



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 23 2018

The Honorable Tom McClintock  
Chairman  
Committee on Natural Resources  
Subcommittee on Federal Lands  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the May 17, 2018, legislative hearing on H.R. 2365, H.R. 4824, and H.R. 5023.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa, Ranking Member  
Committee on Natural Resources,  
Subcommittee on Federal Lands

**Committee on Natural Resources**  
**Subcommittee on Federal Lands**  
**Legislative Hearing**  
**1324 Longworth House Office Building**  
**May 17, 2018**  
**2:00 PM**

Legislative Hearing on the following bills:

- **H.R. 2365 (Rep. Paul Cook)**, To convey certain Federal land in California to Apple Valley, California, Twentynine Palms, California, Barstow, California, and Victorville, California. "*Desert Community Lands Act.*";
- **H.R. 3777 (Rep. Mia Love)**, To direct the Secretary of Agriculture to convey certain National Forest System land containing the Nephi Work Center in Juab County, Utah, to Juab County. "*Juab County Conveyance Act of 2017.*";
- **H.R. 4824 (Rep. John Curtis)**, To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes. "*Rural Broadband Permitting Efficiency Act of 2018.*"; and
- **H.R. 5023 (Rep. Eleanor Holmes Norton)**, To designate the Civil War Defenses of Washington National Historical Park comprised of certain National Park System lands, and by affiliation and cooperative agreements other historically significant resources, located in the District of Columbia, Virginia, and Maryland, that were part of the Civil War defenses of Washington and related to the Shenandoah Valley Campaign of 1864, to study ways in which the Civil War history of both the North and South can be assembled, arrayed, and conveyed for the benefit of the public, and for other purposes. "*Civil War Defenses of Washington National Historical Park Act.*"

**Questions from Rep. Hanabusa** for Timothy R. Spisak, Acting Assistant Director of Energy, Minerals, and Realty Management

1. According to the Bureau of Land Management's (BLM) website, Areas of Critical Environmental Concern (ACECs) are "areas within existing public lands that require special management to protect important and relevant values." During your testimony, you stated that the ACEC designation for the land that would be conveyed in Apple Valley, California under H.R. 2365 does not currently restrict the use of off-highway vehicles (OHV). However, the use of OHVs on ACEC land seems counter to the purpose of the ACEC designation. The extensive use of OHVs in the area has left it unsuitable

for almost any other use other than as an OHV park. Can you further elaborate on what exactly ACECs are, and how an OHV park can be designated as an ACEC?

**Response:**

Areas of Critical and Environmental Concern (ACEC) are areas where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, and wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards. ACECs are administrative designations in land use plans that are established by the Bureau of Land Management (BLM) through the land use planning process.

In the California desert, it is common to have overlapping management designations on BLM-managed lands. This illustrates the BLM's multiple-use mission and the unique mandate the Bureau has to manage the lands under the principles of multiple use and sustained yield so that they are utilized in the combination that will best meet the present and future needs of the American people. In the case of the Northern Lucerne Wildlife Linkage ACEC, which overlaps with the Stoddard/Johnson Special Recreation Management Area, extensive off-highway vehicle (OHV) use makes this area suited for special management as an OHV park. The BLM provides OHV recreation by authorizing use on designated routes that avoid certain wildlife areas. This dual management approach allows the BLM to offer recreational opportunities to the public while protecting wildlife and its habitat.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 23 2018

The Honorable Mike Lee  
Chairman  
Committee on Natural Resources  
Subcommittee on Public Lands, Forests, and Mining  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the May 9, 2018, oversight hearing entitled "*Law Enforcement Programs at the Bureau of Land Management & U.S. Forest Service, Coordination with Other Federal, State and Local Law Enforcement, and the Effects on Rural Communities.*"

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Ron Wyden, Ranking Member  
Committee on Energy and Natural Resources,  
Subcommittee on Public Lands, Forests, and Mining

**U.S. Senate Committee on Energy and Natural Resources**  
**May 9, 2018 Hearing:**  
***Law Enforcement Programs at the Bureau of Land Management & U.S. Forest Service,***  
***Coordination with Other Federal, State and Local Law Enforcement,***  
***and the Effects on Rural Communities***  
**Questions for the Record Submitted to Mr. Brian Steed**

**Question from Senator Ron Wyden**

**Question:** In Oregon, over 50% of the state is owned and managed by the federal government. Good relationships with Oregon communities, cities, counties, and tribes is critical to the management of thousands of acres and facilitate important public uses like recreation, ranching, and energy production.

Please provide specifics on how you are collaborating with Oregon entities to protect public lands and public land users.

**Response:** With 16.1 million acres of diverse BLM-managed public lands in Oregon and Washington, the BLM relies on interagency cooperation and support to assist in managing the public lands and public land users. BLM Law Enforcement seeks out partnerships and enters into contracts with local Oregon counties and the State entities to respond to issues ranging from archaeological theft and vandalism to natural disasters and drug trafficking. Currently, the BLM has 20 law enforcement service contracts with local Oregon government organizations. These service contracts are for patrols, dispatch, and other law enforcement services. The BLM also partners with local sheriff's offices, and is deputized in over ten counties throughout Oregon. In support of this partnership, the BLM regularly participates in the quarterly Oregon Sheriff's Association meetings and the yearly Western States Sheriffs Association meetings.

Drug trafficking is one issue of particular concern to law enforcement organizations nationwide. The BLM has a track record of coordinating with many states and localities throughout the west including Oregon to address this complex issue. The BLM is a board member for the High Intensity Drug Trafficking Areas (HIDTA) program for the Oregon-Idaho region. The HIDTA program, created by Congress with the Anti-Drug Abuse Act of 1988, provides assistance to Federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug trafficking regions of the United States. In Oregon, the BLM also has one agent assigned to the Douglas Interagency Narcotics Team, which is an initiative of the HIDTA program. The Douglas Interagency Narcotics Team was originally formed in October 1989 to help combat substance abuse issues affecting Douglas County, Oregon.

The work of BLM's 2017 Special Agent of the Year Charles "Chip" Mican of Roseburg, Oregon, is an outstanding example of what can be accomplished when BLM Law Enforcement collaborates with local law enforcement on this issue. Last September, Special Agent Mican assembled a team of local and Federal law enforcement officers to shut down illegal marijuana production in the Cascade-Siskiyou National Monument Soda Mountain Wilderness Area, which is managed by the BLM. Under his supervision, the team seized 700 pounds of marijuana, which had already been processed and packaged for distribution.

**U.S. Senate Committee on Energy and Natural Resources**  
**May 9, 2018 Hearing:**  
***Law Enforcement Programs at the Bureau of Land Management & U.S. Forest Service,***  
***Coordination with Other Federal, State and Local Law Enforcement,***  
***and the Effects on Rural Communities***  
**Questions for the Record Submitted to Mr. Brian Steed**

**Questions from Senator Steve Daines**

**Question:** I have heard concerns from Montanans regarding BLM conducted raids, particularly with the seizure of property when no charges are ultimately brought against the individual. It is concerning that raids can result in significant property damage and lengthy legal battles, sometimes taking close to a decade to return seized property, all when the individual is never charged with a crime. What steps has the agency taken to minimize the number of raids that do not result in criminal charges? How does the agency handle restoring seized or damaged property when a raid does not result in formal charges?

**Response:** Engaging in unnecessary or outsized law enforcement actions fractures the trust built between law enforcement and local communities. The BLM is working to enhance its good neighbor relationships with communities in the west where the public lands are located. Part of that work is ensuring that BLM Law Enforcement is perceived and operates as an asset and force multiplier in the community.

BLM Law Enforcement works closely with the Department of Justice's (DOJ) United States Attorney's Office (USAO) when proceeding with an investigation that could result in Federal prosecution. As the USAO has sole discretion to file criminal charges, BLM Law Enforcement works closely with the USAO when seeking a search warrant.

The USAO is responsible for evaluating and approving the BLM's request for a warrant before a BLM officer meets with a Federal Magistrate Judge to get the judge's approval and signature. Once a Federal Magistrate Judge has signed the warrant, the BLM officer is authorized to serve it. Search warrants are obtained and ultimately served only when criminal prosecution is the end goal of an investigation. After serving a search warrant and executing a search, and prior to leaving the premises where the search was conducted, BLM officers provide a copy of the warrant and an itemized list of the property that was seized. The property is retained as evidence pending further court proceedings.

In rare circumstances, prosecutors at the USAO decide not to file charges even after significant steps, such as authorizing a search, have been taken. After a case is adjudicated in Federal court, or if prosecution is declined, property seized as evidence is returned to its owner.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 22 2018

The Honorable John Hoeven  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to the questions received by the Bureau of Indian Education following the May 16, 2018, hearing before your Committee on "Protecting the Next Generation: Safety and Security at Bureau of Indian Education Schools". We apologize for the delay in our response.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional  
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall  
Vice Chairman

Senate Committee on Indian Affairs  
Hearing on "Protecting the Next Generation: Safety and Security at Bureau of Indian Education  
Schools"  
May 16, 2018

**Questions for Mr. Dearman**

**From Senator Daines**

**1. Mr. Dearman, would you agree that the abysmal physical surroundings at BIE schools hurt, not help, students who are already struggling with depression and suicidal thoughts?**

**BIE Response:** A healthy and safe classroom environment is critical to supporting the holistic needs of BIE students. In the FY 2018 Omnibus spending package, Congress funded the BIA and BIE at \$3.1 billion – an increase of \$204 million above the FY 2017 enacted level. This included \$129 million in infrastructure increases for schools and law enforcement. Through this funding, Indian Affairs is working to address the current backlog in school construction and maintenance as well as provide local technical assistance to increase school safety.

