



## New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

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Dr. Rodney E. Cluck, Project Manager  
Alternative Energy Program  
Minerals Management Service  
U.S. Department of the Interior  
381 Elden Street, Mail Stop 4080  
Herndon VA, 20170

Mr. Robert J. DeSista  
Chief, Regulatory Division  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord MA, 01742-2751

### **Re: Cape Wind Energy Project Draft Environmental Impact Statement**

Dear Dr. Cluck and Mr. DeSista:

The New England Fishery Management Council (Council) has reviewed the Minerals Management Service's (MMS) Draft Environmental Impact Statement (DEIS) and the U.S. Army Corps of Engineers' (ACOE) Public Notice (NAE-2004-338-1) for the Cape Wind Energy Project, and is submitting comments pursuant to Section 305(b)(3) of the Magnuson-Stevens Act, which empowers the Council to consult with federal and state agencies regarding potential impacts from development projects to essential fish habitat (EFH) for species under the Council's jurisdiction. The Council previously provided comments relating to the US Army Corps of Engineers DEIS in February of 2005.

These comments are divided into three topical areas: general comments on the DEIS, comments specific to the DEIS Sections, and recommendations.

#### **General comments on the DEIS**

- Throughout the DEIS reports prepared specifically to illustrate or analyze portions of the project are incorporated by reference. The Council on Environmental Quality (CEQ) guidelines state that "care should be taken to ensure that the statement remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference" *38 Federal Register 20550, 20554 (1973)*. The majority of references to these reports are not incorporated into the text of the DEIS in such a way that they are "capable of being understood by the reader without the need for undue cross-reference." We do not believe that the few words contained in these references constitute a sufficient "brief description of the contents of the

report,” as required by CEQ. We ask that the contents of these reports be briefly summarized wherever they are referenced. Additionally, these reports do not appear to be readily available to the public. The DEIS should prominently include mention of where or how to obtain them.

- The document contains discussion of commercial and recreational fishing activities under the second-level heading “Biological Resources.” We believe that this is conceptually incorrect and may confuse the reader. The endeavor of catching fish for recreation or profit should receive its own sub-heading under the “Socioeconomic Resources and Land Use” second-level heading. This should apply consistently throughout the DEIS (i.e. Affected Environment, Environmental Consequences and Cumulative Impacts).

## **Comments specific to the DEIS Sections**

### Proposed Action

- Section 2.3.2.3 refers to the potential use of two types of scour protection around the monopiles. It would be helpful if the proponents indicated their expectations with regards to either scour mats or rock armor, as it is not clear from the document which type of scour protection the proponent actually intends to use. If the decision has not yet been made, it seems appropriate to treat the two as options for controlling or minimizing scour around monopiles. Such clarification should be extended throughout the document, allowing the impacts of each option to be explored in a more rigorous way in the Environmental Consequences Section of the DEIS.
- Section 2.4.3.4 refers to the anticipated inspection schedule for various components of the project. Scour protection and marine cables appear scheduled for inspection after one year for the former, and two years for the latter, with biennial inspections thereafter. Reference is made to the “pruden(ce)” of conducting an inspection after “any significant storm activity.” The document should state specifically if this is merely a prudent action or if it is the proponent’s intention, and further if such an inspection is in addition to the schedule proposed or in place of one or more scheduled inspections.

### Affected Environment

- Section 4.2.5.4.2 states that Nantucket Sound is designated as “Statistical Area 58/075, which is comparable to MDMF Area 10.” We believe the first part of the Statistical Area is a typographical error, and should read “...Area 538/075.” Sub-area 075 is an infrequently used federal statistical area code delineating statistical sub-areas in state waters. While locating Statistical Area 538 using publically available information is possible, the boundaries for sub-area 075 are not readily available to the public. The document should provide a figure that demonstrates clearly where this sub-area is, and how it is comparable to MDMF Area 10. Absent this, it is difficult to interpret any of the fishery-dependent information included in the DEIS as it relates specifically to the proposed project.
- Section 4.2.5.4.3 summarizes interviews with “five shellfish and coastal officers” and includes summary reports regarding commercial and recreational harvesting on Horseshoe Shoal. The Council applauds the use of site-specific information to inform or enhance other available sources, but the DEIS should make clear that this sample is unlikely to be comprehensive or representative of the actual users of resources found on, in and around Horseshoe Shoal.
- Section 4.2.7.1 states “In the Northeast region, NOAA Fisheries works with the and also the MAFMC in defining essential habitat...” We believe that the New England Fishery Management Council was intended to be referenced between the words “the” and “and” in that sentence.
- Section 4.2.7.2, in the Survey of Commercial and Recreational Fishing Activities—2005, makes reference to a survey of 18 “commercial and fixed gear fisherman.” While the average number of

years fishing (32) for this sample group is reported in the text, this statistic is meaningless without basic descriptive statistics covering both the sample and the universe of commercial and fixed gear fisherman in question. We assume this information is included in Report No. 4.2.5-6, but it should be brought forward to the DEIS to illuminate the findings in the remainder of the section. This is especially important here given the amount of detail this section provides, detail which is based entirely on the survey. As noted in our comments on Section 4.2.5.4.3 (above), the Council applauds the use of such site-specific sociological data.

