

Fisheries Technical Working Group (F-TWG) Sunrise Wind Mitigation Plan Meeting Summary

Tuesday, November 19, 2019 from 10 am to 1 pm
NYC Seminar and Conference Center, 71 E 23rd St, New York City

Under the New York State Public Service Commission's procurement process, contracts for offshore wind development necessarily entail Mitigation Plans to address the interests of ocean users such as commercial and recreational fishing and environmental stakeholders. On November 19th, 2019, the **Fisheries Mitigation Plan** for Sunrise Wind (Ørsted and Eversource) development was presented to non-developer members of NYSERDA's Fisheries Technical Working Group (F-TWG). **This document outlines the key discussion points during the Sunrise session as well as input provided to NYSERDA via email following the meeting.** Comments are summarized without attribution to specific individuals. Meeting attendees are referred to as interchangeably in the summary as "stakeholders" and "F-TWG members". The session's discussion goals included:

- Initiate an on-going conversation with the individual project teams about their projects
- Learn about and gain a detailed understanding of the project's mitigation approach
- Share initial advice, comments, and considerations with each of the project teams
- Identify issues for further discussion or to bring back to the full F-TWG

This summary is organized to align with the structure of the meeting agenda (Appendix A). Note this summary is focused on the discussion rather than presentation of Mitigation Plans by developer representatives. Developer presentations are not summarized here. Mitigation plans and presentations from Sunrise Wind are available [here](#).

Fisheries Mitigation Plan Meeting of November 19th, 2019

Attendance: In addition to presenting developer representatives, there were approximately 6 F-TWG members in attendance in the room, 2 NYSERDA staff, and 11 F-TWG members who participated remotely via web/conference call. Two staff from the Consensus Building Institute (CBI), and The Cadmus Group, were also present to provide technical, facilitation, and logistics support.

Welcome & Introduction

NYSERDA shared that it is seeking input from stakeholders to inform its process and next steps regarding both Sunrise and Empire Wind site-specific topics as well as spatially agnostic topics that connect to future projects as well as other parallel efforts.

As part of NYSERDA's contractual requirements, offshore wind developers must consult with relevant state agencies around fishing, wildlife, and the environment and participate in the Technical Working Groups. The developers will evolve their mitigation plans over the course of their projects and make publicly available data collected where possible.

This meeting was not intended to generate consensus, but instead to gather comments and questions on the mitigation plans. Developer mitigation plans will likely be updated two to three times a year based on milestones, state and federal guidance, and TWG input. Slides with further detail on NYSERDA’s introductory comments are available on the F-TWG website.

The Agenda for the meeting and “Rules of the Road” for the discussion were outlined by the facilitator and are available in the Appendix.

General Feedback

This section summarizes feedback from stakeholders that applies to both mitigation plans and/or in several places throughout the mitigation plans.

Detail and Specificity

- **Additional Detail in General:** Throughout the mitigation plan, stakeholders requested a greater level of detail. Specific requests are highlighted in the feedback that follows in this document.
- **Similar Projects:** The plan should bring in more lessons from other projects and places.
- **Hypotheses versus Facts:** Regarding rationales provided for specific actions within the mitigation plan, stakeholders highlighted that it should be clearly delineated whether figures and statements are referring to developer hypotheses or are referring to data based on scientific studies.
- **Naming of the Plans:** A stakeholder suggested finding a new acronym besides FMPs for Fisheries Mitigation Plans as FMPs often refer to Fisheries Management Plans.

Next Steps

- **Meeting Summaries** and presentations from both mitigation plan meetings will be available on the F-TWG website.
- **Mitigation Plan Updates:** Developers will be asked to red-line changes they make to the plan to show how they respond to stakeholder feedback. The F-TWG will also discuss how the mitigation plan review and update process can continue moving forward (e.g. update two-three times a year based on major milestones). The frequency of updating and communicating on mitigation plans should balance level of effort and value. An appropriate level may involve communicating updates once per year. A first step could involve making updates based on this discussion.
- **Future Mitigation Plans:** NYSERDA will also undertake a broader assessment of mitigation plans to understand how they can be standardized, including across states.

Sunrise Mitigation Plan

The sections that follow provide key takeaways discussion associated with each section of the mitigation plan presentation for Sunrise Wind.

Introduction

The joint venture between Ørsted and Eversource (“the developer team”) was introduced with a set of slides available on the F-TWG website [here](#).

