

7.0 CONSULTATION AND COORDINATION

7.1 PUBLIC REVIEW OF DEIS

On January 18, 2008, the Minerals Management Service published a notice in the Federal Register stating the availability of the Draft Environmental Impact Statement. Copies of the DEIS were available for download from the MMS website, by request from the MMS, and, in an initial mailing to agencies, public libraries and some public officials. A similar process has occurred for the FEIS, with the initial mailing list for the FEIS included in Appendix K. The public comment period was initially noticed as lasting 60 days (until March 20, 2008) but then was extended another 30 days to April 21, 2008, in order to provide the public with additional time to read the DEIS and comment. MMS received comments through its public connect website on its Web page at <http://occonnect.mms.gov/pcs-public/>, via emails, via oral or hard copy comments provided at the four public hearings (i.e., the Mattacheese Middle School in West Yarmouth, Massachusetts, the Nantucket High School, in Nantucket, Massachusetts, the Martha's Vineyard Regional High School, in Oak Bluffs, Massachusetts, and at the University of Massachusetts Boston Campus, in South Boston, Massachusetts), and via hard copy comments mailed in. In all, more than 42,000 comment document submittals were received. All comment documents received were logged and addressed as appropriate and are included on a CD in this Final Environmental Impact Statement (see Appendix L). Appendix L also provides a description of the process employed in reviewing comment documents, how individual comments were identified and organized, and how comment responses were prepared. In essence, comments were categorized and summarized into topics that ranged from procedural, regulatory, or policy, to specific resources such as water quality, benthos, or birds. Lastly, Appendix L includes the responses to these summarized comment topics.

7.1.1 Summary of Comments Received

Comments received on the draft EIS generally fell within the following topic categories:

- Regulatory Process
- Alternatives Analysis
- Construction, Operations, Decommissioning
- Geology and Sediments
- Oceanography
- Water Quality
- Air and Climate
- Noise
- Electric Magnetic Fields
- Avian and Bat Resources
- Freshwater and Coastal Wetlands
- Wildlife
- Fisheries – Socio-economic Impacts to Commercial and Recreational Fishing
- Fisheries – Environmental Impacts
- Benthos and Eelgrass

- T&E Species
- Socioeconomics
- Navigation and Transportation
- Communications
- Cultural Resources
- Aesthetic/Landscape/Visual
- Transmission Interconnection

As provided in Appendix L, for most of these topics, in order to capture the breadth and variety of comments, subtopic categories were developed, such that well over 100 sub-topic categories were developed, summarized, and responses prepared.

7.2 REQUIRED AGENCY CONSULTATIONS

Cooperating Agency meetings were held in Boston, Massachusetts on November 2, 2005; June 27, 2006; February 28, 2007; and July 24, 2008. Consultation correspondence is provided in Appendix B and a list of agencies consulted is provided in Table 7.2-1. The following is summary information about each agency consulted and its jurisdiction.

Consultation with Advisory Council on Historic Preservation (ACHP) (Section 106 of the NHPA, as Amended Through 2000)

Section 106 of the NHPA of 1966, as amended through 2000, requires that Federal agencies consider the effects of their undertakings (as defined in 36 CFR § 800.16(y)) on properties included in or eligible for inclusion in the NRHP (known as historic properties per 36 CFR Part 800. The MMS would fulfill the requirements set forth in the NHPA, including consultation with the SHPO in accordance with the implementing regulations.

An undertaking has an effect on a historic property when that undertaking has the potential to alter the characteristics of the property that qualified the property for inclusion in the NRHP. Effects can include physical disturbance, noise, or visual effects. If an adverse effect on historic properties is found, the MMS would notify the ACHP, consult with the SHPO, and encourage the applicant to avoid, minimize or mitigate the adverse effect(s). Ground-disturbing activities associated with construction, as well as visual effects of the aboveground WTGs, are subject to Section 106 review.

The regulations at 36 CFR Part 800 require the identification of historic properties in the project's Area of Potential Effect. This process has been completed along the proposed onshore transmission route; submarine cable system located within state waters, and is currently under review for those portions of the proposed action located in Federal waters. Studies included development of a predictive model for the presence of potentially significant submerged archaeological resources, which may exist in the offshore portions of the proposed action area and a marine reconnaissance archaeological survey, as requested by the cooperating state agency MHC (which includes the SHPO and State Archaeologist) and also the MBUAR. Historic properties within the viewshed of the wind turbine array have been identified on Cape Cod, Nantucket and Martha's Vineyard. Visual simulations of the built turbine array from representative locations have been completed (see Section 5.3.3.4.2 for more details).

In June 2008 MMS initiated formal consultation under Section 106. In order to further understand Section 106 issues of concern and address these impacts to the extent possible, MMS has consulted with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers of the federally

recognized Wampanoag tribes of Mashpee and Aquinnah, the Martha's Vineyard Commission, the ACOE, the Alliance to Protect Nantucket Sound, and the National Trust for Historic Preservation. Consultations included a meeting in Boston on July 23, 2008, and September 8 and 9, 2008 in which the above referenced parties were invited to discuss concerns to help inform the final EIS and resolve Section 106 impacts if possible. MMS is not utilizing 36 CFR 800.8 for conducting formal consultations under Section 106 concurrently with NEPA, but rather is pursuing the consultation independent of the EIS.

