

US EPA ARCHIVE DOCUMENT

From: Bjdurk@aol.com
To: Brendan Mccahill/R1/USEPA/US@EPA
Date: 07/16/2010 01:46 PM
Subject: Comments on EPA Cape Wind air quality certificate

July 16, 2010

Brendan McCahill Environmental Engineer
U.S. Environmental Protection Agency-Region
15 Post Office Square, Suite 100, Attn. OEP-5-02, Boston, MA 02109-3912

RE: Cape Wind air quality certificate

Dear Mr. McCahill:

I implore the EPA to avoid taking any action that should be anticipated to introduce the threat of extinction by the perfect storm, Cape Wind. Any EPA action favorable to Cape Wind should be anticipated to trigger immitigable harm to migratory and endangered wildlife protected by federal laws the EPA is encumbered to observe, and avoided.

I base my contention that Cape Wind poses immitigable harm on the federal government's science, the best science under federal law. The Chairman of the Scientific Review Committee of MMS has announced his strident opposition to the Cape Wind project approval by Secretary Salazar, (below). Michael Fry of ABC thus also disagrees with Cape Wind vocal proponent Mass Audubon.

American Bird Conservancy Statement on Cape Wind Decision in Mass.

Submitted by Ted Williams on Wed, 04/28/2010 - 11:00.

Sad day for anglers, too.

"American Bird Conservancy is disappointed in the Department of the Interior decision to approve the Cape Wind Project because the science collected for the project on bird collision threats is inadequate, and the site will reduce prime offshore sea-duck foraging habitat. Further, there are data to suggest that loons will likely abandon the area for years to come, and there may be significant impacts to endangered Roseate Terns, which breed in nearby Buzzard's Bay and feed in Nantucket Sound," said Dr. Michael Fry Director of Conservation Advocacy for American Bird Conservancy.

Dr. Fry is Chairman of the Federal Minerals Management Service Environmental Studies Advisory Committee.

American Bird Conservancy (www.abcbirds.org) conserves native birds and their habitats throughout the Americas by safeguarding the rarest species, conserving and restoring habitats, and reducing threats while building capacity of the bird conservation movement. ABC is a 501(c)(3) not-for-profit membership organization that is consistently awarded a top, four-star rating by the independent group, Charity Navigator.

<http://www.flyrodreel.com/blogs/tedwilliams/2010/april/conservancy-statement>

Minerals Management Service MMS as the lead Cape Wind federal reviewing agency has failed to observe Best Science as the federal government's in the Cape Wind NEPA environmental review.

The EPA Minerals Management Service Cape Wind FEIS 2/17/09 comments state:

"Monitoring, Mitigation & Management":

"Enforceable monitoring and mitigation requirements for project construction and operation will be a critical component of any MMS authorization for the Cape Wind project."

How would MMS/Cape Wind/Mass Audubon monitors implement, let alone enforce, Adaptive management monitoring and mitigation with Cape Wind when "effective techniques to perform post-construction monitoring simply do not exist" according to the lead federal regulator, under the ESA Section 7 consultation process, USFWS, in their Cape Wind MMS DEIS comments?

Mitigation of avian mortalities by wind turbines has not worked to date to reduce harm to wildlife on land according to Biologist Shawn Smallwood's Peer Reviewed Scientific Journal published study. Mitigation of avian mortalities is not possible with Cape Wind as one cannot mitigate what one cannot effectively monitor as avian or bat mortalities over water.

Cape Wind ignores Best Science guidelines as sited in Nantucket Sound and invites immitigable harm to endangered and migratory species accordingly.

The Department of the Interior and U.S. Fish and Wildlife Service guidelines for siting wind towers in 2003:

"--Avoid placing turbines in documented locations of any species of wildlife, fish, or plant protected under the ESA.

-- Avoid locating turbines in known local bird-migration pathways or in areas where birds are highly concentrated, unless mortality risk is low (e.g., birds rarely enter the rotor-swept area). Examples of high-concentration areas for birds are wetlands, state or federal refuges, private duck clubs, staging areas, rookeries, roosts, riparian areas along streams, and landfills.

-- Avoid known daily-movement flyways (e.g., between roosting and feeding areas) and areas with a high incidence of fog, mist, low cloud ceilings, and low visibility."

