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VIA ELECTRONIC MAIL:

Jeffrey Willis, Executive Director
Rhode Island Coastal Resources Management Council
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RE: Response to South Fork Wind, LLC's Comprehensive Mitigation Proposal

Dear Mr. Willis,

Please accept this letter in response to Orsted & Eversource's South Fork Wind, LLC's Comprehensive Mitigation Proposal letter submitted to CRMC and dated March 11th, 2021.

The letter argues that SFW "has demonstrated that the proposed SFW Project is consistent with the Ocean SAMP's enforceable policies, including on mitigation" (p.1). It is the opinion of the FAB that this statement is untrue. Orsted has failed to consider whole classes of adverse impacts to fisheries user groups and has failed to consider recreational users entirely. Rather than embrace fisheries representatives, they have ignored the FAB's many legitimate concerns of significant, long-term adverse impacts. The current project proposal, including proposed compensatory mitigation and planned non-compensatory mitigation, is grossly inadequate to address these impacts. Put simply, how can adverse impacts be mitigated if they are not even acknowledged?

Orsted argues at length that CRMC cannot require compensatory mitigation. The FAB agrees with this reading of NOAA's Feb 2020 letter to CRMC. In fact, the FAB agrees that CRMC may be unable to require any specific mitigation, whether compensatory or not, because there is no jurisdiction over Federal projects. However, Orsted must concede that the NOAA-approved

enforceable policies of the Ocean SAMP stipulate that CRMC must prohibit projects that result in significant adverse impacts to the natural resources or existing human uses of the Rhode Island coastal zone. If these impacts are not mitigated, CRMC cannot issue a Federal Consistency concurrence.

Orsted must also concede that the CZMA **does** contemplate the role of CRMC to suggest mitigation that would satisfy the enforceable policies of Ocean SAMP. The role of the FAB has been to assist in identifying the need for such mitigation and to suggest both compensatory and non-compensatory mitigation that would mitigate these adverse impacts. Significant, long-term adverse impacts are currently unmitigated or insufficiently mitigated in the proposed SFW Project. While we recognize that the project was changed to a 1 x 1 nm grid layout in response to concerns from commercial fishermen, this change alone only *reduces* impacts and does not preclude the need for further mitigation. The list of reasonably foreseeable un-mitigated and under-mitigated significant adverse impacts includes, but is not limited to:

1. Lost landings and shoreside impacts for commercial fishing and processing;
2. Lost revenues and shoreside impacts for charter fishing; and
3. Lost consumer surplus and shoreside expenditure impacts for recreational anglers.

In addition, the groups above are reasonably foreseen to experience the below significant adverse impacts from the SFW Project and cumulatively from all MA/RI Wind Energy Area projects in the reasonably foreseeable development scenario. These impacts also remain unmitigated or under-mitigated in the current proposed SFW Project:

4. Increased transit costs;
5. Increased gear conflicts and space conflicts;
6. Increased navigation safety risks;
7. Increased costs of insurance or unavailability of insurance to operate within a wind area;
8. Quota effects from impacts of offshore wind on fisheries research and management;
9. Regulatory effects on fishing from incidental take of marine mammals due to offshore wind development, and;
10. Risks of delayed and/or incomplete decommissioning of wind projects at lease end.

Further, while these risks and reasonably foreseeable losses remain unmitigated, commercial and charter businesses face capitalized losses of business value and recreational anglers face stark choices between fishing at second-best locations and moving their activities out of state.

Past experience suggests that compensatory mitigation is the most effective way to resolve these issues, while allowing impacted fisheries user groups to work out among themselves the best allocation of funds to minimize or offset adverse impacts. The FAB continues to support this approach as the most efficient and effective resolution to address issues that are un-mitigated or under-mitigated in the currently proposed SFW Project.

However, the FAB also embraces their advisory role to CRMC in identifying non-compensatory mitigation avenues to eliminate significant adverse impacts. As discussed above, the FAB is unaware of CRMC authority to require specific mitigation actions, but is offering suggested actions that could help reduce and/or eliminate the above adverse impacts. Below is an incomplete list of suggestions. We reserve the right to modify this list in the future.