Consultation and Coordination with Indian Tribal Governments (i.e., Mashpee Wampanoag Tribe and Wampanoag Tribe of Aquinnah) Executive Order 13175 (Applicable Regulatory Agency: Lead NEPA Agency i.e., MMS)

The MMS works on a government-to-government basis with Native American Tribes. As a part of the government's Treaty and Trust responsibilities, the government-to-government relationship was formally recognized by the Federal government on November 6, 2000.

The MMS has formally met at the headquarters of the Wampanoag Tribe of Aquinnah on July 26th and the Mashpee Wampanoag Tribe in July 27th of 2006. MMS also met with the Mashpee Wampanoag Tribe and Wampanoag Tribe of Aquinnah on July 25th and 26th of 2007, respectively. Consultation included explanation of the proposed action and its potential impacts on tribal government and understanding of tribal concerns. Comments made by the tribal groups are addressed in this final EIS. Impacts on tribal governments are discussed under the Environmental Justice and Cultural section of this final EIS (Section 5.3.3.5). The referenced tribes were also invited to attend meetings with MMS and other agencies to discuss Section 106 concerns (see Section 106 consultation summary above).

Consultation with NOAA (NOAA Fisheries) (Fish and Wildlife Coordination Act; 16 U.S.C. 1801-1882 - Magnuson-Stevens Fishery Conservation and Management Act of 1976; 16 U.S.C. 1531-1543; Pub. L. 93-205, as amended - Endangered Species Act of 1973; and 16 U.S.C. 1361-1421; Pub. L. 92-522, as amended; reauthorized in 1994 (Pub. L. 103-238) - Marine Mammal Protection Act of 1972

NOAA Fisheries (formerly NMFS) is a division of the Department of Commerce and is responsible for the management, conservation and protection of living marine resources within the United States' Exclusive Economic Zone (water 3 to 200 miles [5.6 to 370.4 km] offshore). It also has regulatory review and responsibilities for the management and protection of EFH as well as responsibilities under the Endangered Species Act and the Marine Mammal Protection Act.

NOAA Fisheries is responsible for providing an assessment of the likelihood to cause adverse impacts on species or habitats under their jurisdiction. They can also provide recommendations to the Federal agency for mitigation actions to reduce or compensate for proposed action impacts, or can recommend that the Federal agency deny the permit. For the Project, NOAA Fisheries review falls into four categories: fish and wildlife species and habitats regulated under the Fish and Wildlife Coordination Act, EFH regulated under the Magnuson-Stevens Act, marine species and habitats regulated under the Endangered Species Act, and species regulated under the Marine Mammal Protection Act.

MMS initiated the EFH consultation process with NOAA-Fisheries in a letter dated January 22, 2008. NOAA-Fisheries provided its conservation recommendations in their comments on the draft EIS. MMS has been in communication with NOAA-Fisheries and has addressed their recommendations in this EIS and will incorporate these into its lease stipulations.

MMS filed a Biological Assessment in May of 2008 (see Appendix G) which initiated formal consultation under the ESA. Consultation has included individual phone calls and emails between MMS and NOAA Fisheries. NOAA has indicated that an Incidental Harassment Authorization (IHA)

application will be required. The final IHA would need to be issued prior to the commencement of any activities that may “take” marine mammals, however since the authorization is only good for one year the applicant would request this authorization following issuance of the ROD. A BO was issued November 13, 2008 by NOAA Fisheries.

Consultation with the USFWS: (Endangered Species Act, Migratory Bird Treaty Act, Fish & Wildlife Coordination Act)

The USFWS works with landowners, private organizations, government agencies and other partners to conserve fish and wildlife resources. Through Federal action and by encouraging the establishment of state programs, the 1973 Endangered Species Act provided for the conservation of ecosystems upon which T&E species of fish, wildlife, and plants depend. The ESA authorizes the determination and listing of species as endangered and threatened; prohibits unauthorized taking, possession, sale, and transport of endangered species; provides authority to acquire land for the conservation of listed species, using land and water conservation funds; authorizes establishment of cooperative agreements and grants-in-aid to States that establish and maintain active and adequate programs for endangered and threatened wildlife and plants; authorizes the assessment of civil and criminal penalties for violating the ESA or regulations; and authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the ESA or any regulation issued there under.

The MBTA prohibits taking any migratory bird except as permitted by regulations issued by the DOI. Another, more recent mandate regarding the conservation of migratory birds, is Executive Order (E.O.) 13186, signed January 2001, by President Clinton. This E.O. requires every Federal agency that takes action(s) likely to have a measurable negative impact on migratory birds to enter into a MOU with the USFWS, which has Federal jurisdiction over managing and conserving seabirds. The MOU should outline how an agency would promote the conservation of migratory birds. Additional obligations under E.O. 13186 include supporting other conservation efforts already underway and incorporating bird conservation into agency planning. MMS has been working with FWS to develop an MOU pursuant to this E.O. that will include mitigation measures to minimize take and promote conservation of migratory birds.

