

BUREAU OF OCEAN ENERGY MANAGEMENT TRIBAL CONSULTATION GUIDANCE

Final 9 December 2024

1. Purpose.

This document provides guidance for Bureau of Ocean Energy Management ("BOEM") consultation with Tribes and Alaska Native Claims Settlement Act of 1971 corporations ("ANCSA Corporations") as defined in this document concerning BOEM's actions ("Guidance").

2. Scope.

This Guidance applies to all activities of BOEM as addressed.

3. Objective.

This Guidance establishes BOEM procedures for consultation with Tribes and ANCSA Corporations. The Guidance supplements the authorities listed below in section 4 (collectively "Consultation Authorities"), which primarily guide BOEM consultation with Tribes and ANCSA Corporations. BOEM recognizes the unique legal relationship of the United States with Tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions.

4. Consultation Authorities.

- A. [Outer Continental Shelf Lands Act \("OCSLA"\), as amended](#), (43 U.S.C. §§ 1331 *et seq.*), and implementing regulations.
- B. Consolidated Appropriations Act, 2004, Pub. L. No: 108-199, Div. II. § 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div. H., Title V. § 518, 118 Stat. 2809, 3267 (2004).
- C. [Native American Graves Protection and Repatriation Act \("NAGPRA"\)](#)(25 U.S.C. 3001 *et seq.*).
- D. [National Historic Preservation Act, Section 106](#) (implemented through regulations at 36 CFR part 800).
- E. [Executive Order 13175 of November 6, 2000](#). *Consultation and Coordination with Indian Tribal Governments*. 65 Fed. Reg. 67249 (November 9, 2000).
- F. [Presidential Memorandum on Uniform Standards for Tribal Consultation](#) (30 November 2022).
- G. [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) (30 November 2022), memorandum issued by the Office of

Science and Technology Policy and Council on Environmental Quality.

- H. [Department of the Interior Policy on Consultation with Indian Tribes](#) (30 November 2022), 512 DM 4, Departmental Manual, Department of the Interior.
- I. [Department of the Interior Procedures for Consulting with Indian Tribes](#) (30 November 2022), 512 DM 5, Departmental Manual, Department of the Interior.
- J. [Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations](#) (30 November 2022), 512 DM 6, Departmental Manual, Department of the Interior.
- K. [Department of the Interior Procedures for Consultation with Alaska Native Claims Settlement Act Corporations](#) (30 November 2022), 512 DM 7, Departmental Manual, Department of the Interior.
- L. [Departmental Responsibilities for Indian Trust Resources](#), 1995, Department of the Interior 512 DM 2, Departmental Manual, Department of the Interior.
- M. [Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites](#), 1998, DOI 512 DM 3, Departmental Manual, Department of the Interior.
- N. [Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community, Chapter 1: Policy and Responsibilities](#) (30 November 2022), 502 DM 1, Departmental Manual, Department of the Interior.
- O. [Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community, Chapter 2: Committee on Collaborative and Cooperative Stewardship](#) (30 November 2022), 502 DM 2, Departmental Manual, Department of the Interior.
- P. [Requirement to Consult with the Native Hawaiian Community](#) (guidance on the Department of the Interior website).
- Q. [Secretarial Order 3342, Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources](#) (October 16, 2016).
- R. [Joint Secretarial Order 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters](#) (15 November 2021).

5. Definitions.

Terms used in this Guidance are defined as follows:

- A. **Tribe.** Any American Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally

Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a. The authoritative list of these Tribes is kept by the Bureau of Indian Affairs and given notice in the Federal Register (see, e.g., the [list of 574 Tribes](#) published in the Federal Register on 12 January 2023), BOEM will use the most recent such list.

