

DOCKETED	
Docket Number:	17-MISC-01
Project Title:	California Offshore Renewable Energy
TN #:	255882
Document Title:	Comment of the Yurok Tribe on the Draft AB 525 Strategic Plan
Description:	N/A
Filer:	System
Organization:	Yurok Tribe
Submitter Role:	Other Interested Person
Submission Date:	4/22/2024 5:00:43 PM
Docketed Date:	4/23/2024

*Comment Received From: Yurok Tribe
Submitted On: 4/22/2024
Docket Number: 17-MISC-01*

Comment of the Yurok Tribe on the Draft AB 525 Strategic Plan

Additional submitted attachment is included below.



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA



April 22, 2024

Aiy-ye-kwee Chair Hochschild and Honorable Commissioners,

This letter serves as the Yurok Tribe’s (“Tribe”) written comment to the Draft AB 525 Strategic Plan (“Draft Plan”), prepared by the California Energy Commission (“CEC”). The Tribe writes to strongly recommend several additions or edits to the Draft Plan prior to finalization.

I. Introduction to the Yurok Tribe

The Yurok Tribe is the largest Native nation within California with over 6,400 members. The Yurok people have always lived along the Pacific Coast and inland on the Klamath River. As stated in the Yurok Constitution:

The Ancestral Lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary offshore fishing areas and ocean territory) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides and its bed, from its mouth upstream to and including the Bluff Creek drainage basin. Included within these lands are the drainage basin of Wilson Creek, the drainage basins of all streams entering the Klamath River from its mouth upstream to and including the Bluff Creek and Slate Creek drainage basins, including the village site at Big Bar (except for the drainage basin upstream from the junction of Pine Creek and Snow Camp Creek), and the Canyon Creek (also known as Tank Creek) drainage basin of the Trinity River, the drainage basins of streams entering the ocean or lagoons between the Klamath River and Little River (except for the portion of the Redwood Creek drainage basin beyond the McArthur Creek drainage basin, and except for the portion of the Little River drainage basin which lies six miles up from the ocean). Our Ancestral Lands include all submerged lands, and the beds, banks and waters of all the tributaries within the territory just described. Also included within the Ancestral Lands is a shared interest with other tribes in



ceremonial high country sites and trails as known by the Tribe, as well as the Tribe's usual and customary hunting, fishing and gathering sites.¹

The Yurok Reservation, established by Executive Order in 1855, is tethered to the lower forty-five miles of the Klamath River, a mile on either side, from the Yurok village of Req-woi at the mouth of the Klamath River to upstream of the Yurok village of Weych-pues. The Yurok people, the Tribe's inherent sovereignty, and the Yurok Constitution provide the Tribal government authority to create Yurok laws, manage Yurok lands and natural resources, and adjudicate violations of Yurok laws in Yurok Tribal Court. The Yurok Tribe's jurisdiction lies throughout the Yurok Ancestral Territory and "extends to all of its member wherever located, to all persons throughout its territory, and within its territory, over all lands, waters, riverbeds, submerged lands, properties, air space, minerals, fish forests, wildlife, and other resources, and any interest therein now or in the future."² Via the adoption of the Yurok Constitution, the Yurok Tribe, in its governing authority, strives to:

- 1) Preserve forever the survival of our tribe and protect it from forces which may threaten its existence;
- 2) Uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished;
- 3) Reclaim the tribal land base within the Yurok Reservation and enlarge the Reservation boundaries to the maximum extent possible within the ancestral lands of our tribe and/or within any compensatory land area;
- 4) Preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever;
- 5) Provide for the health, education, economy, and social wellbeing of our members and future members;
- 6) Restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests, and all other natural resources; and
- 7) Insure peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government.³

¹ Yurok Const. art. I, § 1.

² *Id.* § 3.

³ *Id.* pmbl.



