

# FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Disruption Settlements and Community Funds

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This document has been prepared by the Fishing Liaison with Offshore Wind and Wet Renewables Group (FLOWW). Many thanks to the following organisations who were involved in drafting:

National Federation of Fishermen's Organisations  
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## **1. The Fishing Liaison With Offshore Wind And Wet Renewables Group (FLOWW)**

The Fishing Liaison with Offshore Wind and Wet Renewables Group (FLOWW) was set up in 2002 to foster good relations between the fishing and offshore renewable energy sectors and to encourage co-existence between both industries. FLOWW's objectives are to enable and facilitate discussion on matters arising from the interaction of the fishing and offshore renewable energy industries, to promote and share best practice, and to encourage liaison with other sectors in the marine environment.

FLOWW comprises organisations with an interest in offshore renewables and the fishing industry, being comprised of fishing industry bodies, offshore renewable developers and consultants, government agencies and The Crown Estate. The group is facilitated by a secretariat funded by The Crown Estate.

A current list of members of FLOWW and further information on the work of the group can be found on the FLOWW website: <http://www.thecrownestate.co.uk/energy-and-infrastructure/offshore-wind-energy/working-with-us/floww/>.

## 2. Introduction and Context

This guidance complements the *FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison* (FLOWW BPG) and may be used to inform discussions in conjunction with this document.

Whilst in the first instance good practice in fisheries liaison and the application of mitigation measures should aim to minimise the levels of disruption or displacement, there may exist residual impacts upon fishing activities. Although in the UK there exists no legal basis for financial compensation associated with the loss of access to fishing grounds, disruption or displacement of fishing activities resulting from offshore renewable energy installations (OREIs) is recognised by both industries as a potential area of concern and one which may require discussion and an agreed resolution between the interested parties. Settlements agreed on a mutual basis therefore aim to counterbalance or offset any residual fisheries related impacts associated with an OREI.

In the context of this guidance disruption settlement is defined as:

***Monetary payment for demonstrable loss of fishery access or economic disadvantage caused directly to active fishing vessels by disturbance or displacement by an OREI***

A Fisheries Community Fund is defined as:

***A fund established by an OREI developer which is to be used for the general betterment of the members of a fisheries community.***

The overall aim of any settlement is to achieve a position whereby fishing interests are neither advantaged nor disadvantaged by the OREI. Given the variation in fishing methods and prosecution across the strategic areas identified for development, no single approach is likely to be suitable for all sites.

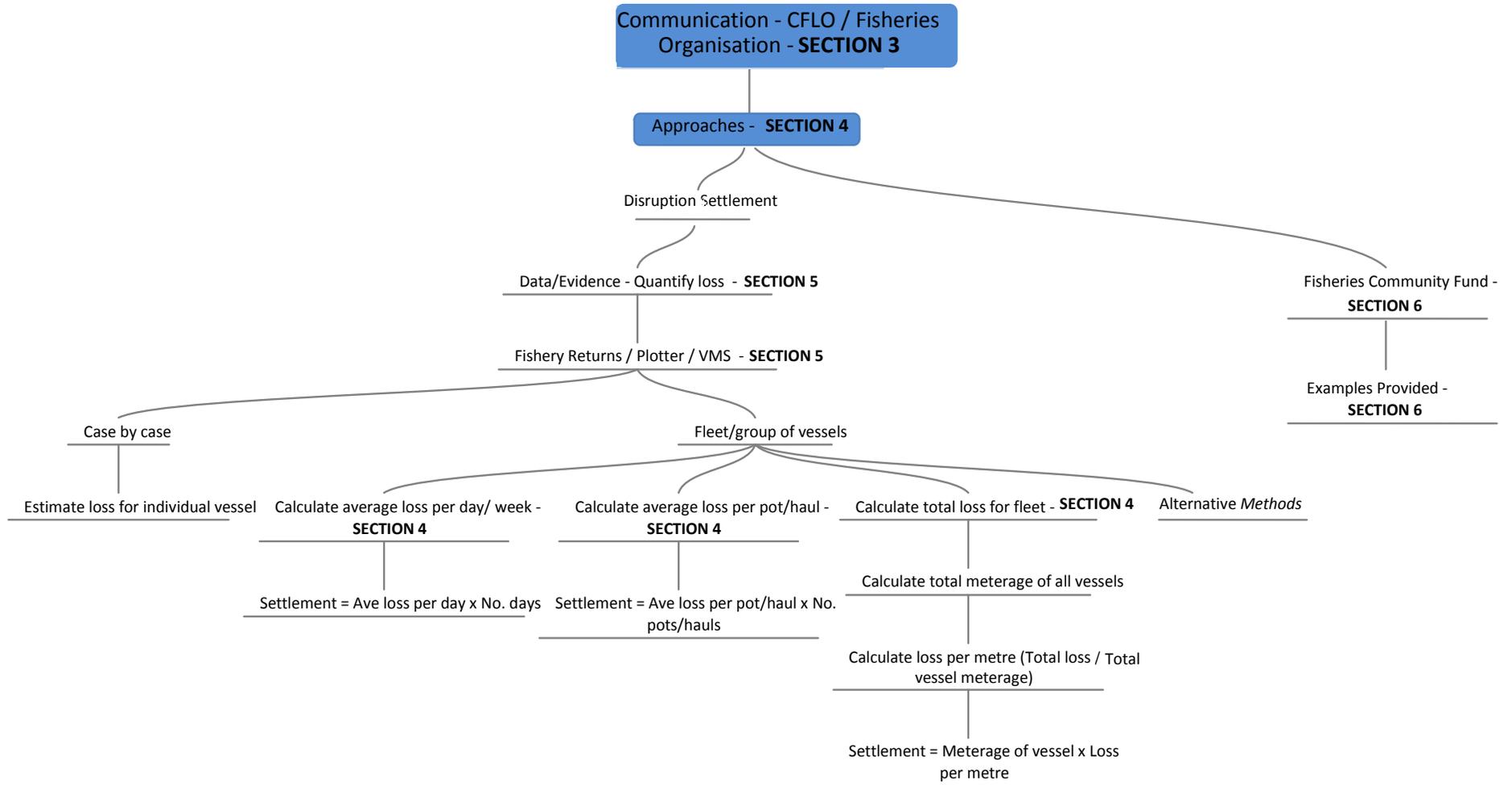
This guidance therefore is intended to assist both OREI developers and the fishing sector by providing a number of suggested approaches that may be used to address residual impacts. This includes arranging disruption settlements for direct impacts to fishing businesses, for instance as a result of construction, cabling or survey work, and the application of fisheries community funds, drawing upon existing examples of good practice in the UK.

