From:	kerin@desautelesq.com
To:	CHJES@orsted.com; KELIN@orsted.com; rmain@hinckleyallen.com; jwillis@crmc.ri.gov; lad0626@aol.com; dciochetto@crmc.ri.gov; ksloan@crmc.ri.gov
Cc:	"todd guilfoos"; Marisa Desautel
Subject:	RE: FAB Response
Date:	Thursday, March 9, 2023 1:43:23 PM

Hi All,

On behalf of the FAB we feel that following the only guidance available from BOEM is prudent especially given that BOEM recommends that it is a MINIMUM of operation compensation. The FAB in consultation with the SME feel that the value in the last offer represents the value of the area to the fishing industry. In an effort to come to an agreement we will accept the following:

-Commercial fisheries.

In the last offer the value of commercial fishing was $21.8 which we feel is accurate with the assumptions and details laid out in the last offer. We propose a reduction of $500k in an effort to come to an agreement, bringing our offer to **$21.3M**. In addition to the reduction of our offer it is noted that there are considerable costs not incorporated into this estimate. These include the lost fishing ground to move boulders in the WLA, the increase in operating costs for fishing boats in the WLA due to increased risks(hiring an extra hand may be necessary to have more eyes on other vessels and turbines), and increased insurance costs. As an example the increased cost to a boat hiring another hand is $200-$700 a day plus insurance. Over the course of a year one boat may incur $40-50k of additional labor costs. This also does not include the additional fuel costs of avoiding the wind farm or string of wind farms in the region. For these reasons we feel this estimate is very reasonable.

-Charter fisheries.

Following the BOEM guidance which applies to charter fishing results we keep our offer at **$1.9M** loss without additional losses for big game fishing that we expect for operations. This is the same as the last estimate.

-Recreational fisheries.

As discussed earlier we have surveyed private recreational anglers who indicate that over 60% of anglers fish large pelagic fish in the wind area and that there will be a drop in visitation during operations of approximately 28% due to the wind farm. We reduce our offer for recreation to **$1M** in an effort to come to an agreement which does not fully incorporate the operational losses to big game fishing.

This results in Total Compensation of **$24.2M** in 2002 dollars.

Continuing Issues/Concerns

- Cable study findings should be applied to cables in federal waters. If cables have an effect in state waters then those negative effects should be compensated in federal waters.
- Cables will be laid on the seafloor for an extended period before they are buried.
- There are anticipated Impacts to surveys. This will negatively affect fishing quotas. Without adequate survey data, quotas are set at lower numbers. This will have a negative effect on the fishing industry.
- Glacial Moraines – Based on the latest map sent over it appears there are at least two areas in which glacial moraines are still being impacted. As you know, impacts to this APC requires more robust mitigation measures.
- More information on boulders and cables is needed.

    - As discussed on a prior call we understood that a map laying out the Southfork project next to the Revolution Wind project would be forthcoming.

    - We also need to know the area of habitat impact associated with the boulder relocation. The information provided to date is helpful but does not provide this level of detail which is necessary to determine how much of the sea floor area within the project will be affected.
    - Need to know when boulder clearing will be occurring, as this was also discussed on our prior call.
    - Please also indicate in which direction the cables will be laid, meaning how will Orsted be traveling along the cable routes? This will help us to understand the direction in which boulders will be moved and the impacts this will have on fishers. For example, mobile gear fishing will be harmed if Orsted chooses to move in one direction versus another.

- Follow up studies on lobster and other key species with DEM involvement.
- Revisions to the radar upgrade program to include more FAB involvement in choice of radar systems to be approved, and approved retailers, as well as oversight in approving requests.
- South Fork is a 15 turbine, 13,700 acre project. $12,000,000 was agreed to be paid in on lump sum over the life of the Project (net present value $5,200,000). Revolution Wind is a much bigger, 65 turbine, 82,732 acre project.

Conditions (similar to state assent):

- A sum to be determined should be deducted from direct compensation and in its place an amount should be paid by Revolution Wind as direct compensation for each day of extended construction. Construction schedule to be determined.
- Revolution Wind to establish a Trust 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. 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.
- Unless the parties can agree to the 3% discount rate the trust operating costs to be paid by Revolution Wind
- 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.

