



# USET

SOVEREIGNTY PROTECTION FUND

**Washington, DC Office**  
1730 Rhode Island Ave., NW, Suite 406  
Washington, DC 20036

**Nashville, TN Office**  
711 Stewarts Ferry Pike, Suite 100  
Nashville, TN 37214  
P: 615-872-7900 | F: 615-872-7417

*Transmitted Electronically*

July 22, 2024

Karen Baker  
Chief  
Office of Renewable Energy Programs  
Bureau of Ocean Energy Management  
Department of the Interior  
1849 C St NW  
Washington, DC 20240

**Re: USET SPF Comments to BOEM on NOA of Draft Environmental Assessment for Commercial Wind Lease Issuance on the Gulf of Maine, Docket No. BOEM-2024-0030**

Dear Chief Baker,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Bureau of Ocean Energy Management's (BOEM) Notice of Availability (NOA) of a draft Environmental Assessment (EA) for commercial wind lease issuance on the Gulf of Maine. The NOA of the draft EA was published by BOEM in the Federal Register on June 21, 2024, and assesses the potential impacts of wind energy-related leasing and associated activities on the Gulf of Maine. Currently, there are two anticipated Gulf of Maine lease sales for offshore wind development scheduled to occur in October 2024 and in 2028.

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.<sup>1</sup> 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.

Upon reviewing the draft EA published by BOEM, USET SPF has concerns regarding the lack of Tribal consultation and the draft EA's findings on potential impacts to Tribal Nations' cultural and historical resources and to culturally significant aquatic life. Our comments focus on the Department of the Interior's (DOI) failure to consult and engage with Tribal Nations in all stages of offshore wind development as

---

<sup>1</sup> 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*

required by law, and we urge BOEM to pursue an Environmental Impact Statement (EIS) or a Programmatic EIS (PEIS) to provide a comprehensive cumulative impact analysis of the proposed lease sales.

### **Tribal Nations Must be Consulted and Engaged During All Stages of Offshore Wind Energy Development**

For well over a year, several of USET SPF's member Tribal Nations have been contending with the rapid authorization and approval of offshore wind projects in our region. These Tribal Nations and USET SPF have repeatedly approached and engaged with DOI leadership and BOEM staff stating that proper and appropriate Tribal consultation must be conducted with the affected Tribal Nations prior to the issuance of any lease.

The United States' approval of offshore wind development projects often affects Tribal Nations' land, natural resources, cultural, and other rights recognized in treaties, statutes, and other legal authorities, since they are often placed on our historic territories and landscapes. Additionally, the United States has legal obligations to engage in Tribal consultation before taking actions that affect Tribal Nations and our rights—including embedded in Executive Order 13175, the National Historic Preservation Act, the National Environmental Policy Act, and other legal authorities. The obligations to engage in Tribal consultation and to protect Tribal Nations' land, natural resource, cultural, and other rights are also recognized in international law, including within the United Nations Declaration on the Rights of Indigenous Peoples, and United States federal Indian law has since its inception borrowed foundational concepts from international law. USET SPF and our member Tribal Nations have time and again told DOI that its actions with regard to offshore wind development have violated these legal obligations. DOI must slow down and engage in offshore wind development responsibly, with Tribal Nations at the table every step of the way.

BOEM is currently considering two lease sales on the Gulf of Maine for offshore wind development, and Tribal Nations continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, and the protection and preservation of aquatic life. Nonetheless, the Administration has indicated that the development and deployment of these projects is and will keep moving forward to meet the President's goal of deploying 30 gigawatts of offshore wind by 2030.

Tribal Nations have expressed concern that the pursuit of this goal at all costs will push DOI to move forward without the necessary avoidance and mitigation measures to protect our cultural lifeways, resources, and livelihoods, and without the necessary and equitable impact aid to Tribal Nations that is provided to state and local governments. In recognition of these concerns, USET SPF has 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.<sup>2</sup> USET SPF has also adopted [USET SPF Resolution No. 2024 SPF:001](#), which urges BOEM to standardize its mitigation procedures with Tribal Nations for offshore wind energy projects. Despite our repeated requests to halt construction of current and future offshore wind energy projects until appropriate consultation and mitigation efforts have taken place, BOEM has not considered enacting a moratorium. Although BOEM has engaged in some consultation with Tribal Nations on this matter, as stated in its draft EA, these issues remain unresolved and persist, and this consultation was by no means adequate.

---

<sup>2</sup> 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.

We strongly urge BOEM to pursue consistent consultation, outreach, and engagement with Tribal Nations and involve us in every step of the process in developing offshore wind projects. Since DOI has already declared that it will move forward with the two lease sales on the Gulf of Maine in October 2024 and in 2028, Tribal Nations must be at the table and have the appropriate technical assistance to fully participate in the environmental, cultural, and historical reviews necessary as part of any additional federal approvals before construction takes place.