(Avoid siting wind turbines in Nantucket Sound in other words)

"Salazar said new technology in the design of turbines and more careful placement, such as outside of migratory paths and away from ridgelines, can reduce bird deaths."

(Avoid siting wind turbines in Nantucket Sound in other words)

Mass Audubon:

"First, for some avian species, such as the Roseate Tern or Piping

Plover, a single death as a result of the project could be regarded as an unacceptable level of impact under the U.S. Endangered Species Act."

Mass Audubon on the Roseate Tern:

"In 2001, 1,826 pairs of Roseate Tern, representing half of the entire North American Population of this species, nested in Buzzard's Bay. During the breeding season the adults of this species are known to forage heavily between Wood's Hole and Nantucket. From July to September even a higher percentage, perhaps as much as 75% of the entire North American population stages at the following beaches in Nantucket Sound—South Beach, Chatham; Monomoy National Wildlife Refuge, Chatham; Great Point, Nantucket, Cape Pogue, on Martha's Vineyard, and a variety of smaller beaches between Hyannis and Mashpee."

http://www.massaudubon.org/PDF/advocacy/editorial/MEPA_windfarm.pdf

Mass Audubon comment to the USACE on the Cape Wind DEIS describes the very values present in Nantucket Sound that indicate avoidance when siting wind turbines.

"This area of Nantucket Sound is within the eastern U.S. migratory bird flyway and hosts high concentrations of wintering waterfowl, and is in close proximity to nesting, foraging and staging areas for federally endangered roseate terns and threatened piping plovers. Substantial numbers of federally endangered sea turtles and protected marine mammal species frequent the proposed project site. In addition, the proposed site provides habitat for federally regulated finfish and shellfish populations."

<http://www.massaudubon.org/PDF/CapeWindDEIS.pdf>

The ESA Federal Regulator US FWS April 21, 2008 comments provided to Dr. Cluck, Cape Wind Project Manager of MMS, on the Cape Wind MMS DEIS:

"The current framework that MMS is proposing would forgo refinement of pre-construction study protocols and set in motion an adaptive management process that would be doomed to failure because effective techniques to perform post-construction monitoring simply do not exist."

The condition of Mass Audubon's "support" for Cape Wind as expressed in their "Challenge" (2006) press release is the Adaptive Management monitoring and mitigation service contract that has an approximate value over term provided in Mass Audubon's "Challenge" of \$8 million dollars. Adaptive Management is the "umbrella" term covering "monitoring" counting mortalities, and "mitigation", attempts to reduce harm to wildlife by "improvement (man's) to the environment, such as by wind turbines. Biologist Shawn Smallwood, known as the father of Adaptive Management monitoring and mitigation, maintains mitigations measures have failed to reduce harm to wildlife caused by land based wind turbines. Please review Biologist Shawn Smallwood's remarks on avian mortalities by wind turbines.

<http://www.youtube.com/watch?v=qzrsopSpIV4>

Conflicted Mass Audubon now admits they intend to secure the Cape Wind avian mortality monitoring contract by their press release--see highlighted.

Bias and conflict of interest are evident as Mass Audubon is an MMS identified "Key Partner" in the MMS NEPA environmental review of Cape Wind. NEPA analysis should avoid taking on a Cape Wind advocacy position as Mass Audubon has with Cape Wind. Now, Mass Audubon admits they intend to provide a service for the Cape Wind project, carcass counting, referred to as Adaptive Management monitoring and mitigation. That's a conflict of interest on the part of the permit reviewing entity, Mass Audubon, confirmed by their press release of June 25, 2010 contact Jack Clarke of Mass Audubon.

[Mass Audubon | What's New!](#)

Mass Audubon "What's New?" (press release June 25, 2010 excerpt):

Next Steps for Mass Audubon participation

Mass Audubon will continue to analyze and report on Cape Wind through:

1. MMS' OCS lease arrangement;
2. ACOE Section 10 permit issued under the US Rivers and Harbors Act;
3. EMS adaptive management plan; and
4. Avian monitoring and mitigation plan implementation during the construction and three year post-construction phases of the project.