At the end of the second quarter of FY 2018, total deferred maintenance for education facilities was \$547 million, including \$380 million for buildings and \$167 million for grounds. Deferred maintenance for education quarters was roughly \$75 million. In total, there are 72 replacement eligible schools – 54 eligible due to poor condition and 18 eligible due to school age and proportion of students in portable units. This is in addition to the ten schools on the 2016 No Child Left Behind (NCLB) Replacement Schools list and the three previously funded schools from the 2004 NCLB replacement schools list.

The President's FY 2019 Budget request includes a legislative proposal to create a Public Lands Infrastructure Fund, which would help pay for repairs and improvements in national parks, national wildlife refuges, and BIE-funded schools. As the U.S. Department of the Interior works to expand its energy program on federal lands and waters, this initiative has the potential to generate much-needed infrastructure and maintenance funding that can better support the varying needs of BIE students.

**From Senator Heitkamp**

**Law Enforcement**

**1. Does BIE require all BIE schools to have emergency response plans in place, including for active shooter situations? If not, why? Does BIE require that each BIE schools have a certain base level of physical safety mechanisms in place (i.e. automatic door locks, security cameras, etc.)? If not, why?**

**BIE Response:** To ensure the welfare and safety of students and staff at BIE-funded schools, BIE utilizes safety personnel to provide national protocols and guidance throughout the BIE school system uniformly in reference to issues that are national in scope. BIE most recently updated its All Academic Staff Training and Preparedness guidance on January 12, 2018 and provided it to schools through BIE Education Program Administrators who work directly with school leaders. The form lists mandatory and recommended trainings and provides checklists for school leaders to plan and complete such trainings, including Emergency Management Plan and Procedures.

BIE safety personnel provide information in a similar manner to both tribally controlled and Bureau-operated schools. However, levels of autonomy differ among tribally controlled and Bureau-operated schools. Bureau-operated schools are required to follow all national BIE policy memoranda, whereas tribally controlled schools have the authority to create their own school policies and procedures, pursuant to any applicable law(s). Since the majority of BIE-funded schools are directly managed by tribes or locally controlled school boards, the BIE's ability to oversee the implementation of safety policies is



limited by their autonomy. However, the BIE does review grant assurances to ensure tribally controlled schools follow statutory and regulatory defined minimum requirements regarding necessary procedures for background checks as well as other safety measures.

**2. Does BIE provide technical and direct assistance to BIE schools in developing and implementing schools safety plans?**

**BIE Response:** As BIE works to improve security at its schools, the agency is focusing much-needed support on improving threat assessments, protocols and procedures as well as increasing access to guidance information for preventing and responding to instances of school violence. The BIE utilizes its School Safety Specialist to collaborate with key BIE staff in providing safety supports directly to BIE-funded schools. The BIE is working to improve its safety procedures by providing schools and staff guidance on pertinent mandatory and recommended trainings to ensure safety is the highest priority at BIE-funded schools and school safety plans are in place. The BIE is also refocusing efforts to provide support and technical assistance to improve safety procedures via six regional BIE summer trainings for all employees, including school-level personnel.

**3. Does BIE collaborate with BIA, other relevant federal agencies, and state and local law enforcement on emergency response planning for BIE schools (including for active shooter situations)? If not, why? If so, please explain what those efforts look like and whether or not best practices are being developed and disseminated amongst BIE schools?**

**BIE Response:** The BIE actively collaborates with the BIA's Office of Justice Services (OJS) as well as local and tribal law enforcement to improve safety in BIE-funded schools. Schools also contract with local private security firms and establish memoranda of understanding with local law enforcement agencies in order to take the burden off school staff in conducting detailed surveys, identifying safety and security deficiencies, and implementing corrective action plans and emergency response plans. During the 2017–2018 School Year, approximately \$1.8 million in Safe and Secure Schools funding assisted in school safety audits and provided onsite School Resource Officers (SROs) that are hired and supervised by BIA OJS. BIE is working with OJS to determine how it can optimize the number of available SROs in BIE-funded schools to increase support in high-need areas.

In addition to OJS providing SROs, OJS provides training and other direct law enforcement safety services to BIE-funded schools, including:

- Gang Resistance Education and Training (GREAT);
- Drug Abuse Resistance Education (DARE); and
- Alert Lockdown Inform Counter Evacuate (ALICE) active shooter response.

**Deferred Maintenance**

**1. Given the current backlog in school construction and maintenance, how does BIE prioritize the allocation of funds and the replacement of school facilities? Within the \$18 billion under the proposed Public Lands Infrastructure Fund in the president's, how much would be allocated to repair or replace BIE schools?**

**BIE Response:** Indian Affairs is currently working to construct those schools from the 2004 NCLB replacement schools index, including Beatrice Rafferty, Cove Day, and Little Singer Day School. Additionally, in September 2018, Indian Affairs announced \$74.2 million in funding for design-build contracts would be directed to two schools on the 2016 NCLB Replacement Schools list -- Blackwater Community School and the Quileute Tribal School. Eight schools remain on the 2016 NCLB Replacement Schools list and will be constructed pending availability of appropriations. As schools complete their planning phase requirements, they establish their position on the replacement priority list. Additionally, as the U.S. Department of the Interior works with Congress to expand its energy program on federal lands

and waters, this initiative has the potential to generate much-needed infrastructure and maintenance funding.

**2. I'd like to bring your attention to the condition of the Tate Topa Schools on the Spirit Lake Reservation. The School site is shared by BIE and the public school and the BIE has a mix of ownership over the school facilities. My understanding is that because of this mixed ownership, BIE has been unhelpful with basic maintenance and addressing other issues with the building, and the school district purchase equipment like metal detectors and cameras themselves since the BIE will not cover it. Will you look at the issues the schools is having in working with BIE and work to improve that relationship so the school building is adequately maintained?**

**BIE Response:** In 1982, the Department constructed a new school to replace a formerly BIA-operated K-6 school. Indian Affairs continued to provide an academic program for K-6 only. The Fort Totten Public School District #30 provided the academic program for grades 7-12, under a cooperative school agreement. Subsequently, the Spirit Lake Tribe contracted the BIA funded school, under Congressional authority to convert to a PL 100-297 tribal grant school to provide academic programs to grades 7 and 8. During this time, the Tate Topa (Four Winds) School Board allowed the public school to occupy a portion of the school facilities via a written agreement. Indian Affairs was not a signatory party to the shared facility use agreements after the Tribe began to administer the education program in 1989. The Spirit Lake Tribe financed with tribal economic development funds a \$2.5 million, 22,000 square foot addition to house grades 6-8 that was completed on March 18, 2002.

Currently, the BIE-funded school is the principal entity housed in the current school facilities. The Fort Totten Public School District #30 high school program utilizes the school's federal facilities without a lease or payment in support of using or maintaining the facilities and programs/services. Per this request, the BIE will follow-up on developments to-date and work with the BIA to analyze the possibility of an established written Memorandum of Agreement that ensures that federal funding is used to the extent possible for the repairs and maintenance while collaborating with the public school to address a proportionate share of costs for facilities and services. Following the determination, BIE will contact the appropriate local-level personnel to discuss paths forward for properly maintaining the school's facilities.

### **Safety Monitoring and Reporting**

**1. BIE schools document incidents of school violence and threats by entering data into the Native American Student Information System (NASIS). Does BIE have any way to ensure that school employees always enter this information when there is an incident?**

**BIE Response:** BIE recently increased its focus on professional development to ensure BIE employees and school personnel have the training necessary to address the various safety needs of students and personnel in BIE-funded schools. This includes an emphasis on supporting schools as they enter their data into NASIS. As such, BIE hired critical NASIS personnel in the last year to ensure school employees understand the systems that support their students' safety. These positions include a NASIS supervisor and seven supporting NASIS staff members tasked with supporting schools from specific regions. The BIE also held regional trainings this summer to assist school-level employees with utilizing the NASIS system. While BIE is working to improve technical assistance to schools to ensure information is entered into the system correctly and in a timely manner, internal controls have been absent in the past. BIE staff now hold regularly scheduled calls and trainings with schools to ensure school staff understand how to input information into the system. Furthermore, under Goal 6 of the agency's five-year Strategic Direction – formally published in August 2018, BIE created its first-ever data-governance board to analyze organization-wide data weaknesses and recommend control measures where needed, such as those regarding incidents of school violence.

2. You said in your testimony that schools are directed to complete Critical Incident Reports, contact the BIE Central Office, their Associate Deputy Director, and a few other people in addition to entering data in NASIS. Are you assured that this process happens every time, or is training lacking in this area, leaving some incidents unreported?

**BIE Response:** BIE utilizes this protocol to ensure uniformity, so BIE tracks incidents accurately and decreases response times. However, it is plausible that some incidents remain unreported due to human error. As such, BIE is working to address recommendations from GAO and the OIG to improve protocols and procedures as well as increase access to guidance information for utilizing data tracking systems. BIE is also providing schools and staff guidance on pertinent mandatory and recommended trainings to ensure that safety is the highest priority at BIE-funded schools.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 17 2018

The Honorable Doug LaMalfa  
Chairman, Subcommittee on Indian, Insular  
and Alaska Native Affairs  
Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to the questions received by Darryl LaCounte, Deputy Director, Bureau of Indian Affairs, after his appearance before your subcommittee at the hearing on H.R. 5244 *Mashpee Wampanoag Tribe Reservation Reaffirmation Act*, S. 607, *Native American Business Incubators Program*, and S. 1116, *Indian Community Economic Enhancement Act*.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional  
and Legislative Affairs

Enclosure

cc: The Honorable Ruben Gallego  
Ranking Member

**Questions from Rep. Gallego**

**Question:** In your written testimony on S. 1116, you state that there are concerns with the proposed reporting requirements for the Buy Indian Act, mainly about the volume and accuracy of the data that would need to be gathered. You also state that "...it is often difficult to ascertain what is or is not an Indian economic enterprise." How and with what frequency is the data for the Buy Indian Act currently gathered and analyzed, and why is it difficult to ascertain what is or is not Indian economic enterprise?

