



USET

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Transmitted Electronically
To Brendan.T.Phillip@ceq.eop.gov

August 25, 2023

Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson PI NW
Washington, DC 20506

Dr. Jane Lubchenco
Deputy Director for Climate and Environment
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Ave
Washington, DC 20504

Dear Chair Mallory and Deputy Direct Lubchenco,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments to the White House's Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP) in response to the July 25, 2023 Tribal consultation to develop an Ocean Justice Strategy. USET SPF appreciates CEQ and OSTP's focus on developing this strategy to strengthen the President's commitment to deliver environmental justice to Tribal Nations by developing the goals and high-level actions required to coordinate and guide ocean justice activities across the federal government. We are pleased that CEQ and OSTP are also focused on how to apply ocean justice to the scientific enterprise of knowledge building, which includes the consideration, inclusion, and, with Tribal permission, incorporation of Indigenous Knowledge. We remind CEQ and OSTP, however, that the federal government has solemn legal trust and treaty obligations to Tribal Nations to protect our lands, the public health of our communities, and our environmental, natural, and cultural resources. These obligations cannot and should not be contextualized as race-based responsibilities to advance environmental justice. Rather, these solemn obligations are the direct result of the trust and treaty, Nation-to-Nation, diplomatic relationship that exists between the United States and Tribal Nations.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and

^[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Since time immemorial we have strived to maintain balance, cohesion, and interconnectedness with our surrounding environments and relatives. The integration of Indigenous Knowledge to federal decision-making processes and in the use and interpretation of western science, must become a central focal point in addressing climate change and adaptation, as well as in ensuring respectful and sustainable development of our lands and natural resources. Our Indigenous Knowledge systems evolve out of a spiritual framework that acknowledges humans are a part of nature and that there are interconnections among all things. Because of these solemn truths, we have responsibilities to live in harmony with all of creation. In developing and implementing an Ocean Justice Strategy, the federal government must recognize the potential detrimental impacts that development can have on our sovereign authorities to steward and protect our cultural lifeways, the environment, our public health and safety, and our oceanic relatives. We must also be aware of how development can produce direct and indirect harmful effects to our cultural and sacred sites, especially those now submerged or being threatened with submersion due to the ongoing effects of climate change.

Of particular concern facing many USET SPF member Tribal Nations, and other coastal and gulf Tribal Nations across the United States, is the Administration's focus on fast-tracking offshore wind energy development. Due to the cultural, historical, and sacred significance of certain submerged areas, we remain concerned with Administration and Congressional efforts to streamline certain permit review processes, such as those required by the National Environmental Protection Act (NEPA). The federal government has a solemn, moral, and legal obligation to ensure these areas are protected so that future generations of our peoples can continue our lifeways and cultural and religious observances. Federal efforts to streamline processes to advance the nation's energy infrastructure capabilities must not come at the expense of preserving and protecting our cultural heritage, sacred sites, and the public health of our people. The development of an Ocean Justice Strategy must address these issues.

Many Indigenous Peoples Are Inextricably Connected to the Ocean as it Holds Significant Cultural Value

Tribal Nations are sovereigns whose territories cover both terrestrial and marine spaces including the ocean. For many Indigenous cultures, the ocean holds a supreme cultural value, significance, and identity. The ocean is often respected as a relative and as a provider of traditional foods, and other cultural and natural resources that Tribal Nations have depended on since time immemorial. Many non-Indigenous solutions to the climate crisis and sea level rise impacts have not accounted for Indigenous Knowledge and value systems, which often include ecosystem-based management, as well as prioritization of non-human relations and environment over human benefits and use. For many Tribal Nations, the relationship with the ocean is one of stewardship and reciprocity. Examples of this stewardship and reciprocity include caring for and protecting coastal ecosystems, sustainable fishing and harvesting practices, and ceremonial offerings to show respect for the ocean. In recent decades, Tribal Nations have also been involved in regional ocean partnerships and action plans.