- B. ANCSA Corporation.** Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, 43 U.S.C §§ 1601 *et seq.* as listed in section 1606 of that statute.
- C. Actions with tribal implications or ANCSA Corporation implications.** Actions that have the same meaning as defined for Tribes in 512 DM 4.3B and for ANCSA Corporations in 512 DM 6.3C. For Tribes, this includes any “Departmental regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes that may have a substantial direct effect on a Tribe” including but not limited to matters enumerated in section 4.3B. For ANCSA Corporations, this includes but is not limited to any “Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an ANCSA Corporation,” including but not limited to matters enumerated in section 6.3C. BOEM actions that may fall within one or both of these categories include, but are not limited to, a rulemaking, a notice to lessees (NTL), a lease sale; or approval of an oil and gas exploration or development plan, a renewable energy plan, a permit for a seismic airgun survey, a right-of-way, a right-of-use and easement, or a non-energy mineral lease or agreement. BOEM cannot delegate its responsibility for determining tribal implications to a Tribe, ANCSA Corporation, or other agency. However, BOEM will give close and respectful consideration to any opinions a Tribe or ANCSA corporation expresses about whether an action has tribal implications and the reasons given in support. Furthermore, BOEM recognizes its responsibility to assume that all actions with resource impacts may have Tribal implications and that invitations for consultation should be extended for those actions, including actions with implications for Tribal traditional homelands of removed Tribes ([512 DM 5.4.A.](#)) BOEM also recognizes its responsibility to consult with Tribal governments at their requests if “there is a reasonable basis to believe that a policy may have Tribal implications” and to consider engaging in consultation even if BOEM determines Tribal implications are absent if a policy is of interest to a Tribe or Tribes ([Presidential Memorandum 30 November 2023, section 4](#)).

- D. Formal government-to government consultation. Formal government-to-government consultation is a process based on a bilateral recognition of sovereignty and is generally focused on a given issue or set of issues, including compliance with a variety of statutes, policies and administrative actions that direct the Federal government to consult with Tribes. Consultations must follow all requirements of 512 DM 4 and 5 and are defined as having both BOEM and Tribal officials with decision-making authorities present at the government-to-government consultation sessions or meetings regarding the proposed BOEM action with tribal implications. See [512 DM 4.3C](#).
- E. Program Director means the BOEM Associate Director, Office of Strategic Resources ("OSR"); Associate Director, Office of Environmental Programs, or the Associate Director, Office of Renewable Energy Programs ("OREP").
- F. Regional Director means the BOEM Regional Director, Gulf of Mexico Region; Regional Director, Alaska Region; or the Regional Director, Pacific Region.
- G. Tribal Liaison Officer ("TLO") means the individual designated by the BOEM Director to carry out the responsibilities described in this Guidance for that position.
- H. Regional Tribal Liaison Officer ("RTLO") means an individual designated by a BOEM Regional Director to carry out the responsibilities described in this Guidance on behalf of a BOEM regional office.
- I. Tribal Working Group ("TWG") means collectively the TLO, Tribal Coordinator, RTLOs, and any other BOEM staff designated to assist with tribal matters.

6. Policy.

- A. BOEM will consult with Tribes or ANCSA Corporations in accordance with the Consultation Authorities. DOI policy for consultation with Tribes is stated in 512 DM 4.4 and policy for consultation with ANCSA Corporations is stated in 512 DM 6.4. These are as follows (footnotes omitted):

Tribes. "It is the policy of the Department to recognize and fulfill its legal obligations to identify, protect, and conserve Tribal trust resources; carry out its trust relationship with Federally recognized Tribes and Tribal members; and invite Tribes to consult on a government to-government basis whenever there is a Departmental Action with Tribal

Implications. All Bureaus and Offices shall make good-faith efforts to invite Tribes to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications. It is the policy of the Department to seek consensus with impacted Tribes in accordance with the Consensus-Seeking Model.” The model is presented in [Figure 1](#) of 512 DM 4, page 8.

ANCSA Corporations. "It is the policy of the Department to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Indian Tribes under Executive Order 13175. All Bureaus and Offices shall make good-faith efforts to invite ANCSA Corporations to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with ANCSA Corporation implications (see 512 DM 7 for consultation process). It is the policy of the Department to seek consensus throughout the consultation process.”

- B.** BOEM staff who represent the bureau in consultations (other than note-takers) should first complete training to promote positive relations with Tribes, including training on implementation of this policy and a review of: (1) The general history of the government-to-government relationship between the Federal Government and Tribes; (2) The treaty rights of Tribes; (3) The Federal trust obligation owed to American Indians (both individuals and Tribes) and Alaska Natives; (4) The culture and history of American Indians, Alaska Natives, and Tribes; (5) Existing consultation policies of the Tribe(s), as well as Tribal government structures, and decision-making processes. 512 DM 4.5E. The training should be designed to prepare staff for culturally attuned behavior and engagement. BOEM supervisors must ensure that this training requirement is met.

