



Billing Code: 4310-MR-P

**DEPARTMENT OF THE INTERIOR
Bureau of Ocean Energy Management**

[Docket No. BOEM-2017-0059]

Record of Decision for the Cape Wind Energy Project

MMAA104000

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of Availability of a Record of Decision

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of a Record of Decision (ROD) for the Cape Wind Energy Project Final Supplemental Environmental Impact Statement (SEIS) in this Notice of Availability (NOA). The SEIS was prepared in response to a 2016 remand order from the U.S. Court of Appeals for the District of Columbia Circuit in *Public Employees for Environmental Responsibility v. Hopper*, 827 F.3d 1077 (D.C. Cir. 2016), in which the Court vacated the 2009 Cape Wind Energy Project Final Environmental Impact Statement (EIS) and ordered BOEM to supplement the EIS with adequate geological surveys before Cape Wind Associates LLC (Cape Wind) may begin construction. The SEIS presented two alternatives: the Proposed Action (affirming BOEM's issuance of the existing lease) and the No Action Alternative (requiring BOEM to rescind lease issuance). BOEM has decided to select the Proposed Action Alternative.

ADDRESSES: The ROD and associated information are available on BOEM's website at <https://www.boem.gov/Massachusetts-Cape-Wind/>.

FOR FURTHER INFORMATION CONTACT: For more information on the ROD, you may contact Mr. James Bennett, Program Manager, Office of Renewable Energy Programs, by telephone at 703-787-1300 or by email at james.bennett@boem.gov.

SUPPLEMENTARY INFORMATION: On July 5, 2016, the U.S. Court of Appeals for the District of Columbia Circuit vacated the 2009 Cape Wind Energy Project Final EIS and ordered that BOEM: “supplement [the EIS] with adequate geological surveys before Cape Wind may begin construction.” *Public Employees for Environmental Responsibility v. Hopper*, 827 F.3d 1077, 1084 (D.C. Cir. 2016). The Court opined that: “[w]ithout adequate geological surveys, the [BOEM] cannot ‘ensure that the seafloor [will be] able to support’ wind turbines.” *Id.* at 1083. While the Court found that: “[BOEM] therefore had violated NEPA (National Environmental Policy Act)” the Court noted that “...[it] does not necessarily mean that the project must be halted or that Cape Wind must redo the regulatory approval process.” *Id.* at 1083-4. The Court explicitly left undisturbed BOEM’s 2010 decision to issue the lease and BOEM’s 2011 decision to approve the Construction and Operations Plan (COP). *Id.* at 1084. In light of the remand order and the remaining valid lease and COP, only two alternatives remain relevant to the court’s remand: the Proposed Action (affirming BOEM’s issuance of the existing lease) and the No Action Alternative (BOEM rescinding the lease). In its Final SEIS, BOEM examines the available geological survey data, including the geotechnical data and reports submitted to BOEM since the 2009 Final EIS, any other relevant data that relates to the adequacy of the seafloor to support wind turbines in the lease area, and considers public comments.

On March 31, 2017, BOEM published the Draft SEIS, in response to the Court’s 2016 remand order discussed above, and a NOA in the *Federal Register* to announce the availability of the Draft SEIS and initiate a 45-day public comment period (82 FR 16060). Comments received can be found at <http://www.regulations.gov> by searching for docket ID BOEM-2017-0008. The Final SEIS addressed comments received by BOEM in response to the Draft SEIS during the 45-day comment period. On August 4, 2017 (82 FR 36418), BOEM published a

NOA announcing the availability of the Final SEIS in the *Federal Register*. The Final SEIS can be found on BOEM's website at: <https://www.boem.gov/Massachusetts-Cape-Wind/>.

AUTHORITY: This notice is published pursuant to the regulations (40 CFR part 1506.6(b)) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: September 26, 2017.

Walter D. Cruickshank
Acting Director, Bureau of Ocean Energy Management
[FR Doc. 2017-20936 Filed: 9/28/2017 8:45 am; Publication Date: 9/29/2017]