- **Representative Clarification:** Stakeholders asked for clarification on the difference between Liaisons and Fisheries Representatives. Liaisons work full-time for the company directly. Representatives are funded by the company, but their role is to represent communities, ports or other interests by taking concerns, questions, and comments to the Liaisons.
- **Transit Lanes:** Regarding the developer proposed 1 nm by 1 nm turbine spacing transit lanes for the “New England” lease areas, meeting attendees articulated a range of views. The developer team described the iterative process that has been employed to reach the current design.
 - Some stakeholders stated that 0.7 or 1 nautical mile would not be sufficient for some vessels in particular. Responding to a question, it was also clarified that the size is not selected to align with size of turbines, but rather based on other factors.
 - In terms of direction, some stakeholders articulated that based on prior discussions, they had been expecting diagonal transit lanes in the design, which are not present.

In preparing to review the Mitigation Plan section by section, the following were key framing points:

- The **Mitigation Plan presented is a draft**, and the developer team will incorporate feedback based on this session. For example, contact information already needs to be updated with new hires.
- NYSERDA clarified that the **Mitigation Plan 1.0 language is contractually obligated** whereas the evolution of the language is not necessarily contractually obligated.

Section 1: Fisheries Mitigation Plan Summary

- **Proprietary Research:** A question was raised regarding non-proprietary research versus proprietary research. In response, it was clarified that surveys of geophysical and technical information will be proprietary at this stage (from developer to developer). Information on surface winds and surface temperatures has been shared publicly already which is useful for fisherman, and most biological data will be shared.
 - Additionally, developer representatives noted that there may be data that the fishing industry partners may classify as proprietary from their perspectives and developers will be careful not to divulge information that is valuable to the fisherman.
 - Stakeholders referenced that pathways for data sharing and data standardization are being worked on currently.
- **Turbine Locations:** A stakeholder inquired whether moving wind turbine locations from most impacted fishing grounds would be included.
 - Developer representatives responded that the areas had been previously vetted in a study as part of the Rhode Island Ocean Special Area Management Plan (Ocean SAMP).
- **Conditional Language:** Stakeholders commented that section 1.2 involves conditional language such as “strive to”, “will aim, where possible” and that from their vantage point, this can come across as though there is not full intent from the developers to collaborate and cooperate with stakeholders.
- **Level of Detail:** Stakeholders shared that they had higher expectations for the level of detail provided in the Mitigation Plan, given the developer’s history of prior projects in other regions.
 - Developer representatives described that arriving at the current Mitigation Plan and associated decisions involved substantial compromise based on listening to concerns of fisherman. Compromise involved changes on cost of energy production, energy output,

and profitability. Additionally, developer representatives shared that substantial resources were put toward addressing stakeholder concerns on surveys.

Section 2: Communication and Collaboration Approach

- **Construction:** Stakeholders noted that construction will require a lot of communication and collaboration, more than survey.
 - Developer representatives shared that they plan to develop a communication plan appendix just for Sunrise.
 - Developers clarified that information shared with Liaisons is protected internally in a database.
- **State List:** A stakeholder inquired why Connecticut is not listed along with Massachusetts and Rhode Island on section 2.4.
 - Developer representatives noted that the list may not be exhaustive and that if there is a gap, it can be addressed.
- **DEC Reference:** In section 2.4.2, the mitigation plan refers to the Department of Environmental Conservation (DEC)'s Department of Fish, Wildlife, and Marine Resources, which focuses on tidal wetlands and freshwater programs. A stakeholder suggested that it would be more appropriate to refer to the DEC overall rather than this specific division of the organization.
- **Combined Table:** The group agreed that the table in section 2.5 could be combine to a single page to make it easier to follow.

Section 3: Monitoring and Research Pre-, During, and Post-Construction

- **Lack of Accurate Baseline:** Stakeholders highlighted that there is broad consensus that the lack of an accurate baseline remains a critical gap.
 - Developers noted that a fuller and more complete baseline of desired data remains an objective across projects but will be challenging to address in full.
- **Transit Lanes:** Stakeholders asked a question as to whether the transit lane components of sections 3.5.1 and 3.5.2 would change considering the announcements on transit lanes.¹
 - Developers responded that analyses are still required and will be undertaken as laid out in the Mitigation Plan. Beyond wind farm layout, project design, lighting, marketing, and navigation topics will need to be addressed through the actions suggested in this section.
- **Commitment Level:** Stakeholders underscored that a commitment to level of funding or level of research would be important to extend beyond an engagement in setting up an organization like the Responsible Offshore Science Alliance (ROSA).
- **Evaluation:** Stakeholders highlighted that Bureau of Ocean Energy Management (BOEM) wind energy areas need to be evaluated separately from each other. A separate evaluation is particularly important for commercial fishing activity over meaningful periods of time. For instance, squid data over the last 5 years may not capture specific effort in an area since this