7. Responsibilities.

- A. BOEM Director.** The Director will represent BOEM in consultations and meetings with Tribes and ANCSA Corporations as circumstances warrant. The Director will extend invitations for consultation or will have the TLO extend invitations on the Director’s behalf for actions whose effect extends beyond one region or program (see section 7.D. below concerning consultations led by Regional Directors or Program Directors) or which otherwise the Director believes warrant elevation. Invitations will provide no less than 30 days’ notice and preferably 45 days unless exceptional circumstances require otherwise for scheduled consultations with Tribes ([512 DM 5.5.A \(4\)](#)) or ANCSA Corporations ([512 DM 7.4.A \(4\)](#)).

B. Tribal Liaison Officer. The BOEM TLO will:

1. Serve as BOEM's principal senior point of contact for tribal consultation matters and advise BOEM leadership in consultations and meetings with Tribes and ANCSA Corporations. The TLO may represent BOEM in consultations as circumstances warrant, but only if authorized in writing by the Director to exercise relevant authorities of the Director.
2. Promote and facilitate consultation and collaboration between BOEM and Tribes or ANCSA Corporations.
3. Designate alternate or supporting headquarters Bureau Tribal Liaison staff as needed and appoint a Tribal Liaison Coordinator (TLC) to assist the TLO.
4. Oversee compliance with the responsibilities set forth in the Consultation Authorities, including oversight and guidance on legal and policy requirements (including tribal treaty rights) developed in coordination with the Office of the Solicitor; and compliance with training, reporting, and other requirements.
5. Submit BOEM's tribal consultation annual reports to the DOI Tribal Governance Officer as specified in 512 DM 4.9.
6. For rulemakings and interpretive rules (e.g., NTLs and their equivalent) and for other significant guidance documents, policies, or procedures affecting more than one BOEM region and whose effect is not limited to a single program, unless circumstances warrant otherwise, make determinations on tribal implications in accordance with the following procedures:
 - a. The Office of Regulatory Affairs ("ORA") will notify the TLO of any proposals for new rulemakings, interpretive rules, or significant guidance documents, policies or procedures for the TLO to determine whether the action has tribal implications. The TLO may determine based on the documents provided whether the action has tribal implications and requires consultation under this Guidance. If the TLO believes that additional review is warranted before a decision is made, the TLO will distribute the documents to the TWG for review.
 - b. The TWG will review those proposed actions for which review is requested, in concert with the individual TWG members' regional

or program management and will make a written recommendation on tribal implications to the TLO, with reasons for the recommendation, before documentation to implement the action is advanced for approval. The TWG review may include discussions with Tribes or ANCSA Corporations that may be affected. If the TWG members disagree, they will present their differing recommendations in writing to the TLO. These recommendations and supporting documentation will be retained as part of the administrative record for the action and included for review in the process for approving the action.

The TLO will review recommendations from the TWG and will forward these and the TLO's determination on tribal implications to the Office Director, ORA and the Associate Solicitor, Division of Mineral Resources. The TLO will assist ORA in the preparation of summaries of the determinations in connection with the development of briefing materials, Regulatory Identification Number (RIN) request forms, and other documents required by the Department of the Interior.

ORA will provide the TLO with the text of proposed and final rulemakings, interpretive rules, and significant guidance documents, policies, or procedures before they are issued for the TLO to determine whether the initial determination on tribal implications remains correct in light of any changes in the planned content of the actions or other new information. ORA will ensure that the materials are forwarded early enough in the review process so that the TLO has time to perform an adequate review before the action is approved. For rulemakings, the TLO will assign staff to serve as a member of the BOEM rulemaking team and be responsible for keeping the TLO apprised of any potential tribal implications as the rule is developed. The TLO will notify ORA of any revised determinations and any associated actions promptly and early enough so that the rulemaking schedule can be accommodated.

- c. Unless circumstances warrant otherwise, the following text will be used as a template for providing determinations on tribal implications in the preamble to rulemakings and, with revision to fit the action addressed, to interpretive rules or other significant guidance documents, policies, or procedures:

Tribal Implications: "BOEM strives to strengthen its government-to-government relationship with American

Indian and Alaska Native Tribes through a commitment to consultation with the Tribes and recognition of their right to self-governance and tribal sovereignty. We are also respectful of our responsibilities for consultation with corporations established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C.1601 et s q. ("ANCSA"). BOEM has evaluated this rule under applicable Federal policies for consultation and has determined that the rule may have a substantial direct effect on one or more federally recognized Tribes or ANCSA Corporations, as defined in 512 DM 4.3, and that consultation is required." [Give the basis for the determination here.]

