COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Mr. Rodney Cluck, Ph.D.
Cape Wind Project Coordinator
U.S. Minerals Management Service
381 Elden Street, MS 4042
Herndon, VA 20170

Re: Comments on the Notice of Intent to Prepare an EIS on the Cape Wind Project

Dear Dr. Cluck:

The Massachusetts Department of Environmental Protection (MassDEP) administers the regulatory programs for several of the state permits required of the Cape Wind project. An important component of its analysis of large projects is the pre-permitting review of Environmental Impact Statements (EIS) prepared under the National Environmental Policy Act (NEPA), and the Environmental Impact Reports (EIR) prepared under the state-level NEPA analogue, the Massachusetts Environmental Policy Act (MEPA). In the case of the Cape Wind project, these processes are combined through a special procedure, with MMS, as the lead federal agency, maintaining its role in drafting the NEPA documents that will also serve to meet the proponent's obligations under MEPA. For this reason, MassDEP will rely on MMS to include within the DEIS/DEIR necessary information that would normally be required under MEPA. This is particularly significant for the Cape Wind project, because the portions of the project within the state boundary, primarily the transmission cable, will require a variance under MGL c. 91 and the Waterways Regulations at 310 CMR 9.00. The variance procedures anticipate that much of the necessary information will be provided through the MEPA process.

Variance Analysis Requirements

The standards and requirements of the Chapter 91 variance process are specified at 310 CMR 9.21. A critical component of an application for a variance is a detailed analysis of the project and alternatives to the proposed project upon which the MassDEP must base its findings. Pursuant to 310 CMR 9.21(2)(c), the MEPA (or, in this case, MEPA/NEPA) alternatives analysis shall be presumed adequate for the purposes of the variance analysis, provided that the Commissioner may require any modification of the project reasonably within the scope of an alternative within the EIR/EIS. Therefore, in order to meet the c.91 variance requirements of 310 CMR 9.21(2), we recommend the filing of an EIS/R with a scope that includes descriptions and appropriate supporting documentation of:

a) the specific regulatory provision from which variances are being sought;

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b) alternative designs, locations, or construction methods that would allow the project to proceed without a variance, and explains why these alternatives are unreasonable;
c) the detriments to public interests in waterways due to the project, and proposed means by which these impacts can be minimized;
d) proposed measures to compensate for any remaining detriments to public interests in waterways; and
e) the overriding public interest served by the project.

Because of its experience in overseeing offshore projects, particularly energy-related projects, MMS is in a unique position to offer insight into the public interest that might be served by this project. MassDEP will also take into consideration the findings of the Massachusetts Energy Facilities Siting Board, which has already issued a decision as to the energy need and environmental impacts and mitigation associated with the transmission cable.

Performance Standards for the Transmission Cable

As the basis for the analysis of the project's impacts to public interests in waterways and any necessary compensatory measures, the DEIR/S should examine the standards for nonwater-dependent infrastructure facilities at 310 CMR 9.55, which provide for the protection of public interests in waterways. The protected interests most relevant to these projects are paraphrased below, and accompanied by additional specific comments intended to provide some guidance to the proponent in preparing the DEIR/S.

- Maritime commerce, industry, recreation, and associated public access. Permanent and temporary impacts to commercial and recreational navigation, including access to docking facilities must be evaluated. Impacts of the cables and any necessary accessory structures impacting marinas, beaches, and other recreational resources must also be described.

- Living marine resources and water quality. The analysis of the project's impacts to living resources should focus on possible impacts to seabirds and migratory birds, fisheries, and other benthic and pelagic aquatic life, with particular attention to any protected species inhabiting the project areas, and commercially harvested species. These studies should include pre-construction surveys of the project areas to determine the type and level of biological activity, and consider possible indirect impacts to aquatic life resulting from changes to water currents, sediment transport, and other factors. Long-term and construction-period water quality issues as may be necessary for the alternatives analysis required under the Water Quality Certification program should also be included.

- Public views, visual quality of the shoreline environment, and historic and cultural resources near waterways. The DEIR should provide sufficient graphic and descriptive information to enable the public and historic and cultural preservation agencies and organizations to assess the projects' impacts to public views of natural, historic, and cultural features.

Thank you for the opportunity to comment. Please contact me if I may be of further assistance.

Sincerely,

Philip Weinberg
Associate Commissioner