

CALIFORNIA FISHERMEN'S RESILIENCY ASSOCIATION

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Mr. Doug Boren
Pacific Regional Director
Bureau of Ocean Energy Management
760 Paseo Camarillo, Suite 102
Camarillo, CA 93010
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Submitted online at Docket # BOEM-2022-0017@<http://regulations.gov>

Re: Docket No. BOEM- 2022-0017 - CFRA Response to Public Sale Notice (PSN)

Mr. Boren,

In January 2022, seven Northern California Port Commercial Fishermen's Associations formed the California Fishermen's Resiliency Association, a California nonprofit Mutual Benefit Corporation. The California Fishermen's Resiliency Association now serves as a "point of contact" and negotiator for fishermen with developers of offshore wind power, telecommunication and energy transmission subsea cables, and offshore mineral extraction projects. The CFRA represents all fisheries and gear types through its member fishermen's associations which include the ports of Crescent City, Trinidad Bay, Humboldt Bay, Shelter Cove, Fort Bragg/Noyo, Bodega Bay and San Francisco. Planning is underway to expand the CFRA membership to include the California Port Fishermen's Associations of Central and Southern California.

The CFRA is structured to encourage statewide cooperative policies and protocols related to offshore wind power and cable projects in a way that protects fishermen and fishing communities from impacts that result from these developments and allows California to move towards realistic renewable energy goals statewide.

Based on the collective efforts mentioned above, the CFRA advocates for the use of FCBA's which are industry-to-industry contracts. These agreements provide for industry-to-industry communication, operational protocols, cooperation and monetary resources to help alleviate impacts to coastal fishing communities and promote long term resiliency for the fishing industry. The CFRA Fishing Community Benefit Agreement template allows for multiple OSW Developers

operating in Northern California to participate through the formation of CFRA regional management committees who are responsible for local administration of the Fishing Community Benefit Agreement provisions. The CFRA welcomes the opportunity to meet directly with potential offshore wind power developers who are considering submission of a bid on either of the two Humboldt Wind Energy lease sale areas.

Along with our answers to questions contained in the BOEM public lease sale document, we would also like to respectfully inform agency staff of the effects of the proposed OSW lease sale already taking place here in Humboldt County. The prospects of massive OSW projects, first in Northern California, and now Southern Oregon, have created a “black cloud” hanging over the heads of fishermen. Some older fishermen, attempting to sell their boats and retire, have been unable to find new recruits willing to enter into commercial fishing as a profession and many younger established fishermen fear that they will be displaced and will be unable to make a living in a profession where they have made considerable investment. OSW impacts are real, are happening now and we believe that it is our collective responsibility to work cooperatively to preserve and promote viability and resilience in fishing communities by minimizing and mitigating OSW impacts to fishing.

Question: Do the proposed qualifications for lease area use bidding credits make sense?

Answer: While the qualifications for “workforce training” and/or “supply chain development” are succinctly described in sections IV-ii of the Pacific Wind Lease Sale 1 (PACW-1) Proposed Lease Sale Notice (hereafter referred to as PSN), the qualifications, descriptions and potential application of the “Community Benefit Agreement”, bid credit provisions are not. Section IV.c(iv) describes the bidding credit qualifications, timeline and potential impacted stakeholders as they relate to CBA bid credits. There are numerous points of contention concerning the application of a CBA to “reduce negative impacts to coastal fishing industry/communities”. Our following comment addresses these concerns.

Comment #1- The PSN refers to “ 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”. Specifically, those described in the above text are fishermen, fishing businesses and Coastal Communities dependent on the long term sustainable harvest of fish resources in and around proposed lease sale areas. This description should exactly state that Fishermen will be the recipients of the long term negative impacts of OSW as per our edits. “a [**fishing**] community or [**fishermen’s**] 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”.

Comment # 2- CBA - BOEM should exactly specify that the CBA be titled “**Fishing Community Benefit Agreement (FCBA)**”. This will clear up many questions and challenges to the CBA bid credit provision from individuals and organizations requesting “impact fee” funding from the CBA provision in spite of having no legitimate negative impacts from OSW developments. The PSN

exactly describes those entities or parties harvesting or dependent on the harvest of marine resources impacted by OSW development. Retitling the CBA provision to FCBA in order to delineate which stakeholder group is impacted would not preclude other parties from challenging OSW developers for a separate CBA.

Question: What types of groups or legally recognized entities should be eligible to enter into FCBA's?

Answer: BOEM should restrict participation in industry-to-industry FCBA's to nonprofit Mutual Benefit Corporations whose members are composed of multiple commercial fishermen's port associations, which encompass the WEA and all ports both north and south of the WEA.

Question: What are the key elements of a CBA FCBA that BOEM should consider?

Answer:

Summary Principles for a FCBA

- OSW fund contributions create continuing economic and community resilience in fisheries to compensate for losses due to OSW development
- FCBA's apply to regions of multiple commercial fishing port associations, within an identified distance to the cable landing location or OSW development.
- FCBA's are inclusive of all fisheries and participants who operate in waters used by OSW, whether they home-port or land in the region, or not
- Legal "501 C3 Entities" with democratic representation to be formed to negotiate with OSW the terms of a FCBA. This Entity will also 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
- 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.