<http://www.massaudubon.org/news/index.php?id=1482&type=press>

Cape Cod Time's <http://www.capecodtoday.com/blogs/index.php/2010/06/28/mass-audubon-supports-cape-wind-energy-p?blog=53>

The Cape Wind Record of Decision incorporates Mass Audubon's glaring appearance of bias ("support") for Cape Wind. It also incorporates conflict of interest based on Mass Audubon's June 25 announcement by press release that Mass Audubon will implement the Cape Wind funded A.M. contract worth multi-millions.

However; the MBTA is a strict liability criminal statute that protects almost all of the birds cited in Mass Audubon Cape Wind testimony to federal regulators.

Mass Audubon's comments on the Cape Wind DEIS on February 23, 2005 to U.S. Army Corps of Engineers, New England District -- Reference File No. NAE-2004-338-1, EOE No. 12643:

"By utilizing other bird mortality data provided in the DEIS, Mass Audubon staff scientists arrived at avian mortalities that ranged from 2,300 to 6,600 collision deaths per year."

<http://www.massaudubon.org/PDF/CapeWindDEIS.pdf>

That's up to 6,600 violations of the MBTA per year that Mass Audubon has endorsed in exchange for a contract funded by Cape Wind to count violations of this strict liability criminal statute.

Compromised science in an IBA, migratory flyway where endangered species are present and at the brink of extinction, has the potential for environmental risk to include extinction by introduction of Cape Wind into the same.

The evidence Mass Audubon provides confirms their bias in favor of Cape Wind during environmental review and permitting processes in which they participate. Mass Audubon's conflict of interest, with a contract condition of "support" for Cape Wind, is verified by their press release stating they plan to implement monitoring and mitigation for the Cape Wind project.

Minerals Management Service “Key Partner” in the Cape Wind NEPA environmental review is Mass Audubon. NEPA analysis should avoid taking on a project advocacy position as Mass Audubon has with Cape Wind.

<http://bjdurk.newsvine.com/news/2010/03/21/4046167-mass-audubon-condition-of-support-for-cape-wind-spells-bias>

'Dear Secretary Salazar: Please do not sign off on Cape Wind' (the evidence that establishes immitigable harm to wildlife presented by Cape Wind, effective technology to monitor mortalities over water simply does not exist, mitigation has not worked on land to reduce harm to wildlife):

<http://bjdurk.newsvine.com/news/2009/03/11/2534556-dear-secretary-salazar-please-do-not-sign-off-on-cape-wind->

Mass Audubon criticized for not protecting birds killed by wind turbines, charges of their bias and conflicts:

<http://bjdurk.newsvine.com/news/2010/05/26/4364708-thanks-for-nothing-mass-audubon>

Mass Audubon failed to remain objective during the NEPA environmental review of Cape Wind as Mass Audubon offered their “support” of Cape Wind in 2006. Mass Audubon has undermined the NEPA environmental review of Cape Wind as an MMS identified “Key Partner” demonstrating bias in favor of Cape Wind and an adaptive management contract to count carcasses caused by Cape Wind -to be funded by Cape Wind will be implemented by Mass Audubon.

Mass Audubon's Challenge Press release spells bias during the Cape Wind NEPA permit review in which they were participating.

Upper Cape Codder: 4/20/06

Allison & Clarke: **Challenge** to Cape Wind: Get it right
By Taber Allison and Jack Clarke

"Mass. Audubon challenges the developer of Cape Wind and its **PERMITTING AGENCIES TO ACCEPT** comprehensive and rigorous **MONITORING AND MITIGATION CONDITIONS** that will reduce the risk to birds and other wildlife. **IF THESE CONDITIONS ARE ADOPTED** and remaining significant data gaps are addressed, **MASS AUDUBON WILL SUPPORT CAPE WIND**, the largest, clean, renewable-energy project in the Northeast.

We also propose adoption of an Adaptive Management Plan that includes a rigorous monitoring program beginning at the construction phase and continuing for at least three years post-construction, mitigation measures in the event that the project results in significant adverse environmental impacts, compensation for the use of public lands and waters and enforceable procedures for decommissioning any abandoned turbines.

An independent panel should be responsible for collecting and analyzing data collected during monitoring and preparing reports for peer review and dissemination to relevant agencies, Cape Wind and the public.

