



MARINE MAMMAL COMMISSION

26 March 2012

Mr. Tommy Beaudreau, Director
Bureau of Ocean Energy Management
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Beaudreau:

The Marine Mammal Commission has reviewed the Bureau of Ocean Energy Management's final environmental assessment on Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf offshore New Jersey, Delaware, Maryland, and Virginia. The final environmental assessment fails to respond in a meaningful way to recommendations made by the Commission on the draft environmental assessment. It also is ambiguous regarding measures to minimize impacts on marine mammals. The Marine Mammal Protection Act (Title II, Section 202(d)) states—

Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

The Commission's recommendations for minimizing potential impacts of wind energy site assessment activities on marine mammals were developed in consultation with the Commission's Committee of Scientific Advisors, and were outlined in a letter sent to Ms. Maureen Bornholdt, dated 11 August 2011 (enclosed). In the letter, the Commission included thirteen recommendations. The comments pertained primarily to the proposed mitigation measures for marine mammals and sea turtles in Appendix C of the draft environmental assessment, now identified as mandatory project design criteria in Appendix B of the final environmental assessment.

The Bureau's response to comments, included in Appendix C of the final environmental assessment, identifies only one of the Commission's thirteen recommendations (page 324), and the response to that comment is inadequate and does not address the Commission's concern. The Commission notes that the Bureau's responses to comments from other federal agencies and from non-governmental organizations are, in contrast, much more detailed and thorough.

Although some of the Commission's recommendations were addressed in the final environmental assessment, the following recommendations were not addressed and the relevant requirements were unchanged in the final document. Therefore, the Marine Mammal Commission repeats the following recommendations, that the Bureau of Ocean Energy Management—

- work with lessees to ensure the availability of adequate baseline information before moving forward with wind energy site characterization and assessment projects—although the

Bureau is moving forward with the leasing process, the biological survey and monitoring guidelines for lessees have yet to be finalized;

- require the use of passive acoustic monitoring to increase protection of marine mammals during geophysical surveys—the Bureau has indicated in the final environmental assessment that it would only encourage, but not require, lessees to use passive acoustic monitoring;
- require lessees to estimate the proposed exclusion and buffer zones for all sound sources using operational- and site-specific information and the relevant thresholds established by the National Marine Fisheries Service, and modify those zones as necessary using in-situ sound measurements—the Bureau has indicated that it would require field verification of exclusion zones only for a very limited subset of pile driving activities;
- use exclusion zones to protect both listed and non-listed marine mammals—the Bureau’s requirements for mitigation measures if marine mammals are observed within the designated exclusion zones refer inconsistently to both listed and non-listed marine mammals;
- require lessees to immediately report all injuries or mortalities of both listed and non-listed marine mammals and suspend their activities if a marine mammal is seriously injured or killed and the injury or death could have been caused by their activities, and then consult with the National Marine Fisheries Service and the Marine Mammal Commission to determine the cause of the injury or death and devise means for avoiding such impacts before operations resume—the Bureau’s requirements for reporting injuries or mortalities refer only to species listed as endangered or threatened under the Endangered Species Act;
- allow lessees to resume to full power for geophysical surveys only when the shutdown has been eight minutes or less in duration, and when no marine mammals have been observed within the exclusion zone before or during the shutdown or when a marine mammal is seen within the exclusion zone but also is observed leaving the zone—the Bureau has not provided any rationale as to why, instead of adopting the eight-minute requirement, it would not require full ramp-up unless cessation of the sound source exceeds twenty minutes;
- require lessees to cease pile driving if a marine mammal has entered the exclusion zone around a pile driving operation until the marine mammal is observed to have left the exclusion zone or has not been seen or otherwise detected within the exclusion zone for 15 minutes in the case of small odontocetes and 30 minutes in the case of mysticetes and large odontocetes — the Bureau has indicated that it would not require any cessation of pile driving once pile driving begins, even if a listed marine mammal enters the exclusion zone during pile driving; and
- encourage lessees to use acoustical monitoring to characterize ambient sound levels before, during, and after proposed activities and to monitor for the presence and movements of cetaceans in the vicinity of specific proposed wind energy areas—the Bureau does not reference any requirements for acoustical monitoring of ambient sound levels.

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If the Bureau disagrees with these recommendations, then please send the Commission, in writing, an explanation for why it disagrees so that the Commission can understand and evaluate the Bureau's reasoning. Please contact me if you have questions about the Commission's recommendations or rationale.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure

cc: Maureen Bornholdt