Question: How should Boem evaluate the [FCBA] agreement? On what metrics can BOEM evaluate [FCBA's]?

Answer: Boem should use the following criteria to evaluate an FCBA submission:

1. Is the FCBA entered into between the developer and a diverse, inclusive, and democratic entity representing fishermen? We believe this entity should be composed of multiple commercial fishermen's port associations in and adjacent to the WEA and that entity should be incorporated as a 501-C3 or C6 corporation.
2. Is the FCBA management led and controlled by fishing industry representatives from the not for profit entity?
3. Does the FCBA remain in effect for the duration of the development?

4. Is there a continuous non-decreasing revenue stream of impact fees to offset the negative impact to coastal fishing communities through the lifespan of the project?
5. Does the FCBA provide for amendments to address new or unforeseen impacts to fishing as these impacts become known?
6. Does the FCBA provide funding for operation of the nonprofit entity responsible for provisions contained within the FCBA between the entity and developer(s).
7. Does the FCBA establish the fishermen's entity as the "point of contact" between the fishing community/industry and developer(s)?
8. Is the FCBA, the signatories to the agreement, and the actions of the fishermen's entity, public and transparent?
9. Are the parties of the FCBA reporting yearly to BOEM and appropriate state agencies as to monetary disbursements of impact fees used to create resilience in coastal fishing communities? Is there a safety and operational protocol plan in place? The parties reported any negative impacts to coastal fishing communities caused by OSW development? How have those impacts been resolved?
10. Is the entity and fishermen's organizations affiliated with that entity satisfied with the negotiations and results of an FCBA for an OSW project?

Question: How and when should BOEM monitor FCBA commitments?

Answer: Boem must require reporting from entities and developers at least quarterly. These reports will detail actions of the parties involved in each FCBA. Monitoring should begin at the time any developer receives a Boem lease.

Question: If Boem grants a bidding credit for a FCBA, at what point in the lease process should a FCBA be executed?

Answer: A FCBA should be negotiated and executed before the award of any OSW lease. The FCBA should be submitted with the required developer documents at the time of lease awards.

Question: What disclosures should be required to be part of any FCBA?

Answer:

1. The FCBA contract details shall be public.
2. No party waives their right to comment on any aspect of OSW development.
3. The fishermen's entity must be a 501-c3 or c6 Mutual Benefit Corporation whose membership consists of multiple commercial fishermen's port associations with an inclusive, democratic, membership representing multiple fishing gear types
4. The FCBA contract reflects the concepts contained in the fishing industry letter (see attachment).

Question: Should Boem explicitly allow a lessee's FCBA to include payment into a mitigation or innovation fund?

Answer: Boem should **require** each FCBA contract to include yearly "impact fee" payments into a mitigation fund overseen by the nonprofit fishermen's entity for the creation of long term resiliency in coast fishing communities

Question: Is offering a bidding credit to enter into a FCBA the most effective method to encourage.....agreement between developers and impacted stakeholders?

Answer: Yes!

Question: What level of credit should Boem offer in exchange for bidders entering into a FCBA, and how does that level affect receipt of fair return to the United States?

Answer: The proposed FCBA bid credit of 2.5% is too low, and unrealistic as a motivation to developers to enter into a FCBA and will not begin to address the generations long damage to fishing communities and fishing grounds by OSW. A more realistic bid credit for the execution of a FCBA should at minimum be 15% and preferably closer to 20% to accurately reflect the loss and negative impact to the fishing industry.

Commercial fishing is one of America's oldest industries. The anticipated negative impacts of OSW on coastal fishing communities will, in some areas, cause the long term economic decline of those coastal communities. This anticipated decline and the resulting economic loss to the economy and the U.S. Treasury could be offset or reversed by a robust bid credit for FCBA's thus allowing fishing communities and this industry to survive OSW developments. Creating long term resiliency for fishing communities by the application of OSW impact fees will ultimately avoid federal disaster relief funds and instead provide for a long term positive income to the U.S. Treasury.

Question: How should lessees engage with affected users?

Answer: Lessees should engage in with affected users (fishermen and industry) through contractual provision contained in FCBA contracts. The fishermen nonprofit entity, engaged with the developer by the execution of a FCBA, becomes the "point of contact" for the developer (lessee). The FCBA contains provisions for consultation, training, claims, safety management, public outreach, fishermen's liaison officers, biological assessments and unforeseen impact mitigation provisions.

Question: Should the two CBA credits BOEM discussed be combined?

Answer: No. The FCBA and any additional CBA credits should be separated with the FCBA credit having priority.

Question: Should executed FCBA's be posted publicly?

Answer: Yes

Thank you for the opportunity to provide comment.

Sincerely,

Ken Bates, President
California Fishermen's Resiliency Association
For the CFRA Board of Directors