The Yurok Constitution Preamble provides in part that:

[i]n times past and now Yurok people bless the deep river, the tall redwood trees, the rocks, the mounds, and the trails. We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. We never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals... This whole land, this Yurok country, stayed in balance, kept that way by our good stewardship, hard work, wise laws, and constant prayers to the Creator.⁴

The Yurok Tribe and Yurok people's health, wellbeing, and cultural resources are intimately connected with the health of the ecosystem and the species within them. Self-described as salmon, water, forests, and prayer people, the Tribe values management of, and reliance on, a traditional subsistence diet and practices—they are a vital part of Yurok cultural identity. Abundant and thriving salmonid and other anadromous fish populations are essential for the continuation of subsistence fishing, cultural, and economic lifeways of the Yurok people. And a healthy Klamath River is a prerequisite for healthy salmon populations. These important connections to the Klamath River make the River a tribal cultural landscape to the Yurok people. Likewise, the portion of the Yurok Ancestral Territory along and within the Pacific Ocean is central to the health of the Klamath River, subsistence fishing and gathering, and viewsheds for cultural practitioners, and as such is also a tribal cultural landscape of the Yurok people.

Unfortunately, ocean, coastal, and aquatic habitat degradation caused by increasing temperatures and shifting currents in the Pacific Ocean, dams and wildfires along the Klamath River, and other causes, the Yurok salmon fishery has undergone a substantial decline during recent decades, negatively impacting the Yurok Tribe and its people's capacity pass traditional ceremonial and ecological knowledge to future generations, access commercial fishing income, and ensure tribal food security, health, and wellbeing.

Impacts to salmon populations and viewsheds are just two reasonably foreseeable impacts of the Projects to the tribal cultural resources of the Yurok Tribe, the environment within the Yurok Ancestral Territory, and to health and wellbeing of the Yurok people. The potential for planned offshore wind projects, along with other reasonably foreseeable wind projects, associated transmission projects, and other infrastructure projects servicing the offshore wind industry to negatively impact tribes has been flagged by the California Coastal Commission, whose Consistency Determination of the lease sale was predicated upon the assumption that "future wind development [] not only provide benefits to the community but also in a manner that does not

⁴ *Id.*



continue to exacerbate harm in Native American communities and any additional vulnerable populations with limited resources to address these harms.”⁵

Above all else, the Yurok Tribe seeks to ensure that offshore wind does not harm the traditional lifeways of the Yurok people or the animals, plants, and ecosystems of the Yurok Ancestral Territory. For this reason, the Yurok Tribal Council has voted to formally oppose the planned development of offshore wind projects in the Ancestral Ocean Territory of the Yurok Tribe and along the California North Coast.⁶

The importance of the global effort to fight climate change by, in part, transitioning to clean, renewable energy is not lost on the Yurok Tribe—sea level rise, increasing prevalence of catastrophic wildfires, more frequent and severe drought, among others, are effects of climate change which deeply and disproportionately impact the Yurok Tribal community. Indeed, the Yurok Tribe is engaged government-wide in climate change mitigation and adaption efforts, from implementing projects to bring clean, reliable energy to the Yurok Reservation, to restoring and managing natural landscapes and ecosystems throughout the Klamath River Basin and beyond. It is fundamental, however, that the rights of the Yurok Tribe and its members not be sacrificed in the name of fighting climate change.

Nothing in this comment should be construed as an endorsement by the Yurok Tribe of planned offshore wind projects along the California North Coast. The Tribe reserves its rights related to participation in all state and federal processes relating to the planning, permitting, and regulation of the offshore wind industry.

II. Comments on the AB 525 Draft Strategic Plan

Overall, the Tribe is pleased with the attention to tribal concerns expressed in previous comments, during the meetings of the Offshore Wind Tribal Working Group, and in other venues. However, there are several critical revisions which the Tribe implores the CEC to consider. Comments herein will refer, when possible, to specific provision in the three volumes of the Plan (respectively, “Volume I,” “Volume II,” and “Volume III”).

A. Decisionmaking Authority and Co-Management

The Yurok Tribe has repeatedly called for California and the United States to acknowledge the legitimacy of the Yurok Tribe’s claims to the unceded Ancestral Territory of the Yurok Tribe, including that portion within the Pacific Ocean (“Ancestral Ocean Territory”) overlapping both

⁵ CALIFORNIA COASTAL COMM’N, CONSISTENCY DETERMINATION CD-0001-22 p. 121 (Jan. 24, 2022), <https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/Th8a-4-2022%20adopted%20findings.pdf>.