**Response:** Difficulty ascertaining what is or is not an Indian Economic Enterprise is due to system-related obstacles and affects the reporting accuracy of Buy Indian actions.

The System for Award Management (SAM) is a required database for all vendors, pursuant to the Federal Acquisition Regulation. This system is the source for the vendor records for all of the Department of the Interior, including Indian Affairs, and is managed by the General Services Administration (GSA) on behalf of the federal government. While vendors can identify themselves as Native Owned in SAM, and can also identify themselves as eligible for Indian Economic Enterprise (IEE) or Indian Small Business Economic Enterprise (ISBEE) set-asides, there is no discrete socio-economic category for vendors to identify themselves as an IEE or ISBEE during their entity registration.

GSA operates and maintains SAM as part of the Integrated Award Environment (IAE). Any decision on requested changes to IAE tools, such as SAM, are made by the IAE Change Control Board (CCB) comprised of agency representatives from the 24 CFO Act Agencies, not by GSA. IAE is embarked on a modernization effort. In December 2017, GSA confirmed to the IAE CCB that SAM would not be able to add IEE and ISBEE as new, self-selected socio-economic categories prior to the migration of SAM to a new environment, projected to come online sometime in the current fiscal year. Without specific IEE and ISBEE socio-economic designators in SAM, IA will have continued difficulty ascertaining whether the vendor is an Indian Economic Enterprise.

With the increase in the Micro Purchase threshold to \$10,000, a considerable amount of actions will now be procured with the Purchase cards. We are unable to identify if the merchant used in a purchase card transaction is an IEE or ISBEE. This information is not currently available from the Purchase card provider.

We currently require quarterly reporting on Buy Indian Act deviations from all our acquisition offices. Once central office receives the deviations, we review the content and follow up as needed.

IA understands the need for reporting on this important subject matter. However, the current legislation is requesting we provide a reporting of all contracting actions in Indian Affairs at a

regional level. The volume of reporting at this level will require considerable efforts. We propose that the request for reports be aggregated to reflect summary data at year end that focuses only on those contracts that deviate from this policy. Our current deviation reporting is mostly a manual process and is not included in the automated reporting segment within the system used for contracts. Therefore, manually aggregating this data at the regional level will become burdensome to an already thinly stretched IA acquisition staff. In addition, as mentioned above, the increased use of the Purchase Card will limit our ability to properly report on IEE or ISBEE.

We also currently do not have a system in place to capture the requirements of reporting the following requirement:

“(D) a description of the methods used by applicable contracting officers and employees to conduct market searches to identify qualified Indian economic enterprises; (i) the types of alternative procurement methods used, including any Indian owned businesses reported under other procurement goals;”

The effort to capture this information and report back to Congress would be fully manual, requiring regular data calls to our regional offices and the consolidation of this information for reporting purposes. This would be a burdensome requirement for our staff.

**Question: Some of the need for business development assistance and finance in Indian Country is being met by the Native CDFIs, but there is still so much more that goes unmet. Additionally, there are existing technical assistance centers that provide some assistance, however they do not offer financial education and other guidance on running a business. How do you see the provisions of S. 607 as “filling the gaps” of that existing programs that are in currently place at interior?**

**Response:** The Department of the Interior’s Office of Indian Energy and Economic Development (IEED) administers, among other programs, the Indian Loan Guarantee and Insurance Program (ILGIP) and the Division of Economic Development (DED), which advise Native business men and women on how to capitalize, form, and sustain a business. However, these programs are limited by geography, manpower, and funding.

The ILGIP leverages over \$100 million annually for loan guarantees. In FY 2018, the program obligated funding for 22 guaranteed loans, averaging \$5,468,855.82 each. The ILGIP deals predominately with larger tribal businesses and Indian borrowers. Meanwhile, the Native CDFIs handle mostly mortgage loans, with fewer offering commercial loans. The incubators envisioned in S.607 would fill this gap by addressing commercial loans for fledgling entrepreneurs and cottage businesses too small to come within the reach of the ILGIP.

DED currently consists of just three staff members who provide “financial education and other guidance on running a business” across Indian Country. Given this staffing level, DED publishes online business and economic primers to equip Native business men and women to succeed in the marketplace (<https://www.bia.gov/as-ia/ieed/online-primers-economic-development-glance>)

House Natural Resources  
Subcommittee on Indian, Insular and Alaska Native Affairs  
Legislative Hearing  
July 24, 2018

and handles technical assistance inquiries by phone, email and at conferences. Under DED's oversight, S.607's incubators will bring this commercial know-how directly to remote tribal locations on a one-on-one basis, filling the gap left by DED's inability to provide accessible advisory staff at permanent locations throughout Indian Country.

The incubators would therefore be an effective "force multiplier" for the Department's tribal economic development programs.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 11 2018

The Honorable Paul Gosar  
Chairman  
Subcommittee on Energy and Mineral Resources  
Committee on Natural Resources  
House of Representatives  
Washington, D.C. 20515

Dear Chairman Gosar:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to questions submitted following the Subcommittee's June 26, 2018, oversight hearing on "Offshore Renewable Energy Opportunities."

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

cc Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Alan Lowenthal  
Ranking Member



**House Natural Resources Committee**  
**Subcommittee on Energy and Mineral Resources**  
**Legislative Hearing on Offshore Renewable Energy Opportunities**  
**Tuesday, June 26, 2018 10:00 AM**  
**Questions for the Record**

Questions for Mr. James Bennett, Chief of the Office of Renewable Energy Programs  
Bureau of Ocean Management (BOEM), Department of the Interior

1. The Regional Administrator of NOAA's Greater Atlantic Regional Fisheries Office recently stated in a letter that BOEM evaluates cumulative impacts "on a project-by-project basis with very limited assessment at the leasing stage... [which] is not sufficient given the scale and speed of proposed development on the OCS." How (and at what point in the leasing process) does BOEM assess cumulative impacts to fisheries, in light of multiple developments on the Outer Continental Shelf and shifting fishery distributions? Does it do so on both ecosystem and fishery-specific levels?

**Response:** As discussed below, in both the Environmental Assessment (EA) that is prepared prior to lease issuance and the Environmental Impact Statement (EIS) prior to a decision on Construction and Operations Plan (COP) approval, BOEM considers the cumulative impacts to fisheries and other environmental and socioeconomic resources of the past and present activities as well as those that are reasonably foreseeable. The level of the analysis - including direct, indirect, and cumulative impacts - is proportionate with the scale of the proposed action and the actions BOEM considers to be reasonably foreseeable. BOEM analyzes fishery impacts on both an ecosystem and fisheries-specific level. If the analysis of a particular project (individually and cumulatively) shows that it would not have ecosystem level effects, then the National Environmental Policy Act (NEPA) document would focus more on the site-specific (individual fish and fisheries) that may be affected by the proposed action.

2. You stated that BOEM is "doing a better job of building trust between [BOEM] and the commercial fishing communities." What specifically are you doing to build that trust? Once BOEM has collected data from those fisheries communities, what is its obligation with regard to considering that data in its decision making? In what situation[s] would it affect the outcome of the leasing process?

**Response:** Over the past year, BOEM has increased its dialogue with commercial and recreational fishermen to ensure that it fully understands their concerns from both a biological and socio-economic impact perspective. This has been accomplished through more focused engagement with Regional Fishery Management Councils, participation in state-led fishery advisory group meetings, and the recent National Academies Fisheries Steering Committee (see: <https://www.nap.edu/catalog/25062/atlantic-offshore-renewable-energy-development-and-fisheries-proceedings-of-a>). BOEM's obligation, in compliance with the Administrative Procedure Act, is to consider the data provided by fisheries communities, along with all

other relevant factors and information in the record, when making decisions concerning the development of renewable energy projects on the OCS. BOEM has demonstrated its willingness to incorporate fishing industry recommendations into the leasing process by issuing guidelines to leaseholders and/or including lease stipulations to develop and implement a fisheries communication plan, developing a fishing industry webpage, and working closely with state partners to address regional fisheries monitoring of potential impacts from offshore wind development. Many specific aspects of monitoring and mitigation of fisheries impacts are under discussion and will be vetted through the NEPA review process for commercial-scale projects. BOEM gives serious consideration to the fishing community's input during planning decisions, alongside the input of numerous other stakeholders, including the use of best available data. BOEM has previously removed areas from consideration in planning areas because of known fishing activity (e.g., Massachusetts [Nantucket Lightship], Rhode Island/Massachusetts [Cox Ledge]). However, there is no predetermined or existing threshold of fishing activity that BOEM uses when deciding whether BOEM should include or remove certain areas from leasing and development consideration. BOEM decides these issues on a case-by-case basis, balancing multiple site-specific factors and considerations.

3. Why does the RFF (Request for Feedback) on BOEM's Proposed Path Forward for Future Offshore Renewable Energy Leasing on the Atlantic Continental Shelf, published in the *Federal Register* on April 6, 2018, not include fisheries as a reason to exclude areas?

**Response:** The analysis conducted for the Path Forward is a high-level analysis; whereas exclusion of fishing areas typically results from a more focused, site-specific analysis conducted later in the BOEM process. During public outreach meetings, BOEM has specifically requested information on "go/no-go" factors for fisheries that could be part of the future analyses. Additionally, BOEM has received comments on the Request for Feedback that have suggested potential fishing factors that could be considered on a macro scale using data that is currently available. BOEM is currently examining the feasibility of the approaches offered through the comment process.

It should also be noted that the RFF is not a replacement for BOEM's existing processes to determine Wind Energy Areas and issue leases through site-specific analysis and stakeholder outreach. BOEM will continue to pursue leasing processes in the future that are focused on specifically bounded offshore areas, utilizing extensive analysis of site-specific conditions (e.g., fisheries, navigation, seafloor conditions, etc.).

Where BOEM has previously conducted a site-specific analysis for past lease sales and determined areas should be excluded for fishing or other potential conflicts, those areas have been removed from further consideration.

