



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
Maine Field Office
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August 26, 2024

David Bigger, Ph.D.
Office of Renewable Energy Programs
Bureau of Ocean Energy Management
45600 Woodland Road, VAM-OREP
Sterling, VA 20166

Re: Wind Energy Commercial Lease on the Atlantic Outer Continental Shelf Offshore Maine
Project Code: 2024-0070330

Dear Dr. Bigger:

This letter is in response to your August 19, 2024, request for the U.S. Fish and Wildlife Service's (USFWS or Service) review of the Bureau of Ocean Energy Management's (BOEM) "Wind Energy Commercial Lease on the Atlantic Outer Continental Shelf Offshore Maine" (Project) Biological Assessment (BA). BOEM has determined that issuance of a wind energy commercial lease in support of wind energy development in the Gulf of Maine may effect, but is not likely to adversely affect, federally listed species under the jurisdiction of the Service, including roseate tern (*Sterna dougallii dougallii*; endangered), piping plover (*Charadrius melodus*; threatened), rufa red knot (*Calidris canutus rufa*; threatened) (red knot), northern long-eared bat (*Myotis septentrionalis*; endangered), and tricolored bat (*Perimyotis subflavus*; proposed endangered), and will have no effect on American chaffseed (*Schwalbea americana*; endangered), monarch butterfly (*Danaus plexippus*; candidate), northeastern beach tiger beetle (*Habroscelimorpha dorsalis dorsalis*; threatened), Plymouth redbelly turtle (*Pseudemys rubriventris bangsi*; endangered), sandplain gerardia (*Agalinis acuta*; endangered), or seabeach amaranth (*Amaranthus pumilus*; threatened). As BOEM is consulting with the National Marine Fisheries Service (NMFS) on the effects of the Project on Atlantic salmon (*Salmo salar*; endangered) and its critical habitat within the action area, this letter will not be addressing those determinations.

BOEM's request and the Service's response are made pursuant to section 7 of the Endangered Species Act, as amended (87 Stat. 884, as amended; 16 U.S.C 1531, *et seq.*) (ESA). A full description of the lease activities and potential effects from the project can be found in the BA. The following comments do not address all Service concerns for fish and wildlife resources and do not preclude separate review and comment by the Service as afforded by other applicable environmental legislation.

CONSULTATION HISTORY

- BOEM first sent a BA that was prepared using the Service’s Information for Planning and Consultation (IPaC) Consultation Package Builder (CPB) on June 3, 2024. The Service spoke with BOEM on June 12, 2024, requesting that BOEM revise the project’s action area to be more expansive and update the Species List and BA accordingly. The Service sent an email summary of the call the same day.
- BOEM sent a revised BA with an updated action area on June 25, 2024. The Service sent a response letter including comments on July 26, 2024.
- BOEM sent a revised BA with responses to the Service’s comments on August 2, 2024. The Service and BOEM had a meeting to discuss the BA and comments on August 13, 2024.
- BOEM sent an updated BA on August 19, 2024.

PROPOSED PROJECT

The proposed Project is the issuance of commercial leases within the Wind Energy Area (WEA) in the Gulf of Maine and to grant rights-of-way (ROWs) and rights-of-use and easement (RUEs) in the region of the outer continental shelf (OCS) of the Gulf of Maine. BOEM’s issuance of these leases and grants is needed to (1) confer the exclusive right to submit plans to BOEM for potential development, such that the lessees and grantees develop plans for BOEM’s review and will commit to site characterization and site assessment activities necessary to determine the suitability of their leases and grants for commercial offshore wind production or transmission, and (2) impose terms and conditions intended to ensure that site characterization and assessment activities are conducted in a safe and environmentally responsible manner.