It is not within FLOWW's remit to provide prescriptive advice on how settlements related to disrupted and displaced fishing activity should be decided and calculated. However FLOWW recognises the provision of key guiding principles for this process and suggestions and examples can help to promote mutual agreements and good relationships between both parties.

Guidance is available on how disruption settlements can be calculated in the Seafish's: [Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments](#), which provides methods for calculating financial impacts as a result of areas closed or restricted to fishing.

The following flow chart may be used to navigate this guidance:

Figure 1. Options flow chart for considering disruption settlements and fisheries community funds and relationship to this guidance



### 3. Communication

Emphasis should be placed on the benefits of early dialogue between the OREI developers and any affected fisheries stakeholders in order to understand the nature of the fishing ground and any potential impacts. This will assist both parties to reach a mutually agreed outcome. It is important to understand, for example, whether the area in question is heavily or lightly fished, the number of vessels involved, how and when it is normally fished, the history of fishing activity in the area, and associated revenues.

Developers should work through their designated Company Fishing Liaison Officer (CFLO) who should take advantage of local advice from sources such as Inshore Fisheries and Conservation Authorities (IFCAs), Inshore Fisheries Groups (IFGs) or their equivalent, local fishery officers and representatives of the national associations, and Fishermen's Federations, Producer Organisations and the Shellfish Association of Great Britain. Contact details and links for such groups and organisations can be found on the [FLOWW website](#). OREI developers in proximity should engage with each other to consider whether their projects will have cumulative impacts.

The FLOWW BPG provides further detail on communication strategies when planning OREIs. In summary the following steps should be undertaken:

- Find a suitable local fisherman, ex-fisherman, or representative to act as a Fishing Industry Representative (FIR). The FIR will work alongside the CFLO to provide support and guidance.
- Make early contact with local fishermen / identification of fishing industry interests.
- Liaise with other local sources - Fishery Officers, national fishing federations and associations etc.
- Engagement with affected parties will depend on the circumstances of each case. One approach is to establish a working group including representatives of the OREI developer, the fishing industry, and independent third parties in the interests of drawing in wider knowledge and to act as an independent arbiter where appropriate.
- Communications may be supported through the preparation and distribution of questionnaires to determine which areas each vessel operates in, number of pots/creels or other fishing method used.

## 4. Approaches

Settlements may be considered at the individual business or wider community level. Disruption settlements typically aim to address losses and/or costs directly incurred by individual fishing businesses through a payment to each business. Settlements at the community level are generally administered through a group arrangement. This may include the establishment of a fisheries community fund as outlined in section 6.