For example, representatives from USET SPF member Tribal Nations served and continue to serve on regional Ocean partnership committees such as the Northeast Regional Ocean Council (NROC) and the Mid-Atlantic Committee on the Ocean (MACO). Tribal Nation representatives have served on these regional ocean partnership committees since their founding during the Obama-Biden Administration from 2008 to 2016. We acknowledge that the Climate Crisis is very real and anthropogenic climate change is

also impacting the ocean, such as warming waters and ocean acidification. We acknowledge secondary impacts from runoff pollution, which is causing harm for many marine species and ecosystems, and, in turn, harming the well-being of many human communities, especially Tribal Nations that depend on the ocean and its resources to support our cultural and subsistence lifeways. As climate change alters oceanic habitats, many species, such as the North Atlantic Right Whale, are forced to relocate for foraging and survival. This endangered keystone species survival is further tested due to changing Ocean currents. Climate change is weakening the Atlantic Meridional Overturning Circulation (AMOC) system; the system responsible for circulating water from South- to-North Atlantic. A weakened system results in the recent increase in frequency and severity of global natural disasters, such as wildfires and droughts; complete AMOC system collapse ramifications are unknown. We fully support measures to protect the ocean, such as the protection and restoration of ecosystems that sequester carbon and support biological diversity, expansion and protection of marine protected areas, responsible and sustainable energy development, and decarbonizing shipping, but we would also caution against placing an undue burden on the ocean to solve the climate crisis, such as through expediting NEPA and other permit approvals for offshore wind development. We caution the federal government that fast tracking these necessary permit approval processes runs the risk of replicating environmental degradation and environmental justice situations on ocean spaces as those that have occurred on terrestrial spaces.

Concerns with Offshore Wind Development Without Proper Tribal Consultation and the Streamlining of Permit Review Processes Resources

In March 2021, the Biden Administration [announced](#) an ambitious goal to deploy 30 gigawatts of offshore wind electricity generation by 2030. This initiative is aimed at supporting energy independence, strengthening the national domestic supply chain, and job creation. Upon announcing the Administration's offshore wind energy directive, the National Climate Advisor along with the Heads of the Departments of the Interior, Energy, Commerce, and Transportation met with state officials, industry executives, and labor leaders to announce new leasing, funding, and goals to advance the Administration's clean energy goals. Since then, the Department of the Interior (DOI), through its Bureau of Ocean Energy Management (BOEM), has approved two large-scale offshore wind projects, Vinyard Wind, and South Fork Wind, which are now under construction. In a recent White House [Press Release](#), it was announced that BOEM is on track to complete at least 16 offshore wind project plans by 2025. Additionally, DOI issued a [Press Release](#) on January 12, 2023 announcing proposed regulations to modernize and streamline review processes for offshore wind. Under Section VII(5) of BOEM's [Notice of Proposed Rulemaking](#), the agency stated:

“BOEM has evaluated this proposed rule under DOI's consultation policy...BOEM's tribal consultation guidance...and the criteria in E.O. 13175. BOEM does not believe that this proposed rule itself would have substantial direct effects on Tribes...and, hence, has concluded that consultation under the DOI and BOEM tribal consultation policies is not required. BOEM reached this determination in part because the requirements of this proposed rule are, in sum, administrative, technical, procedural, or interpretive in nature and they would not themselves have foreseeable particular, substantial direct impacts on tribal resources.”

BOEM, without first conducting initial outreach to Tribal Nations prior to its decision, determined that the proposed regulations to revise and streamline permitting review processes did not require Tribal consultation. This action does not align with the Administration's directive to support Tribal sovereignty and the Nation-to-Nation, government-to-government consultation process. Throughout this year, BOEM and leadership from DOI and the Bureau of Indian Affairs have hosted a number of formal and informal discussions with Tribal Nations regarding the permitting and development of offshore wind projects. With