Finally, an independently administered mitigation fund should be established for conservation of bird habitat around Nantucket Sound. **MONITORING AND MITIGATION SHOULD BE FUNDED BY CAPE WIND** with contributions from independent institutions and government agencies as appropriate..." [cut]

Mass Audubon testimony to regulators on bird kill by Cape Wind puts them in conflict with federal species protections and international treaties by offering their "support" of Cape Wind, during the Cape Wind NEPA environmental review, in which they are participating:

Mass Audubon's comments on the Cape Wind DEIS on February 23, 2005 to U.S. Army Corps of Engineers, New England District -- Reference File No. NAE-2004-338-1, EOE No. 12643:

"By utilizing other bird mortality data provided in the DEIS, Mass Audubon staff scientists arrived at avian mortalities that ranged from 2,300 to 6,600 collision deaths per year."

<http://www.massaudubon.org/PDF/CapeWindDEIS.pdf>

Conflict of financial interest on the part of a permit reviewing entity involved in the collection of data, analysis of avian data, and commenting upon the same during the Cape Wind NEPA permit review is confirmed by Mass Audubon's pledge to conduct the service, Adaptive Management monitoring and mitigation, handled by contract, funded by Cape Wind. This contract has a value of approximately \$8 million dollars based on Adaptive Management contracts at Altamont, CA. This AM contract is the condition of Mass Audubon's "support" for Cape Wind, (their project "support" alone exhibits bias on the part of a permit reviewing entity as allowed or invited by Minerals Management Service MMS). Mass Audubon's financial interest in A.M. carcass counting contract that they state they intend to implement, as Adaptive Management service, funded by Cape Wind, represents a macabre conflict of interest on the part of Mass Audubon involved in Cape Wind NEPA environmental review process.

The potential catastrophic environmental consequence of bad science incorporated in the Cape Wind Record of Decision is extinction. Mass Audubon's science appears bought. There is a stark and troubling disconnect between the cautionary warnings offered by the federal regulator US FWS under the ESA Section 7 Review process, and by Dr. Fry Chairman of the Federal Minerals Management Service Environmental Studies Advisory Committee. Each disagrees completely with Mass Audubon's Cape Wind favorable position influenced by a contract funded by Cape Wind.

Mass Audubon "What's New?" press release (excerpt that demonstrates Mass Audubon's intent to provide service handled by contract funded by Cape Wind):

Next Steps for Mass Audubon participation

Mass Audubon will continue to analyze and report on Cape Wind through:

1. MMS' OCS lease arrangement;
2. ACOE Section 10 permit issued under the US Rivers and Harbors Act;
3. EMS adaptive management plan; and
4. Avian monitoring and mitigation plan implementation during the construction and three year post-construction phases of the project.

<http://www.massaudubon.org/news/index.php?id=1482&type=press>

Mass Audubon bias and conflict of interest has undermined the NEPA review of Cape Wind. A supplemental EIS is at minimum necessary to correct compromised science as the basis for the Cape Wind Record of Decision.

Mass Audubon had the responsibility to provide unbiased science as an MMS identified "Key Partner" in the Cape Wind permit review. Instead, Mass Audubon upstaged the federal regulator with purview over the endangered species under the ESA, NE U.S. Fish and Wildlife Service, that consistently challenges Mass Audubon's public endorsement of Cape Wind. Mass Audubon's role in the Cape Wind permit review is official as an MMS identified "Key Partner" has undermined the Cape Wind NEPA environmental review.

Minerals Management Service FY 2006 Cooperative Conservation Project'

**"Project Title:
Cape Wind Energy Project**

Examples of Key Partners

Cape Wind LLC, State of Massachusetts, Cape Cod Commission, Massachusetts Audubon Society, Alliance to Protect Nantucket Sound, U.S. Coast Guard, U.S. Corps of Engineers, U.S. Environmental Protection Agency, Federal Aviation Administration, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, the Wampanoag Tribe of Gay Head, and the U.S. Minerals Management Service."

<http://www.mms.gov/offshore/PDFs/CooperativeConservationReport2006.pdf>

<http://www.capecodtoday.com/blogs/index.php/2010/06/28/mass-audubon-supports-cape-wind-energy-p?blog=53>

MA Audubon is in an enviable position if Cape Wind is permitted beyond the \$8 million dollar Cape Wind AM contract.