The following principles and considerations are likely to prove important in establishing fruitful settlements:

- *Negotiating mandate:* All parties involved in the process should have the mandate to speak on behalf of their interests. Care should be taken to ensure that all relevant interests are involved in the process.
- *Transparency:* Whilst accepting the need for commercial confidentiality over any individual pecuniary settlements, an agreed and transparent approach is likely to be important. This may be supported through the following documentation:
  - the development of terms of reference for any working groups;
  - the preparation and agreement of statements of common ground (SoCG) (for project applications via the Planning Inspectorate in English waters);
  - the preparation of a Fisheries Liaison and Mitigation Plan and/or Commercial Fisheries Mitigation Strategies (e.g. for project applications in Scottish waters);
  - the preparation of meeting minutes;
  - defined terms of any final agreement.
- *Placing settlements within a wider liaison, coexistence and mitigation framework:* When it is clear how and where settlements fit within the wider framework of measures and interactions to support coexistence, settlements are likely to be agreed more easily.
- *Evidence-based:* Monetary settlements should be based upon evidence to corroborate agreed values (see section 5). In the case of individual payments to businesses, it is also important to ensure claims are genuine. Evidence needs should be proportionate to achieving this end, taking account of any practicalities associated with providing evidence so that genuine claims are not precluded.
- *Honour agreements:* Agreements achieved should be enduring and transferable in cases where an OREI developer sells or transfers a project to a third party. Similarly they should also apply, where relevant, to bodies responsible for different project assets e.g. in the case where there is a separate owner of the OREI and the export cable infrastructure.
- *Build trust:* Effective implementation of the above considerations are likely to lead to a process that all parties have faith in and trust, thus leading to high levels of cooperation between both OREI developers and the fishing industry.
- *Alternative dispute resolution:* In the event that it is not possible to reach a mutually agreed settlement it may be appropriate to seek alternative dispute resolution (ADR) . It is essential

that ADR is undertaken by a neutral third party mutually agreed to by both sides of the dispute.

#### Valuing settlements:

Whilst each case will have its own circumstances that determine which factors should be considered, the following may be taken into account, where appropriate, when valuing the fisheries subject to any settlement:

- the period of impact, taking account of seasonality, number of vessels and intensity, and historic patterns of use;
- proportion/importance of area lost to fishing;
- significance of any deviation while transiting to fishing grounds;
- accessibility to other similar fishing grounds and stock;
- the costs of gear relocation or removal.

There is likely to be considerable variation in how different businesses are affected by any works activities or project. When agreeing any settlement there is a need to consider those directly affected and legitimate indirect impacts on others.

Settlements should be based on loss of earnings and/or increased costs incurred, rather than loss of revenue. For example, when displaced from their usual fishing grounds fishing vessels may move to alternative grounds, which may require a settlement to cover the additional fuel costs incurred, loss of fishing time, or potentially lower catch in less productive grounds etc., but not a complete loss of revenue. The circumstances of the loss of earnings being accounted for will be case specific.

Some examples for calculating the basic fisheries value of an area may include the following:

1. *The value of landings from the affected area for each vessel over an agreed reference period.*

Example - a fishing vessel's official landings data, such as over the last three years, may be made available. The landings data would show the amount and location (ICES Rectangle, or ICES sub-rectangle) of catch, and the value of the impacted area can be generated by:

- i. reviewing the total landings recorded from those ICES rectangle(s), or ICES sub-rectangle(s), that overlap the area impacted in the last three years and generating an average value, or a value associated with an equivalent time period;
- ii. agreeing on the proportion of the total landings calculated in (i) that will be affected; and
- iii. in the case of a disruption settlement to individual businesses, generate a fixed, or variable, day-rate that applies to the works.

2. *Generating a value based on catch per unit effort that is then extrapolated/raised to the level of fleet affected.*

Example – calculating an average value per creel per week:

- Vessel Calculation: no. creels in area x average creel value per week = ‘vessel total value per week’
- Total value (all creels for all vessels) per week: Add all of the ‘vessel total values per week’ = ‘Total value of all creels for all vessels in affected area’
- Average value of creel per week = ‘Total value of all creels for all vessels in affected area’ ÷ No. of creels

Such an approach may also be possible for other gear operations e.g. mobile gear based on the number of towed operations.

3. Other examples of approaches have included segmenting values according to the length of vessel (e.g. Thanet Offshore Wind Farm) or daily/weekly catch values. Further details can be found in Figure 1.

The Seafish [Best Practice Guidance for Fishing Industry Financial and Economic Impact Assessments](#) provides a more detailed analysis of the types of data available, methods and associated pros and cons.

#### Further considerations:

- *Changes to the period of disruption:* In the case of disruption settlements, agreeing fixed/variable day-rate(s) will allow for schedule under/over-runs that often apply to survey and construction programmes.
- *Fixed gear:* In the case of planning for the removal of fixed gear, sufficient lead time needs to be allowed as it may take a number of days to move all gear from the area of activity, and weather conditions may delay access. Similarly it may take a number of days to reset gear once the activity is complete. It is therefore recommended that an appropriate reference period is agreed to enable all associated activities to be completed. This should then be taken into account in determining the levels of disruption expected and related to associated settlements. The FLOWW BPG (Appendix 5) provides further guidance on the removal of static gear associated with disruption settlements.
- *Removal of associated fishing effort:* There is debate over whether disruption settlements should be linked to retirement of the related fishing effort. There are pros and cons of following such a principle, but the following should be considered:
  - In theory, following such a principle would help to avoid the knock-on impacts of displaced activity on other fishermen. However, this potential benefit also needs to be evaluated in the context of any wider strategy for addressing residual issues including any community level approaches. In the case of the Walney II offshore wind farm, for instance, no stipulation was made to retire fishing activity as part of a disruption settlement, but the wider fishing interests benefit from collective projects via the West of Morecambe Fisheries Fund.

- The likely impacts of displacement will be case specific, dependent upon intensity and type of fishing operations and the availability and ease of access to alternative productive fishing areas and the extent of fishing activities already occurring in those areas.
  - Underpinning such a principle in practice will be dependent upon the level of buy-in to using the principle as the basis for a settlement and/or upon a reliable monitoring and enforcement framework.
  - Losses incurred by a fishing business will be higher or lower depending on whether the disrupted activity is able to relocate.
- *Alternative employment:* In some situations there may be opportunities for alternative employment to be found for displaced fishing vessels, e.g. vessels displaced from an an OREI site during construction may be employed as guard vessels, providing an alternative means of earning. Such opportunities will vary from project to project, and are described further in the FLOWW BPG.

## 5. Data/Evidence

Appropriate levels of evidence should be provided and agreed to by both parties, which may include:

- Copy of certificate of registry for each vessel for which a claim is being made;
- Copy of a valid MCA certification or equivalent;
- Copy of the relevant vessel fishing licenses and entitlements for each vessel for which a claim is being made;
- Sight of vessels fishing charts and GPS plotter records to provide clear historic evidence of potential disruption in the area of the operations;
- Evidence of sales notes where available for an agreed time period;
- Fishing accounts of the vessels concerned for an agreed time period;
- Fishing vessel or and/or fisheries landings data held by fisheries authorities. Due to the requirements of the Data Protection Act, for access to individual records a declaration will need to be completed in order for records to be released.

It may be appropriate to validate sources of evidence not obtained directly from claimants in order to verify accuracy (for example, transcription errors may exist in official landings data). Similarly, corroboration/validation of evidence provided by claimants may be possible via independent sources such as fishery officers, for example.

## 6. Fisheries Community Funds

As an alternative, or in addition to disruption settlements aimed at individual businesses, both OREI developers and fishing interests may consider it desirable to implement actions at a community level as a broader strategy to address residual impacts, or simply on the basis of a goodwill gesture in recognition of a new marine activity being accommodated within an area of existing activities.

This has led in some cases to the establishment of fisheries community funds in order to facilitate such actions. As well as supporting fishing businesses, in comparison to disruption settlements, these may also help to address less tangible but legitimate impacts and interrelationships with the wider fisheries community e.g. impacts upon the supply chain or industry support infrastructure. Existing practice in establishing such funds has generally occurred on the following basis:

- As a voluntary measure agreed to by both OREI developer (s) and fisheries interests.
- Undertaken in combination with a disruption settlement process aimed at individual fishing businesses.
- Aimed at promoting longer term community relations through fisheries community orientated projects, initiatives or research activities. In some cases this funding has been used as match funding against other sources for larger scale projects or to return greater value to fishing communities.
- Examples initiatives include:
  - projects for community benefit such as ice plants, fuel storage facilities, or safety equipment.
  - research initiatives aimed at supporting fisheries e.g. stocks assessment surveys or better understanding marine renewable – fishery interactions e.g. gear trials.
  - resource enhancement or conservation initiatives e.g. lobster v-notching, reseedling.
- Examples of such initiatives include the West of Morecambe Fisheries Fund ([www.westofmorecambe.com](http://www.westofmorecambe.com)) and the Thanet Fishermen's Association fuel company.

As with establishing processes to address disruption settlements, approaches identified early in section 4 may be relevant to establishing any successfully operating fund. Methods used to value fisheries in section 5 may also be relevant to generating the value of funding made available through such a mechanism. The application of such funds should ideally be considered on a mutual basis between the OREI developer and affected fishing interests.