

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

23 February 2005

Colonel Thomas L. Koning
District Engineer
New England District
U.S. Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742-2751

Dear Colonel Koning:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed and offers the following comments on the Draft Environmental Impact Statement, Draft Environmental Impact Report, and Development of Regional Impact Report for the Cape Wind Energy Project. The Marine Mammal Commission is an independent federal agency established under the Marine Mammal Protection Act. The Commission's duties include making recommendations to federal agencies on actions necessary for the conservation of marine mammals. Agencies that decline to adopt Commission recommendations are required, under section 202(d) of that Act, to provide the Commission with a detailed explanation, within 120 days of receipt of the recommendations, of the reasons why those recommendations were not followed or adopted.

The proposed project involves the construction of 130 wind turbine generators in a 24-sq.-mi. area in Nantucket Sound between Cape Cod, Martha's Vineyard, and Nantucket Island. This area includes habitat used by several species of marine mammals, including, on rare occasions, endangered North Atlantic right whales and humpback whales, and endangered sea turtles. The wind turbines would be installed on towers constructed using a monopile (i.e., pile driver). The pile driver is expected to produce noise of 180 db or greater up to 500 meters from each tower location during the construction period. The draft document reviews information on the physical and biological environment in the project area and concludes that marine mammals are likely to avoid the area during construction activities, but that, once the facilities are operational, significant effects on marine mammals or their behavior are not expected.

The draft documents do not provide an adequate assessment of the available information on marine mammals that occur in project area. The Marine Mammal Commission therefore recommends that the final document include a more complete assessment of available whale and other marine mammal survey and sighting data for Nantucket Sound.

The draft documents also suggest that underwater sound at levels of 180 dB will not cause a significant impact on marine mammals because sound at that level poses little risk of permanent hearing damage. We know of no data to document this for most marine mammals. Even if it is true, sound at or even below this level can alter marine mammal movement and behavioral patterns, causing them to avoid areas or react in ways that can place them at risk. The Marine Mammal

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Commission recommends that the final document provide a more complete assessment of the potential effects of the predicted noise levels associated with pile driving on the behavior of marine mammals found in Nantucket Sound.

In addition, the draft document does not adequately discuss the authorizations that likely will be needed under the Marine Mammal Protection Act and the Endangered Species Act. Section 101(a)(5) of the Marine Mammal Protection Act requires citizens that may unintentionally take small numbers of marine mammals incidental to activities other than commercial fishing to obtain a small-take authorization. This includes taking by harassment. Such authorizations may be issued only if the National Marine Fisheries Service determines that the incidental taking will have negligible effects on the affected marine mammal populations. Authorizations are to identify permissible methods of taking and include requirements for monitoring and reporting impacts on marine mammals. There is little doubt that activities associated with the proposed action, particularly the use of pile drivers for tower construction, will result in the taking of marine mammals by harassment. As such, the documents should discuss what the project proponents have done to meet the incidental take provisions of the Marine Mammal Protection Act. The Marine Mammal Commission further recommends that the Corps ensure that the applicant complies fully with section 101(a)(5) of the Act.

The draft documents indicate that informal consultation has been undertaken with the National Marine Fisheries Service pursuant to section 7 of the Endangered Species Act but provides no description of the results of that consultation. Given the potential impacts to endangered species during the construction phase of the project, the Commission believes that the final documents should discuss how the project proponents have met the consultation provisions of the Endangered Species Act.

If you or your staff have questions regarding these comments and recommendations, please call.

Sincerely,

A handwritten signature in black ink that reads "David Cottingham". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Cottingham
Executive Director