#### Environmental and Socioeconomic Consequences

- Section 5.3.1.1.1 should specify which version of scour control is preferred by the project proponents, or alternatively discuss the criteria and procedures to be used in evaluating one relative to the other.
- Modeled bedform migration reveals a “3.3 to 9.8 ft per year” migration rate (Section 5.3.1.1.1). Given the project proponent’s intention of burying electrical transmission lines to six feet below the seabed, more extensive discussion on the impacts of electrical transmission line exposure on commercial fishing activities should be included in the document.
- Under Section 5.3.1.3.1, the conclusion that “operation impacts on oceanographic process would vary from negligible to minor and would result in only temporary and localized effects” does not appear to be supported if rock armor is used as scour control. A permanent or semi-permanent addition of 47.8 acres of rock piles to what is described as a generally sand or coarse-granule-dominated bottom is not minor, temporary or localized.
- Section 5.3.2.5 should discuss the potential impacts of rock armor and scour mats on subtidal offshore resources individually. We note that the range in area covered by scour control devices could be between 2.5 and 47.8 acres. The costs and benefits associated with these two options should be more clearly delineated.
- Analysis presented in Section 5.1.5.11 (Monopiles as Fish Attracting Devices) concludes that monopiles are unlikely to attract fish due to the low rugosity of the structures. This appears to be in conflict with the analysis presented in Section 5.3.2.7.2 (WTGs Acting as Fish Attracting Devices), which extrapolates that the monopiles will attract particular fish species (Atlantic cod, cunner, tautog, black sea bass, and scup). This conflict should be reconciled.
- Section 5.3.2.7 contains no analysis whatsoever on the impacts of transmission line exposure on mobile gear fisheries. Given the analysis indicating the likelihood of such exposure, and the presumed frequency of cable burial monitoring, the document should contain such analysis and reach some conclusions relative to the safety of operating mobile fishing gear in the vicinity of transmission cables in the event of exposure.
- Section 5.3.2.7 contains the conclusion that “Commercial fishing vessels would have to avoid the WTGs and ESP when trawling. However, the affects are minor...slight course corrections may be required to avoid them.” There is no analysis presented to support this conclusion. The Council is concerned that the safe and effective use of mobile gear would be impossible in a field of WTGs for the following reasons:
  - The otter-trawl (tow) gear typically extends from about 775’ to 1400’ behind the boat depending on the size of the trawler and the species of fish being targeted. The trawl doors spread the gear 300’ to 400’ apart. The targeted species tend to be aggregated in schools, not evenly distributed over the area. Therefore, it will be very difficult for fishermen to fish with this gear in between a row of WTGs.

- Fishermen concentrate their efforts where they have located the schools and need to be able to turn to stay on the fish. A trawler cannot make sharp turns when its net is in the water. It requires a large turning radius of from ½ to 1 mile to keep the gear from collapsing. This is more than the distance between the WTGs.
- Fishing is a dynamic activity with boats towing along every possible compass heading and having to take account of the winds, tidal currents, location of the fish, and locations and courses of other boats in the area. It requires considerable skill and concentration on the part of the captains to safely ply their trade. The presence of the WTGs throughout the fishing area would make safe maneuvering extremely difficult and pose an ever-present danger of collision. The probability of accidental collisions with the structures or other vessels, whose presence may be visually obstructed by the towers, would be enhanced under conditions of foul weather and poor visibility, for which the area is noted.
- Section 5.3.2.7 makes no attempt to discuss the potential for social or economic adverse impacts to commercial or recreational fishing. In fact, despite extensive treatment of the commercial and recreational fisheries in the Affected Environment, no discussion of the potential for differential impacts relative to the No Action Alternative can be found in the DEIS. Absent any discussion on this, the conclusion that “operations are expected to have negligible to minor impacts on fisheries” is not supportable. Further, as previously stated, the social and economic impacts on fisheries should be addressed under the “Socioeconomic Resources and Land Use” header.
- Section 5.3.2.8 includes no estimates of total anticipated water withdrawals during jet plow embedment. The document states that “eggs and larvae entrained...would likely suffer 100 percent mortality,” and that “millions of fish eggs and larvae may be present in the withdrawn water.” These two statements are difficult to interpret without estimates of anticipated water withdrawals. The potential magnitude of egg and larvae entrainment is not clearly established.

