



Northwest Indian Fisheries Commission

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July 17, 2024

Agenda Item C.1
Attachment 2
September 2024

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

Re: Tribal Opposition to Offshore Wind Development

Dear Director Klein:

I am writing on behalf of the Northwest Indian Fisheries Commission (NWIFC) and our 20 member tribes¹ to express our opposition to further offshore wind development on the US West Coast, and request that current activities be put on hold until treaty tribes' concerns regarding the adverse impacts on the marine environment and resources are addressed. Tribal nations are on the frontlines of the impacts of climate change and are acutely aware of the need to transition to renewable energy sources and decarbonize our energy sector. However, this transition must be done equitably and not unduly impact tribal treaty rights and treaty-reserved resources. As our federal trustee, BOEM is obligated to uphold and protect tribal treaty rights.

Treaty Rights

The NWIFC is composed of the 20 treaty tribes in western Washington with treaty-reserved, constitutionally protected rights to harvest and manage various natural resources throughout their usual and accustomed areas. *U.S. v Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) *aff'd* 520 F.2d 676 (9th Cir. 1975) *cert. denied*, 423 U.S. 1086 (1976) affirmed these rights, as well as the tribes' role as co-managers of the resources. Furthermore, as recognized in the United States Constitution², treaties are the supreme law of the land, and as such, impose the highest responsibility on the government having established a legal trust responsibility upon all agencies of the United States to protect tribes, tribal treaty rights, including fishing rights, and treaty-reserved resources. Federal courts have consistently required federal agencies to uphold tribal treaties and the rights tribes reserved in those treaties.

¹ The NWIFC member tribes are the Hoh, Jamestown S'Klallam, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S'Klallam, Puyallup, Quileute, Quinault, Sauk-Suiattle, Skokomish, Squaxin Island, Stillaguamish, Suquamish, Swinomish, Tulalip, and Upper Skagit.

² See "Supremacy Clause"; article 6, sec. 2, *United States Constitution*.

Member tribes of the NWIFC fish both commercially and for subsistence within their federally adjudicated usual and accustomed areas in the Pacific Ocean, which include marine waters on the outer continental shelf off the U.S. West Coast. Within these marine waters, tribes are co-managers of fisheries resources and the ecosystem that supports them. The tribes' area of sovereign interests includes, but are not limited to, all areas in which their treaty-reserved resources reside and migrate through, including the waters off Washington, Oregon, California, Alaska and Canada.

Opposition to Offshore Wind Development

The member tribes of the NWIFC are writing to collectively express opposition to further offshore wind development on the West Coast of the U.S., and request that current activities be put on hold until tribal concerns have been addressed. We believe that offshore wind development poses a significant threat to treaty-reserved resources and treaty rights. As our federal trustee, BOEM has a responsibility to ensure that these resources are protected for current and future generations.

Our primary concerns:

- **A lack of meaningful tribal consultation** – To date, BOEM's tribal consultation has been a box checking exercise that falls short of the requirements and commitments made in Executive Order 13175, the Biden Administration's Memorandum on Uniform Standards for Tribal Consultation (dated Nov. 30, 2022), and DOI's 2022 Consultation Guidance. Further, BOEM's tribal listening and information sessions that have been held regarding proposed offshore wind development on the U.S. West Coast do not constitute tribal consultation, nor do they provide an appropriate forum for meaningful engagement with tribal technical staff.
- **Impacts to treaty-reserved resources** – Floating offshore wind platforms on the U.S. West Coast is a newly developing industry, and many of the technologies being proposed for use are still under development. The potential impact of the widespread deployment of these platforms is poorly understood, and under current BOEM policies they will not be meaningfully considered until a lessee develops a Construction and Operations plan. This is unacceptable and places a high degree of risk on treaty-reserved resources and thus impinges on tribal treaty rights. Tribes are opposed to any form of mitigation, as this will come at the expense of and a diminishment of tribal treaty rights. As a first step to addressing these concerns, BOEM must complete the scientific analyses recommended by the National Marine Fisheries Service (NMFS) in their letter dated June 28, 2022, and address the concerns expressed by the Pacific Fishery Management Council's letter dated April 12, 2023. Ultimately, a comprehensive understanding of the impacts of offshore wind development on the entirety of the California Current Ecosystem is needed before offshore wind development proceeds.

- **Tribal capacity to meaningfully engage** – Tribal staff are fully committed to the management of their resources; however, new uses of the ocean are placing additional burdens on tribal rights and tribal treaty resources. For the tribes to meaningfully engage in the offshore wind development process they need additional staff to do so, initially 2 FTEs per potentially impacted tribe with technical, policy, and legal expertise. BOEM’s retaining of consultants on behalf of the tribes to assist does not constitute an increase in tribal capacity and is an insult to tribal sovereignty.

These concerns are not exhaustive, nor do they supersede the concerns of any individual tribe. Until these concerns are addressed, we remain opposed to offshore wind development on the U.S. West Coast and request that all current OSW development activities on the U.S. West Coast be put on hold.

We look forward to working with BOEM on this matter, and our member tribes look forward to engaging with BOEM in meaningful, consent-based consultation. Please contact Tommy Moore, NWIFC Oceanographer at tmoore@nwifc.org or (360) 640-5066 with any questions or if you would like to arrange a meeting of representatives from the member tribes of the NWIFC.

Sincerely,



Ed Johnstone
Chairman