MA Audubon manages Bird Island with \$780,000 restoration mitigation anticipated from Cape Wind lease payments.

In addition, the state and feds will fund \$3.77 million to Bird Island for a feasibility study. Mass Audubon's Jack Clarke, through the US Offshore Wind Collaborative (USOWC), intends to provide (his) their "Actions" that include "Monitoring U.S. offshore projects" "environmental impacts", "through all phases of development"; as an MMS identified "Key Partner" in the Cape Wind NEPA environmental and permit review.

Party to the Altamont, CA lawsuits over the violations of federal species protections by the wind industry, Michael Boyd-President of Californians for Renewable Energy, estimates the value of the Cape Wind monitoring contract as \$3 million "startup"; and \$1 million per each year following. MA Audubon's "Challenge" press release stipulates that Cape Wind AM will continue for at least 3 years post Cape Wind construction. If Cape Wind takes 2 years to construct, the approximate future value of MA Audubon's "support" condition of Cape Wind (MA Audubon "Challenge" press release) is \$8 million dollars. Mass Audubon has announced they will provide the service by Jack Clarke 2010 June 25 press release.

With greater ambition to service all offshore wind energy project's Mass Audubon seeks unlimited contracts for AM through wind energy favorable science.

Mass Audubon Founding Member of New Wind Collaborative

The new non-profit, named the US Offshore Wind Collaborative (USOWC), will work to ramp up the growth of a sustainable offshore wind industry nationwide. Recognizing the urgency of our

energy and climate change challenges, the Collaborative will address technical, environmental, economic and regulatory issues that serve as obstacles to wind development. Specific goals include providing a forum for cross-sector communication, planning, and action, and distributing information that informs and advances the industry.

The collaborative recently released a [working paper](#) titled U.S. Offshore Wind Energy: A Path Forward as a resource for stakeholders. This document provides an overview of current offshore wind regulation and government policies, technology development, and environmental/marine use, among other issues.

http://web.massaudubon.org/site/DocServer/USOWC_working_paper.pdf?docID=2701

For more information, visit <http://www.usowc.org/>.

http://www.massaudubon.org/advocacy/roundup_archive.php?id=178

"Actions"

"Monitor U.S. offshore projects through all phases of development, including regulatory procedures, stakeholder involvement, siting analysis, best management practices, turbine performance, environmental impacts, and public perception." (page 10)

<http://www.usowc.org/pdfs/USOWCProspectus.pdf>

http://web.massaudubon.org/site/DocServer/USOWC_working_paper.pdf?docID=2701

MA Audubon conditions their "support" for Cape Wind, a project they are reviewing as an MMS identified "Key Partner", upon Agency acceptance of Adaptive Management monitoring and mitigation. This service contract is valued, over the term prescribed by MA Audubon in "Challenge" press release, as **\$8 million dollars "funded by Cape Wind...." to the AM contract holder.**

However; Adaptive management monitoring and mitigation as proposed for Cape Wind is "doomed to failure" according to the federal permitting authority under ESA Section 7 review process, USFWS, comments on the Cape Wind MMS DEIS.

The ESA Federal Regulator US FWS, under the ESA Section 7 review process, in April 21, 2008 comments provided to Dr. Cluck, Cape Wind Project Manager of MMS, on the Cape Wind MMS DEIS, states, excerpts:

"The current framework that MMS is proposing would forgo refinement of pre-construction study protocols and set in motion an adaptive management process that would be doomed to failure because effective techniques to perform post-construction monitoring simply do not exist."

"...As suggested in our comments, with respect to natural resources for which the Service is responsible, we find that there is considerable need to correct inaccuracies, explain inconsistencies, clarify ambiguities, fully articulate the limitations of the available science, and reach logical conclusions about the extent of impacts or the inability to predict them in the absence of information. Given the nature of our comments, and our continued call for the gathering of adequate baseline information on natural resources from which to assess impacts and design appropriate monitoring and mitigation, we strongly recommend that MMS prepare a supplemental DEIS prior to concluding its NEPA process..."