4. BOEM must consider prevention of interference with reasonable uses in offshore renewable development decisions. Would you consider existing fisheries such a "reasonable use" under the law? If not, why not?

**Response:** BOEM considers fishing a reasonable use in accordance with applicable regulation and BOEM has required in plans that it has approved that developers communicate with fishermen to ensure that activities are carried out in such a manner as to reduce conflicts with fisheries operations.

The OCS is home to multiple users and BOEM is committed to reducing multiple use conflicts. BOEM depends on data to make its decisions on how to reduce and avoid multiple use conflicts - whether within the agency or with other ocean users, such as national security, ocean energy facilities, commercial and recreational fishing, ocean aquaculture, maritime commerce and navigation, tribal interests, critical undersea infrastructure and other ocean uses. Potential impacts to fisheries and fishing activities are uses that BOEM takes very seriously, and are thoroughly analyzed at multiple stages during BOEM's leasing and lease management processes.

5. Does BOEM consider itself the steward of the ocean commons in implementing the renewable offshore energy development program? If not, why not? What would BOEM do differently if it were the steward?

**Response:** BOEM considers itself a steward of the ocean commons in its mission to manage development of U.S. OCS energy and mineral resources in an environmentally and economically responsible way. Environmental stewardship is an important aspect in BOEM's mission, and OCSLA directs BOEM to study and consider coastal, marine, and human environmental impacts when making decisions on renewable offshore energy development. The enactment of the Outer Continental Shelf Lands Act, 43 U.S.C. §§1331 *et seq.*, made the Department of the Interior responsible for the stewardship of U.S. OCS *energy and mineral resources*. OCSLA requires that OCS resources be made available for expeditious and orderly development, subject to environmental safeguards, in a manner that is consistent with the maintenance of competition and other national needs. *Id.* at 1332(3). The resources we manage belong to the American people and future generations of Americans; wise use of and fair return for these resources are foremost in our management efforts.

6. BOEM contends it is not required to consider the impact of construction and operation of a windfarm on an area of the ocean at the time BOEM leases the area to a windfarm developer. Where does this authority come from? Why do you believe that this is so?

**Response:** The analysis conducted at the time BOEM leases an area to a wind farm developer does not consider impacts resulting from the construction and operation of commercial wind power facilities, since lease issuance does not result in the irretrievable and irreversible commitment of resources from construction and operation activities. The analysis conducted at lease issuance considers the reasonably foreseeable impacts from activities associated with lease issuance, which includes site characterization activities (e.g., surveys of the proposed lease area) and site assessment activities (e.g., construction and operation of a meteorological tower and/or buoys) within the proposed lease area. BOEM also takes this approach because at the lease sale stage it is impossible for BOEM to reasonably foresee the commercial and operational impacts

resulting from the particular project the eventual auction winner might propose years after the lease sale is held. This is particularly difficult in a nascent and rapidly evolving industry, in which technology developments (e.g., Wind turbine generator size) drastically affect the design of the projects to be proposed and, in turn, BOEM's ability to determine which resources could be affected in the specific location where project components might be proposed.

After lease issuance a lessee performs site assessment activities to determine whether the site is suitable for commercial development and, if so, design the project, and submit a COP with its project-specific design parameters for BOEM's review. Not until a lessee has performed its site assessment activities, and has designed the project taking into account the data gathered, can BOEM evaluate a concrete proposal and examine the potential impacts such proposal could have. Any NEPA analysis of construction and operation impacts prior to COP submittal would simply be speculative and, given the rapidly evolving industry that it is; such NEPA analysis would likely require supplementation once the lessee formulates its proposal after conducting site assessment activities.

BOEM can approve, approve with modification, or disapprove a COP. BOEM retains the authority to prevent the environmental impacts of a commercial wind power facility from occurring by deciding whether or not to approve a COP. It is approval of a COP that constitutes an irreversible and irretrievable commitment of resources, which triggers BOEM's obligation to perform a NEPA analysis that considers the reasonably foreseeable impacts that could result from the COP approval (i.e., construction and operation of a commercial project).

7. As a "steward of the ocean commons," the National Ocean and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) transmitted a June 7, 2018, letter to BOEM requesting that it consider cumulative impacts of all wind development offshore the Atlantic Coast when BOEM makes offshore renewable energy leasing and development decisions. How does BOEM consider cumulative impacts before it grants a new lease to a developer? What baseline fisheries and fisheries habitat analyses does BOEM undertake before authorizing a developer to undertake ocean surface-disturbing activities? How will BOEM respond to NMFS?

**Response:** During the Area Identification process, BOEM considers environmental and use conflicts in the potential lease area, including fishing activity. BOEM analyzes fishery impacts on both an ecosystem and fisheries-specific level. If a particular project (individually and cumulatively) is not anticipated to have ecosystem level effects, then the analysis in the NEPA document would focus more on the site-specific resources (e.g., individual fish species/fisheries) that may be affected by the proposed action.

Regarding baseline fish and fish habitat data, BOEM requires in 30 CFR §585.610(b)(5) for Site Assessment Plans, and §585.626(3) for Construction and Operations Plans, a description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds. Some of this information is already available from the National Marine Fisheries Service, especially information regarding

the fish that are commercially and recreationally exploited, and results of NMFS scientific trawl surveys that NMFS uses to set commercial and recreational harvest limits. Additional information may be required on a case-by-case basis depending on unique habitat or data gaps for the area to be disturbed.

NMFS and other fisheries comments on the NY Bight Call will be factored into decision-making during Area Identification and subsequent processes. Specifically, the information will provide a deeper understanding of how the areas are used as a fishery, and will provide information about areas that should be removed from further leasing consideration. The comments will also be used in evaluating potential leasing impacts and means to mitigate those impacts.

8. Does BOEM consult with Secretary Zinke when it assesses the next wind farm lease? If not, why don't you think you should?

**Response:** BOEM identifies areas for consideration and establishes offshore renewable energy leases through established regulations under the delegations of authority from the Secretary of the Interior. BOEM includes the Secretary of the Interior and other officials in his office whenever required by Departmental and Bureau regulations, policies, or when requested by the Secretary during the lease sale development process. Specifically, internal reviews and consultation on identified lease areas and lease language occur throughout the planning stages and prior to the publication of Federal Register notices from the agency. BOEM's process for development of offshore renewable energy leases includes review and surname of lease sale development packages by Departmental leadership for concurrence and input prior to the publication of lease-related Federal Register notices. BOEM publishes lease-related Federal Register notices for the following actions: Call for Information and Nomination, Requests for Interest, Requests for Competitive Interest, Determinations of No Competitive Interest, Proposed Sale Notice, and Final Sale Notice.

If a lease is issued and a COP submitted, it is likely an EIS will be required. The Department's April 27, 2018, memorandum, *NEPA Document Clearance Process*, lays out a six-step concurrence process for the development and issuance of an EIS and ROD. The intent is "to provide Department leadership with a valuable situational awareness."

**Committee on Natural Resources**  
**Subcommittee on Energy and Mineral Resources**  
**Legislative Hearing**  
**1324 Longworth House Office Building**  
**June 26, 2018**  
**10:00 AM**

Legislative Hearing on the following bills:

- Discussion Draft H.R. \_\_\_\_ (Rep. Bordallo) To amend the Outer Continental Shelf Lands Act to apply to territories of the United States, to establish offshore wind lease sale requirements, to provide dedicated funding for coral reef conservation, and for other purposes. “Offshore Renewable Energy for Territories Act”
- H.R. 5291 Rep. Tsongas (for herself, Mr. Grijalva and Mr. Keating) To establish an offshore wind career training grant program, and for other purposes. “Offshore Wind Jobs and Opportunity Act”
- Discussion Draft H.R. \_\_\_\_ (Rep. \_\_\_\_ ) To amend the Outer Continental Shelf Lands Act to provide for a leasing program for offshore renewable energy, and for other purposes. “National OCS Renewable Energy Leasing Program Act”

Questions from Rep. Alan Lowenthal for Mr. James Bennett, Chief, Office of Renewable Energy Programs, U.S. Bureau of Ocean Energy Management.

1. What does BOEM think about the proposal for a four-year offshore wind leasing program? Would a lease schedule help further develop the Outer Continental Shelf? Are there potential drawbacks to an offshore wind lease schedule?

**Response:** The offshore wind industry in the U.S. is young and dynamic, with a still-developing supply chain and dramatic changes in technology occurring from year to year. Demand for offshore wind energy also varies substantially depending on geographic location, and can be affected by factors beyond BOEM’s control. The offshore wind industry is very different from the fully mature offshore oil and gas industry, which has a five-year leasing program. Offshore wind is a very dynamic industry with dramatic changes occurring over very short periods of time, as we have experienced with the New York and the North Carolina sales. A rigid schedule of lease sales for OCS wind energy, without considerable flexibility, could end up hindering BOEM’s ability to respond to market conditions and industry interest. Greater flexibility and responsiveness might be associated with a goal or target for new offshore wind capacity, rather than by a lease sale schedule.

BOEM understands the desire to provide greater clarity in the number and timing of lease sales for offshore wind. For a lease to be successfully developed there must be an agreement for offtake with a utility in an adjacent state. BOEM lacks the authority to provide offtake to developers, so demand for additional lease sales is largely driven by market forces and policies of the states. A lease schedule could potentially assist in aligning federal and state processes, where there is demand. At a minimum, BOEM suggests including a provision to allow for updates to any program based on market demand throughout its implementation. If BOEM were

forced to lease in areas where there was not sufficient demand, the result could be an auction where there were no bidders, or leases that were purchased but sat undeveloped for an extended period of time until market conditions improved.

We will be happy to work with the Committee to identify an approach that best fits this nascent industry.