#### Monitoring and Mitigation

- Section 9.2 appears to use lessons learned from the Horns Rev and Nysted wind energy projects as the basis for determining appropriate mitigation and monitoring activities. Given that site-specific monitoring that has occurred since 2001 on Horseshoe Shoals, it would be appropriate to highlight lessons learned from these activities.
- Section 9.4.5 notes the expected burying of cables to 6 feet below the seabed. Section 2.4.3.4 of the Proposed Action notes “...there would be inspections of these runs conducted during the early years following their laying. A full inspection may be appropriate after the first two years, and thereafter on a random basis...” Section 9 should include further guidance on the inspection procedures and timing, as well as specify a communications plan in the event that a cable exposure is revealed through monitoring. Commercial fisherman should be included as a specific target for such communication.

#### **Recommendations:**

The Council remains concerned with the potential impacts this project may have on the habitat necessary to maintain healthy fish stocks and the impact that the project may have on commercial fisheries. Accordingly, we have provided a broad list of conservation recommendations that the MMS should consider as a condition for permitting this project.

1. The project schedule should be revised to avoid in-water work within Lewis Bay from January 15 – May 31 of any year in order to protect sensitive life stages of winter flounder EFH.

2. The choice of scour control is of critical concern due to the variance in potential impacts to EFH and benthic communities. Analysis of the benefits and impacts of the two types of scour control (scour mats and rock armor) is inadequate for the public to provide substantive comments in this regard. Based upon the information presented, scour mats appear to be the least likely to cause an adverse impact to EFH. However, there is little data pointing to the conclusion that scour mats would become covered and no discussion of mitigation or offsetting compensation in the event that they fail to function in the ways the document anticipates. Further, 47.8 acres of rock piles are anticipated in the case of rock armor scour control, but there is little or no discussion of the potential impacts of such an extensive addition of structured bottom to the project area. The choice of scour control methods, and the rationale for that choice, must be made clear prior to project approval.
3. Require the project proponents to publish a monitoring program for scour control and transmission line burial. This monitoring program should include, at a minimum, semi-annual monitoring events in the first year and annual monitoring throughout the life of the project. A communications plan should be established to warn commercial fisherman of any exposures noted during inspections. These plans should be reviewed and approved by federal and state resource agencies prior to project approval.

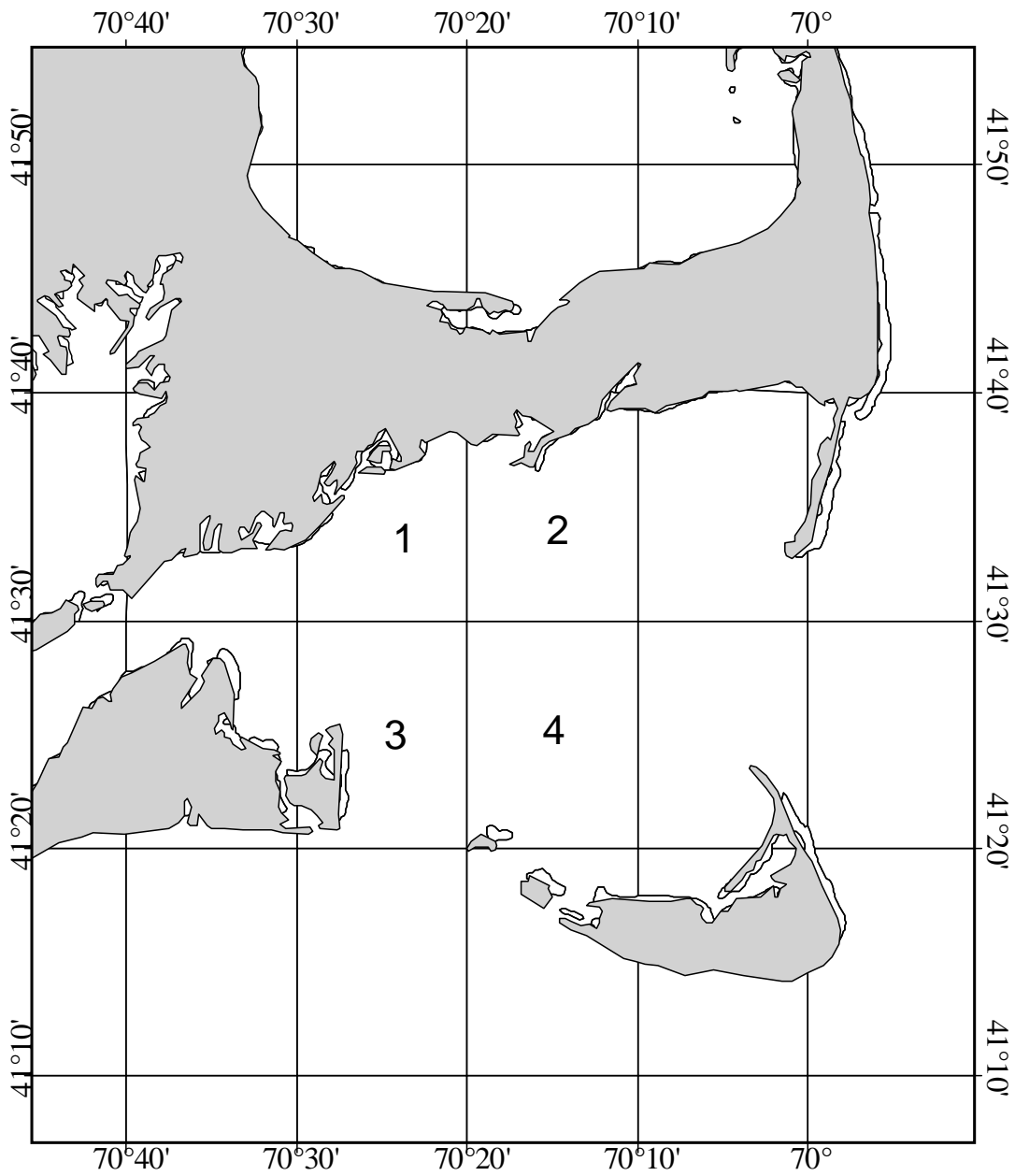
Should you have questions regarding these comments, please contact Chad Demarest at 508-495-2358.