- Project effects study – In 2027 Revolution Wind will fund a survey of Rhode Island fishermen who have historically fished in waters within [2] km of the Revolution Wind turbine field, to determine for which species these fishermen have observed a change in species abundance, size distribution, or condition in the turbine area since the activation. Revolution Wind to engage external subject matter experts, at Revolution Wind's cost, in carrying out this survey and the subsequent analysis. The purpose of the study is to 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 turbine area since the activation, and whether this change is statistically different from changes in other portions of federal waters and/or adjacent state 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 that may be attributable to the presence or operation of the turbines, or other project components, RIDEM will estimate the loss of landed value that can be expected due to this change in relative abundance over the life of the project. Future losses will be discounted using a real discount rate of 5%.
- The validity of any survey, analysis and loss estimate will then be confirmed by an independent expert mutually agreed upon by Revolution Wind and FAB. Upon confirmation, 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.
- Except as otherwise provided, Revolution Wind shall provide the Payments described 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;
- Upon payment of the funds Revolution Wind shall have no further involvement whatsoever with respect to the distribution of funds.

---------- Forwarded message ---------
From: **Jesper Christensen** <CHJES@orsted.com>
Date: Wed, Feb 15, 2023 at 3:32 PM
Subject: RE: FAB Response
To: todd guilfoos <todd.guilfoos@gmail.com>, Kellen Ingalls <KELIN@orsted.com>, Main, Robin L. <rmain@hinckleyallen.com>
Cc: Marisa Desautel <marisa@desautelesq.com>, Jeff Willis <jwillis@crmc.ri.gov>, LANNY DELLINGER <lad0626@aol.com>, David Ciochetto <dciochetto@crmc.ri.gov>, Kevin Sloan <ksloan@crmc.ri.gov>

Hi All,

We very much appreciate the continued discussions these past several days. As a follow up to the below we'd like to offer the following compensation structure.

- Commercial: $6,715,000 (92% or $3,215,000 increase vs WHOI)
- Charter: $500,000 (11% or $50,000 increase vs WHOI)
- Community: $300,000 (ref our February 2nd email under recreation)
- Total: **$7,515,000** (90% or $3,565,000 increase vs WHOI)

The offer is all-inclusive, meaning the intent is to account for all issues, including those stated in your emails of January 26th and February 9th, that could potentially result in compensation. All amounts are in 2022 dollars based on a 5% discount factor.

While WHOI and the FAB disagree on the baseline, given how close they are we have used the FAB's baseline numbers in calculating the increased commercial number above. Similarly, as stated in our February 2nd email, we agree to increase the charter number to match the FAB's original estimate of a $500,000 impact.

The increase of the commercial number is based on decay of loss values during the early years of operations, i.e. assuming losses during operations of 50% year 1, 40% year 2, 30% year 3 and 5% annually thereafter. This decay allows for the fisheries to adjust to the new conditions, e.g. WTGs, boulder relocations, while also significantly increasing the loss percentages as good faith negotiations with the FAB. While we are willing to continue the discussion on the interaction between fixed and mobile gear during operations, we strongly believe that the decay of loss values adequately reflects an appropriate adjustment period.

Also note that these numbers do not account for the types of positive species impacts shown locally at the Block Island windfarm, and globally at offshore windfarms in general.

Reference is made to guidance from BOEM, but it's important to note that this is not yet guidance. This draft guidance was issued for public comment in June 2022. Nevertheless we are open to discussing interpretation of the concepts found within, provided the right context is included. For example, the baseline values presented in the WHOI analysis include much more substantial multipliers than those suggested in the BOEM draft guidance, and using the BOEM baseline as suggested in that draft guidance would significantly reduce the present value of the impact. For this and other reasons that have been discussed, we maintain that the WHOI analysis is more than appropriately conservative.

Regarding the 5% discount factor, we acknowledge the FAB's concern about administrative costs and expenses, and to address this concern we are offering the following.

> After five (5) years of operations, the TAP will send the Parties a report on the costs and expenses paid and the income accrued to the Escrow Account over the previous calendar year

and the life of the Escrow Account through December 31 of the previous calendar year ("Annual Report"). If the costs and expenses over the life of the Escrow Account exceed the income accrued over the life of the Escrow Account (a "Deficiency"), in more than three (3) consecutive Annual Reports, Revolution will make a payment to the Escrow Account in the amount of the Deficiency. The TAP shall treat any payment made by Revolution as income in any Annual Report.

Please let us know if you have any questions or need clarifications to this offer. We look forward to discussing this, among other things, in the coming days.

