| | |
|---|---|
| **From:** | Cruickshank, Walter |
| **To:** | Lefton, Amanda B; Stokely, Sarah C; Morin, Michelle; Vorkoper, Stephen R; Annatoyn, Travis J |
| **Subject:** | Re: [EXTERNAL] Fwd: (External)South Fork Wind / Do Not Sign Off on BOEM"s Illegal Actions |
| **Date:** | Wednesday, November 24, 2021 10:26:16 AM |

It's the same law firm.

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**From:** Lefton, Amanda B <Amanda.Lefton@boem.gov>
**Sent:** Wednesday, November 24, 2021 10:23 AM
**To:** Stokely, Sarah C <Sarah.Stokely@boem.gov>; Morin, Michelle <Michelle.Morin@boem.gov>; Vorkoper, Stephen R <stephen.vorkoper@sol.doi.gov>; Annatoyn, Travis J <travis.annatoyn@sol.doi.gov>; Cruickshank, Walter <Walter.Cruickshank@boem.gov>
**Subject:** Fwd: [EXTERNAL] Fwd: (External)South Fork Wind / Do Not Sign Off on BOEM's Illegal Actions

Hey team

Is this the same individual that we discussed?

Begin forwarded message:

> **From:** Christine Harada <christine.harada@fpisc.gov>
> **Date:** November 24, 2021 at 10:19:47 AM EST
> **To:** "Lefton, Amanda B" <Amanda.Lefton@boem.gov>, "Morin, Michelle" <Michelle.Morin@boem.gov>, "Stokely, Sarah C" <Sarah.Stokely@boem.gov>, "Cruickshank, Walter" <Walter.Cruickshank@boem.gov>, "Krevor, Brian" <Brian.Krevor@boem.gov>
> **Cc:** Tabitha Elkington <tabitha.elkington@fpisc.gov>, Jennifer Mallard <jennifer.mallard@fpisc.gov>, John Cossa <john.cossa@fpisc.gov>
> **Subject: [EXTERNAL] Fwd: (External)South Fork Wind / Do Not Sign Off on BOEM's Illegal Actions**
>
> **This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**
>
> Dear team
>
> FYSA - just received
>
> Christine
>
> ---------- Forwarded message ---------

From: **Reid Nelson** <rnelson@achp.gov>
Date: Wed, Nov 24, 2021 at 7:02 AM
Subject: RE: (External)South Fork Wind / Do Not Sign Off on BOEM's Illegal Actions
To: Marion F. Werkheiser <marion@culturalheritagepartners.com>, Chris Daniel <cdaniel@achp.gov>, Christopher Koeppel <ckoeppel@achp.gov>, Jaime Loichinger <jloichinger@achp.gov>
Cc: Bettina Washington <bettina@wampanoagtribe.net>, David Weeden <David.Weeden@mwtribe-nsn.gov>, [redacted]@aol.com <[redacted]@aol.com>, Kitcki Carroll <kcarroll@usetinc.org>, Samantha Skenandore <Samantha.Skenandore@quarles.com>, Christine Harada <christine.harada@fpisc.gov>, epaden@delawarenation-nsn.gov <epaden@delawarenation-nsn.gov>, lanceg@optonline.net <lanceg@optonline.net>, jcummings@mptn-nsn.gov <jcummings@mptn-nsn.gov>, Jeff D. Emidy <jeffrey.emidy@preservation.ri.gov>, Brona Simon <brona.simon@state.ma.us>, Daniel Mackay <daniel.mackay@parks.ny.gov>, kathy_schlegel@nps.gov <kathy_schlegel@nps.gov>, preynolds@cityofnewport.com <preynolds@cityofnewport.com>, hjohnson@cityofnewport.com <hjohnson@cityofnewport.com>, jnicholson@cityofnewport.com <jnicholson@cityofnewport.com>, mthompson@newportrestoration.org <mthompson@newportrestoration.org>, alyssa@newportrestoration.org <alyssa@newportrestoration.org>, mcrawford@new-shoreham.com <mcrawford@new-shoreham.com>, tcoxe@newportmansions.org <tcoxe@newportmansions.org>, tdickinson@newportmansions.org <tdickinson@newportmansions.org>, [redacted]@gmail.com <[redacted]@gmail.com>, Gerald F. Abbott <[redacted]@gmail.com>, [redacted]@comcast.net <[redacted]@comcast.net>, Valerie Talmage <vtalmage@preserveri.org>, jwakeford@ncai.org <jwakeford@ncai.org>, david.s.robinson@mass.gov <david.s.robinson@mass.gov>, john.peters@mass.gov <john.peters@mass.gov>, Greg Werkheiser <greg@culturalheritagepartners.com>, William J. Cook <will@culturalheritagepartners.com>, Jessica Krauss <jessica@culturalheritagepartners.com>, Christopher Koeppel <ckoeppel@achp.gov>, Chris Daniel <cdaniel@achp.gov>