Sincerely,

John Pappalardo  
Chairman

cc: Pat Kurkul, National Marine Fisheries Service  
W. Peter Jensen, Mid-Atlantic Fishery Management Council  
John V. O'Shea, Atlantic States Marine Fisheries Commission  
Secretary Ian A. Bowles, MA Executive Office of Energy and Environmental Affairs  
Paul Diodati, MA Division of Marine Fisheries  
Leslie-Ann McGee, MA Coastal Zone Management

**Figure 1. Ten-minute squares of latitude and longitude that contain or are adjacent to proposed disturbance site.**



**Table 1. EFH designations for species and life stages found within the four ten-minute square latitude and longitude cells at or surrounding the proposed disturbance site.**

<b>TMS 1</b>	<b>TMS 2</b>	<b>TMS 3</b>	<b>TMS 4</b>
<b>Species and Life Stage(s)</b>			
Atlantic cod - A	Atlantic cod - A	Atlantic cod - A	Atlantic cod - A
winter flounder - E, L, J, A	winter flounder - E, L, J, A	winter flounder - E, L, J, A	winter flounder - E, L, J, A
windowpane flounder - A	windowpane flounder - A	windowpane flounder - A	windowpane flounder - A
little skate - J, A	little skate- J, A	yellowtail flounder - J	Atlantic sea herring - J
winter skate- J, A	winter skate - J, A	little skate - J, A	little skate - J, A
long finned squid - J, A	long finned squid - J, A	winter skate - J, A	winter skate - J, A
Atlantic butterfish - E, L, J, A	Atlantic butterfish - E, L, J, A	long finned squid - J, A	long finned squid - J, A
Atlantic mackerel - E, L, J, A	Atlantic mackerel - E, L, J, A	Atlantic butterfish - E, L, J, A	Atlantic butterfish - E, L, J, A
summer flounder- E, L, J, A	summer flounder - E, L, J, A	Atlantic mackerel - E, L, J, A	Atlantic mackerel - E, L, J, A
scup - J, A	scup - J, A	summer flounder - E, L, J, A	summer flounder - E, L, J, A
black sea bass - J, A	black sea bass - J, A	scup - J, A	scup - J, A
surf clam - J, A	surf clam - J, A	black sea bass - L, J, A	black sea bass - J, A
king mackerel - E, L, J, A	king mackerel - E, L, J, A	surf clam - J, A	surf clam - J, A
Spanish mackerel - E, L, J, A	Spanish mackerel - E, L, J, A	king mackerel - E, L, J, A	king mackerel - E, L, J, A
Cobia - E, L, J, A	Cobia - E, L, J, A	Spanish mackerel - E, L, J, A	Spanish mackerel - E, L, J, A
		Cobia - E, L, J, A	Cobia - E, L, J, A
<i>Total # spp: 15</i>	<i>Total # spp: 15</i>	blue shark - A	blue shark - A
<i>Total # life stages: 42</i>	<i>Total # life stages: 42</i>	bluefin tuna - J, A	bluefin tuna - J, A
		<i>Total # spp: 18</i>	<i>Total # spp: 18</i>
		<i>Total # life stages: 47</i>	<i>Total # life stages: 46</i>

\* TMS: ten-minute square of latitude and longitude depicted in Figure 1.