In our view, it is clear that an informed discussion regarding likely collision injury and mortality impacts between passerine birds and the wind turbines and their wind wakes has not been presented in the DEIS and cannot be developed due to the lack

of relevant baseline data. Much more information is needed on the spatial and temporal distribution of flying vertebrates at Horseshoe Shoal and on the avoidance rates of the species involved during a variety of behaviors and activities in a range of conditions. For this reason, the Service once again recommends that the baseline information long requested by our agency be properly obtained and reflected in a - 16-supplemental DEIS. We believe 40 CFR 1502.22 requires MMS or the applicant to collect the missing information..."

http://www.windstop.org/images/USFW_DEIS_COMMENTS.pdf

MA Audubon manages Bird Island with \$780, 000 restoration mitigation anticipated from Cape Wind lease payments.

In addition, the state and feds will fund \$3.77 million to Bird Island for a feasibility study

Northeast Coastal Areas Study Significant Coastal Habitats Site 34 (MA)

Maps

I. SITE NAME: Buzzards Bay Colonial Bird Nesting and Feeding Areas

II. SITE LOCATION: Bird Island and Ram Island are located just offshore the western shoreline of Buzzards Bay, northeast of the city of New Bedford, in the vicinity of the Towns of Marion and Antassawamock, respectively.

TOWNS: Mattapoisett, Marion

COUNTY: Plymouth

STATE: Massachusetts

USGS 7.5 MIN QUADS: Naushon Island, Mass 41070-47; Woods Hole, Mass 41070-56; Sconticut Neck, Mass 41070-57; Onset, Mass 41070-66; Marion, Mass 41070-67

USGS 30x60 MIN QUADS: Martha's Vineyard 41070-A1; New Bedford 41070-E1

III. GENERAL BOUNDARY: There are two distinct, separate and yet closely related areas comprising this complex: 1) an area on the western and upper portions of Buzzards Bay enclosing two small offshore islands (Ram Island and Bird Island) and a large group feeding area; and 2) a nearshore area of open waters along the lower, eastern shoreline of Buzzards Bay important as a general feeding area for individual birds. Ram Island forms the southwestern boundary of the first area and is situated about 0.5 miles (1 km) south of Antassawamock in the Town of Mattapoisett. Moving northeastward from Ram Island the boundary encloses Bird Island, located about 0.5 miles (1 km) south of Sippican Neck in the Town of Marion, to Great Neck and up into Buttermilk Bay at the head of Buzzards Bay. The dimensions for this area are approximately 10 miles (16 km) long in a southwest-northeast direction and about 3 miles (5 km) wide in a northwest-southeast direction along the western shoreline of Buzzards Bay. The second area is located approximately 10 miles (16 km) south of Bird Island and consists entirely of the nearshore waters around Woods Hole and the northern half of Naushon Island out to about 0.5 miles (1 km) from the shoreline. This second area is approximately 6 miles (10

km) long in a southwest-northeast direction and 2 miles (3 km) wide in a northwest-southeast direction. The general boundaries for both areas are delineated on the accompanying maps.

IV. OWNERSHIP/PROTECTED STATUS: These areas consist entirely of public lands and waters. Ram Island is owned by the State of Massachusetts, Division of Fisheries and Wildlife; Bird Island is owned by the Town of Marion and managed by the Massachusetts Audubon Society.

http://training.fws.gov/Library/pubs5/necas/web_link/34_buzzards%20bay.htm

[Bird Island tern restoration project gets federal, state help - Marion, MA - Wicked Local Marion](#)

Bird Island tern restoration project gets federal, state help

By Chris Reagle

Wed Sep 17, 2008, 11:45 AM EDT

After seven years, erosion control and soil restoration work will resume at Bird Island, which had become badly degraded due to weather, and wave action, and put in peril delicate sea bird habitat.

Bird Island, on which sits the historic Bird Island Lighthouse, is a significant habitat for the endangered roseate tern, as well as common terns.

A collaboration between the U.S. Army Corp of Engineers, the state Executive Office of Energy and Environmental Affairs and the town will offer much respite for the battered island on the outskirts of Sippican Harbor.

"I would say construction is three years down the line. Planning will take about two years," Carolyn Mostello, Tern Project Leader at the state Division of Fish and Wildlife, said.

She said the state and feds would kick in a total of \$3.77 million to pay for a feasibility study, plan preparations, and specifications, and new revetment and replacing eroded substrates to restore suitable habitats.