2. Could you very briefly explain how bidding credits work in offshore wind leasing?

**Response:** As allowed under the Outer Continental Shelf Lands Act Section 8(p) and detailed in 30 CFR 585.220, BOEM has the flexibility to choose from a number of auction formats, and often combines non-monetary factors with monetary bidding. Under a multiple-factor bidding format, BOEM may consider a combination of monetary (e.g., cash) and non-monetary (bid credit) factors as part of a bid. Example: non-monetary factors used by BOEM in past auctions include bidding credits for Community Benefits Agreements, Power Purchase Agreements (PPA), Joint Development Agreements, and status as a governmental entity. Non-monetary factors were first offered in an offshore wind auction on July 31, 2013. In the Atlantic Wind Lease Sale, Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts, a 20% credit was offered for a joint development agreement, as well as a 25% credit for a power purchase agreement greater than 250 MW.

Procedures for evaluating eligibility for bidding credits are described in a Final Sale Notice published at least 30 days prior to the sale. BOEM establishes an auction panel to review bidder non-monetary applications and determine if a credit will be awarded during the auction. If a bidder is awarded the credit, they are notified prior to the auction of the amount of the credit. A bidder's credit will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced lease area in a bidder's multiple-factor bid. This credit serves to supplement the amount of a cash bid made by a particular bidder in each round.

2a. If bidding credits were a factor in lease sales, how would BOEM ensure fairness in evaluating them? Assuming bidding credits included commitments made by lessees – for example in the form of community benefits – how could BOEM enforce these following the auction?

**Response:** BOEM's bidding credit evaluation process includes two primary steps: 1) identification of objective bidding credit requirements in the Final Sale Notice; and 2) use of an Auction Panel to evaluate proposals submitted by auction bidders. BOEM believes having objective evaluation criteria in combination with a review panel ensures fairness in the auction process.

Bidding credits that include commitments by lessees, such as Community Benefits Agreements, are usually required to be legally binding contracts. Enforcement of these contracts is through the parties to the contract, one party being the bidder and the other an entity defined in the Final Sale Notice. BOEM is not a party to these agreements.

3. It's my understanding that bidding credits could potentially include benefits to bidders holding a power purchase agreement (PPA) and likely already holding a lease. How would this impact new market entrants?

**Response:** BOEM does not believe that offering bidding credits for PPAs will impact new market entrants. As currently defined, a qualifying credit must be for a PPA issued for energy to be generated in the lease area being auctioned. No bidder has qualified for a bidding credit based on a PPA in any of BOEM's auctions to date; this is because a power purchaser will typically require an entity to have site control (i.e., a lease) before it will award a PPA. BOEM is moving away from the use of PPAs as a bidding credit for this reason.

4. Is BOEM aware of whether state procurements also consider such non-price factors in awarding PPAs or other long-term revenue support? If so, in what way would "bidding credits" confer additive benefits to the intended beneficiaries?

**Response:** State procurement rules and procedures related to offshore wind energy vary from state to state. It is possible that states could evaluate factors beyond the price of energy in formulating their procurement procedures and some states have chosen to include such provisions in requests for procurement of offshore wind. For example, the Commonwealth of Massachusetts considered commitments to economic activity in the Commonwealth, such as leases for water-side facilities and other properties, capital investment, local manufacturing or outfitting of project such as turbine foundations, or use of local suppliers and service providers. State-initiated non-price factors would typically benefit existing BOEM lessees, as the BOEM lease sale typically precedes the state procurement application process and applicants with site control would likely be received more favorably. The state action would be predicated on the knowledge of any non-price factors that were part of the initial lease sale.

5. What is BOEM's current approach to meeting NEPA requirements in the offshore wind leasing process? Are there ways BOEM can improve the NEPA process to increase efficiencies while still maintaining a robust level of environmental review and opportunity for public input?

**Response:** In late 2010, the Department announced a staged approach to renewable energy development by which an environmental assessment (EA), rather than an environmental impact statement (EIS), is prepared for lease issuance. When a lessee submits a construction and operations plan (COP), BOEM prepares a site-specific EIS. Eliminating one of the two EISs previously envisioned, reduced the overall timeframe for development by one year. Also under this initiative, the Bureau attempts to deconflict areas prior to lease issuance, reducing unforeseen issues and delays later in the process.

In accordance with Secretarial Order 3355, *Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807*, BOEM continues to look for ways to improve the efficiency, certainty, and flexibility in our environmental review process under NEPA. As a result, the Program is in a better position to meet the Administration's and Department's goals to streamline review and permitting, which includes reducing the time to two



years for each Federal agency to complete all environmental reviews and authorization decisions for major infrastructure projects. The following efforts were undertaken in response to industry requests, to manage our ever increasing workload, and to address the complexity of proposals we are receiving.

In early 2016, BOEM published a broad agency announcement seeking new NEPA approaches for offshore renewable energy facilities. Seven projects were funded, including efforts focused on incorporation by reference to produce more concise documents and analyses proportional to the potential impacts.

Since the spring of 2016, BOEM has led the Offshore Wind Permitting Subgroup, comprised of 17 departments and agencies focused on enhancing Federal agency coordination around offshore wind development.

In 2017, BOEM developed an annotated outline for COP EISs to ensure consistency across EISs and identify sections that can be pre-populated by BOEM. In addition, we share this outline with developers early in the development of their COPs. This allows developers to organize their COPs in a way that is easier for BOEM to summarize and incorporate information by reference, reducing unnecessary detail in our EISs.

Later in 2017, BOEM began approving the use of third-party contracting for EISs, which reduces delays, while still allowing us to select and direct contractors.

In early 2018, the Bureau announced draft guidance allowing developers to defer final design decisions until later in the process to take advantage of rapid technological advances that could outpace the permitting process. The use of this design envelope approach will also allow BOEM to reduce or eliminate delays during the environmental review as well as the need for subsequent environmental and technical reviews by BOEM as project design parameters are finalized.

Finally, through BOEM's Environmental Studies Program, we continue to fund studies evaluating stressors from offshore wind construction and operation. With this scientifically collected data, we are addressing environmental concerns raised by the public. For example, for underwater sound generated during operations, direct measurements determined that the sound level is low and around the same level as natural sounds such as waves.

6. Can you update me on the status of negotiations as they relate to wind energy off California's coast between BOEM, the Defense Department, the California State government, and interested wind developers?

**Response:** BOEM has been engaged in a stakeholder and data gathering effort in relation to identification of potential wind energy areas offshore California for the past two years. We have done this in close coordination with the State of California. The area of particular interest for near-term offshore wind development is off the central coast of California because of the wind resource and the existing unutilized infrastructure along the coast due to the closure of the Morro Bay Gas-Fired Power Plant and impending closure of the Diablo Canyon Nuclear Power Plant. Early in the planning process, BOEM consulted with the Department of Defense (DoD), one of

the key stakeholders, on mission compatibility with offshore wind development. DoD has initially determined that all of the areas evaluated offshore the central coast, from the southern edge of the Monterey Bay National Marine Sanctuary to the Mexico border, are wind exclusion areas. The Department of the Interior, DoD, the State of California, and potential offshore wind developers met in February 2018 to discuss a path forward in light of the initial DoD assessment. At the meeting, DoD agreed to re-evaluate the central coast in specific areas if additional project-level information is provided by wind energy developers. Several developers have already submitted additional information and others are expected to do so shortly. In addition, several developers have joined in an industry proposal recently submitted to DoD. The timing for DoD's review is uncertain at this point and will affect the manner and timing for BOEM's leasing and planning process to provide areas appropriate for renewable energy leasing off central California.

**Committee on Natural Resources**  
**Subcommittee on Energy and Mineral Resources**  
**Legislative Hearing**  
**1324 Longworth House Office Building**  
**June 26, 2018**  
**10:00 AM**

Legislative Hearing on the following bills:

- Discussion Draft H.R. \_\_\_ (Rep. Bordallo) To amend the Outer Continental Shelf Lands Act to apply to territories of the United States, to establish offshore wind lease sale requirements, to provide dedicated funding for coral reef conservation, and for other purposes. “Offshore Renewable Energy for Territories Act”
  - H.R. 5291 Rep. Tsongas (for herself, Mr. Grijalva and Mr. Keating) To establish an offshore wind career training grant program, and for other purposes. “Offshore Wind Jobs and Opportunity Act”
  - Discussion Draft H.R. \_\_\_ (Rep. \_\_\_) To amend the Outer Continental Shelf Lands Act to provide for a leasing program for offshore renewable energy, and for other purposes. “National OCS Renewable Energy Leasing Program Act”
- Questions from Rep. \*\*\*\* for Witness Name and Title

1. Is BOEM aware of whether state procurements also consider such non-price factors in awarding power purchase agreements (PPAs) or other long-term revenue support? If so, in what way would “bidding credits” confer additive benefits to the intended beneficiaries?

**Response:** State procurement rules and procedures related to offshore wind energy vary from state to state. It is possible that states could evaluate factors beyond the price of energy in formulating their procurement procedures and some states have chosen to include such provisions in requests for procurement of offshore wind. For example, the Commonwealth of Massachusetts considered commitments to economic activity in the Commonwealth, such as leases for water-side facilities and other properties, capital investment, local manufacturing or outfitting of project such as turbine foundations, or use of local suppliers and service providers. State initiated non-price factors would typically benefit existing lessees of OCS wind energy leases, as the BOEM lease sale typically precedes the state procurement application process and applicants with site control would likely be received more favorably. The state action would be predicated on the knowledge of any non-price factors that were part of the initial lease sale.

2. If bidding credits were a factor in lease sales, how would BOEM ensure fairness in evaluating them? Assuming bidding credits included commitments made by lessees – for example in the form of community benefits – how could BOEM enforce these following the auction? Do you think the “National OCS Renewable Energy Leasing Act” is a step in the right direction?

**Response:** BOEM's bidding credit evaluation process includes two primary steps: 1) identification of objective bidding credit requirements in the Final Sale Notice; and 2) use of an Auction Panel to evaluate proposals submitted by auction bidders. BOEM believes having objective evaluation criteria in combination with a review panel ensures fairness in the auction process.