MMS began informal consultations with both the FWS (and NOAA) regarding the applicant’s proposal in January 2006. This included individual phone calls and emails between MMS and USFWS/NOAA as well as the following efforts which MMS also considered part of the informal consultation and ultimately the development of the formal consultation package:

- During 2006 and 2007, MMS has regularly convened conference calls with USFWS-ESA-listed bird experts, state bird experts and private scientists (selected by the USFWS). These efforts were meant to get everyone on the same page and share expertise on: (1) information available on the proposed action as it relates to potential impacts on ESA-listed birds and (2) development of the risk assessment model and population viability analyses.
- A face-to-face meeting of these and other experts was also held on January 30, 2007 to discuss potential impacts to ESA-listed birds associated with current and conceptual offshore wind projects and identify data gaps and information needs.
- An additional face-to-face meeting was held September 13, 2007 with the same and additional individuals to discuss potential mitigation and monitoring activities that may possibly be built into the proposed action for the ESA consultation on the applicant’s proposal.

MMS filed its BA in May of 2008 and has completed formal consultation under the ESA with the issuance of the final Biological Opinion on November 21, 2008. MMS has worked with USFWS to address issues of concern and to develop an avian monitoring plan and other mitigation measures.

Consultation with United States Coast Guard (USCG) (U.S. Coast Guard Regulations at 33 CFR part 66.0, Subpart 66.01)

Pursuant to 33 CFR part 66.0, Subpart 66.01, the USCG has jurisdiction over projects located in navigable waters of the United States. The proposed action constitutes fixed structures in navigable waters of the United States which therefore require private aids to navigation marking. A permit application to establish and operate Private Aid-to-Navigation to a Fixed Structure has not yet been filed.

All 130 WTGs and the ESP are subject to USCG review for authorization to mark and light the WTGs and ESP. The USCG has safety and regulatory jurisdiction over projects located in navigable waters of the United States. The USCG Marine Safety Office for the Port of Providence, Rhode Island, which has jurisdiction over general navigation in the proposed action area, has coordinated a Navigational Risk Assessment. This Risk Assessment was prepared at the direction of, and in consultation with, the U.S. Coast Guard Marine Safety Office at the Port of Providence in order to provide a qualitative assessment of navigational risks related to the proposed action. The analyses required by the USCG were outlined in a letter to the USACE dated February 10, 2003 (Appendix B). Subsequent to the release of the USACE draft EIS/DEIR in November of 2004, the applicant was required to revise the 2003 Navigational Risk Assessment to incorporate design changes and new information and to address topics requested by the USCG in its letter of February 14, 2005. The *Revised Navigational Risk Assessment* (Report No. 4.4.3-1) has been incorporated into this FEIS.

MMS met with the USCG, USACE, and FAA on May 8, 2008 to address water and air navigational issues. The USCG has issued their Terms and Conditions to ensure that the proposed project does not negatively impact navigation and public safety. See Appendix B.

In the fall of 2008, the USCG sponsored a radar impact study (see Appendix M) that resulted in additional consultation with the applicant and the MMS. The USCG then assessed potential impacts to marine radar from the proposed action and issued an Advanced Copy of Findings and Mitigation on December 30, 2008 (see Appendix M), presenting the USCG's assessment of mitigation requirements for moderate impacts on navigation safety resulting from the WTG impacts on radar. In addition, based on consultation between the USCG and the applicant once the radar study was completed, the applicant developed mitigation designed to offset the moderate impacts on navigation safety (see Section 9.0).

Federal Aviation Administration (49 U.S.C. 44718, 14 CFR Part 77)

On August 27, 2004 the applicant requested an extension on the April 9, 2003 Determination due to delays in obtaining permits to start construction. The FAA granted the extensions on October 5, 2004. The FAA initiated an appeal of the original April 9, 2003 determinations based on their receipt of two petitions requesting discretionary review of the determinations. The FAA reviewed the new information submitted and upheld the original Determination of No Hazard on August 2, 2005 which expired on February 7, 2007. As a result of the reconfiguration of the WTG's, design changes that increased rotor height from 417 ft (127 m) to 440 ft (134 m), and the release of new lighting guidelines by the FAA, the applicant has submitted a request for a new Determination of No Hazard. The revised configuration was circulated as Aeronautical Studies #2006-ANE-1078-OE through 2006-ANE-1207-OE. FAA issued a public notice on April 25, 2007 and has stated that those determinations are pending. MMS has also requested a new letter from FAA to confirm that the proposed turbine locations would not have a negative impact on aviation. FAA provided a response in late summer of 2008 to MMS indicating their evaluation

is not complete (see Appendix B). MMS's construction approval would be conditioned upon receipt of the FAA final hazard determination.