



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

October 1, 2021

James F. Bennett
Program Manager, Office of Renewable Energy Programs
U.S. Department of the Interior
Bureau of Ocean Energy Management
Washington, D.C. 20240-0001

Re: Endangered Species Act section 7 consultation for the South Fork project (corrections)

Dear Mr. Bennett:

Enclosed is NOAA's National Marine Fisheries Service (NMFS) Biological Opinion (Opinion), issued under section 7(a)(2) of the Endangered Species Act (ESA), for the South Fork Offshore Wind Project. The Bureau of Ocean Energy Management is acting as the lead federal agency for purposes of section 7 consultation; the other action agencies include the Bureau of Safety and Environmental Enforcement, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Coast Guard and the National Marine Fisheries Service. In the Opinion, we conclude that the proposed action may adversely affect but is not likely to jeopardize the continued existence of fin, sei, sperm, or North Atlantic right whales or the Northwest Atlantic distinct population segment (DPS) of loggerhead sea turtles, North Atlantic DPS of green sea turtles, Kemp's ridley or leatherback sea turtles, or any of the five DPSs of Atlantic sturgeon. As described in section 4 of the Opinion, we find that the proposed action is not likely to adversely affect blue whales, Rice's whales, Giant Manta Ray, hawksbill sea turtles, smalltooth sawfish, gulf sturgeon, Nassau grouper, Oceanic whitetip sharks, the Northeast Atlantic DPS of loggerhead sea turtles, six species of ESA listed corals or shortnose sturgeon. We find that the proposed action will have no effect on the Gulf of Maine DPS of Atlantic salmon, and critical habitat designated for the North Atlantic right whale, the New York Bight or Chesapeake Bay DPS of Atlantic sturgeon or the Northwest Atlantic DPS of loggerhead sea turtles.

As required by Section 7(b)(4) of the ESA, an incidental take statement (ITS) is provided with the Opinion. The ITS includes Reasonable and Prudent Measures (RPMs) and implementing Terms and Conditions necessary to minimize and document the take of ESA listed whales and sea turtles. The RPMs and implementing Terms and Conditions outlined in the ITS must be undertaken so that they become binding conditions for the exemption in section 7(o)(2) to apply. Failure to implement the terms and conditions through enforceable measures may result in a lapse of the protective coverage of section 7(o)(2).

When an action will result in incidental take of ESA-listed marine mammals, ESA section 7(b)(4) requires that such taking be authorized under the MMPA section 101(a)(5) before the Secretary can issue an ITS for ESA-listed marine mammals and that an ITS specify those



measures that are necessary to comply with Section 101(a)(5) of the MMPA. Section 7(b)(4), section 7(o)(2), and ESA regulations provide that taking that is incidental to an otherwise lawful activity conducted by an action agency or applicant is not considered to be prohibited taking under the ESA if that activity is performed in compliance with the terms and conditions of this ITS, including those specified as necessary to comply with the MMPA, Section 101(a)(5). Accordingly, the terms of this ITS and the exemption from Section 9 of the ESA for marine mammals become effective only upon the issuance of MMPA authorization to take the marine mammals identified here. Until the MMPA authorization is issued for this action, this ITS is inoperative for ESA-listed marine mammals. With that exception, this ITS is effective upon issuance, and the action agency and applicant may receive the benefit of the take exemption as long as they are complying with the relevant terms and conditions.

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. In the Opinion, we provide a number of conservation recommendations for the consideration of the action agencies.

Issuance of this Opinion concludes consultation for the proposed action. Reinitiation of consultation is required and shall be requested by BOEM or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) The amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may not have been previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species; or, (4) a new species is listed or critical habitat designated that may be affected by the identified action.

We appreciate the cooperation of your staff throughout the consultation process and I look forward to continuing to work with you as this project moves forward. Any questions regarding the Biological Opinion can be directed to Julie Crocker in our Protected Resources Division at (978) 282-8480 or by e-mail (Julie.Crocker@noaa.gov).

Sincerely,



Michael Pentony
Regional Administrator

cc: Crocker, Tuxbury, Anderson – F/GAR
Hooker, Morin – BOEM
Degnitz – BSEE
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Esch – F/OPR
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