Marion,

Thanks for sharing your concerns with us. While your comments point to a number of issues that we, too, raised during consultation, we determined that declining to sign or terminating the consultation was not appropriate. Based on staff's review of the documentation provided by BOEM and their recent responses to comments, it is our opinion that BOEM, through this MOA, has taken into account the effects of this undertaking on historic properties. As such, we elected to sign and execute the MOA.

We do not take lightly the concerns raised by you or your clients. BOEM's consultation faced challenges stemming from the nature and complexity of the undertaking and its effects on historic properties, as well as the challenge of addressing the broad public interest in the undertaking's effects on historic properties. Further, given the scope and

scale of offshore wind energy, these consultations rely on the utilization of various identification and assessment techniques and often employ new and emerging technology, resulting in an overwhelming amount of technical information being provided to consulting parties. Analyzing this information presents a substantial task in its own right and the ACHP believes there will be additional opportunities to improve how this information is presented and consulted on as part of future BOEM undertakings, including more emphasis on site-by-site narratives for historic properties in the area of potential effects. We hope that these analyses will help address consulting parties questions and concerns regarding BOEM's assessment of effects in the future. Further, we acknowledge that the scope and scale of proposed offshore wind development along the east coast, from consecutive undertakings, will increase and require BOEM and its applicants to dedicate additional time and resources to assessing and resolving those effects. We are already advising BOEM of such needs and how they might meet them, outside and beyond the context of this consultation.

We remain committed to advising BOEM as it navigates the Section 106 process for future offshore wind projects and as a signatory to this MOA, we are also committed to seeing the terms of the agreement implemented successfully.

If you have any questions or are interested in further clarification, please contact Mr. Christopher Daniel, Program Analyst, at 202-517-0223 or via e-mail at cdaniel@achp.gov.

Reid Nelson

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**From:** Marion Werkheiser [mailto:marion@culturalheritagepartners.com]
**Sent:** Tuesday, November 16, 2021 1:32 PM
**To:** Reid Nelson <rnelson@achp.gov>; Chris Daniel <cdaniel@achp.gov>; Christopher Koeppel <ckoeppel@achp.gov>; Jaime Loichinger <jloichinger@achp.gov>
**Cc:** Bettina Washington <bettina@wampanoagtribe.net>; David Weeden <David.Weeden@mwtribe-nsn.gov>; (b)(6) @aol.com; Kitcki Carroll <kcarroll@usetinc.org>; Samantha Skenandore <Samantha.Skenandore@quarles.com>; Christine Harada <christine.harada@fpisc.gov>; epaden@delawarenation-nsn.gov; lanceg@optonline.net; jcummings@mptn-nsn.gov; Jeff D. Emidy <jeffrey.emidy@preservation.ri.gov>; Brona Simon <brona.simon@state.ma.us>; Daniel Mackay <daniel.mackay@parks.ny.gov>; kathy_schlegel@nps.gov; preynolds@cityofnewport.com; hjohnson@cityofnewport.com; jnicholson@cityofnewport.com; mthompson@newportrestoration.org; alyssa@newportrestoration.org; mcrawford@new-shoreham.com; tcoxe@newportmansions.org; tdickinson@newportmansions.org; (b)(6) @gmail.com; Gerald F. Abbott <(b)(6) @gmail.com>; (b)(6) @comcast.net; Valerie Talmage <vtalmage@preserveri.org>; jwakeford@ncai.org; david.s.robinson@mass.gov; john.peters@mass.gov; Greg Werkheiser <greg@culturalheritagepartners.com>; William J. Cook

<will@culturalheritagepartners.com>; Jessica Krauss
<jessica@culturalheritagepartners.com>
**Subject:** (External)South Fork Wind / Do Not Sign Off on BOEM's Illegal Actions

Dear Reid, Chris D., Chris K., and Jaime,

I write respectfully to request that the ACHP refuse to sign the proposed Memorandum of Agreement for the South Fork Wind project. BOEM is running roughshod over American Indian tribes and some of our nation's most historic communities. Signing this MOA in its current proposed state will create a regrettable precedent for all future offshore wind projects. It will substantially reduce the ACHP's ability to balance protections of historic assets with new energy development.