- A. Recreate populations of commercially and recreationally important species outside of a leased wind area. Assuming this can be implemented in a manner that does not create additional conflicts for, or costs to, fisheries user groups, the impacts of wind development would be completely mitigated if all fishing could continue elsewhere at 100% of existing capacity. There is some precedent for this type of effort following the North Cape Oil Spill, after which the lobster fishery was “re-seeded” to restore the population. This is a difficult and expensive process since the re-seeding needs to extend to restoring adult populations as well. Nonetheless, this is a non-compensatory policy that avoids Orsted’s obvious distaste for compensatory mitigation.
- B. Avoid pile-driving during the months of December – March (for Atlantic cod spawning) and May – October for spawning of most other commercially and recreationally important species on Cox’s Ledge. SFW COP Appendix J1, page G-54, indicates that after accounting for 10 dB of underwater noise attenuation, there will be a kill radius from pile-driving noise of up to approximately 710 m from each monopile for eggs and larvae. Each kill circle has an area of approximately 0.46 square nm, and the 16 platforms contemplated in the COP would collectively generate kill circles covering 45% of the SFW lease area. Prohibiting the large scale killing off of year classes during spawning would help mitigate the significant impacts from construction. The FAB is aware of the proposed moratorium on pile driving from January – April to protect Atlantic right whales, and considers the additional window of May – October to protect spawning of nearly all species on Cox’s Ledge to be similarly reasonable.
- C. Avoid pile driving within 9 km (summer) to 11 km (winter) of an active fishing vessel. SFW COP Appendix J1, page G-54, indicates that after accounting for 10 dB of noise attenuation there will be a temporary threshold shift effect on fish species from pile-driving noise up to 9 km from each monopile in summer and up to 11 km from each monopile in winter. Avoiding pile driving when commercial, charter or recreational fishing vessels are nearby would further mitigate adverse impacts from construction.
- D. There are many further areas requiring mitigation, so we will provide only a summary of suggestions for each. The FAB remains ready to engage with Orsted and CRMC staff to help plan effective non-compensatory mitigation if that is desired.
 - a. For processors, a landings replacement program.
 - b. For navigation safety, soft material cladding to be maintained around turbine platforms, a tug vessel stationed within the wind farm and able to reach a vessel in distress within 10 minutes, and placement of a helipad (and no turbine) atop the substation suitable for search-and-rescue (SAR) use by the U.S. Coast Guard.

- c. To offset unavailability of insurance or increased pricing thereof, a commitment to provision of marine property and casualty insurance at current rates.
- d. To prevent gear conflicts, a program in which fishing vessels are induced to voluntarily vacate areas prior to surveying, construction, or maintenance activities within the wind farm.
- e. To prevent quota or regulatory issues, stock re-seeding programs (sufficient to offset the effects) outside the wind farm for any species of commercial or recreational interest who experience reduced quota either due to uncertainty in stock assessments imposed by wind areas or due to incidental take of marine mammals arising from any phase of the wind project.
- f. To offset the loss of drift sport fishing within the array and the potential loss of Atlantic cod due to reef effects on platform foundations, marketing programs for the charter industry and for recreational fishing in Rhode Island, as well as vessel buyback programs for recreational anglers no longer needing a seaworthy vessel.

Detailed Responses

Original text from Orsted is presented in Times font.

FAB responses are presented in Calibri font immediately beneath.

1. “SFW respectfully submits that it has demonstrated that the proposed SFW Project is consistent with the Ocean SAMP’s enforceable policies, including on mitigation.” (p.1)

Response: The FAB disagrees. As has been stated in previous communications, the shortcomings of the planned non-compensatory mitigation and proposed compensatory mitigation arise from Orsted’s approach of ignoring and minimizing the many impacts on fisheries user groups. While a few meetings occurred between Orsted, CRMC and FAB members, this alone does not satisfy the requirements of the Ocean SAMP. Mitigation requires that the project applicant must make the fishing industry whole.

2. “The CZMA regulations direct the state and applicant to ‘cooperate’ ‘to develop conditions that, if agreed to’ by each ‘would allow the State agency to concur’ with the consistency certification. 15 C.F.R. §930.4. But while the CZMA allows for and indeed encourages cooperation and collaboration between the state and the applicant, the CZMA does not permit states to demand compensation as a condition of concurrence. NOAA has stated this plainly.” (pp.1-2)

Response: The FAB disagrees with this attempt to characterize the mitigation process as the state demanding compensation. Rather, due to the complex nature of the many significant adverse impacts to fisheries user groups, it is the FAB’s assessment that compensatory mitigation is the most efficient mechanism for making these groups whole. See discussion above for many potential non-compensatory mitigation actions. The FAB notes that the same logic here also does not permit states to demand specific non-compensatory mitigation, but that the state agency should work with the applicant in order to reach a combined mitigation package supporting concurrence. Thus, whether the suggestions are compensatory or non-compensatory in nature,

all suggested mitigation is provided to help inform potential components of an acceptable mitigation package. The focus on compensatory mitigation has been based on the FAB's perception of the most efficient means to mitigate impacts.