⁶ Resolution 24-33, Statement of the Yurok Tribe in Opposition to Planned Offshore Wind Energy Development (April 11, 2024).



state and federal waters,⁷ and to take affirmative steps to support the inherent sovereign authority of the Yurok Tribe in the Ancestral Ocean Territory and over the resources therein, through interagency cooperative agreements, co-management agreements, or other means. The Yurok Tribe has repeatedly stated that such support is a prerequisite for the Tribe’s consideration of support for the development of the offshore wind industry in the Ancestral Ocean Territory. Moreover, Yurok Tribe is the sovereignty entity best positioned to ensure beneficial environmental outcomes of land and natural resources management within the Ancestral Ocean Territory.

The Draft AB 525 Strategic Plan provides a strong factual basis to underpin the need for the exercise of Tribal authority over the Ancestral Ocean Territory. The Draft Strategic Plan notes the state’s sordid historical treatment of Native American people, the ramifications of historical wrongs on present-day tribal communities, the deep cultural importance of the cultural and natural resources of the ocean to California Native American Tribes, and tribes’ numerous legitimate and sincerely held concerns regarding offshore wind. The Plan also provides a description, albeit high-level, of the state’s current obligations to rectify past harms, and of repeated comments by tribes, including the Yurok Tribe, that a primary means to do so is by promoting tribal decisionmaking authority and engaging in co-management.

Yet, disappointingly, the Draft AB 525 Strategic Plan fails to endorse proactive steps towards realization of the Yurok Tribe’s sovereign authority in the Ancestral Ocean Territory and the Ancestral Territory more broadly. Volume I’s only mention co-management is to list “co-management opportunities” as one strategy in a list of several which “could . . . “address[] impacts to California Native American tribes.” Volumes II and III mention “co-management agreements” as a “strateg[y] for addressing cumulative impacts to Tribal Cultural Resources.” However, there is no discussion of shared decisionmaking authority or co-management as a broader strategy for addressing potential harms of offshore wind, much less for ensuring optimal environmental outcomes. Moreover, there was no discussion of co-management in the offshore wind context as a means to fulfill broader state obligations with respect to tribes, such as Executive Order N-15-19. And most troublingly, although the Yurok Tribe specifically brought up co-management and shared decisionmaking authority in the development of the AB 525 Permitting Roadmap on several occasions, nowhere in that document, nor here, has there been legitimate consideration, much less discussion, of the role of tribes, either in the selection of the recommended approach for permit coordination or in the proposed structure for the application of the recommended approach to the offshore wind context.⁸

⁷ See, e.g., Joseph L. James, Comment of the Yurok Tribe to the AB 525 Draft Conceptual Permitting Roadmap (Feb. 10, 2023); Joseph L. James, Comment of the Yurok Tribe to the AB 525 Offshore Wind Energy Permitting Roadmap (May 10, 2023).

⁸ See, e.g., Volume II, 254-259



The Yurok Tribe calls upon California to recognize the inherent authority of the Yurok Tribe over the Ancestral Ocean Territory, and to encourage BOEM and other involved federal entities to do the same. Recognizing this inherent authority is the best and first real step California and the United States can take to ensure the protection of the Tribe’s cultural resources and landscapes, fishing rights, and lifeways, and to break the cycle of extraction and dispossession of Yurok lands and resources that has resulted from multiple waves of boom-and-bust industries.

Relatedly, the Yurok Tribe calls upon California to encourage BOEM and other relevant federal entities to engage in a concerted consultation effort with the Yurok Tribe regarding co-management of offshore wind-related activities and offshore wind-affected resources within the Ancestral Territory, and including within the Ancestral Ocean Territory, on an ongoing basis. Supporting co-management is not only a way for BEOM to demonstrate respect for the Tribe’s sovereignty but would also serve as a strategy to effectively mitigate a wide variety of potential impacts. The Yurok Tribe has a deep history of effective environmental and natural resources management and the capacity to develop, evaluate, and enforce environmental conditions of construction and operation. Moreover, due to interdependence of the offshore wind projects to other needed infrastructure, such as transmission, which involve both state and federal regulators, discussions of the role of tribal sovereignty in the integration of offshore wind energy generation into the state electrical grid is necessary for clarity of process and certainty of development outcomes.