Under the proposed Project, BOEM would potentially issue up to 15 leases that may cover the entirety of the WEA, easements associated with each lease, and grants for subsea cable corridors and associated offshore collector/converter platforms. The ROWs, RUEs, and potential easements would all be located within the OCS offshore Maine, Massachusetts, and New Hampshire and may include corridors that extend from the WEA to the onshore energy grid. The BA analyzes the reasonably foreseeable effects to ESA-listed species and designated critical habitat from activities that are anticipated to occur from the proposed Project, including site assessment activities on leases and site characterization activities on the leases, grants, and potential easements. Site characterization and assessment activities described in the BA include biological surveys, geophysical surveys, geotechnical surveys, and the temporary installation of meteorological (met) buoys and acoustic doppler current profilers.

PROPOSED CONSERVATION MEASURES FOR LISTED SPECIES

The Service’s Consultation Handbook defines “Conservation Measures” as “*actions to benefit or promote the recovery of listed species that are included by a Federal agency as an integral part of a proposed action under ESA consultation. These actions will be taken by the Federal agency or applicant, and serve to minimize or compensate for, project effects on the species under review*” (USFWS and NMFS 1998). Conservation Measures may include actions that the Federal agency or applicant have committed to complete in a BA or similar document. When used in the context of the ESA, “Conservation Measures” represent actions pledged in the project description that the action agency or the applicant will implement to further the recovery of the species under review. Such measures may be tasks recommended in the species’ recovery plan,

should be closely related to the action, and should be achievable within the authority of the action agency or applicant. Since Conservation Measures are part of the proposed Project, their implementation is required under the terms of the consultation (USFWS and NMFS 1998).

BOEM provided a list of conservation measures to avoid and minimize effects on listed species in Section 1.6 of the BA. Through coordination with BOEM, we understand that these measures are incorporated into the Project description and will be implemented as part of the proposed Project.

1. The Lessee must install acoustic detectors for bats on survey vessels to supplement the data captured by buoys and are important to capture bat activity at the margins of or in proximity to the Research Lease Area, especially in the areas closest to land. The USFWS will provide a bat survey and monitoring protocol for the applicant to use as guidelines for acoustic detections.
2. The Lessee must provide an annual report to both the Lessor and USFWS using the contact information provided as an Enclosure to this lease, or updated contact information as provided by the Lessor. This report must document any dead or injured birds or bats found during activities conducted in support of plan submittal. The first report must be submitted within 6 months of the start of the first survey conducted in support of plan submittal, and subsequent reports must be submitted annually thereafter until all surveys in support of plan submittal have concluded and all such birds and bats have been reported. If surveys are not conducted in a given year, the annual report may consist of a simple statement to that effect. An annual report must be provided to BOEM and USFWS documenting any dead (or injured) birds or bats found on vessels and structures during construction, operations, and decommissioning. The report must contain the following information: the name of species, date found, location, a picture to confirm species identity (if possible), and any other relevant information. Carcasses with Federal or research bands must be reported to the United States Geological Survey Bird Band Laboratory, available at <https://www.usgs.gov/labs/bird-banding-laboratory>. Additionally, annual reporting of injured or dead listed species will be recorded in the Injury & Mortality Reporting (IMR) system (<https://ecos.fws.gov/imr/welcome>). Survey Results and Data: The Lessee must provide the results of avian surveys and data to BOEM and USFWS with its plans.
3. To minimize the attraction of birds on data buoys, the Lessee must install bird deterrent devices (e.g., anti-perching), where appropriate.
4. The Lessee must coordinate with USFWS to identify appropriate mitigation measures.
5. To help address information gaps on offshore movements of birds and bats, including ESA-listed species, the Lessee must install Motus stations on meteorological or environmental data buoys in coordination with USFWS' Offshore Motus network.
6. Any lights used to aid marine navigation by the Lessee during construction, operations, and decommissioning activities must meet USCG requirements for Private Aids to Navigation (PATON) and BOEM's guidelines for lighting and marking of structures supporting renewable energy development (<https://www.boem.gov/2021-lighting-and-marking-guidelines>). For any additional lighting, the Lessee must use such lighting only when necessary, and the lighting must be hooded downward and directed, when possible, to reduce upward illumination and illumination of adjacent waters.

