



# MAKAH TRIBAL COUNCIL

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Jean Thurston-Keller, Project Coordinator  
Bureau of Ocean Energy Management, Pacific Region  
Office of Strategic Resources  
760 Paseo Camarillo (Suite 102)  
Camarillo, California 93010

October 31, 2023

*Re: Makah Indian Tribe's comments on Draft Wind Energy Areas – Commercial Leasing for Wind Power Development on the Oregon Outer Continental Shelf (OCS), BOEM-2023-0033*

Dear Ms. Thurston-Keller,

The Makah Indian Tribe, through its elected Tribal Council, appreciates the opportunity to provide comments on the Bureau of Ocean Energy Management (BOEM) Draft Wind Energy Areas – Commercial Leasing for Wind Power Development on the Oregon Outer Continental Shelf (OCS) (BOEM-2023-0033). For several years, the Makah Tribe has been working to develop climate resilience and adaptation measures within the Makah community and our reservation on the northwestern corner of the continental United States. That effort includes advocacy for federal, state, and international action on climate change. We fully recognize the need for bold action to address the climate crisis, including exploring development of reasonable and fully vetted renewable energy projects. However, these advances must not come at the expense of the Tribe's treaty rights, cultural practices, and the ability to make a livelihood from the marine resources in the waters adjacent to the Makah Reservation.

The Makah Tribe, like many other Tribal nations, state governments, and local organizations, calls for a complete halt in BOEM's process to establish offshore wind energy on the West Coast, including the determination of potential wind energy areas ("WEAs") off the coast of Oregon, until BOEM completes the necessary scientific studies and analyses identified below and conducts meaningful consent-based consultation with the Makah Tribe and all other affected Tribes.

### **The Makah Tribe**

The 1855 Treaty of Neah Bay between the Makah Tribe and the United States is the legal mechanism by which the Makah people actively maintain our cultural identity and practice our spiritual beliefs. The existence and well-being of the Makah Tribe has always been closely tied to our relationship with the ocean. The Makah hold a spiritual reverence for and have inexorable ties to the ocean and its bountiful natural resources. Tribal leaders and Makah tribal members are charged by tradition to ensure the continuation of our culture through the conservation of, continued access to, and ability to utilize our natural resources.

The 1855 Treaty also reserves the Makah Tribe's right to exercise inherent sovereign authority over our treaty protected areas and co-management of the resources found there. The Treaty expressly

reserves the right of the Makah Tribe to whale, seal, and fish within the Tribe's Usual and Accustomed Fishing Grounds and Stations ("U&A") and to hunt and gather on open and unclaimed lands. Our current adjudicated U&A extends north to Canadian waters, south to the Norwegian Memorial, and approximately 40 nautical miles offshore of the Washington coast in the Pacific Ocean and east to Tongue Point in the Strait of Juan de Fuca, a total area of approximately 1,550 square miles of marine territory. The overall health of our Treaty resources depends upon the interconnected ecosystems of the California Current, Alaska Current, and the Strait of Juan de Fuca as resources migrate and live out their lifecycles within these ecosystems and beyond. As set forth in the Makah Ocean Policy, the Makah area of interest extends throughout the "ocean, marine, and coastal actions in the Pacific Rim region as well as inland freshwater areas where Makah governing, and treaty interests are present and where treaty resources migrate or rear." Our treaty rights are place-based, meaning that Makah fishermen, unlike non-Native fishermen, cannot simply fish elsewhere if changes to the ocean, such as offshore wind energy development, changes in shipping lanes, climate change, etc., disrupt fishing or access to the Makah U&A. Accordingly, to protect our treaty interests, we must consider the impacts of any offshore wind energy development on the entirety of the West Coast.

#### **A Complete Halt to BOEM's Process to Establish Offshore Wind Energy on the West Coast**

The Makah Tribe reiterates its demand that no further steps to be taken in BOEM's process for offshore wind energy on the West Coast until a cumulative analysis of the impacts of offshore energy, at the proposed scale and scope, is completed for the entire West Coast ecosystem and the natural resources and fisheries which it supports. Makah's continuing call for a complete pause aligns with many other agencies and entities that have identified specific studies and analyses that must be completed to provide BOEM, state and tribal governments, stakeholders, and the public with the information necessary to participate in the process going forward. Below we summarize the wide-ranging calls to better understand the potential impacts of West Coast offshore wind before proceeding with BOEM's process for identifying WEAs and subsequent steps in the leasing and development process that may follow.

#### **Studies Requested by NMFS West Coast Region**

Specifically, the National Marine Fisheries Service's ("NMFS") letter to BOEM Pacific Regional Director Doug Boren dated June 28, 2022 provides an initial set of research questions that are needed to establish a baseline of information for informed decision-making and informed consent-based consultation regarding offshore wind energy development off the West Coast. Although this letter is specific to Oregon, this research should be extended across the California Current Ecosystem. As outlined below, the Makah Tribe recommends that this research be led by qualified science agencies in partnership with Tribal Governments and BOEM. We provide a brief outline of those foundational questions and studies below:

- **Habitat Mapping:** BOEM must conduct extensive mapping and habitat data collection, in coordination with NMFS prior to leasing to identify sensitive areas so that these habitats can be excluded from leasing.
- **Upwelling:** BOEM must evaluate potential effects to oceanographic processes prior to identifying wind energy areas, including effects from the wind turbine structures themselves. Oceanographic effects from extraction of energy from the atmosphere during operation must be considered and evaluated, particularly with respect to effects on timing, duration, strength, and location of upwelling processes.