While CRMC cannot demand compensation, Orsted's refusal to cooperate make CRMC's ability to approve the consistency certification impossible. In fact, the FAB rapidly responded with counter proposals each time that Orsted updated its proposals. The cumulative delay in this process is almost entirely due to Orsted not cooperating in the same manner. Orsted's refusal to engage in meaningful discussions that advance the concept of Orsted making the fishing industry whole is evidence of Orsted's refusal to "cooperate," as required by the CZMA and the Ocean SAMP.

3. "The Ocean SAMP calls for modification first. Then, to the extent the project cannot be modified to fully avoid potential adverse effects, the applicant must work to mitigate them. This is critical: an applicant is not required to both modify a proposal and mitigate. If modification of the project removes the potential impact, there is nothing left to mitigate."
(p.2)

Response: The FAB agrees with the final sentence, but not the penultimate one. The overwhelming likelihood, as in this case, is that the proposal modifications do not remove the potential impacts, only lessen them. If the impacts are not removed, then the applicant is required to both modify a proposal and also mitigate, though that mitigation does not need to be compensatory in nature.

4. "In this context, the Ocean SAMP also requires that 'potential adverse impacts of offshore developments and other uses on commercial or recreational fisheries be evaluated, considered and mitigated.'" (p.2, immediately following previous)

Response: This quote stands out like a sore thumb. Orsted's repeated efforts to ignore or suppress evaluation and consideration of many adverse impacts, including all potential impacts on recreational anglers as a user group is the principal cause of the inadequacy of their current proposal. Impacts cannot be mitigated if they are not even acknowledged. It is not clear what point is being made here, or how this statement supports the preceding argument.

The CZMA defines "effect on any coastal use or resource" as "any reasonably foreseeable effect on any coastal use or resource...[e]ffects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions." The FAB points out that Orsted fails to include this full definition in any of the materials filed with the CRMC. Likewise, the analysis required by this definition has not been provided by Orsted.

5. “While the FAB participates in these negotiations and provides advice to CRMC staff pursuant to its advisory role, it does not have veto authority over these negotiations, nor does it serve as a signatory to any agreement reached.” (p.2)

Response: The FAB does not dispute this contention, and is unclear as to why Orsted makes this statement. The FAB takes its advisory role seriously and has worked diligently to provide information to the CRMC related to significant long-term negative impacts, making whole fisheries user groups, and the determination of whether there is an overall net benefit or net loss to Rhode Island marine economic sector from the development of the project.

6. “Further, while the Ocean SAMP requires ‘negotiation’ among CRMC staff, the applicant, and the advisory FAB, it does not require that the three reach a final agreement with respect to mitigation.” (p.3)

Response: See previous response. The FAB has never made a representation of the nature suggested by Orsted. The FAB’s role is to provide expert advice to CRMC staff regarding the need for mitigation of adverse impacts.

7. “The Ocean SAMP adopts a rigorous science-based approach to decision-making. It requires the Council to ‘work to the maximum extent practicable... to make sure it is using the best available science and modeling tools to inform the decision making process.’ §11.8(A)(5). In fact, the Ocean SAMP identifies as one of its core principles to ‘[b]ase all decisions on the best available science.’ *Id.* §11.6(C)(4).

SFW has adhered to this type of data-driven and evidence-based approach throughout these mitigation negotiations. As described below, SFW has engaged numerous subject-matter experts to evaluate potential impacts from the SFW Project, implement project modifications, and develop a robust mitigation proposal to address any remaining potential effects not completely eliminated through modification. SFW has compiled extensive written documentation summarizing the bases for its mitigation proposal and also has made its subject matter experts available for extensive questioning by and dialogue with CRMC staff. SFW believes its mitigation proposal follows the letter and spirit of the Ocean SAMP to rely on the best available science.” (p.3)

Response: This is an unreasonably favorable view of Orsted’s behavior during the mitigation negotiations. In written correspondence, Orsted disclosed that they asked Woods Hole “to assess any economic impacts to commercial fisheries” (RESPONSES¹ A.1, p.1). In the remainder of that document, it is apparent that Woods Hole was not asked to evaluate impacts to charter or recreational fishing, and it appears that “economic impacts” was interpreted by Woods Hole as excluding evaluation of any impacts other than commercial landings.² Charter fishing and transit

¹ SFW Memo: Responses to FAB Questions 2021-02-18.

