




Rhode Island Coastal Resources Management Council

Inter-Office Memorandum

Date: December 13, 2022

To: Raymond Coia, Chairman
Council Members

From:  Jeff Willis, Executive Director

cc: CRMC Staff Kevin Sloan, David Ciochetto, Justin Skenyon

Subject: CRMC Application #2021-07-005 Revolution Wind, LLC

Over the course of the past three months the Coastal Resources Management Council (CRMC) staff, CRMC Fishermen's Advisory Board (FAB) along with their legal counsel and subject matter expert, and the Applicant have been meeting on a weekly basis to discuss and negotiate a compensatory fisheries mitigation package to compensate the Rhode Island fishing industry for impacts resulting from the Revolution Wind project export cables in Rhode Island state waters. Over the same period, the Applicant and FAB legal counsel and subject matter expert met multiple times per week to discuss in detail various aspects of the mitigation package including but not limited to data, methodology, fishermen concerns, and fund administration. Throughout this process, all parties have worked diligently and professionally together to make great strides to arrive at the agreement described in the Memorandum of Understanding (MOU) contained within.

The Applicant utilized the expertise of the Woods Hole Oceanographic Institute (WHOI) to develop a baseline fishery report for impacted fisheries in state waters. This report was improved upon to better reflect impacted fisheries through extensive discussions between WHOI, the FAB and the FAB's legal counsel and subject matter expert with assistance from the Rhode Island Department of Environment Management (RIDEM), Division of Marine Fisheries. These meetings resulted in a narrow range baseline valuation of impacted fisheries in the West Passage from which discussions and negotiations for a compensatory fisheries mitigation package could begin.

All parties have cooperated amicably during compensatory fisheries mitigation negotiations to find solutions that will address known impacts from the project to the fishing industry and address potential future impacts which are unknown. For example, in the MOU document contained within, the FAB and the Applicant have agreed a Cable Effects Study will be conducted by RIDEM which will consider potential long-term impacts from the Revolution Wind export cables in state waters. The FAB and the Applicant have also agreed to work together to better refine the Gear Claims Application and application

process used by the Applicant to compensate fishermen for lost or damaged gear resulting from project activities to better reflect and compensate for lost time and effort.

Given this, should the Council agree, staff recommends this MOU be approved as part of the Council’s Decision.

MEMORANDUM OF UNDERSTANDING

This purpose of this Memorandum of Understanding (“Memorandum”) dated December 13, 2022, is to describe the mitigation negotiated among the Coastal Resources Management Council (“CRMC”) staff, the Fishermen’s Advisory Board (“FAB”) that is advisory to CRMC and Revolution Wind, LLC (“Revolution Wind”). The FAB and Revolution Wind request that the Council approve the mitigation described below as the final mitigation to be included in CRMC’s Assent pursuant to Sections 11.10.1(F) and (G) of the Ocean Special Area Management Plan for CRMC application 2021-07-005, as further described in CRMC’s meeting agenda for December 13, 2022 (the “Revolution Wind Assent”).

The FAB, Revolution Wind and the CRMC staff have negotiated the following mitigation package to be included in the Revolution Wind Assent if approved by the Council:

1. Payments:

a. Direct Compensation	\$3,050,000:
<i>i. - Commercial adj. 2022\$ (\$2,291,973 x 1.1112)*</i>	\$2,546,840
<i>ii. - Charter adj. 2022\$ (\$326,407 x 1.1112)</i>	\$ 362,703
<i>iii. - Additional funds **</i>	\$ 140,457
b. Community Fund	\$ 200,000
c. Trust Operation	\$ <u>200,000</u>
d. Total Compensation (2022\$)	\$3,450,000

*A sum of \$ 513,000.00 shall be deducted from the direct compensation fund and in its place \$8409.83 per day shall be paid by Revolution Wind as direct compensation for each day of construction as described in further detail below in Paragraph 3.

** The additional funds were not tied to any particular outstanding issue. The funds were added in a good faith effort to reach agreement, recognizing the FAB had certain concerns related to outstanding issues. The Total Compensation above represents the agreed-upon total compensation.

2. Trust:

- a. Formation: Revolution Wind will establish the Rhode Island Fishermen’s Future Viability Trust 3 for Direct Compensation (the “Trust”). The Trust shall establish a claims process to manage and process compensation claims for commercial and for-hire charter fishing operations for mitigation of direct losses/impacts arising from (a) the construction and operation and (b) the decommissioning of the project to be built by Revolution Wind(as defined in the Revolution Wind Assent). The Direct Compensation program is not intended to address or provide compensation for any claims of lost or damaged gear or related economic loss, which must be submitted to the Ørsted Fishing Gear Conflict Prevention and Claim Procedure referenced in Paragraph 4 below. Concurrently with the

payment by the Trust of any compensation claim, the party asserting the claim shall execute a release of liability in favor of Revolution Wind, LLC, Ørsted North America, Inc., and Eversource Investment LLC, and any of their affiliated or related parties, from any liability or obligation relating to that particular claim. The Trust shall hire a third-party administrator to act as a technical assistance provider (TAP) to administer and oversee the fund, pay claims, and prepare periodic reports. The TAP shall be a regionally recognized public accounting firm. The Coastal Community Fund shall be established as a non-profit grant making entity to support initiatives for the general betterment of coastal communities in Rhode Island. Other details on the Trust and Community Fund can be found in the draft formation documents sent to the FAB's counsel on December 7, 2022.