- **Comprehensive Marine Spatial Planning/Modeling:** BOEM must undertake formal spatial planning analyses using best-available data for present and future species distributions for offshore wind siting along the West Coast.
- **Integrated Baseline Data and Region-wide Monitoring:** BOEM must conduct integrated baseline data and region-wide monitoring, including active and passive acoustic and seabed and oceanographic habitat monitoring to understand the impacts of offshore wind on living marine resources and the West Coast marine ecosystem. The current guidelines and best practices contain major gaps in the understanding of habitat conditions, fisheries use patterns, and ecosystem conditions. Without consistent standardized approaches, it is not possible to thoroughly evaluate the impacts of offshore wind development.
- **Analyze Regional and National Impacts:** BOEM must work with NMFS, states, treaty fishing tribes, local tribal communities, coastal communities, and the Pacific Fishery Management Council to consider and evaluate the cumulative regional socioeconomic impacts of wind energy development and evaluate the impact such development may have on U.S. fisheries production and U.S. conservation goals. As discussed further below, the Makah Tribe reiterates its call for a programmatic environmental impact statement to fully evaluate the potential cumulative impacts of West Coast offshore wind development on the region's ecosystem, fisheries, tribal treaty rights, the regional economy, and other aspects of the human environment that will be affected by development at the scope and scale envisioned.

#### **Studies and Questions Raised by the PFMC**

Likewise, the Tribe supports the Pacific Fishery Management Council's (PFMC) April 12, 2023 Letter to BOEM Pacific Regional Director Doug Boren, which outlines similarly important questions that must be answered before BOEM proceeds with further West Coast offshore wind energy processes.

- **Use of Spatial Planning Tools:** BOEM must use spatial planning tools to help minimize the potential impacts offshore wind energy development may have on fisheries and ecosystem resources.
- **Production of Model Data Layers:** BOEM must produce model data layers, particularly those for habitat and ecosystem, related to upwelling and primary productivity.
- **Represent Temporal Variability:** BOEM must incorporate a better representation of temporal variability in the important fisheries off the coast of Oregon.
- **Identify Potentially Impacted Larval Nurseries:** BOEM must conduct a careful analysis of ecosystem impacts and identify sensitive areas such as larval nurseries that may be impacted by offshore wind development.

#### **A Programmatic EIS is Necessary**

Like NOAA and PFMC, the Tribe requests that BOEM works with NOAA and other science agencies to provide clear and complete information on the cumulative impacts of offshore wind development at the scale and scope currently being proposed. Given the science expertise and capacity of NOAA and NMFS, BOEM must work with these science agencies to produce a thorough and science-based programmatic environmental impact statement (EIS) for offshore wind for the West Coast. This will ensure that all potentially impacted governments and communities along the West Coast will have the information necessary to fully participate in the BOEM process. For Tribes, specifically, this information is essential to informed, science-based decision-making by Tribal governments regarding potential impacts to treaty resources, cultural practices, and other

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Tribal interests. BOEM's production of this information is necessary to support a consent-based consultation process with Tribal governments.

### **Consultation with the Makah Tribe**

As a Tribal Nation, Makah has a unique relationship with BOEM. As such, BOEM has a trust responsibility to understand and describe the potential impacts that the agency's decisions may have on Makah treaty rights and resources so that it can fully protect those rights and resources when undertaking any actions on offshore wind energy. In addition to providing the scientific analyses described above and adequately considering the impacts of these projects on the Tribe's rights and resources in the Pacific Ocean, BOEM must engage in meaningful, consent-based consultation with the Makah Tribe as outlined in the 2022 Department of the Interior Policy and Procedures on Consultation with Indian Tribes and the Consultation Procedures in the Makah Ocean Policy. Despite repeated attempts by the Makah to engage in meaningful consultation, BOEM has yet to incorporate tribal interests or concerns in agency decisions. As a federal agency, BOEM has a trust obligation to ensure that Makah's treaty resources, cultural practices, and community well-being are protected now and for the future.

The Makah Tribe requests that no further steps be taken in BOEM's offshore wind energy process on the West Coast until all the analyses described above are completed, BOEM conducts a thorough evaluation of all cumulative effects through a programmatic EIS and until a consent-based consultative process that prioritizes treaty rights is in place. Following this, BOEM and the Tribe must engage in consent-based consultation regarding the results of the studies and potential impacts to the Tribe and its rights, interests, and resources.

Thank you for the opportunity to provide the Tribe's comments and further explain its request for a complete halt to offshore wind energy processes on the West Coast while BOEM conducts the studies and evaluations that have long been called for by federal agencies, fisheries managers, and tribes. Please contact me ([timothy.greene@makah.com](mailto:timothy.greene@makah.com)) or the Tribe's Deputy General Manager Leanne Ellis ([leanne.ellis@makah.com](mailto:leanne.ellis@makah.com)) with any questions or for any additional information.

Sincerely,



Timothy J. Greene, Sr.  
Chairman  
Makah Tribal Council

Cc (by email):

Liz Klein, Director, BOEM

Douglas Boren, Director, BOEM Pacific Region

Whitney Hauer, Renewable Energy Specialist

David Ball, BOEM Pacific Region Historic Preservation Officer and Tribal Liaison

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**Pacific Fishery Management Council**

**Bryan Mercier, BIA Northwest Region Director**

**Mahvish Madad, U.S. Department of State**

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