increasing urgency, Tribal Nations have expressed our serious concerns that the present process has moved with remarkable speed and with wholly inadequate provisions for meaningful Nation-to-Nation, government-to-government consultation and consensus surrounding the siting, permitting, and deployment of these projects. This lack of meaningful consultation or adequate resolution to our concerns has effectively marginalized and silenced the voices of Tribal Nations, whose waters, natural resources, traditional lifeways and submerged cultural sites, once again, face destruction in the name of progress. The Biden Administration has rightfully committed to developing renewable energy to combat the existential threat of climate change. Tribal Nations are the first to agree with this priority and are ready to work collaboratively towards a reasonable implementation of necessary infrastructure deployment—including offshore wind development. However, we cannot be passive when Tribal sovereignty is discounted and threats to our traditional communities, current and ancient homelands, sacred sites, and irreplaceable cultural resources are overlooked or dismissed.

Another example of a failure to properly consult with Tribal Nations occurred in 2019 when BOEM announced to Tribal Nations a change in its scoping and permitting processes to combine the required Section 106 National Historic Preservation Act (NHPA) and NEPA evaluations into one Environmental Impact Statement (EIS) evaluation process—without Tribal consultation. Without meaningful Tribal input, proposed offshore wind projects will have a profoundly negative, or more accurately, a devastating impact on the waters and seabeds our people have lived on or near since time immemorial. Our submerged cultural and sacred sites face complete destruction or irreparable damage unless sincere planning for avoidance, impact minimization or mitigation is conducted in collaboration with affected Tribal Nations. In addition, hasty actions to deploy offshore wind may further endanger or cause the extinction of critical sea life in these areas. Reports have indicated that unprecedented numbers of whales and other species have already died during periods of offshore wind site exploration. These species are our relatives and, as seafaring peoples, integral to our traditional lifeways and cultural practices. The United States has solemn legal and moral obligations to protect our ways of life and this includes preserving these priceless ecosystems, so that our future generations may continue to live according to our traditions.

BOEM is currently considering additional offshore wind project proposals and several Tribal Nations, both within and outside the USET SPF region, continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, traditional lifeways, and aquatic life. The development of these projects is moving forward without necessary avoidance and mitigation measures or impact aid to Tribal Nations. In recognition of these concerns, USET SPF adopted [USET SPF Resolution No. 2023 SPF:013](#), which urges a temporary moratorium on BOEM's offshore wind scoping and permitting processes until a Nationwide Programmatic Agreement (NPA) is developed and agreed upon with Tribal Nations.² USET SPF has been engaged with BOEM and the other agencies within DOI regarding ongoing concerns with offshore wind development absent Tribal consultation. Any type of offshore development that is outside of Tribal Nations' jurisdictional boundaries must require Tribal engagement and consultation prior to the issuance of any new offshore leases. Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied³ and our cultural heritage is preserved. We are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the Administration's offshore wind deployment goals. These conversations and

² USET SPF partner organizations, the National Congress of American Indians and the Affiliated Tribes of Northwest Indians, share these concerns and have passed similar resolutions.

³ USET was instrumental in the creation of the Federal Communications Commissions' (FCC) Tower Construction Notification System that provides for expedited cultural reviews of cell phone tower siting, as well as a [best practices agreement](#) between member Tribal Nations, the FCC, and project proponents.

considerations must be included in CEQ and OSTP's development of an Ocean Justice Strategy since it involves important aspects of advancing the Administration's commitment to environmental justice.

The federal government must uphold its trust and treaty obligations by ensuring it, and non-Tribal developers of these projects, engage and consult with Tribal Nations early in the process when considering an award for a lease for development of these projects. Similarly, in the event our cultural and sacred sites and cultural lifeways are disrupted, disturbed, and otherwise adversely impacted, the federal government as well as the non-Tribal developer must be held accountable and provide mitigation measures, impact aid, and other necessary resources to Tribal Nations. Tribal Nations have already sacrificed too much in the way of land loss, the destruction of our communities, cultural heritages, and sacred sites, and the exploitation of our natural resources.