B. Sea Space Planning

The planning of future wind lease areas has long been and is now of great importance to the Yurok Tribe because significant wind energy resources immediately to the north of the Humboldt lease areas, off the coast of Del Norte County and within the Ancestral Ocean Territory were identified several years ago.⁹ The AB 525 Draft Strategic Plan details the process the CEC and its partners used to identify future sea space, including “identify[ing] and categoriz[ing] data and information to assess and screen sites for conflicts.”¹⁰ The process purportedly included consideration of “Native American and Indigenous People: cultural significance and cultural landscapes.” Ultimately, the Del Norte Area_1 was identified as AB 525 Suitable Sea Space. The Plan states the following with regard to the characterization of the Del Norte Area_1 and the other potentially suitable sea space areas:

By examining the potential conflict data, locations were identified that could avoid or help to reduce some potential conflicts, and therefore the project specific

⁹ See, e.g., Gregory Chapman et al., Schatz Energy Research Center, Del Norte County Offshore Wind Preliminary Feasibility Assessment (May 2021), <https://tethys.pnnl.gov/sites/default/files/publications/Del-Norte-County-Offshore-Wind-Preliminary-Feasibility-Assessment.pdf>.

¹⁰ Volume III at 60.



impacts, because species use or existing ocean use activities occur less frequently. These locations are considered lower conflict, or least conflict for potential offshore wind generation development, based on existing but limited information.

Based on existing information, this AB 525 suitable sea space should be considered as areas to focus research on for understanding impacts of offshore wind deployment. These locations should be considered areas for additional data gathering, research, and feasibility analysis to lessen conflicts and help minimize impacts of offshore wind development.

CEC recommends that “BOEM consider the areas identified in [Volume III, Appendix C] in future offshore wind Call Areas,” and that the next steps for sea space planning should be to “[c]ontinue suitable sea space identification, research, analysis and refinement, in coordination with BOEM, underserved and tribal communities, and stakeholders to inform the feasibility of offshore wind development that minimizes impacts to California’s coast and ocean resources.”¹¹

The Yurok Tribe is deeply disappointed at the omission of the Yurok Tribe’s oral comments to CEC regarding identification of suitable sea space in the Ancestral Ocean Territory. The Yurok Tribe informed CEC that the Ancestral Ocean Territory includes an area of the Pacific Ocean offshore of the Yurok Reservation, immediately north of the existing Humboldt wind lease areas. The Yurok Tribe further informed CEC that the Ancestral Ocean Territory is the part of the unceded Ancestral Territory of the Yurok Tribe, and as such, must be considered in the CEC’s determination of suitable sea space. Moreover, the Yurok Tribe notified the CEC that this area is of great cultural significance to the Yurok Tribe, and that offshore wind energy development there would have cultural impacts on the area and to Yurok cultural practices. Yet, the AB 525 Draft Strategic Plan makes no mention of this, nor appears to consider the Ancestral Ocean Territory and the Yurok Tribe’s comments in its ultimate identification of the Del Norte Area_1 as potentially suitable sea space. There is no explanation for why the Yurok Tribe’s identification of the existence of sovereign, unceded, and culturally significant areas within the Del Norte Area_1 was not included as data indicating a potential conflict in the analysis, why this area was considered “lower conflict or least conflict” in spite of its significant overlap with the Ancestral Ocean Territory, or any recommendation that the Yurok Tribe be consulted moving forward with respect to the Del Norte Area_1.

The Tribe calls upon the CEC to revise the Draft AB 525 Strategic Plan to rescind its recommendation that BOEM consider the Del Norte Area_1 in future offshore wind Call Areas and document the Tribe’s previous comments, and to immediately consult the Yurok Tribe regarding the designation of the Del Norte Area_1 as potentially suitable sea space.

¹¹ Volume II at 270.



C. Adaptive Management

The Draft AB 525 Strategic Plan identifies adaptive management as “key in ensuring that marine resources are protected given the high degree of uncertainty surrounding the scope and scale of impacts associated with construction and operation of offshore wind development as described in the CCC’s Consistency Determinations.”¹² The Plan describes a number of surveying and monitoring programs that could be implemented to facilitate adaptive management in response to a wide variety of impacts, including impacts to sensitive marine species, originating from a broad variety of activities, from pile driving to dredging to vessel ingress and egress from the lease areas. The Yurok Tribe agrees that adaptive management is a necessary tool for mitigating the impacts of offshore wind projects.