² We cannot differentiate between obstruction by Orsted and omissions by Woods Hole, because the scope of their engagement has not been disclosed. Orsted makes numerous contradictory statements in the RESPONSES memo that at times imply Orsted decided to exclude impacts from the scope based on questionable assertions about the

costs were later considered in the Woods Hole Update, but there remains no evaluation of recreational fishing by Orsted or Woods Hole to date, nor is there any consideration of impacts from cumulative effects of offshore wind development, navigation safety, insurance, fisheries science and regulatory impacts, or the risks associated with incomplete or delayed decommissioning of the project. In other words, Orsted's engagement of "numerous subject-matter experts" does not appear to have resulted in a comprehensive evaluation of potential impacts. The only available explanations are a lack of competence on the part of Orsted and/or the subject matter experts retained, a deliberate effort to understate adverse impacts in order to reduce needed mitigation, or some combination of the two.

Further, as discussed in the FAB's previous correspondence, Orsted's "data-driven and evidence-based approach" is no more than a negotiating tactic that is being applied uniquely to these mitigation negotiations. As has become clear during negotiations, Orsted embraces this approach as an argument that any impacts, without a government-sanctioned or peer-reviewed tool for estimating their extent, can be considered to merit zero mitigation. This position does not, as Orsted describes it, "rely on the best available science" – it is, in fact, *anti-scientific*. If scientists do not agree on the exact measurement of an adverse impact, that does not mean the best available estimate is zero. Rather, it means expert judgment is required and that there may be unresolved uncertainty about the impact's extent. In this case, the parties are in luck. The entire purpose of the FAB, as Orsted so eloquently points out, is "expressly intended to be an advisory-only body." (p.2) The expert judgment of the FAB members fits squarely and soundly within the substantial gaps in the Woods Hole analysis.

8. "SFW prioritizes coexistence with the fishing community as an important step in developing a sustainable offshore wind industry." (p. 3)

Response: In its March 11th letter, Orsted indicates that it "prioritizes coexistence with the fishing community as an important step in developing a sustainable offshore wind industry." If Orsted's recent behavior with respect to mitigation is any indication of sustainability, the offshore wind industry will crumble. Orsted has not developed "a robust mitigation proposal to address any remaining potential effects not completely eliminated through modification." Rather, they have attempted to exclude whole classes of impacts and fisheries user groups by fabricating restrictions on those impacts that do not exist in the Ocean SAMP and by deliberate ignorance of reasonably foreseeable effects as defined in the CZMA. The most glaring shortcomings of their mitigation proposal are the exclusion of all impacts to recreational anglers and the refusal to consider meaningful impacts to all fisheries user groups during the operations phase of the project. These shortcomings are not apparently on any data or evidence, but only on problematic assumptions of Orsted's subject-matter experts.

9. "Accordingly, CRMC and the FAB lobbied heavily for the offshore wind industry's adoption of 1 x 1 nautical mile (NM) grid spacing between wind turbine generators

Ocean SAMP, and at other times assert that Woods Hole determined the impacts did not bear evaluation. There has also been no disclosure by Woods Hole of the initial scope of impacts considered for evaluation and then discarded.

(WTGs) to permit commercial and recreational fishing to continue safely within the wind lease areas. The historical record is replete with instances of such statements.” (p. 3)

Response: Please see previous correspondence from the FAB. While it is true that CRMC and the FAB advocated for 1 x 1 nm spacing, that advocacy was explicitly a compromise, recognizing that impacts would still remain, requiring mitigation.

10. “As CRMC is aware, SFW spent considerable time in 2020 waiting for a proposal from the FAB on gear claim and then attempting to reach agreement with the FAB on a business interruption component. SFW invested significant time and money trying to work with the FAB’s consultant on an agreed-upon, standardized framework. Even though SFW agreed to adopt the FAB’s proposal in nearly every respect, the FAB refused to reach agreement. (p.5 FN 4)

Response: Please see previous correspondence from the FAB. This is a misrepresentation of the way in which negotiations broke down over the gear claims process.