No Tribal Implications: "BOEM strives to strengthen its government-to-government relationship with American Indian and Alaska Native Tribes through a commitment to consultation with the Tribes and recognition of their right to self-governance and tribal sovereignty. We are also respectful of our responsibilities for consultation with corporations established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C.1601 et seq. ("ANCSA"). BOEM has evaluated this rule under applicable Federal policies for consultation and has determined that the rule has no substantial direct effects on any federally recognized Tribe or ANCSA Corporation, as defined in 512 DM 4.3, and that consultation is not required." [Give the basis for the determination here.]

C. Office Director, Office of Regulatory Affairs. The Chief, ORA, will:

1. Designate an ORA point of contact for tribal reviews.
2. As specified in section 7.B.6.a. above, notify the TLO and the Regional Director or Program Director of any affected region or program of any proposals for new rulemakings, RIN Requests or other memoranda related to the development of rulemakings, interpretive rules, significant guidance documents, policies, or procedures; and provide relevant documentation.
3. Represent BOEM, as circumstances may warrant, and otherwise provide coordination and assistance to the Director, TLO, Regional Directors, or Program Director in consultations and meetings with Tribes or ANCSA Corporations that may be affected by rulemakings, interpretive rules or other significant guidance documents, policies, or procedures.
4. Ensure that tribal implications text (section 7.B.6.c) approved by the TLO

is included in the preamble to rulemakings and in documents promulgating interpretive rules, other significant guidance documents, policies, or procedures whose issuance is coordinated by ORA.

D. Regional Directors and Program Directors.

1. Consultations for actions within specific geographic regions, including leasing and plan review, unless circumstances warrant otherwise, will be conducted by the appropriate Regional Director or Program Directors.
2. Consultations for actions affecting more than one geographic region but whose effect is limited to a single program, including rulemakings, NTLs and their equivalent, other significant guidance documents, policies or procedures, or the Environmental Studies Program, unless circumstances warrant otherwise, will be conducted by the Program Director overseeing the program area.
3. Regional Directors and Program Directors will:
 - a. Represent BOEM in consultations and meetings with Tribes and ANCSA Corporations as circumstances warrant.
 - b. Regional Directors will designate a BOEM RTLO, who will advise and assist the Regional Director in complying with this Guidance, will typically serve as the lead staff in facilitating regional tribal consultations and responses to them, and may represent BOEM in consultations as circumstances warrant but only if authorized in writing by the Regional Director to exercise their relevant authorities.
 - c. Inform potentially affected Tribes and ANCSA Corporations early in the development of individual oil and gas or renewable energy lease sales, marine mineral leasing and agreements, carbon sequestration leasing, study profiles on the national studies list ("NSL"), or other actions by BOEM within the region that may have tribal implications and invite expressions of interest in consultation.
 - d. Provide invitations to consult in accordance with paragraphs 1 and 2 above through appropriate individual communications to any potentially affected Tribes or ANCSA Corporations, in combination with public notices, as appropriate. Invitations will provide no less than 30 days' notice and preferably 45 days unless exceptional circumstances require otherwise for scheduled

consultations with Tribes [\(512 DM 5.5.A \(4\)\)](#) or ANCSA Corporations [\(512 DM 7.4.A \(4\)\)](#).

- e. If any Tribe or ANCSA Corporation requests consultation, determine whether the action has tribal implications, with advice as appropriate from regional and program tribal liaison staff; proceed in accordance with the Consultation Authorities, considering all applicable laws, including but not limited to any treaty rights; and memorialize the determination in writing.
- f. Provide Tribes and ANCSA Corporations with follow up as indicated by consultations.

E. Tribal Working Group. The TWG, facilitated by the TLO, shall:

- 1. Collaborate in carrying out responsibilities associated with those positions, including the responsibilities in section 7.B.6.b.
- 2. Identify and advance relationships and effective paths for communication with Tribes or ANCSA Corporations that may be affected by actions that BOEM's regional or program offices plan to take.
- 3. Take steps to advance implementation of the Consultation Authorities.
- 4. Prepare fiscal year annual reports in accordance with the reporting provisions of 512 DM 4, 5, 6 and 7 that address planning and progress. The reports should document decisions regarding tribal implications; document efforts to contact Tribes or ANCSA Corporations (phone, email, and written correspondence); and include or provide references to notes of meetings with Tribes or ANCSA Corporations.