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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Energy and Natural Resources Committee Hearing to, “Examine Federal Offshore Energy Strategy and Policies”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Energy and Natural Resources Committee with the following testimony for the record of the October 26, 2023 hearing to “Examine Federal Offshore Energy Strategy and Policies.” As a matter of Tribal sovereignty and self-determination, Tribal Nations continue to pursue the rebuilding of our Tribal economies, especially following the COVID-19 public health emergency. The deployment, upgrade, and maintenance of infrastructure on Tribal Lands remains a critical component of these efforts in our pursuit of Nation rebuilding. However, the deployment of new infrastructure projects, particularly those located outside of our jurisdictional boundaries, including energy infrastructure, and the streamlining of federal permitting processes remain a major concern for USET SPF because of the potential impacts to Tribal sovereignty, cultural and sacred sites, and the public health and lifeways of our communities. We have serious concerns with the ongoing authorization of offshore wind leases absent early and appropriate Tribal consultation, as well as the lack of funding and planning for avoidance and mitigation measures and impact aid to 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 advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Concerns with Offshore Wind Development Without Proper Tribal Consultation, Compliance with NEPA, and Resources and Technical Assistance for Tribal Nations

The planning and deployment of offshore wind energy projects without early and appropriate Tribal consultation has become an increasingly alarming issue throughout Indian Country. The recent, historic funding authorized by the Bipartisan Infrastructure Law and the Inflation Reduction Act have overwhelmed Tribal Nations and our chronically underfunded Tribal departments and personnel responsible for reviewing NEPA permit applications for infrastructure projects. The aggressive pursuit of offshore wind development has led to decisions to streamline or outright ignore federal responsibilities to appropriately engage in

^[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

consultation with Tribal Nations and hold non-Tribal developers accountable for Tribal engagement and coordination.

Tribal Nations are contending with the impacts of the deployment of offshore wind energy projects due to the failure of the Bureau of Ocean Energy Management (BOEM) to conduct appropriate consultation and engagement with Tribal Nations prior to the approval of permits for these projects and throughout their construction. Though these issues have the potential to impact Tribal Nations across the United States, several of these projects are currently under construction and affected USET SPF member Tribal Nations have been engaged with BOEM to avoid adverse impacts. However, BOEM has failed to properly consult with our member Tribal Nations and has not provided adequate plans for avoidance or mitigation.

Furthermore, it has recently come to our attention that human burials have been found on land associated with the Vineyard Wind project in Massachusetts in mid-October. However, affected Tribal Nations were not notified by BOEM about this discovery until confronted by Tribal leadership. Let it be strongly emphasized that USET SPF is not opposed to renewable energy development, especially when those projects are being pursued and initiated by Tribal Nations. The issue we have is 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.

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, 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 Subsequently, we have also adopted resolutions seeking [standardization of BOEM's mitigation procedure](#) and reemphasizing the need for an offshore wind development [moratorium in the absence of power purchase agreements](#). 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.

We understand that the Biden Administration has a goal of deploying 30 gigawatts of offshore wind electricity generation by 2030. However, this development, as well as the continued development of oil and gas on the Outer Continental Shelf, must not occur at the expense of destroying our sacred sites, cultural, natural, and environmental resources, and aquatic wildlife. Consistent with the Administration's commitment to Indian Country and "the whole of government" approach, the process must provide full mitigation through the completion of comprehensive and transparent procedures to appropriately protect Tribal Nation religious, cultural, environmental, and sovereign interests. We believe that the Administration's goals of developing clean energy and increasing Tribal co-management opportunities can and must be harmonized. Indeed, Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied 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.

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.

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 awarding 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 form of land loss, the destruction of our communities, cultural heritages, and sacred sites, and the exploitation of our natural resources.

Conclusion

The failure of the federal government to fully fund and uphold its trust and treaty obligations to provide critical resources for Tribal Nations to review the permitting of energy projects occurring outside our jurisdictional boundaries has resulted in the degradation and destruction of our cultural and natural resources, sacred sites, and public health. While we strongly support robust and strengthened national energy infrastructure, and energy infrastructure build-out in Indian Country and beyond, it must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health. Tribal Nations should not have to bear the brunt of these harms so the nation can further develop and transport its energy resources. Congress has solemn legal obligations to ensure the atrocities of the past do not continue to repeat themselves. We call upon this Committee to uphold trust and treaty obligations assist us in protecting our governments, cultures, and lifeways as offshore wind and other energy development continues.