

United States Senate

WASHINGTON, DC 20510

September 27, 2024

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Elizabeth Klein
Director
Bureau of Ocean Energy Management
1849 C Street NW
Washington, D.C. 20240

Kathryn E. Kovacs
Director
Bureau of Safety and Environmental
Enforcement
1849 C Street NW
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Dear Director Young, Director Klein, and Director Kovacs:

We write to urge the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) to ensure early and meaningful Tribal consultation and engagement regarding offshore wind projects. While the Biden administration has taken steps to ensure that Tribes have a seat at the table in the development and implementation of federal policies that affect them, we ask that these commitments are honored and meaningfully implemented in any work BOEM and BSEE conduct on offshore wind projects.

During the first week of his presidency, President Biden committed to more robust consultation with Tribal Nations when pursuing federal projects and policies that have Tribal implications.¹ In 2022, the Biden Administration directed agencies to give “meaningful consideration” to information shared by Tribes, ensure “adequate time to communicate” with Tribes, strive for consensus between federal agencies and tribal nations, and prioritize the participation of official Tribal leaders.² The Administration has also issued guidance for agencies to more intentionally incorporate Indigenous Knowledge in federal decision-making.³ Relatedly, the Council on Environmental Quality issued the National Environmental Policy Act (NEPA) Implementing Regulations Revisions Phase 2 final rule, which recognizes Indigenous Knowledge as “high-

¹ The White House, “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,” January 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>.

² The White House, “Memorandum on Uniform Standards for Tribal Consultation,” November 30, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/>.

³ Council on Environmental Quality, “Guidance for Federal Departments and Agencies on Indigenous Knowledge,” November 30, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>.

quality information,” requires consideration of a project’s “effects on Tribal resources,” includes adverse effects on “Tribal sacred sites” on the list of factors for procedural analysis, and emphasizes the importance of robust Tribal engagement.⁴ In 2023, President Biden also issued Executive Order 14112, further advancing Tribal self-determination and directing agencies to better support equitable program access for Tribes.⁵

Building on the Administration’s efforts, the Department of Interior (DOI), of which BOEM and BSEE are part, committed to “regular and meaningful” Tribal consultation, including a policy of “encourag[ing] early, interactive, pre-decisional, informative and transparent consultation,”⁶ and to act as co-stewards of public lands in partnership with Tribes.⁷ DOI also established a model to not only consult Tribes but to seek their consensus, particularly on issues that most directly impact Tribal interests.⁸

These commitments build on existing statutory mandates to consult with Tribes,⁹ as well as the longstanding Executive Order 13175 requiring agencies to “ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”¹⁰ BOEM, BSEE, and DOI more broadly, must uphold these commitments for any ongoing and future projects, including the establishment of Wind Development Areas and offshore wind project developments, and the management of offshore wind operations.

As offshore wind projects have grown, some Tribes have raised environmental, cultural, and sovereignty concerns about the projects and noted the lack of meaningful Tribal consultation.¹¹

⁴ Council on Environmental Quality, Federal Register Notice, “National Environmental Policy Act Implementing Regulations Revisions Phase 2,” May 1, 2024, <https://www.federalregister.gov/documents/2024/05/01/2024-08792/national-environmental-policy-act-implementing-regulations-revisions-phase-2>.

⁵ Exec. Order No. 14,112, 88 FR 86021 (2023).

⁶ U.S. Department of the Interior, “Interior Department Strengthens Tribal Consultation Policies and Procedures,” press release, December 1, 2022, <https://www.doi.gov/pressreleases/interior-department-strengthens-tribal-consultation-policies-and-procedures>.

⁷ U.S. Department of Interior, “Interior Department Issues Guidance to Strengthen Tribal Co-Stewardship of Public Lands and Waters,” September 13, 2022, <https://www.doi.gov/pressreleases/interior-department-issues-guidance-strengthen-tribal-co-stewardship-public-lands-and-waters>; U.S. Department of Interior, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,” November 15, 2021, <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>.

⁸ Department of Interior, “Departmental Manual Chapter 4: Department of the Interior Policy on Consultation with Indian Tribes,” November 30, 2022, p. 8, https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4_2.pdf.

⁹ *See, e.g.*, National Historic Preservation Act of 1966, Public Law 89-665, the National Environmental Policy Act of 1969, Public Law 91-190.

¹⁰ The White House, “Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments,” November 9, 2000, <https://2009-2017.state.gov/documents/organization/136740.pdf>.

