one or a combination of factors listed below:
  - a. A percentage of the BOEM yearly lease fee
  - b. A percentage of the BOEM “Bid Credit” for execution of a FCBA prior to the BOEM lease sale.
  - c. An assessment per square mile of BOEM lease area
  - d. An assessment per individual turbine anchoring system
  - e. An assessment per individual turbine
  - f. An assessment of navigation and harbor impacts
  - g. Note- See attached exhibit for recorded negotiated fees

## **Section 7- Impact Fee Evaluations**

This Agreement requires the periodic review of impacts, mitigation, minimization, and impact fee assessments based on three-year intervals from the “date of execution” of this Agreement, continuing for the lifespan of the project. Review of impact fee calculations will be necessary as more is learned in real time about the actual installation, operation, maintenance and removal of project components and activities required by the Developer throughout the lifespan of the project. Included in this periodic review of impacts is: the change in ownership of wind power projects, a change in procedures, changes in subcontractors hired by the Developer, and Federal COLA adjustments. In the case of change of ownership of the wind power project, such change of ownership will automatically require review of impacts, etc., within sixty days after change of ownership occurs.

## **Section 8 - Employment of Third Party consultants**

It is the desire of the CFRA to establish and maintain open, clear, and concise communications with the Developer(s) through direct interactions with the Developer’s project manager. If it is the choice of the Developer(s) to hire a third party consultant, operating between the CFRA and the Developer’s project manager, this agreement allows for an additional upward fee adjustment of 10% on all operational expenses, one time mitigation payments and yearly impact fee assessments.

## **Section 9 - Individual Compensation**

This agreement may provide for the provision for one time individual payments to a subset of qualifying need-based commercial fishermen impacted by OSW development. A draft provision is available as an addendum to the FCBA Agreement”.

## **Section 10 - Additional Developer Obligations**

1. Consultation -During the Projects design and environmental review, the Developer shall request the CFRA to provide feedback on the Projects design, construction, and operation to reduce the anticipated impacts.
2. Right of First Offer - The CFRA, to the extent legally permitted, will have the Right of First Offer for the supply of available personnel and equipment to provide Patrol Services as may be applicable. This may be offered to CPFV (Commercial Passenger Fishing Vessels) Owners.
3. Training -The Developer, at its discretion, shall define potential employment opportunities in support of the project by providing required qualifications and timing of such opportunities. The Developer may at its discretion, offer economically reasonable retraining to members of the CFRA that seek to be employed by the Developer. The training will focus on basic skills, education and qualifications to the offshore wind industry. This may be offered to CPFV Owners.
4. 24-Hour Telephone Hotline - Starting on Commercial Operation Date (COP), it will be used to report issues related to the Project impacts.
5. Safety Management System - Sets protocols for the project's support vessels during the installation, operation, and decommissioning of the project, including exclusion zones and corridors for navigation necessary to insure safety. It will also include operating procedures for operation of commercial fishing vessels in the vicinity of the project area, export cable route and harbor operations. The operation of the safety management system will be the combined responsibility of the Developer, Fisheries Liaison Officer and CFRA.
6. Gear Replacement - The Developers will pay the costs of damaged gear provided that:
  - The vessel informed the Developer in writing of the incident within 72 hrs.
  - The vessel was complying with the protocols in the Safety Management System.
  - The vessel submits documentation regarding the cost of replacement of the gear within 14 days of the damage.
7. Fish Stock Surveys and Biological Assessments - To the extent required by the BOEM approved Site Assessment Plan and COP, the Developer will perform fish stock and biological assessments in and around the projects and the projects transmission cables during the construction, operation, and decommissioning of the project and monitor whether the project has any adverse impacts on commercially viable fish species.
8. Decommissioning - Both parties agree that no component(s) installed, anchored, or floating, which belong to the project developer or developers subcontractors or agents, will remain on the lease site and/or cable lane(s) at the termination of the project or termination of the lease. Nothing will be "decommissioned in place" (abandoned on site).
9. Future unforeseen impact mitigation - the Developer(s) shall obtain up to a \$10,000,000 bank or investment grade corporate guarantee (Bond) or insurance coverage in the amount of \$10,000,000 listing the CFRA Membership as additionally



insured, effective for the duration of the Project to address unforeseen impacts of the project on the members of the organizations.

**Section 11 - Term, Assignment, Choice of Law and General Provisions**

A. Term and Termination. The Agreement shall become effective on \_\_\_\_\_ and shall remain in full force and effect unless or until: Notice from Developer to the CFRA that Developer has terminated the Project; \_\_\_\_\_ (other conditions for termination).

B. Assignment, Successors in Interest. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the Parties and their respective successors and permitted assigns. Developer shall be permitted to assign this Agreement, to an affiliate or subsidiary of \_\_\_\_\_ only with the express written consent of the CFRA, which shall not be unreasonably withheld. Upon any such assignment, Developer shall remain liable for all obligations of Developer under this Agreement.

C. Governing Law and Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and the United States without regard to conflict of law provisions. Venue for any disputes arising from this Agreement shall be in the Superior Courts of the State of California in \_\_\_\_\_ County.

D. Notice. All notices to either Party under this Agreement shall be in writing and shall be addressed to the affected Party at the addresses set forth below. A Party may change its address by giving notice in compliance with this section:

If to CFRA:

with copy to: Dustin E. Owens, Esq., 1118 6th Street, Eureka, CA 95501

If to Developer:

with copy to:

E. Counterparts, Facsimile Signatures. This Agreement may be executed in counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document, and signatures transmitted by facsimile or email/pdf shall in all respects be treated as originals.

F. Entire Agreement. The Agreement contains the entire agreement between the Parties and supersedes any prior agreements, discussions, or commitments, written or oral, between the Parties.

G. Further Assurances. The Parties hereto agree to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

H. Modification. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the Parties to this Agreement

I. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, but the remainder of the provisions can be enforced without failure of material consideration to either Party, then the remainder of the Agreement shall continue in full force and effect

J. Waiver. A waiver by any Party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such Party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving

K. Independent Contractors. Each Party is an independent contractor and shall be solely responsible for the employment, acts, omissions, control and directing of its employees. Except as expressly set forth herein, nothing contained in this Agreement shall authorize or empower a Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other Party or to bind the other Party or make any representation, warranty or commitment on behalf of any other Party. Nothing in this Agreement shall be deemed to create any form of business organization between the Parties, including, without limitation, a joint venture or partnership.

L. Attorney Fees. In the event of any dispute arising from this Agreement, the prevailing party shall be entitled to recover their reasonable attorney fees and costs.

## **Section 12 - No Waiver of Rights**

- A. No portion or provision in this agreement shall waive the rights of the Developer, CFRA, member association and individual fishermen to comment within the public forum on any aspect to the project, project impacts, or future cumulative impacts caused by this project or additional project developments.
- B. Signatories to this agreement and recipients of impact fees are not required to endorse any aspect of Developers project, nor are prevented from taking part in planning related to impacts avoidance, minimization or mitigation of said project
- C. No Developer has any authority, ownership, or control over activities and equipment funded by this Agreement once those fees are allocated by CFRA.

D. No signatory to this Agreement or recipient of impact compensation shall be subject to or required to enter into any non-disclosure and/or non-disparagement agreements.

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Developer \_\_\_\_\_ Date \_\_\_\_\_

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California Fisherman's Resilience Association Representative \_\_\_\_\_ Date \_\_\_\_\_