An Ocean Justice Strategy Must Provide Resources and Technical Assistance for Tribal Nations

USET SPF strongly opposes the streamlining of NEPA and other permitting review processes without early engagement and consultation with Tribal Nations. Just as the federal government has trust and treaty obligations to protect our cultural heritage and well-being, it also has obligations to empower us to exercise self-determination and utilize funds and other resources to protect what is important to us. The current resources available to Tribal Nations to fully participate in the NEPA and NHPA review processes have always been inadequate – yet another reminder of the federal government's failure to uphold its trust and treaty obligations to fully fund technical assistance and support for Tribal Nations. For instance, while funding for Tribal Historic Preservation Officers (THPOs) received an increase in Fiscal Year 2023 appropriations – after remaining stagnant for far too long – these funding levels are still insufficient to support the costly and time-consuming review of leases and permits for proposed infrastructure projects. This issue is further compounded due to enactment of the COVID-19 relief laws and the recent Bipartisan Infrastructure Law and Inflation Reduction Act that are making historic investments in infrastructure deployment. These investments are further exacerbating and straining the resources, personnel, and capacity of Tribal Nations to participate in and review NEPA permits within and outside of our jurisdictional boundaries.

Furthermore, it is important to note that in the instances that Tribal Nations have a THPO and/or a cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed available capacity and resources. Review of these projects can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight authorities. Additionally, these individuals and departmental staff may fulfill multiple roles within their Tribal government due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role.

For these reasons, we urge CEQ and OSTP uphold its trust and treaty obligations to Tribal Nations and identify in its Ocean Justice Strategy appropriate funding, resources, and technical assistance available to Tribal Nations to fully engage in the NEPA, NHPA, and other permitting review processes for offshore wind development. Further, the Ocean Justice Strategy must direct agencies to identify, allocate, and include in annual budget requests to Congress, dollars required for Tribal Nations to fully participate in the permit review processes for offshore wind development. This would benefit both the federal government and Tribal Nations by hastening review processes, limiting the potential for costly and lengthy litigation, and advancing

the Administration's infrastructure/energy development initiatives. Indian Country is not opposed to renewable energy development, especially when those projects are being pursued and initiated by Tribal Nations. However, we do take issue when non-Tribal entities and agencies of the federal government do not properly engage and consult with Tribal Nations when these projects are occurring outside of our jurisdictional boundaries and threatening our cultural, environmental, and natural resources and sacred sites. Development of an Ocean Justice Strategy must take into consideration these issues and provide proper guidance to federal agencies to address these issues through the appropriate allocation of resources, technical assistance, and other support required for Tribal Nations to fully participate in the permit review processes of offshore wind development.

Conclusion

In developing an Ocean Justice Strategy, CEQ and OSTP, as well as the Administration as a whole, must uphold the federal government's solemn trust and treaty obligations and fully consider the impacts these projects have on our lifeways, cultural heritage, sacred sites, and the public health and wellbeing of our communities. These actions would be consistent with the Administration's commitment to Indian Country and its "all of government" approach to uphold trust and treaty obligations that promote and advance our sovereign authorities to protect our lifeways, sacred sites (submerged and under threat of submersion), and the public health and safety of our communities. While we have been encouraged by the Biden Administration's stated commitment to upholding Tribal sovereignty, Tribal Nation co-management and co-stewardship of traditional lands and waters, and the incorporation of Indigenous Knowledge in federal decision-making, the BOEM process, to date, has not reflected those commitments. Further, BOEM's process has also not reflected and adhered to the enlightened trust obligations otherwise embraced by its parent agency, the U.S. Department of the Interior. We grow increasingly concerned that the pace of offshore wind development has already left Tribal Nations behind and playing catch-up. After centuries of federal efforts aimed at destroying our governments, cultures, and lifeways, this Administration must uphold its commitments to modernizing and strengthening its trust relationship with Tribal Nations. We look forward to continued dialogue and consultation on development of an Ocean Justice Strategy that fully supports Tribal sovereignty and the principles of proper Tribal consultation protocols and procedures. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director