Best regards,
Jesper Christensen
Senior Commercial Project Manager
Commercial Management (NEP, OCW1)
Region Americas

Ørsted
Tel. +16176803270

From: todd guilfoos <todd.guilfoos@gmail.com>
Sent: Thursday, February 9, 2023 1:35 PM
To: Jesper Christensen <CHJES@orsted.com>; Kellen Ingalls <KELIN@orsted.com>; Main, Robin L. <rmain@hinckleyallen.com>
Cc: Marisa Desautel <marisa@desautelesq.com>; Jeff Willis <jwillis@crmc.ri.gov>; LANNY DELLINGER <lad0626@aol.com>; David Ciochetto <dciochetto@crmc.ri.gov>; Kevin Sloan <ksloan@crmc.ri.gov>
Subject: FAB Response

Jesper- Thanks for the offer to engage more in this discussion even though there are differences in our numbers. You asked for more details behind some of the assumptions and numbers and I make an effort to clearly provide a reasonable justification for all the assumptions made in the Economic Analysis and have continued discussions with WHOI and your representatives. I only focus on the major differences in compensation:

-Regarding the discount rate. The WHOI analysis takes an extremely aggressive assumption on the discount rate for this project. Since the mitigation is for the purpose of paying claims over the next 30 years any funds will need to earn back the discount rate + inflation + service fees which are planned to be paid from interest. Therefore a 5% discount rate and long-term inflation of 2.5% plus service fees (maybe 1-2% of funds) would need to earn 8.5-9.5% returns. Most insurance companies that are set up to pay claims would invest 80% of their assets in fixed income due to the need to satisfy claims of different durations and optimize on riskiness of assets. These fixed income assets return between 3-6%, making total returns of closer to 6% on average. In my estimation the duration of claims past construction will significantly underfund the reserves for claims because of the compounded error in discount rate. A conservative estimate would use a discount rate of 3%.

-**Lobster and Crab** – We all know the limited data issues with lobster and crab through traditional reporting avenues. The estimate provided by WHOI for this species is too low based on three different data points. First, VMS data suggests a higher estimate based on the intensity of landings

in Revolution WLA compared to VTR. As noted, coverage is low for lobster and Jonah, so I do not solely rely on VMS data in my original estimate. Second, ventless trap surveys in the Revolution area support the higher abundance of lobster and crab on a per trap basis and highly correlate with VMS and evidence from individual fishers. Third, in an informal survey of lobster boats on past average earnings from the Revolution WLA it is determined that the minimum exposure for the industry is $540,000 annually. All three data sources point to a higher estimate for this species, which will not be covered by the current offer. In an attempt to come to an agreement, I propose an estimate for lobster and Jonah of $600k based on the 4 data sources – VMS, VTR, Ventless Trap surveys, and Survey of lobster boats.

Following the guidance from BOEM published June 23, 2022 recommends a **MINIMUM** of operation compensation based on the following.

-Commercial fisheries.

"BOEM recommends that, at minimum, lessees consider the following payment structure be available for claimants: 100 percent of revenue exposure for the first year after construction, 80 percent of revenue exposure 2 years after construction, 70 percent of revenue exposure 3 years after construction, 60 percent after four years, and 50 percent after five years post construction. Compensatory mitigation beyond 5 years post-construction may be necessary and should be evaluated based on the activities proposed in the COP."

We note the current offer from Orsted is well below this minimum.

We apply these estimates of impact for the first 5 years post construction. After 5 years I estimate loss of land that will result in claims for fixed gear fisherman. Before construction I estimate that fixed gear fish on 192 km^2 within the Revolution WLA. After wind turbines are built I estimate between 108 to 51 km^2 will be lost in the east to west lanes that do not contain turbines. I also estimate between turbines a potential gain of new ground of between 17 to 9 km^2, though this new ground is highly uncertain as it depends on room for boats to operate between turbines and between trawling lines that may be too risky. Using a uniform distribution of events this equates to a 34.9% loss of ground applied to fixed gear. This in addition to the 5% lost to turbine area is used for post 5-year construction effects.

Using 2022 dollars this equates to **$21.8M** for commercial fishing impacts.

-Charter fisheries.

Following the BOEM guidance for charter fishing results in a **$1.9M** loss without additional losses for big game fishing that we expect for operations. Note our original offer was for less than the BOEM minimum.

-Recreational fisheries.

Following the BOEM guidance for charter fishing results in a **$1.4M** loss without additional losses for big game fishing that we expect for operations. Internally we have surveyed private recreational anglers who indicate that over 60% of anglers fish large pelagic fish in the wind area and that there will be a drop in visitation during operations of approximately 28% due to the wind farm. This drop is due to the difficulty in fishing these species in a wind turbine array as indicated by the FAB experts.

This results in Total Compensation of **$25.1M**

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Todd

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Todd