Bidding credits that include commitments by lessees, such as Community Benefits Agreements, are required to be legally binding contracts. Enforcement of these contracts is through the parties to the contract, one party being the bidder and the other an entity defined in the Final Sale Notice. BOEM is not a party to these agreements.

The Department has not developed a position on the National OCS Renewable Energy Leasing Act at this time; however, identifying multifactor components years ahead of an auction event is excessive and may result in continuous delay of the sale pending refinement of the multiple factors.

3. Bidding credits could potentially include benefits to bidders holding a PPA and likely already holding a lease – how would this impact new market entrants?

**Response:** BOEM does not believe the use of Power Purchase Agreements (PPA) as a bidding credit will impact new market entrants. Generally, a qualifying credit must be for a PPA issued for energy to be generated in the lease area being auctioned. No bidder has qualified for a bidding credit based on a PPA in any of BOEM's auctions to date; this is typically because an entity must have site-control (i.e., a lease) before a PPA will be awarded. BOEM is moving away from the use of PPAs as a bidding credit for this reason.

4. There has been some discussion of developing a Department of Defense Clearinghouse for offshore energy projects. Onshore, the DOD Siting Clearinghouse works with the renewables industry to ensure projects are compatible with military missions. Would this work for offshore energy projects? In your opinion, what is the most effective way to improve and facilitate compatibility conversations?

**Response:** There are existing and longstanding Memoranda of Understanding between the Department and DOD that establish requirements for consultation and collaboration on offshore energy development, including for conventional and renewable energy. A critical element of this process is maintaining and building upon the historical DOD knowledge base of past coordination efforts with the Department and BOEM. The Department believes the existing framework for DOD coordination on offshore renewable energy siting is effective. The Department works closely with long established contacts within the Office of the Secretary of Defense to ensure impacts on military readiness and operations are avoided to the greatest extent possible. This process allows DOD to conduct assessments of the OCS and identify military uses of areas that may be incompatible with wind energy development and other areas where development is more suitable. The Department uses these assessments in our planning process to identify wind energy areas. Review by a Clearinghouse would duplicate this already robust and comprehensive process, add additional time to offshore energy development, and may

undermine development planned for areas in which DOD and offshore activities already successfully co-exist.

5. As demand for renewable energy expands, companies are eager to develop more offshore wind projects. This created some conflicts with other ocean users on appropriate siting of these projects. Can you speak to some of the conflicts and how today's legislation would address those issues?

**Response:** Through site and issue-specific outreach, BOEM considers environmental and use conflicts throughout all stages of its leasing and development process for offshore wind. Stakeholder issues vary by area, but typically include concerns related to conflicts with commercial fishing, navigation, viewshed, and impacts to marine mammals, including the North Atlantic right whale.

It is unlikely that this legislation would substantially affect any potential conflicts with other ocean users, as BOEM would still follow its regulations and procedures to avoid and minimize conflict with other ocean uses.

6. Last week, the Trump Administration repealed the Obama Ocean Policy and replaced it with one solely focused on interagency coordination. Do you believe this new ocean policy, in conjunction with the legislation we are considering today, will be more successful in harmonizing competing uses of and public access to our vast ocean resources?

**Response:** We believe that Executive Order 13840 (EO) will facilitate our continued success in addressing issues related to competing uses of our ocean resources. The EO's stated intent is to advance the economic, security and environmental interests of the United States through improved public access to marine data and information, efficient Federal agency coordination on ocean related matters, under existing laws and regulations, and engagement that may require interagency or intergovernmental solutions with marine industries, the science and technology community, and other ocean stakeholders including State-sponsored Regional Ocean Partnerships. This direction from the EO is consistent with BOEM's approach to stakeholder engagement among all ocean users. The EO says that Federal agencies should continue to collaborate with ROPs where such engagement is consistent with Congressional mandates. We anticipate Federal agencies continuing to coordinate with the States through their established ROPs such as the Mid-Atlantic Regional Council on the Ocean (MARCO) and the Northeast Regional Ocean Council (NROC), along with the Tribes and Fisheries Management Councils. We see great value in the collaborative forum created between Federal agencies, States, Tribes, and Fisheries Management Councils with roles in managing the ocean, and believe it is important to continue coordinating under the new ocean policy. The new EO directs agencies to facilitate as appropriate coordination, consultation, and collaboration regarding ocean-related matters, consistent with applicable law, among Federal, State, Tribal, and local governments, the public sector, marine industries, the ocean science and technology community, other ocean stakeholders, and foreign governments and international organizations. We will continue to share and consider data and information, participate in early coordination among agencies,

coordinate with stakeholders, and coordinate among Federal, State, Tribal, and Fisheries Management Council representatives regarding our ocean resources.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT - 1 2018

The Honorable Paul Gosar  
Chairman  
Subcommittee on Energy and Mineral Resources  
Committee on Natural Resources  
House of Representatives  
Washington, D.C. 20515

Dear Chairman Gosar:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to questions submitted following the Subcommittee's January 19, 2018, oversight hearing on "Deficiencies in the Permitting Process for Offshore Seismic Research."

We apologize for the delay and thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Alan Lowenthal  
Ranking Member

**Committee on Natural Resources**  
**Subcommittee on Energy and Mineral Resources**  
**Oversight Hearing**  
**1324 Longworth House Office Building**  
**January 19, 2018**  
**9:00 a.m.**

**Oversight Hearing on “*Deficiencies in the Permitting Process for Offshore Seismic Research*”**

**Questions from Rep. Alan Lowenthal for Dr. Walter Cruickshank, Acting Director, Bureau of Ocean Energy Management.**

1. Dr. Cruickshank, during the subcommittee hearing, you agreed to provide a variety of documents relating to the development of the Draft Proposed Program (DPP) and the subsequent decision of the Secretary to announce that he was removing Florida from the DPP. As such, please provide:
  - a. Copies of any correspondence that exists between employees of the Department of the Interior and anyone in the Florida Governor’s office regarding the potential inclusion of waters around Florida in the Draft Proposed Plan.
  - b. Copies of any correspondence that exists between the Bureau of Ocean Energy Management and the Florida Governor’s office after publication of the Draft Proposed Program and before the Secretary’s meeting with the Governor on January 9<sup>th</sup>.
  - c. Copies of any correspondence that exists between the Secretary’s office, Deputy Secretary’s Office, or Office of the Assistant Secretary for Land and Minerals Management and the Florida Governor’s office after publication of the Draft Proposed Program and before the Secretary’s meeting with the Governor on January 9<sup>th</sup>.
  - d. Copies of any correspondence that exists related to discussions between the Bureau of Ocean Energy Management and the Secretary, the Deputy Secretary, the Assistant Secretary for Land and Minerals Management, or anyone in their offices, regarding the Secretary’s decision to tweet on January 9 that Florida would be removed from consideration for offshore oil and gas leasing.



- e. Copies of any instructions sent to the Bureau of Ocean Energy Management from any other officials in the Department of the Interior regarding how they should treat the waters around Florida in developing the next step of the offshore leasing program.

**Response:** The Draft Proposed Program (DPP) published in the Federal Register on January 8, 2018, is the first in a series of three documents that are required to be prepared, pursuant to the OCS Lands Act, before the Secretary may take final action to approve a 2019–2024 Program. The DPP proposes consideration of 25 of the 26 offshore planning areas for inclusion in the final leasing schedule, and seeks additional information for consideration in creating a final Program. The next stage under the OCS Lands Act process is the preparation of a Proposed Program (PP).

BOEM will continue to conduct analysis of the Eastern Gulf of Mexico, Straits of Florida, and South Atlantic Planning Areas to inform the preparation of the PP. Any revisions to the areas proposed in the DPP will be represented in the PP, which is the next stage in the National Oil and Gas Leasing Program process as outlined in Section 18 of the OCS Lands Act. Prior to the PP a thorough review of those comments and additional analysis has taken place. Afterward, BOEM will publish the PP, which will include revised maps and data where appropriate to allow you and other interested stakeholders to understand the details of the proposal.

When developing a program of this size, it is expected that there will be many communications between the Federal government and stakeholders, such as state officials, NGOs, and the public. Comments on the DPP received from stakeholders can be viewed at <https://www.regulations.gov/docket?D=BOEM-2017-0074>. While some of these communications may be incorporated into the decision-making process as comments are received, it is imperative that the program development follow the steps as outlined in Section 18 of the Outer Continental Shelf Lands Act.

2. Mr. Cruickshank, the Marine Mammal Protection Act creates a mechanism for the incidental take of “small numbers” of marine mammals. Can you explain why the “small numbers” requirement is a constraint on the ability to issue seismic permits?

**Response:** Although small numbers was initially defined in the MMPA implementing regulations, the definition was court-invalidated and a new definition has not been established. Although NMFS describes a broad method for assessing small numbers in relation to population size, not having small numbers defined quantitatively or qualitatively creates uncertainty for applicants as to whether an IHA will be issued or the application returned for changes to meet the small numbers requirement. This can lead

to delays in IHA decisions, complicate planning, and possibly impose additional costs on the applicants.

3. As noted by Mr. Steen in his testimony, the seismic permits for the Atlantic Ocean were initially submitted in 2014. Following removal of the Atlantic from the 2017- 2022 Five-Year Program and due to the significant concern for negative impacts on marine life, the seismic permits were denied in January 2017. In fact, the prior Director of BOEM stated:

“In the present circumstances and guided by an abundance of caution, we believe that the value of obtaining the geophysical and geological information from new airgun seismic surveys in the Atlantic does not outweigh the potential risks of those surveys’ acoustic pulse impacts on marine life.”

- a. Is it not unusual to simply pick up review of these seismic permits where things left off in the review process?
- b. Shouldn’t both BOEM and the Fisheries Services have required applicants to resubmit new applications incorporating the best scientific information available when this issue was reopened five months later in May 2017 (i.e., three years after the applications were originally submitted)?