7. The Lessee must use approved oil spill response plan (OSRP) mitigation measures, as necessary, to prevent birds from going to affected areas including chumming, hazing, and relocating to unaffected areas.

CONCURRENCE

Bat Species

The BA addresses effects to northern long-eared bat in Section 2.5.3 and tricolored bats in Section 2.12.3, including collision with vessels and aircraft and disturbance. The Service concurs with BOEM's determination that the Project may affect, but is not likely to adversely affect, northern long-eared bat. Our concurrence is based on the following:

- we anticipate only a small number of bats may occur in the offshore action area. At any given time, Project activities would occur in a small portion of the action area and/or they would be brief, so disturbance would be insignificant;
- vessel and aircraft traffic increase due to the project would be minimal compared to baseline conditions in the Gulf of Maine;
- the Project will minimize lighting to reduce potential attraction of birds and bats to vessels and aircraft by only using lighting when required and ensuring that additional lighting is hooded downward and directed when possible;
- anthropogenic noise associated with vessels and aircrafts during site characterization and assessment activities would be temporary and highly localized.

The Service notes that we are currently working to complete a final listing decision for the tricolored bat, and until that time we cannot provide concurrence on an effects determination for this species. If tricolored bat is listed, BOEM should contact the Service immediately and request reinitiation, as this would meet the criteria for requiring reinitiation of consultation per the implementing regulations for section 7 of the ESA (50 CFR 402.16). Depending on if any changes to the Project are anticipated at that time or if any new information is available, the Service may be able to issue a concurrence letter addressing this change specifically.

Avian Species

The BA addresses effects to piping plover in Section 2.6.3, roseate tern in Section 2.8.3, and red knot in Section 2.9.3, including collision with vessels and aircraft and disturbance. The Service concurs with BOEM's determination that the Project may affect, but is not likely to adversely affect, piping plovers, roseate tern, and red knot. Our concurrence is based on the following:

- we anticipate that migrating piping plovers, roseate terns, and red knots would occur in the offshore action area during spring and fall migration periods, and foraging roseate terns would occur in the offshore action area during the summer breeding period. However, at any given time, Project activities would occur in a small portion of the action area and/or they would be brief, so disturbance would be insignificant;
- vessel and aircraft traffic increase due to the project would be minimal compared to baseline conditions in the Gulf of Maine;
- the Project will minimize lighting to reduce potential attraction of birds and bats to vessels and aircraft by only using lighting when required and ensuring that additional lighting is hooded downward and directed when possible;

- bird deterrent devices (e.g., anti-perching) will be installed where appropriate;
- an oil spill response plan will be developed with mitigation measures; and
- anthropogenic noise associated with vessels and aircrafts during site characterization and assessment activities would be temporary and highly localized.

The Service acknowledges BOEM's 'no effect' determinations for American chaffseed, northeastern beach tiger beetle, Plymouth redbelly turtle, sandplain gerardia, and seabeach amaranth, as project activities would not occur in habitat that supports these species. The Service also acknowledges BOEM's 'no effect' determination for monarch butterfly. Although the ESA does not require conferencing on candidate species, BOEM assessed the effects of the proposed Project to monarch butterfly. The Service concurs with BOEM's determination that the proposed Project is not likely to jeopardize the continued existence of the monarch butterfly.

As a reminder, until the proposed Project is complete, we recommend that you check IPaC every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed Project area is current (by selecting "Request updated list" on your My Projects page). Should Project plans change or additional information on listed or proposed species or critical habitat become available, our concurrences or acknowledgement of the effects of the proposed Project may be reconsidered.

Thank you for continued coordination with the Service. If you have any questions or require further assistance, please contact Kim Spiller (kimberly_spiller@fws.gov; 413-770-2484) of the Maine Field Office.

Sincerely,

Amanda S. Cross, Ph.D.
Field Supervisor
Maine Field Offices

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