¹ On November 19th, the five New England offshore wind leaseholders (Equinor, Mayflower Wind, Ørsted/Eversource, and Vineyard Wind) announced a uniform turbine layout proposed to the U.S. Coast Guard. The proposal involved 1 nautical mile (nm) spacing between wind turbines. (Full press release from Vineyard Wind is available here: <https://www.vineyardwind.com/press-releases/2019/11/19/new-england-offshore-wind-leaseholders-submit-uniform-layout-proposal-to-the-us-coast-guard>)

fishery's effort is known to change spatially over time. Additionally, it was shared that BOEM is working with National Marine Fisheries Service (NMFS) to further develop some tools to evaluate fisheries usage; more details will be available in the coming months.

- **Overall Level of Detail on Section 3:** Stakeholders stated that much more detail in this whole section on monitoring would be important in order to adequately address the topics within the application requirements of the RFP. Additionally, stakeholders shared that details matter for fishing groups and some shared examples of instances in which fishing activity had been impacted by surveys. Some targeted points stakeholders raised where further clarity or specificity could be listed included the following:
 - In section 3.2.1, other examples such as various NMFS surveys should be listed.
 - In section 3.2.1 on page E-8, a stakeholder asked whether “common commercially harvested species” would include those in cable routes. More broadly, some stakeholders articulated that the list of species is not extensive enough and includes some species that are irrelevant to the project area. A stakeholder suggested developers reference fishing area charts that are available online at the Department of State website.
 - In section 3.3, stakeholders noted that it is unclear how monitoring for potential impacts during each phase would be conducted if there is not a baseline.
 - In section 3.5.2, a stakeholder stated that it is unclear what statistics are referred to by the phrase “statistically sound methods”.
 - In sections 3.5.2 and 3.6, one stakeholder suggested the Mitigation Plan should provide additional specificity on the data gaps known to exist, and spell out changes in fishing behavior, target species, economics and other areas.

Section 4: Supporting Other Research

- **Research on Vessels:** Stakeholders articulated that to the extent practical, all research should be conducted from onboard fishing vessels.
 - Developers noted that they are open and willing to using fishing vessels for research and other activities as well.
- **Public Data:** Stakeholders requested that as far as possible data collected from the lease area should be made publicly available.
 - Developers noted that they are open to this approach except for competitive and proprietary data that needs to be protected for business reasons. That protection likely applies more to bathymetry and wind data and less to biological data.
- **Financial Commitment:** On section 4.4, stakeholders stated that it would be helpful to have more information available on the financial commitment structure and associated details.
 - Developers agreed to add in details on the financial commitment structure where possible.
- **Recreational:** Section 4.5 is focused on commercial, but should add recreational, particularly on the first bullet at the end of the section.
 - Developers agreed that recreational fishing could be added in this section.
- **Feedback from stakeholders on this section received after the meeting**

- 4.1 All data collected from the lease area should be made publicly available after the site enters operations. At this point the data collected from the lease area is no longer business sensitive.

Section 5: Proposed Mitigation of Impacts to Benthic/ Fishery Resources

- **Format Change:** Stakeholders provided targeted input on the tables in this section. In many cases, this input requested a delineation between scientific fact, in which cases references should be provided, as opposed to hypothesis statements on behalf of the developers. Discussion concluded with a request to change the format to include multiple columns that delineate the actual mitigation, separate from current thinking (potentially through three columns- “expectation”, “evidence”, and “mitigation”. Specific feedback included:
 - On page E-13, the second box states that “...identical habitat is widely available in the immediate area”. Stakeholders requested that a reference be provided to support that statement.
 - On page E-14, the third box also needs reference to a study to support statements on construction impacts.
 - On page E-14, the 3rd and 4th boxes need to reflect that not all shifts are beneficial through more careful language.
 - On page E-14, the 4th box in the proposed mitigation column needs to provide scientific basis for the statement.
 - On page E-14 the last two boxes in the proposed mitigation column also need to provide scientific basis for statements such as “not considered significant” regarding impacts.
- **Framework of If-Statement:** A discussion emerged on the balance between providing insights on the Mitigation section while leaving room for evolution as the baseline is not determined and the project planning is in early stages. Overall, stakeholders articulated that more clarity could be provided through a framework of if-statements to address what potential mitigations would be taken if certain types of issues are found.
 - Developer representatives shared that some of what is in the Mitigation Plan is informed by work currently underway in other projects in the region.