We note that the issuance of a lease by BOEM to a lessee conveys no right to proceed with construction of a wind energy facility. However, a lease sale sets in motion both lessee expectations and future destructive activities that could affect our historic territories and landscapes. Therefore a lease sale should be preceded by sufficient Tribal consultation and environmental and cultural review. Additionally, BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) must strictly monitor lessees to ensure that any terrestrial or seabed disturbance does not occur prior to the receipt of additional federal approvals and the required environmental, cultural, and historical reviews that must accompany them. Our Tribal Historic Preservation Officers (THPOs) and our cultural/natural resources department staff must be involved in those future reviews.

### **The Federal Government Must Provide Tribal Nations the Resources Necessary to Fully Engage in Consultation**

It is important to note that, in the instances where Tribal Nations have a THPO and/or 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 their 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 federal and state agency jurisdictions. Furthermore, these individuals and departmental staff may fulfill multiple roles within a Tribal government due to historic and persistent funding shortfalls for these and other positions. This is, in large part, due to the federal government's failure to uphold its trust and treaty obligations to provide the required resources and funding to Tribal Nations.

We remind BOEM that it must collaborate with Tribal Nations to provide the necessary technical assistance, resources, funds, and personnel required to properly engage with BOEM and its partners in environmental, cultural, and historical reviews. This is a matter of upholding trust and treaty obligations to Tribal Nations.

Moving forward, this includes supporting our participation in evaluating a lessee's Construction and Operations Plan (COP) for proposed development associated with the lease sales on the Gulf of Maine. Once the lease sales occur, Tribal Nations must have the appropriate resources and personnel to review any COP developed by a lessee to ensure that any construction activities do not harm our cultural and other resources. This must be done to ensure that our cultural lifeways, areas of cultural significance, and aquatic life central to Tribal commercial enterprises and subsistence are protected from any potentially harmful effects—this includes any potentially harmful short term and long-term effects.

### **BOEM Must Conduct an EIS Because the Development of Offshore Wind on the Gulf of Maine is Likely to Affect the Cultural and Historical Resources of Tribal Nations in the Region**

We strongly urge BOEM to initiate an Environmental Impact Statement (EIS) or Programmatic EIS to fully determine the impacts of wind energy development that may result from the two lease sales on the Gulf of Maine.

In reviewing the draft EA published by BOEM, concerns arise regarding potential impacts from wind energy development to cultural resources and aquatic life on the Gulf of Maine. Specifically, under Appendix B, Sec. B.4.6, “Cultural, Historical, and Archeological Resources”, the draft EA acknowledges that:

“Potential adverse physical impacts on marine cultural resources and terrestrial cultural resources are possible, depending on the location of future seafloor and ground disturbing activities. Implementation of existing federal and state cultural resource laws and regulations would reduce the severity of potential impacts in the majority of cases, resulting in overall **moderate** impacts on cultural resources.”

Any possible disturbance to Tribal cultural resources, whether terrestrial or submerged, is unacceptable. Tribal Nations have consistently borne the brunt of infrastructure development to further the federal government’s goals and objectives, and the pursuit and development of offshore wind energy projects is no exception. The environmental and cultural reviews associated with an offshore wind lease sale must consider the potential impacts that will flow from that sale—including the impacts of development.

While **we are not opposed to renewable energy development** to combat the harmful effects of climate change and to pursue efforts in eco-friendly sustainability, this must not be pursued at the expense of our cultural lifeways, resources, and heritage. For too long, Tribal Nations have had to contend with the federal government and industry fast tracking development projects without ensuring that we are at the table for decision making and that we have the necessary resources, funds, and personnel required to participate in the environmental, cultural, and historical review processes.

### **Conclusion**

The federal government has fast-tracked wind energy project approval and construction without upholding trust and treaty obligations to consult with Tribal Nations meaningfully and appropriately. These actions have resulted in the deplorable disturbance and destruction of our submerged sacred sites, the callous unearthing of our ancestors at submerged burial grounds, and disruptions to our cultural lifeways.

As BOEM reevaluates how it consults and engages with Tribal Nations, USET SPF urges that DOI—prior to the issuance of a lease, as well as prior to any construction activities —ensure that all required environmental, cultural, and historical reviews are conducted, that Tribal Nations are full partners throughout the process, and that Tribal Nations are provided the resources necessary to fully engage. While BOEM has stated that the issuance of a lease does not authorize a lessee to initiate construction activities, Tribal Nations must receive assurances that BOEM and its partners will monitor and enforce this stipulation. This must be enforced to ensure that no terrestrial or seabed disturbance occurs prior to the completion of the required environmental, cultural, and historical review processes.

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](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director