The Yurok Tribe strongly recommends that CEC expressly consider the utilization of environmental thresholds or triggers that could be tied to temporary moratoria on offshore wind construction, operations, and decommissioning activities. Due to the vast uncertainty and potential catastrophic impacts of floating offshore wind on the environment of the California North Coast, including to fisheries resources held in trust by the federal government on behalf of the Yurok Tribe, it is vital that adaptive management tools sufficient to avert catastrophic harm be developed as early as possible and implemented in all instances. Environmental review processes and the mitigation measures which result from them have long been criticized by tribes and nontribal environmental proponents for being insufficient to avert environmental harm. Often, this insufficiency results from a narrow view of what is “feasible,” underpinned by an overriding desire on the part of industry and regulators to ensure a project is completed, rather than to an honest effort to ensure the mitigation of significant environmental impacts.

It is critical that the CEC now champion mitigation measures which are sufficient to protect catastrophic environmental harm, to maximize the chance such measures will be considered “feasible” during the preparation of key environmental documents.

D. Impacts to Tribal Cultural Landscapes and Cultural Viewsheds

As the Tribe has voiced on numerous occasions previously, impacts to tribal cultural landscapes and cultural viewsheds from offshore wind projects are a key concern of the Yurok Tribe. This specific concern is discussed in Volume II:

A component of cultural landscapes includes viewsheds. Tribes have expressed concerns with offshore wind having a significant impact to tribal viewsheds of the horizon over the Pacific Ocean, including potentially seeing the turbines and red lights on top of the turbines at night. Many of the coastal tribes have stated parts of

¹² Volume II at 61.



their ceremonies and connection to the ocean rely on viewing the ocean’s horizon. Some tribes have ceremonies that include prayer, songs, and movement on the coast with eyes directed at the ocean’s horizon. Concerns have been expressed that having the offshore wind turbines dotting the horizon will disrupt and negatively impact these ceremonies.¹³

Yet, Volume III fails to discuss sufficient mitigation measures for impacts to cultural viewsheds. As a threshold matter, Volume III discusses impacts to and mitigation measures for such impacts to Tribal Cultural Resources and Traditional Cultural Properties without specifically discussing impacts to or mitigation measures for impacts to Tribal Cultural Landscapes or cultural viewsheds.¹⁴ Impacts resulting from visibility of offshore turbines and substations are discussed instead in the “Aesthetics” section, but only in the context of “alter[ing] scenic seascape vistas from valued coastal areas” and “detracting from night sky views.”¹⁵ Thus, there is no treatment of mitigation measures for impacts to Tribal Cultural Landscapes or cultural viewsheds in Volume III, the principal document within the Draft AB 525 Strategic Plan detailing mitigation measures.

The Yurok Tribe requests that the CEC revise Volume III to discuss impacts to Tribal Cultural Landscapes and cultural viewsheds from offshore wind projects, as well as appropriate mitigation measures for such impacts. Specifically, the Yurok Tribe requests that the CEC recommend consideration of locating turbines and substations within lease areas to avoid significant impacts to Tribal Cultural Landscapes and cultural viewsheds and limiting turbine heights to avoid such impacts. Implementation of such mitigation measures would not be limited by USCG guidelines or Federal Aviation Administration regulatory requirements—a concern for safety lighting or color treatments—but rather would be at BOEM’s discretion.

E. Funding and Assistance

As noted in the Draft AB 525 Strategic Plan, internal capacity and need for technical assistance are key limitations on tribes’ ability to participate in offshore wind planning processes.¹⁶ Although additional funding is indeed necessary, funding access is a multi-faceted problem that goes beyond just the amount of funds available. The Yurok Tribe recommends that the Draft AB 525 Strategic Plan to be revised to explicitly recommend the following terms in any new grant program created to assist tribes with participation in offshore wind-related processes:

- Making grant funds available on an upfront, rather than reimbursable basis

¹³ Volume II at 68.

¹⁴ See Volume III at 33–35.

¹⁵ Volume III at 35.

¹⁶ Volume II at 65.



- Limiting procurement and reporting requirements to the extent allowable under applicable laws to ease the administrative burden of grant implementation
- Eliminating or limiting match requirements for tribes
- Eliminating or limiting requirements for tribes to waive sovereign immunity as a condition of funding

III. Conclusion

The Yurok Tribe thanks the CEC for the consideration of these comments.

Wok-hlew,

Joseph L. James
Chairman, Yurok Tribe