**Response:** As you know, on January 5, 2017, BOEM issued a memorandum denying six pending G&G permit applications to conduct airgun seismic surveys in its Mid- and South Atlantic Planning Areas. The permit denials were appealed to the Interior Board of Land Appeals (IBLA). Consistent with Secretary's Order 3350, on May 10, 2017, BOEM's Acting Director issued a memorandum rescinding the January 5 denials memorandum. BOEM requested that the IBLA remand the appealed denials to BOEM for further consideration. The IBLA remanded the appealed denials to BOEM on May 15, 2017, and the following day, BOEM sent letters to the companies notifying them that the denials were rescinded.

The January 5, 2017, memo was the first documented instance in which seismic permits were denied by BOEM.

BOEM has resumed the evaluation of the previously denied applications. The National Marine Fisheries Service (NMFS) resumed its draft Incidental Harassment Authorization (IHA) review as well. The draft IHAs were posted for public review and we understand that NMFS is reviewing the comments. The drafts will be updated to reflect any new information resulting from the public review and BOEM will then coordinate with NMFS on mitigation issues. Since the development of mitigation

measures is ongoing and takes into account new information, as well as the ability of the applicant to submit updated information prior to final review, it is not necessary for new applications to be submitted.

4. Mr. Cruickshank, scientific studies in the last few years have found that seismic airgun surveys can cause *undue harm* to marine life. Research shows that seismic airguns negatively impact many marine species, including whales, fish, lobsters, scallops, oysters and even zooplankton – the very foundation of the marine food-chain.
  - a. Are you aware of these scientific studies?
  - b. Are you willing to allow *undue harm* to these marine species for the sake of oil and gas exploration and drilling in the Atlantic - an area where the coastal states and their constituents are clearly opposed to it?

**Response:** BOEM is aware of many scientific studies that assess the impact of seismic activity on marine life; the varying results of these studies are considered during the development of environmental impact statements and mitigation measures. While we do not assume that adverse population-level effects cannot occur, to date, there has been no documented scientific evidence of noise from air guns used in geological and geophysical (G&G) seismic activities adversely affecting marine animal populations or coastal communities. This technology has been used for more than 30 years around the world. It is still used in U.S. waters off of the Gulf of Mexico with no known detrimental impact to marine animal populations or to commercial fishing. Nonetheless, BOEM acknowledges the documented disruption of marine mammal behavioral patterns by seismic airguns, as well as our evolving understanding of how disturbance effects may be translated to the population, and notes that we should not assume that a lack of evidence for adverse population-level effects of airgun surveys means that those effects may not occur.

When our scientists begin to look at possible impacts of seismic surveys, they first look at what might happen if no measures were taken to mitigate or avoid possible injury to marine mammals. Next they begin to look at what could be done to avoid harm, such as avoiding migration routes and stopping surveys if vessels get close enough to marine mammals to possibly injure their hearing.

After a thorough public process, the Department selected a preferred alternative that included specific mitigation measures to limit impacts to marine mammals and that would allow surveys to take place. We expect survey operators to comply with our requirements and, if they do, we do not expect seismic surveys to cause any injuries or

death to marine mammals or sea turtles.

Another source of confusion is about what a "take" is. As defined by Federal law, a "take" of a marine mammal, unsurprisingly, includes causing its death. However "take" also includes not only injury to hearing but also any disturbance to an animal that may disrupt its behavioral patterns. BOEM has published numbers of potential "takes," and the highest numbers are based on potential for behavioral effects, such as temporarily leaving survey areas. In fact, the same Federal law defining "take" of a marine mammal prohibits all taking unless NOAA has determined that the taking will have no more than "negligible impact," i.e., no adverse effects on marine mammal rates of recruitment or survival.

BOEM also consults with both NOAA and the U.S. Fish and Wildlife Service under the Endangered Species Act to develop mitigations that will limit any potential impacts to endangered and threatened species, including baleen whales and sea turtles.

5. The State of North Carolina recently requested a supplemental consistency certification under the federal Coastal Zone Management Act for all companies proposing to conduct seismic blasting off the State's coast. Their request was based on significant new information regarding the detrimental impact of seismic blasting on fish, zooplankton, and other marine life. The commercial and recreational fishing industries support 22,500 jobs, \$787 million in income, and contribute almost \$2 billion in business sales annually to the State's economy.
  - a. Can you assure me that BOEM will consider this objection and adequately respond to it before granting permits for seismic blasting?
  - b. Can you assure me that BOEM will support the state's request, and to await the conclusion of any consistency review, including resolution of any state objections to consistency, before granting permits for seismic blasting?

**Response:** The Coastal Zone Management Act (CZMA) requires that a State requesting a supplemental consistency certification must concur with or object to the lessee's consistency certification within a designated time period. If the State does not meet the deadline, CZMA provisions render the permit consistent ("conclusively presumed"). If the State concurs, we can approve the permit, and the lessee can begin activities. If the State objects, we are prohibited from approving the permit, and (1) the lessee can appeal the State's decision to the Department of Commerce, or (2) the lessee can amend the proposed activities associated with the permit and resubmit it to BOEM for approval and to the State for Federal consistency review. The applicants declined North Carolina's request for supplemental coordination under the National

Oceanic and Atmospheric Administration's Coastal Zone Management Act (CZMA) regulations, and the applicants disagreed with the state that there is significant new information regarding coastal effects. BOEM cannot mandate that the applicants submit a new consistency certification for CZMA supplemental review and must complete its review based on the existing state CZMA concurrences.

**Committee on Natural Resources Subcommittee on Energy and Mineral Resources  
Oversight Hearing  
1324 Longworth House Office Building January 19, 2018  
9:00a.m.**

**Oversight Hearing on "*Deficiencies in the Permitting Process for Offshore Seismic Research*"**

**Questions from Rep. Nanette Diaz Barragan** for Dr. Walter Cruickshank, Acting Director, Bureau of Ocean Energy Management

1. Early last week, Associate Deputy Secretary James Cason briefed our staff about Secretary Zinke's reorganization plan for D-O-I and mentioned recombining BOEM (*bone*) and B-S-E-E. He stated that the staff of the two agencies were currently analyzing the pros and cons of recombination.
  - a. Is that correct, and if so, what is the status of that analysis?
  - b. When do you expect to have that analysis completed, or when have you been instructed to have that analysis completed by?
  - c. Has the Department estimated the amount of time and money required to recombine them?

**Response:** The Department of the Interior is taking bold steps to better position itself for the next 100 years. In response to President Trump's Executive Order on a *Comprehensive Plan for Reorganizing the Executive Branch*, Secretary Zinke laid out a vision for a reorganized Department of the Interior, which proposes to align regional boundaries within Interior to provide better coordination across the Department to improve mission delivery and focus resources in the field. Across the Department, the President's FY 2019 budget includes a total of \$17.5 million to start this effort. The Department is continuing to evaluate the advantages and disadvantages of BOEM and BSEE being separate organizations with the understanding that revenue generation collection activities need to be separate from safety. There is no defined deadline for evaluating a BOEM/BSEE recombination, nor have any cost-analyses been conducted to date.

2. Late last month, William K. Reilly, co-chairman of the national Oil Spill Commission formed after the Deepwater Horizon disaster and E-P-A administrator during the term of President George H.W. Bush, weighed in with his thoughts on the proposed recombination. He said, quote "If you have one part of your operation bringing in \$18 billion dollars a year and another part that does inspections, what part would you pay attention to? It is very

unwise to mix those two under one head."

- a. Considering that even the spokeswoman for the National Ocean Industries Association admitted that, quote "we did not ask for it"-referencing the recombination-and that industry lobbyists are concerned that it will ultimately distract agency staff, who was responsible for calling for this review in the first place?

**Response:** The evaluation of the advantages and disadvantages of BOEM and BSEE being separate organizations is being conducted pursuant to Secretary Zinke's vision for a reorganized Department of the Interior in support of President Trump's Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*.

3. You have been a career Interior Department employee for many years, and you worked at the agency both before and after the Deepwater Horizon disaster.

- a. Do you believe that recombining BOEM and BSEE is the most efficient use of taxpayer dollars and-more importantly-will doing so increase the human and environmental safety of offshore oil and gas operations?

**Response:** At this point in the evaluation of a BOEM/BSEE merger, it is hard to answer these questions directly. However, the Secretary's decisions will be based partly on the value for the American taxpayer and largely on the impact to BOEM and BSEE's ability to manage development of U.S. Outer Continental Shelf (OCS) energy and mineral resources in a safe and an environmentally and economically responsible way while continuing to enhance safety on the OCS.

4. Can you briefly mention why the Minerals Management Service was reorganized in 2010 and 2011, how the split was made, and the amount of time and money that was required to fully separate the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement? Was it a simple process that occurred quickly?

**Response:** Pursuant to a May 19, 2010, Secretarial Order (S.O. 3299), the Department of the Interior established three separate and independent entities to carry out the functions once performed by the Minerals Management Service (MMS).

MMS was renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) in mid-June 2010, to more accurately describe the scope of the organization's function. On October 1, 2010, the revenue collection arm of the former MMS became the Office of Natural Resources Revenue.

On January 19, 2011, Secretary of the Interior Ken Salazar and the BOEMRE Director announced the separation of the: 1) the resource development and energy management functions of BOEMRE; and 2) the safety and enforcement functions of BOEMRE.

The Bureau of Ocean Energy Management (BOEM) was made responsible for managing development of the nation's offshore resources in an environmentally and economically responsible way. Functions of the bureau include: leasing, plan administration, environmental studies, National Environmental Policy Act (NEPA) analysis, resource evaluation, economic analysis and the renewable energy program.

The Bureau of Safety and Environmental Enforcement (BSEE) was made responsible for enforcing safety and environmental regulations. Functions of the bureau include: All field operations including permitting and inspections, research, offshore regulatory programs, oil spill response, and training and environmental compliance.