Compromised science in an IBA, migratory flyway where endangered species are present and at the brink of extinction, has the potential for environmental risk to include extinction by introduction of Cape Wind into the same. Please do not take action that should be anticipated to result in the violation of strict liability criminal statute and federal laws. I ask that the EPA require conformity by Cape Wind required to conduct a full three years collection of avian data to comply with U.S. Fish and Wildlife Service under the ESA Section 7 Consultation Process repeated requests. Please do not take any action that should be anticipated to trigger immitigable harm to endangered and migratory wildlife, by Cape Wind, and violate federal laws and international treaties.

Thank You,

Barbara Durkin
48 Moore Lane
Northboro, MA 01532
Telephone: (508) 612-4133

In the interest of disclosure, I am a plaintiff named in the below law suit press release:

June 25, 2010

For Immediate Release: Friday, June 25, 2010

Contact: Kyla Bennett (508) 230-9933 [PEER]; Paula Dinerstein (202) 265-7337 [PEER]; Jessica Almy (202) 588-5206 [Meyer Glitzenstein & Crystal]

HEAVY TOLL ON WILDLIFE PROMPTS LAWSUIT AGAINST CAPE WIND Scientific Reviews of Impact on Endangered and Threatened Birds Skewed

Friday, June 25, 2010, Washington, DC - A coalition of groups filed suit today against federal agencies responsible for approving the proposed Cape Wind turbine farm on the grounds that the project will exact a terrible toll on federally protected migratory birds. The suit contends that required scientific studies were not done and that mandated protective measures were ignored in approving the controversial 130-turbine project slated for Nantucket Sound, a principal bird migration corridor off the Massachusetts coast.

The lawsuit filed today in federal district court in Washington, D.C. contends that the U.S. Department of the Interior's Bureau of Ocean Energy Management, Regulation and Enforcement (until recently known as the Minerals Management Service) and Fish and Wildlife Service violated the Endangered Species Act, Migratory Bird Treaty Act, and National Environmental Policy Act in green-lighting the offshore wind farm. Plaintiffs include Public Employees for Environmental Responsibility (PEER), Cetacean Society International, Lower Laguna Madre Foundation, Californians for Renewable Energy (CARE), Three Bays Preservation and the Alliance to Protect Nantucket Sound, as well as Cindy Lowry, Barbara Durkin, and Martha Powers. They are represented by the Washington, D.C. public interest law firm Meyer Glitzenstein & Crystal.

Among the issues raised by the suit are the -

- Refusal to adopt recommended protective measures for the endangered Roseate Tern and the threatened Piping Plover, such as shutting turbines down during peak migration periods;
- Refusal to collect or submit acoustic, radar, infrared, or observational data on bird migration; and
- Failure to prepare a supplemental environmental impact statement when new information came to light that a large aggregation of the highly imperiled North Atlantic Right Whale was present in the project area.

As a result of these failures, there is no reliable information on how many birds will perish in the huge turbine blades despite requirements that the best scientific information must be used. In addition, there are questions about whether the project will harm, harass, or kill critically endangered Right Whales.

"We are in this lawsuit because science was manipulated and suppressed for political reasons to which the Obama administration turned a blind eye," stated PEER New England Director Kyla Bennett, a biologist and lawyer formerly with the U.S. Environmental Protection Agency, noting the role of the (now former) Minerals Management Service and Interior Secretary Ken Salazar. "Condemning rare birds to extinction is not required for offshore wind development."

A January 2010 Interior Inspector General report found that the agencies reviewing the project's environmental impact study were unnecessarily rushed in their reviews because of the applicant's desire to complete the environmental review prior to the exodus of the Bush Administration. Moreover, U.S. Fish & Wildlife Service biologists protested that the lack of data made it impossible to adequately assess the project's impacts on birds. The agency then reassigned the lead biologist.

"After years of personally witnessing the destruction of precious coastal habitat to wind industrial complexes

am disturbed to see the federal agencies entrusted with the protection of our public waters act so recklessly in approving the Cape Wind project," concluded Walt Kittelberger, Chairman of the Lower Laguna Madre Foundation.

###

[Read the lawsuit](#)

[View the Inspector General report on Cape Wind](#)

[See the lack of safeguards for scientific integrity inside the Interior Department](#)