



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT

Washington, DC 20240

JUL 13 2010

Ms. Patricia Kurkul
Regional Administrator, Northeast Region
National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930-2298

Dear Ms. Kurkul:

The purpose of this letter is to formally request the re-initiation of consultation with the National Marine Fisheries Service (NMFS) regarding the potential impacts of activities connected with the Cape Wind Energy Project on whale populations in Nantucket Sound, offshore Massachusetts. As you are aware, the Bureau of Offshore Energy Management, Regulation, and Enforcement (BOEM) (formerly the Minerals Management Service) recently received information regarding the possibility that a greater number of North Atlantic right whales (NARWs) could pass through the project area than previously thought. Although BOEM is of the opinion that the mitigation measures that will be imposed on the project developer would be equally protective of many whales as it would be for few whales (e.g., no work will occur within 60 minutes of any sighting of a marine mammal by NMFS-approved, trained marine mammal observers on-ship), the BOEM requests that NMFS determine whether this will indeed be the case.

On November 13, 2008, NMFS issued its biological opinion (BiOp), pursuant to section 7 of the Endangered Species Act, regarding the impacts of the Cape Wind Energy Project on marine mammals and sea turtles in and around the project area. This opinion found that the proposed action: (1) may adversely affect, but is not likely to jeopardize the continued existence of the loggerhead, Kemp's ridley, leatherback, or green sea turtles; (2) is not likely to adversely affect or jeopardize the continued existence of right, humpback, or fin whales; and (3) will not affect hawksbill turtles, shortnose sturgeon, or sperm, blue, or sei whales, as these species do not occur in the action area.

Despite the determination that the project would not likely adversely affect these species, the BiOp analyzed and developed mitigation measures to ensure that these whale and turtle species are not impacted by project activities. See BiOp at 87 and Appendix A. Further, in its April 28, 2010, Record of Decision (ROD) authorizing the issuance of a lease to Cape Wind Associates, BOEM adopted all mitigation measures identified by NMFS to both whales and turtles. See ROD at 35. Further discussion of the relevant potential effects of the proposed action and mitigation requirements relevant to marine mammals and sea turtles can be found in Sections 4.2.9, 5.3.2.9, 9.3.5.6 of the Final Environmental Impact Statement (FEIS).

On April 26, 2010, commenters on the Cape Wind Environmental Assessment (EA) submitted information indicating that an unusually large number of NARWs, including two mother/calf pairs, were recently sighted to the south and west of Martha's Vineyard. The reported location of these animals was within the potential transit points between the staging area in Quonset, Rhode Island and the potential site of the wind facility in Nantucket Sound.

The BOEM considered this information in its most recent EA, drafted for the purpose of determining whether new information existed that would render the existing analysis contained in the FEIS inadequate for the purposes of the National Environmental Policy Act. After considering the information submitted by the commenters, BOEM determined that this new information did not indicate that the project would lead to any impacts on whale species that were not already considered in the FEIS or the BiOp. See Cape Wind EA/Finding of No New Significant Impact (dated April 28, 2010; issued May 4, 2010) available at <http://www.mms.gov/offshore/RenewableEnergy/CapeWind.htm>. The BOEM made this conclusion based on the efficacy of the existing mitigation measures adopted in the ROD. For example, project construction vessels will maintain a speed of 10 knots or less, which will avoid vessel/whale collisions. Vessels will be required to abide by NMFS Northeast Regional vessel approach and speed guidelines, which will further minimize the potential for vessel/whale collisions. A 750-meter exclusion zone will be imposed around all pile driving activities, and driving may only commence when NMFS-approved, trained marine mammal observers on-ship verify that no marine mammals or sea turtles have been sighted within the last 60 minutes. The ROD also specifies a "soft-start" for each pile driving activity (i.e., start of driving at lowest sound level with slow increase of noise levels), to allow an animal to temporarily leave the area if disturbed by the activity. Similarly, the NMFS-approved observer verification requirement, the "ramping up" of activities, and a 500-meter exclusion zone will apply to all pre-construction seismic survey activities. It is BOEM's opinion that these measures are sufficient to protect all numbers of NARWs in the proposed action area.

We request that NMFS determine whether the existing mitigation measures, as adopted in the ROD, will be effective and sufficient to support the finding that project activities will not likely adversely affect whale species, in light of the new information regarding the potential number of NARWs that may be in or near the project area.

Based on recent discussions with NMFS, BOEM understands that the existing BiOp and associated Incidental Take Statement will remain valid and effective until consultation is completed. Pre-construction lease activities, including surveys, may continue during the consultation process, subject to the mitigation measures in the ROD and the BiOp.

We look forward to working with NMFS during this process. If you have any questions or require additional information, please contact Jill Lewandowski, Protected Species Biologist, Environmental Division at Jill.Lewandowski@mms.gov or 703-787-1703.

Sincerely,

(cc:jj)


James J. Kendall
Chief, Environmental Division

cc: Julie Crocker, NMFS NERO
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