In the South Fork consultation, my firm represents multiple parties on Block Island and Newport, RI. We have local government and/or federally recognized tribal clients in every forthcoming offshore wind project on the federal permitting dashboard. These communities and Tribal Nations need the ACHP to stand up and demand that BOEM follow the law on these projects.

On South Fork we object to the proposed MOA for the following reasons:

- BOEM has not adequately identified or assessed adverse effects on historic properties, and yet is jumping to mitigation;
- BOEM has not complied with Section 110(f)'s requirement to use all possible planning to minimize harm to NHLs;
- BOEM has failed to adequately consider cumulative effects on historic resources, especially with respect to Newport, which BOEM has unfairly excluded;
- BOEM is allowing Orsted to illegally segment its three projects (South Fork, Revolution, and Sunrise), giving South Fork a pass because of its relatively small size (12 turbines), even though Orsted plans to wrap an additional 200 turbines around South Fork in its next two projects;
- BOEM's proposed mitigation is ridiculously inadequate for the projected 25+ years of impacts the projects will have on cultural resources;
- BOEM's (really, Orsted's) proposed mitigation does not reflect community input; in fact, the consulting parties have expressed that they do not need or want what they are being told they will get;
- BOEM took 48 hours to consider our clients' lengthy feedback on the latest draft and is now giving parties eight calendar days to sign; indeed,
- BOEM's staff have openly admitted "[they] don't have the time to comply with Section 106 and 110(f)."

BOEM has utterly failed to resolve adverse effects by imposing a "springing MOA" that relies on illusory promises of undefined "Historic Preservation Treatment Plans" that will have to be negotiated in the future— a tool more appropriate to a nationwide programmatic agreement, not a 12-turbine development. Why the ACHP would even consider taking on the role of mediating inevitable disputes over the unresolved HPTPs, when it's BOEM's job to resolve adverse effects now, is beyond me.

If a springing MOA is permitted in this project, it will become the default for all future offshore wind projects.

BOEM is rushing this process because of arbitrary deadlines on the federal permitting dashboard. BOEM is de facto terminating consultation because it does not want to spend the time to finish the Section 106 process and to determine through consultation how to resolve adverse effects. ACHP must call them on it and force them to officially terminate consultation, if an extension of the deadline cannot be reached that would allow for meaningful consultation.

In the first two offshore wind projects in the US, our firm's clients (Block Island and Nantucket) were denied meaningful consultation and mitigation through the federal agency process, forcing them to negotiate directly with the project proponents to resolve their concerns and establish mitigation funds in private agreements such as the Nantucket Good Neighbor Agreement, which we provided to your office. We strongly believe that agency-backed regional mitigation funds would resolve adverse visual effects from these proposed projects in a predictable way and provide an efficient solution to permitting offshore wind. BOEM is forgoing a huge opportunity to create a new model for an emerging industry and a positive success story for Section 106—and instead asking the ACHP to be party to its circumvention of the law that ACHP exists to sustain.

BOEM's failure to ensure a fair Section 106 process—and the ACHP's failure to hold BOEM to account-- will continue to leave our clients with no options other than to file suit to enforce federal law in this and every subsequent consultation for which this improper MOA and shoddy process become the model.

I welcome the opportunity to speak with you about this matter as soon as possible.

Regards,
Marion

Marion F. Werkheiser
She/her
Attorney at Law
Cultural Heritage Partners, PLLC
Direct/Text: 703.489.6059
www.culturalheritagepartners.com
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This email is confidential and may be privileged. If you are not the intended recipient, please notify us immediately by replying to this message or sending an email to marion@culturalheritagepartners.com, and destroy all copies of this message and any attachments. Thank you.