Section 6: Proposed Mitigation of Impacts to the Recreational and Commercial Fishing Industry

- **Gear Loss:** Regarding gear loss, a variety of comments were discussed:
 - The table on page E-16 includes “Training and Communication following Gear Loss Prevention and Claim Procedure” as a Proposed Mitigation Measure. A stakeholder recommended detailing in the mitigation plan that communication on gear loss would include connecting with at least this F-TWG group (if not by fishing industry more broadly) for input.
 - Developer representatives shared that the gear conflict prevention documentation is always open for comments.
 - A stakeholder also stated that gear loss mitigation measures should extend beyond upfront measures. It was recommended that ongoing maintenance measures to address gear loss are also covered in the mitigation plan.

- **Co-existence:** Some stakeholders stated that they would not be comfortable with Sunrise as the only decision-maker on the compensation plan.
 - In response, developer representatives stressed that input from other stakeholders is desired and ultimately, they endeavor for coexistence. With coexistence, impacts would be mitigated, and compensation would not be needed.
- **Compensation Options:** One suggestion from a stakeholder was including a menu of options for compensation structures that depends on who is impacted and how impacted they are. This would be to at least contemplate types of losses and how the compensation would be determined.
- **Clear Compensation Plan:** Stakeholders stated that having a clear compensation plan is necessary as it would allow all parties to plan for the instances in which financial impacts may be felt and have an awareness as to the extent that developers would assume responsibility for those potential impacts. Moreover, setting aside contingency funds at the beginning will ensure that there is financial support available if needed.
- **Feedback from stakeholders on this section received after the meeting**
 - 8.2.1 Sunrise's priority to ensure co-existence with the fishing industry is noble but approaches to developing compensation plans must take into consideration that entire fisheries may lose access to the WEA or the WEGs may cause the degradation of a fishery within and around the WEA.
 - Recommendations may be made by individuals within the fishing industry, an industry wide recommendation is highly unlikely. If members of the industry are financially harmed because of loss of access to the WEA, whatever the approach, the vessel owner / permit holder that has been directly impacted will want to be made whole in addition to any funds that supports losses to the community supported by fisheries as a whole.
 - 8.2.2 Should financial compensation be required; the fishing industry supports a process for identifying recipients and values that is open to the public and managed by an independent third-party, where payments for the loss of a public resource exists.

Appendix A: Agenda

- 10:00** **Welcome and Introductions**
- 10:10** **Overview of the Day, Goals and Ground Rules, *Facilitator***
- 10:20** **Brief Overview of Procurement Process, Authorities and Jurisdictions, and Process from here, *NYSERDA***
- 10:30** **Overview of the Project, Sunrise Project Team**
- 10:45** **Present each major section**
- Project Team presents key points of each section
 - F-TWG ask questions, provides advice and considerations
 - Facilitator summarizes key points at end of each
- 11:30** ***Brief Break***
- 11:40** **Continue Review and Discussion of Sections**
- 12:45** **Summary and Next Steps, Facilitator and NYSERDA**
- 1:00** **Adjourn and Lunch for F-TWG**

Appendix B: Rules of the Road for TWG-Project Dialogue

This is the first, but by no means the last, dialogue between the F-TWG and specific project teams. Unlike the typical F-TWG meeting where discussions focus on key issues across projects, these discussions are meant to be project specific. Thus, to set expectations and parameters about project specific dialogue, the following rules of the road are suggested.

- Only non-developer F-TWG members will attend (but for each project team).
- A meeting summary without attribution will be developed from the dialogue and made available to all F-TWG members and posted on the F-TWG website.
- The F-TWG is a common forum to learn together about project details and to provide individual advice and comments to project teams. The F-TWG is not expected to develop collective advice to the projects.
- The project teams are not required to agree with nor act on the advice or comment of F-TWG members, but are expected to take it seriously, consider the merits, act when possible, and explain why key advice was not taken.
- The project teams should understand that while these meetings are not public there is no guarantee of confidentiality and the meeting summary will be made public. Thus, project teams should be mindful when / if they choose to share proprietary data.
- The dialogue with individual project developers is expected to be on-going and no one single meeting is intended to serve as the sole forum or time for dialogue.
- Through individual project discussions, the F-TWG may identify common themes and issues that need to be discussed across projects and these may be brought to future F-TWG meetings where all members, including developers, are present.