The decisions on how to structure the reorganization were made after extensive interviews and discussions with BOEMRE employees in all of the regional offices; collecting and analyzing data relating to the Bureau's processes, systems and regulatory metrics; and developing various models and options for restructuring and reorganizing the Bureau. Although approximately \$7.8 million was spent for contractor-provided BOEMRE/MMS Reorganization Support Services, the Department has not estimated the total cost of the reorganization.





# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT - 1 2018

The Honorable John Hoeven  
Chairman  
Committee on Indian Affairs  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Hoeven:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Committee's June 20, 2018, oversight hearing on "Keep What You Catch: Promoting Traditional Subsistence Activities in Native Communities."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall  
Ranking Member

**Questions for the Record**  
**From Senator Catherine Cortez Masto**  
**Senate Indian Affairs Committee hearing on “Keep What You Catch: Promoting**  
**Traditional Subsistence Activities in Native Communities”**  
**June 20, 2018**

*For Dr. Jennifer Hardin, Ph.D., Subsistence Policy Coordinator at the Office of Subsistence Management, U.S. Fish and Wildlife Service, Anchorage, AK*

**Question 1A: Many tribes are facing additional barriers due to state regulations. Indigenous peoples who have practiced subsistence fishing and hunting for generations are experiencing large fines for not abiding by state regulations and a seizure of goods and supplies necessary for subsistence harvesting at the hands of the state.**

**How can the federal government assume an active role in protecting the sovereignty of native peoples and continuing this tradition and what would tribal co-management over subsistence activities look like?**

**Response:** Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) dictates that the subsistence harvest of fish and wildlife is the priority consumptive use on Federal public lands in Alaska. This means that in the event that there are not enough resources to meet the harvest demands of all users, only Federally-qualified rural residents (both Native and non-Native) may hunt or fish on Federal lands under Federal regulations, and that Federal public lands are closed to all other consumptive uses. In these instances, state regulations no longer apply on Federal public lands. While some subsistence users may find this type of dual management system to be confusing at times, it can also be quite protective of the hunting and fishing practices that are central to the Native and non-Native rural subsistence way of life in Alaska by ensuring that these practices can continue on Federal public lands even if state mandates or priorities differ. The Federal Subsistence Board’s charge is to act on behalf of rural subsistence users in providing for the subsistence priority on Federal public lands, per the ANILCA mandate. The State of Alaska is not obligated under the law to carry out this same mandate.

ANILCA outlines the regulatory decision making structure for subsistence harvest on Federal public lands in Alaska. Federal subsistence regulatory decisions are the responsibility of the Secretaries of the Interior and Agriculture and the ten Subsistence Regional Advisory Councils. Subsistence Regional Advisory Councils are composed of representatives who are knowledgeable about subsistence issues in their respective regions and are appointed by the Secretaries. Many Regional Advisory Council members are Alaska Native.

The Secretaries have delegated regulatory decision making authority related to the subsistence take of fish and wildlife to the Federal Subsistence Board (Board). In turn, the Board is statutorily required to defer to the recommendations of the Subsistence Regional Advisory Councils unless recommendations are not supported by substantial evidence, violate recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. The subsistence decision making structure outlined in ANILCA is designed

to ensure that the Federal Subsistence Management Program is characterized by a bottom-up approach that is primarily driven by the concerns of the rural Alaskans who will be directly affected by Board decisions.

Currently, "co-management" is not defined in relation to the subsistence provisions contained in Title VIII of ANILCA. It is assumed that any future proposed Federal subsistence co-management structures would conform to the provisions of Title VIII of ANILCA, which define the subsistence priority for rural Alaskans throughout the state.

**Question 1B: How could we balance state interest to protect endangered species with tribal rights to subsistence activities?**

**Response:** The Federal Subsistence Management Program in Alaska provides a good model for balancing subsistence opportunity with conservation of healthy populations of fish and wildlife in order to ensure the continuation of the subsistence way of life for future generations. Striking this balance requires close collaboration between rural subsistence users, the Federal Subsistence Board, Federal land management agencies and the State of Alaska. In accordance with Section 815(4) of ANILCA, the endangered species program is not administered by the Federal Subsistence Management Program. At this time, no subsistence resources managed by the Federal Subsistence Management Program are listed as endangered species.

**Question 2: One of the prominent barriers to subsistence activities is the harmful role of climate change in natural ecosystems in Indian Country. We know that when lakes and other natural resources are polluted and communities are unable to harvest resources, they lose an important source of nutrition.**

**Have you collected any data or research on the relationship between environmental pollution and native health in communities that practice subsistence fishing, hunting, or farming? If so, can you talk about how native health is impacted by climate change?**

**Response:** This is an important issue of concern for subsistence users in rural Alaska but it is not an area of research that is within the purview of the Federal Subsistence Management Program. The Federal Subsistence Management Program provides funding for fisheries research through the Fisheries Resource Monitoring Program. Research conducted through that program examines, among other issues, the health of subsistence fisheries throughout Alaska, including the impact of changing environmental conditions on subsistence fish populations.

The Office of Subsistence Management also administers the Partners for Fisheries Monitoring Program (Partners Program) on behalf of the Federal Subsistence Management Program. The Partners Program is a competitive grant program directed at providing funding for biologist, social scientist, and educator positions in Alaska Native and rural organizations with the intent of building capacity in rural Alaska to actively participate in Federal subsistence management.

**Question 3A: I understand that Native populations are the most vulnerable group to climate change and that environmental pollution of tribal lands and resources generally comes from surrounding businesses, plants, and communities that do not belong to the tribal community.**

**What can we do to protect tribal lands from surrounding environmental pollution and what course of action can tribes or the government take against organizations, communities, or individual who contaminate tribal lands?**

**Response:** The situation in Alaska is unique in that more than 50 percent of lands within the state are managed by the Federal government and subject to the subsistence priority afforded by Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). In accordance with Section 810 of ANILCA, Federal agencies are required to evaluate and minimize the potential effects of other uses or activities on subsistence uses prior to authorizing such actions on Federal lands. All other lands within the State of Alaska, including those belonging to Alaska Native Claims Settlement Act (ANCSA) Corporations, fall under state jurisdiction.

**Question 3B: How can traditional knowledge help address climate change impacts facing tribes? Do you think western science takes your suggestions seriously?**

**Response:** The Federal Subsistence Management Program recognizes the critical importance of local and traditional ecological knowledge in informing decisions about subsistence harvest by rural Alaskans. The Federal Subsistence Board (Board) relies on the knowledge shared by local people and strives to consider it equitably alongside of western scientific knowledge. Because traditional ecological knowledge is obtained through systematic observations and repeated interactions with the natural world over long spans of time, it can be particularly useful in assessing the impacts of environmental change on the natural resources that subsistence users depend upon. Traditional ecological knowledge often provides a spatial and temporal scale that is otherwise unavailable to resource managers.

The Board strives to obtain traditional ecological knowledge from a variety of sources in an effort to inform management decisions. All staff analyses of wildlife and fishery proposals to change Federal subsistence regulations, make customary and traditional use determinations, and rural determination proposals incorporate available traditional ecological knowledge to help the Board better understand subsistence resources and the people who depend on them. The Federal Subsistence Management Program consults with local federally recognized tribes on proposals that might impact their members, and incorporates the knowledge learned during those consultations. The Subsistence Regional Advisory Council system provides a direct conduit of traditional ecological knowledge in the decision making process. The Board considers traditional ecological knowledge along with biological and sociocultural data when making decisions about the take of fish and wildlife on Federal public lands.

**Question 4: A large part of our discussion today has revolved around the numerous barriers to subsistence activities, particularly focusing on the role of the Federal Subsistence Board in management. However, we know that for native communities subsistence activities are an important source of cultural identity and heritage. We**

**know that cultural connections including traditional values, customs, activities, and ceremonies serve as protective factors in the lives of tribal youth by discouraging delinquent behavior, encouraging academic success, and alleviating various stressors on native youth.**

**Could you talk about the emotional, spiritual, and cultural toll these barriers to subsistence activities have had on native communities, specifically related to native youth?**

**Response:** In Title VIII of ANILCA, Congress found that the continuation of the subsistence way of life by rural Alaskans is essential to their physical, economic, traditional, cultural and social existence. Title VIII established a priority for the taking of fish and wildlife for nonwasteful subsistence purposes on Federal public lands in Alaska over the taking of those resources for other purposes. In ANILCA, Congress recognized the vital relationships between people, land and cultural identity that are reflected in subsistence hunting and fishing practices in rural Alaska. These practices are part of a community's cultural, social, economic, and nutritional wellbeing. The Federal Subsistence Management Program's focus on the sociocultural aspects of subsistence activities distinguishes it from other hunting and fishing programs.

The Federal Subsistence Management Program tries to facilitate the continuation of cultural practice associated with the subsistence way of life in rural Alaska by supporting culture camps designed to pass on important cultural knowledge to future generations, providing for community harvest systems that are organized and managed by communities according to customary and traditional practices and offering the ability to harvest fish or wildlife outside of established season or harvest limits, for food in traditional religious ceremonies, including potlaches.

The Federal Subsistence Management Program regularly conducts outreach to connect with rural youth. For example, the program offers presentations and workshops within rural village schools in conjunction with Subsistence Regional Advisory Council meetings and often holds those meetings within village schools so youth may attend and participate. Engagement with rural youth during meetings allows for council members to interact and influence the next generation, securing the subsistence way of life for the future. The Federal Subsistence Management Program regularly holds an art contest focusing on wildlife and fish related subsistence activities for all students in Alaska in grades K-12.

The Federal Subsistence Board, Subsistence Regional Advisory Councils, and the Office of Subsistence Management will continue to seek additional mechanisms to increase youth involvement in the Federal Subsistence Management Program to support generations of conservation leaders. These future leaders will protect the continuation of the opportunity for subsistence uses on federal lands, which is essential to the physical, traditional, cultural, and social existence of rural residents in Alaska. This unique existence has withstood natural, institutional, and social challenges for many generations.