- b. **Payment:** Revolution Wind will provide \$200,000 to the Trust's account as summarized above in Paragraph 1(c) to be used for the costs of operating the Trust.

- 3. **Cable Installation Schedule and Per Day Compensation:** Revolution Wind estimates that the installation of the Revolution Wind export cables will take place over the course of sixty (60) days of active cable installation, likely during the months of October and November. For each day of active cable installation, Revolution Wind shall pay \$8409.83 per day. The amount of direct compensation generated under this Paragraph is part of the Direct Compensation referenced in Paragraph 1 and shall be paid to the Rhode Island Fishermen's Future Viability Trust 3 within ten business days of the end of each month of active cable installation. For purposes of this Paragraph, the term "day of active cable installation" shall mean any day when the cable installation vessel(s) are in the cable corridor for the actual installation of the cables regardless of whether they are performing any work on the seabed.
- 4. **Gear Loss Program:** Revolution Wind and the FAB will set up a separate working group to discuss improvements to and simplification of the existing Ørsted gear loss program and claims process. In addition, Revolution Wind agrees to add compensation for reasonable lost time compensation associated with lost gear or snags, if any. Revolution Wind also will add compensation for reasonable claim preparation costs incurred by fishermen.
- 5. **Cable effects study** – In or about 2027, RIDEM will conduct a survey of Rhode Island fishermen who have historically fished in waters within [2] km of the Revolution Wind Export Cables in RI state waters ("Export Cable Area"), to determine for which species these fishermen have observed a change in species abundance, size distribution, or condition in the Export Cable Area since the activation of the cables. RIDEM may engage external subject matter experts in carrying out this survey and the subsequent analysis.

RIDEM will determine for which species, if any, to carry out a data analysis. That analysis will examine available fishery-dependent and fishery-independent data on stock/population, catch, landings, and fishing effort to determine whether there has been a statistically significant change in abundance, size distribution, or condition in the Export Cable Area since the activation of the cables, and whether this change is statistically different from changes in other portions of Rhode Island state waters and/or adjacent federal waters. Statistical significance should be demonstrated at a level consistent with the statistical power of the available data. RIDEM may choose to collect additional data to support this effort if necessary and reasonable in cost as mutually agreed upon between RIDEM and Revolution Wind.

For any species for which RIDEM concludes that statistically significant relative abundance changes have occurred in the Export Cable Area that may be attributable to the presence or operation of the Export Cables, RIDEM will estimate the loss of landed value that can be expected due to this change in relative abundance over the life of the Export Cables. Future losses will be discounted using a real discount rate of 5%.

The validity of RIDEM's analysis and loss estimate will then be confirmed by an independent expert mutually agreed upon by Revolution Wind and FAB. Upon confirmation of RIDEM's analysis, Revolution Wind will pay the present value of the estimated loss to the Trust. This entire process will be carried out once and not repeated.

6. Additional Conditions

- a. Except as otherwise set forth in Paragraph 3, Revolution Wind shall provide the Payments described above in Paragraph 1 within thirty (30) days after the receipt of all final federal, state and local permits, authorizations, concurrences and approvals necessary to construct and operate the Revolution Wind Project as described in the approved Construction and Operations Plan as amended, such funds to be held in an escrow account or investment account for the Trust;
- b. Upon payment of the funds described in Paragraphs 1 and 3, Revolution Wind shall have no further involvement whatsoever with respect to the Direct Compensation Program or Coastal Community Fund. The purpose of the Direct Compensation Program is to provide financial compensation to eligible fishermen for mitigating direct losses/impacts to commercial and for-hire (charter) fishing from the construction, operation and decommissioning of the Project;
- c. The mitigation outlined herein is contingent on: (i) CRMC staff recommending this mitigation to the Council; (ii) FAB members not objecting to the mitigation or Application before the Council; and (iii) the Council approving the mitigation as part of the Revolution Wind Assent at the Council meeting on December 13, 2022; and
- d. For the avoidance of doubt, if: (i) CRMC does not issue its written final decision and the Revolution Wind Assent; and/or (ii) Revolution Wind fails to receive all final assents (including the Revolution Wind Assent), permits, authorizations, concurrences and approvals then Revolution Wind shall have no obligations hereunder.
- e. If any payments are made under Paragraphs 3 and/or 5 or any credit made in Paragraph 3, they will be adjusted for inflation using the U.S. Bureau of Economic Analysis gross domestic product deflator.