11. “SFW also developed a comprehensive fisheries communication plan that incorporates input from CRMC and the fishing community.” (p.5, Section C ‘Additional Modifications’)

Response: Orsted’s efforts here are hardly project modifications. A fisheries communication plan and fisheries liaisons are required by BOEM and do not mitigate the adverse impacts from this project. Telling the fishermen that they cannot fish in a certain area for a period of time does not make them whole.

12. “Note that the Draft Environmental Impact Statement for the SFW Project states that “the number of charter fishing trips is fairly low in the RI-MA WEAs.” BOEM 2020-057, South Fork Wind Farm and South Fork Export Cable Project, Draft Environmental Impact Statement, 3-88 (Jan. 2021) [hereinafter DEIS]. The DEIS also notes that the 70 square miles of Cox Ledge excluded from the lease area and therefore the SFW Project are “important to for-hire recreational fishing.” *Id.* But even in this “important” area, NOAA data indicates only six average annual permit holders from 2012 to 2014, each generating less than \$10,000 per year.” *Id.* (p. 9 FN 5)

Response: During 2012-2014 the charter industry was still under the requirement to file paper VTRs, only switching eVTRs in March 2018. A fault of the VTR system is that captains are obligated to enter a single position for the entire trip. This has been discussed repeatedly in past FAB correspondence to CRMC staff and to developers. Specific to charter fishing, it is likely that many trips started outside Cox’s Ledge and were attributed in the VTR to that starting location, even if the trip had a significant effort on Cox’s Ledge. The paper system was widely considered burdensome and it’s likely a charter captain would not spend too much time considering the exact location fished when any LAT/LON pair would meet the requirement. The nature of recreational fishing for Atlantic cod and HMS often necessitate trying many areas until the fish are located. Many charter captains start out as close to the dock as possible and move out as

needed. In general, the better fishing is on Cox's Ledge – if the weather is poor you may try closer first, but end up on Cox's Ledge ultimately.

The FAB is aware of substantially more than 6 members of the RIPCBA who fished on Cox's Ledge during 2012 to 2014. Since those years, Cod has begun a steady rebuild and even more vessels are spending an even great amount of time each year there. The NOAA data cited here is in no way representative of the true for hire effort in the area. The FAB is aware of 22 distinct charter vessels actively fishing in the Cox's Ledge area, and is willing to provide that information confidentially to CRMC staff.

13. "During mitigation negotiations, the FAB has raised a litany of speculative concerns about the SFW Project, too numerous to recount here." (p. 10)

Response: The contention that the FAB's experiential testimony is somehow "speculative" and should therefore be dismissed is false. Orsted cannot even be bothered (in any its myriad documents) to "recount its responses to all such comments." (p. 10). To the contrary, the FAB's concerns have been consistently and repeatedly itemized in written correspondence, including at the top of this letter. To date, those concerns remain unaddressed and outstanding. Orsted then goes on to highlight only three of the FAB's concerns as "speculative." These concerns are: habitat impacts, negative impacts to Atlantic cod, and the prospect for restrictions on insurance coverage. Each is addressed in turn below. Given Orsted's refusal to engage with the FAB on these many legitimate concerns, it is quite obvious that Orsted's mitigation proposal is actually **not** "comprehensive," "fair and transparent," "extensive" and/or "substantial." (pp. 9-10)

14. "First, the FAB has suggested that the introduction of WTG foundations will permanently alter large swaths of underwater habitat. No evidence supports this... The total area of temporary and permanent seabed disturbance within the wind lease area within Cox's Ledge is just 8.80 percent." (p.10)

Response: The FAB's concerns arise from the disclosures in the SFW COP. Taking the above statement at face value, the amount of seabed disturbance from boulder relocation, rock dumping and jet plowing constitutes a high risk of mortality for high value benthic species including scallops, lobster and Jonah Crab, as well as for eggs and larvae of all species found on or near the seabed. It is not clear how "just 8.80 percent" is a small enough proportion not to merit concern. In fact, to the extent that these activities happen separately in time from pile-driving, it is possible that these impacts are cumulative and additional to the 45% of the lease area potentially rendered into a kill zone for eggs and larvae of all species. These adverse impacts alone will last multiple seasons, and they come with the added risk that killing off these animals may increase the chances of recolonization by other, lower-valued species.

There is also a concern of the FAB with respect to mobile gear fishing – if cables cannot be buried to target depth or if they become unburied (as they have off of Block Island), then the cables become "hangs" that can snag mobile gear (trawls and dredges). To the extent this takes place, the affected footprint is hardly relevant, as relatively little unburied cable is required to

substantially alter the viability of dragging any path that interacts with the cable (a much larger area than the cable itself).

15. “Further, based on the 2019 stock assessment of cod by the NOAA Northeast Fisheries Science Center, the stock is overfished, its condition “remains poor,” and the stock shows a truncated age structure. See Black Sea Bass & Cod Presentation (Dec. 17, 2020). Further, cod have a high exposure to climate change, which is anticipated to have a negative impact on cod. The distribution of cod is expected to continue shifting northward from Cox’s Ledge as a result of warming temperatures, and climate change is anticipated to result in a loss of thermal habitat for cod on Georges Bank and in southern New England. *Id.* In other words, the Atlantic cod populations are depleted, and climate change is expected to have further negative impacts on cod recruitment. The impacts of climate change on cod populations far outweigh any speculative impacts from the SFW Project.” (p. 11)

Response: The FAB does not dispute the fact that Atlantic cod are overfished, but that status was realized many years ago due to historical activity. Overfishing is not currently occurring. Currently and historically, Atlantic cod stock has been assessed based on two stocks, but new information out of the New England Fisheries Management Council working group on Atlantic cod suggests that Southern New England has a distinct population, and the fish on Cox’s Ledge are not actually part of the Georges Bank stock. In fact, it turns out the Southern New England cod stock has a genetic trait that has helped them adapt to warmer water. This is preliminary evidence explaining why we are seeing an increase in the local cod stocks on Cox’s Ledge even while other monitored areas are not.

Orsted claims that anthropogenic factors supersede any impacts that the turbine foundations will have on habitat (“stock is overfished,” “cod have a high exposure to climate change”). Specifically, Orsted states that “the impacts of climate change on cod populations far outweigh any speculative impacts from the SFW Project.” This argument is preposterous. There is no climate change exception to the Ocean SAMP. The FAB has to deal with the impacts from the habitat change as a result of *this project*. Allowing exceptions like climate change would open Pandora’s Box in terms of excuses by which project developers can get out of making the fishing industry whole under the Ocean SAMP. Orsted takes the habitat as it finds it.

16. “Finally, the FAB has stated repeatedly that the introduction of WTGs will result in loss of insurance, creating de facto “exclusion zones.” This concern is not new, and CRMC previously has considered and rejected it:

Some fishermen have expressed the concern that marine insurance companies might increase their insurance premiums or prohibit insured fishing vessels from operating within the vicinity of offshore wind farms (e.g. Ichthys Marine 2009). However, it should be noted that at the time of this writing, Sunderland Marine does not currently impose restrictions or higher premiums on their members, nor have they heard of other insurance companies issuing such demands (McBurnie, pers. comm.). Sunderland Marine is the world’s largest insurer of fishing vessels, and insures The Point Club, a fishing vessel insurance and safety club that insures many

of the fishing vessels operating out of Point Judith and Newport (Nixon, pers. comm.).

§8.4.8(D)(8). SFW's own recent investigation of this concern has led to the same conclusion." (p.11)

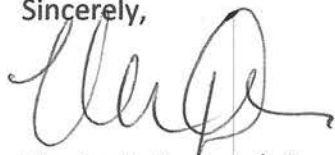
Response: This is yet another case of Orsted mischaracterizing the record. First, the FAB concerns are not speculative as at least one FAB member has already been notified of their insurer exiting the market. Second, the quote above from the Ocean SAMP § 8.4.8(D)(8) was apparently written more than ten years ago when the buildout of the wind areas was beyond the far horizon. Finally, as Orsted has done repeatedly, this quote is selective and taken out of context. Indeed, the immediately following sections of the Ocean SAMP give examples of legitimate concern for fishing industry access to insurance:

"The presence of wind farms may impede access to fishing grounds for some fishermen; even if fishing within the turbines is not restricted, some fishermen may choose to avoid the wind farms for safety or insurance reasons..." §8.4.8 (F)(1)

"Fishermen in the UK were concerned about impacts on the availability and cost of insurance for fishing vessels navigating around wind farms, even if fishing within wind farms is legal (Mackinson et al. 2006)." §8.4.8 (F)(3)

Overall, Orsted's contention that it followed "best available science and modeling tools" is not accurate. Instead, Orsted continues to ignore the FAB's legitimate concerns related to reasonably foreseeable effects of this project. As outlined above, the current project proposal, including proposed compensatory mitigation and planned non-compensatory mitigation, fails to make the fisheries user groups whole.

Sincerely,



Marisa A. Desautel, Esq.