

## EPA Official Record

---

**Notes ID:** ACC3A4A6964D8D7F85257A39004C6279

**From:** Michael\_Amaral@fws.gov

**To:** Matt Schweisberg/R1/USEPA/US@EPA

**Copy To:** Dave\_S\_Rothstein@FWS.GOV; Tom\_Chapman@fws.gov; Maria\_Tur@fws.gov

**Delivered Date:** 09/10/2010 10:50 AM EDT

**Subject:** Fw: AFCEE MMR Wind Turbine Project

Matt - Per your request, here is a recent example of an effects analysis (call it it a Biol Assessment if you like) and a request for concurrence (see attached at bottom). Note use of words like insignificant and discountable. Under our Section 7 ESA consultation handbook (definitions) these terms mean: discountable effects are those extremely unlikely to occur and insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Insignificant effects cannot be meaningfully measured, detected... etc.

Unless EPA designates the State of Mass its non-federal representative in the consultation, then the effects analysis and req for concurrence should come to us through your office, and EPA must be ready to stand behind it. see pages 2-12 and 2-13 of the Section 7 Handbook, " Role of the permit or license applicant".

<http://www.fws.gov/endangered/esa-library/pdf/CH1-3.PDF>

Ken Kimmel's (OEA general council) insistence that the Cape Wind-MMS part of this is separate and will come later from Cape Wind once they feel assured that South Terminal Ext will be permitted is puzzling and seems to place us in a catch 22. If I understood him correctly, the State's position is that they and Apex their consultants, will address intertidal and subtidal (tern foraging) habitat loss and conversion (including proposed mitigation), and potential activation or suspension of PCB contamination and oil risk from new cargo vessel traffic through Buzzard's Bay due to the new marine terminal. However, they will be deferring analysis of any change in the risk for an oil spill as a result of the change from Quonset to NB Harbor for construction-staging of the Cape Wind project to Cape Wind LLC and the BOEM (MMS). If that part of the effects analysis is put off until later, doesn't that leave us with an incomplete effects analysis and an incomplete AR upon which to base a decision re our consultation? Without pre-judging what that analysis will show, this is as much/more about process than substance.

Despite Ken Kimmels assurances that the state has won all (12) suits filed by the Alliance to date, they have hired Meyer, Glitzenstein and Crytal, Wash DC and this group (regrettably) has a pretty good track record suing the USFWS under the ESA.

Michael

----- Forwarded by Maria Tur/R5/FWS/DOI on 09/10/2010 08:57 AM -----

▼ Maria Tur/R5/FWS/DOI

Rose Forbes, P.E., YD-02  
HQ AFCEE/MMR  
322 East Inner Road  
Otis ANG Base MA 02542  
Work: 508-968-4670 x 5613  
Fax: 508-968-4476  
Cell: 210-324-9495  
rose.forbes@us.af.mil

(See attached file: *Letter to USFW.PDF*) [attachment "Document.pdf" deleted by Michael Amaral/R5/FWS/DOI] (See attached file: *Document.pdf*)



- Letter to USFW.PDF



- Document.pdf