¹¹ Congressional Research Service, “Offshore Wind: The Bureau of Ocean Energy Management’s Engagement with Federally Recognized Tribes,” May 3, 2024, <https://crsreports.congress.gov/product/pdf/IF/IF12650#:~:text=Pursuant%20to%20such%20authorities%2C%20BOEM,%2C%20cultural%2C%20and%20religious%20sites;Confederated%20Tribes%20of%20Coos%20and%20Lower%20Umpqua%20and%20Siuslaw%20Indians,tribe-disappointed-with-wind-energy-decision-citing-failure-of-boem-to-honor-its-obligations-to-tribe-and-impacts-to-fisheries-cultural-resources-and-heritage/>; Letter from Representative Raúl M. Grijalva, et al.,

In Massachusetts, the Wampanoag Tribe of Gay Head Aquinnah and Mashpee Wampanoag Tribe have expressed concern about BOEM’s level of meaningful government-to-government consultation during the permitting process for recent offshore wind projects. Tribal leaders report that, at times, BOEM merged Tribal consultation sessions into the same meetings as stakeholder sessions, failing to ensure separate consultation meetings with federally recognized Tribes. A recent wind turbine blade malfunction off the coast of Martha’s Vineyard has heightened Tribes’ concerns about the environmental and cultural implications of offshore wind technologies and about federal agencies’ inadequate communication with the Tribes.¹²

It is imperative that Tribal Nations’ concerns are heard and effectively addressed during the development of federal decisions that have Tribal implications. We urge BOEM to meaningfully engage with Tribal Governments and their Tribal Historic Preservation Officers (THPOs) early and consistently in the course of developing offshore wind projects, including holding separate government-to-government consultation sessions with Tribal Nations as part of the NEPA and National Historic Preservation Act processes. We also urge that Tribes be designated as cooperating agencies to ensure meaningful participation in project scoping, permitting, operations, and decommissioning. Tribal officials, THPOs, and other Tribal leaders offer expertise on such projects’ environmental justice implications — which the Administration has committed to weighing¹³ — and on other critical considerations, such as the projects’ potential socioeconomic implications and impacts on sacred sites. Furthermore, we ask that BOEM and BSEE work with relevant partner agencies to swiftly notify, communicate, and respond to Tribal stakeholders regarding any new or ongoing issues affecting offshore wind projects and the surrounding area.

We recognize that engagement in highly technical, nascent industries like offshore wind can be resource intensive, presenting a systemic challenge for Tribes. Therefore, we also urge BOEM to identify and implement strategies to provide Tribes with the financial and technical assistance to meaningfully engage in consultations, including through effective compensation for Tribal reviews. This kind of aid is not unprecedented; for example, in 2022, the Federal Permitting Improvement Steering Council allocated \$5 million to Tribes “in order to enhance Tribal engagement in the permitting review and authorization process” for certain projects.¹⁴ We are

to Bureau of Ocean Energy Management Director Elizabeth Klein, May 23, 2024, <https://democrats-naturalresources.house.gov/imo/media/doc/2024-5-23%20RG%20JH%20VH%20to%20BOEM%20re%20Tribal%20Consultation%20on%20Offshore%20Wind.pdf>; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, “Tribe Files Lawsuit to Stop BOEM’s Wind Energy Lease Sale and Require More Extensive Analysis of Wind Energy Impacts,” Morgan Gaines, September 17, 2024, <https://ctclusi.org/tribe-files-lawsuit-to-stop-boems-wind-energy-lease-sale-and-require-more-extensive-analysis-of-wind-energy-impacts/>.

¹² New York Times, “A Giant Offshore Wind Turbine Blade Breaks, Prompting Beach Closures,” Brad Plumer, July 16, 2024, <https://www.nytimes.com/2024/07/16/climate/wind-turbine-breaks-nantucket.html>; Martha’s Vineyard Times, “Aquinnah tribe calls for moratorium on offshore wind development,” Eunki Seonwoo, July 22, 2024, <https://www.mvtimes.com/2024/07/22/aquinnah-tribe-calls-moratorium-offshore-wind-development-2/>.


¹³ The White House, “Justice40,” <https://www.whitehouse.gov/environmentaljustice/justice40/>; Executive Office of the President, “Memorandum for the Heads of Departments and Agencies,” July 20, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

¹⁴ U.S. Federal Permitting Improvement Steering Council, “Federally Recognized Tribes Receive Groundbreaking Investment to Aid in FAST-41 Covered Infrastructure Project Permitting Reviews,” December 1, 2022,

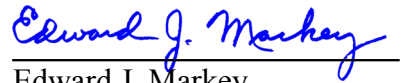
supportive of increased assistance to better meet Tribal needs and encourage DOI to help address the technical and staff capacity issues faced by Tribes, to ensure that they can adequately engage in and keep pace with project consultations.

We believe these steps are important for BOEM and BSEE to fully implement the Biden Administration's commitments to honoring Tribal sovereignty and to pursuing robust government-to-government consultation with Tribes. Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator