

Cross examination of Dennis Duffy, D.P.U. – 12-30, Page 145, lines 19-22, August 6, 2012.

In the final analysis, Cape Wind is looking for a loan guarantee they do not need for a larger project than they need to build. Cape Wind could easily reduce the price of the project by the equivalent amount of the loan guarantee and just build a smaller, more efficient project.

**2. A DOE Loan Guarantee will not Reduce Prices for Ratepayers Already Burdened by the High Price of Cape Wind Power.**

The cost to ratepayers for this power purchase agreements are enormous, averaging almost 200 million dollars per year in above market cost. With Massachusetts having near the highest electricity prices in the country, any additional costs would be borne by a region of the country that can ill afford any increases. Additionally it should be pointed out that the cost of Cape Wind is far higher than other renewable power, nearly three times higher than other wind energy assets. In essence, multiple times more renewable energy could be purchased for the same money.

There is no discernible benefit to the ratepayer if taxpayer dollars are committed to the project – *“the PPA does not call for any adjustment whatsoever if Cape Wind is not able to secure a federal loan guarantee from the United States Department of Energy (“USDOE”).”* Prefiled Direct Testimony of Dennis J. Duffy, D.P.U. 12-30, Exhibit CW-DJD-1, Page 12, lines 9-11, March 30, 2012. Emphasis Added

**3. The DOE Loan Guarantee Will Not Result in Additional Investments in Massachusetts, New England, or the United States.**

Surprisingly, despite the billions in ratepayer money that will be committed to this project, there is absolutely no guarantee that any of the money will be used to purchase products from suppliers in Massachusetts, New England, or even the United States. Cape Wind has already cancelled an agreement with a Massachusetts business (See January 28, 2013 letter from Mass Tank Sales Corp, Middleboro, MA, Carl C. Horstmann, President, to Mr. Todd Stribley, U.S. Department of Energy). While there may be some construction jobs related to the project (although there is no guarantee that Massachusetts businesses will be awarded the contracts), dollar for dollar these jobs will come at a high price in reduced employment in other areas of the state - primarily from companies adjusting to the most significant rate increase in recent memory, perhaps ever.<sup>4</sup>

Again, in sworn cross examination of Mr. Duffy, he relieves us of any doubt as to Cape Wind’s real intentions:

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<sup>4</sup> While the amount of power attributed to the Cape Wind PPA is comparatively small - (3.5% of total load in NGRID territory and 1.9% in NSTAR territory), the huge prices will result in energy price increases of 10% or more in an average customers distribution charge, absent other increases.

Q. When Cape Wind sources out their parts for their project, is there any requirement anywhere in the PPA that you would need to purchase a certain amount of these parts in Massachusetts?

[Duffy] I don't recall. Not that I recall.

Q. Is there a certain amount that is specified that you would have to buy in the United States?

[Duffy] I don't recall any such provision.

Q. So essentially you could source the building of the parts for Cape Wind anywhere in the world?

[Duffy] Well, without conceding whether that hypothetical is practical or realistic, I'm not aware of a provision whereby such an approach would be a violation of the terms of these particular contracts.

Cross examination of Dennis Duffy, DPU 12-30 - NSTAR Electric Company - Vol. 2, page 163, lines 6-21, August 6, 2012

#### **4. The DOE Loan Guarantee Will Not Reduce the Use of Foreign Oil or Coal and Will Not Result in Significant Reductions of Pollutants, Including Carbon Dioxide.**

Throughout the negotiations and adjudicatory hearings for Cape Wind the developers have promised that Cape Wind will bring significant reductions in pollutant levels in New England, particularly in greenhouse gases. However, while this may have been true when the project was first proposed, it is no longer the case and the proponent has not updated its analysis, something that AIM has been calling for repeatedly.

The New England Electric Grid is served by several sources of energy – natural gas, nuclear, renewable power, hydro<sup>5</sup>, and coal. On any given average day in New England, the fuel mix for electric generation is nearly 50% non-carbon emitting (nuclear, renewable and hydro), with the vast majority of the rest (often over 50%) being natural gas, the cleanest of fossil fuels. Only a tiny portion of electricity is generated by coal, generally under 4% and almost none is produced using oil. Therefore the claim that foreign oil or coal use will be reduced if Cape Wind is helped by the DOE loan guarantee is simply incorrect. While some of the natural gas does come from foreign sources though the use of liquefied product, even that amount will be reduced over the next several years as additional pipeline capacity is built to take advantage of US natural gas deposits in Pennsylvania and elsewhere.

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<sup>5</sup> Large scale hydro, such as that from Hydro Quebec and other renewables built prior to implementation of recent laws are not considered “renewable” under Massachusetts law and therefore will be listed separately for consistency. AIM prefers to use the term “non-carbon emitting” but for consistency the Massachusetts legal definitions will be used.

In fact, one of the coal plants in Massachusetts – Salem Harbor - will be shutting down next year and Brayton Point, the largest plant in New England that uses coal, has just been sold and faces an uncertain future. Otherwise only small capacity coal plants remain in New England and none will be built anytime in the future. Therefore, any “emission reductions” that Cape Wind claims should be taken with a grain of salt when almost 50% of the electric grid is served by non-carbon emitting sources already, with the remaining served by the lowest carbon emitters available. New England’s generation profile is already one of the cleanest in the country.

In addition to the project not reducing the amount of pollutants previously claimed, it is even unclear if Cape Wind will reduce any pollutants at all worldwide. While a wind turbine does not produce pollution during its normal use, this is a very limited and outdated analysis – many sustainability experts are now using life cycle analysis to make sure that emission reductions here in the US do not result in higher emissions in undeveloped countries as a result of mining and processing materials used to construct renewable power generation equipment. In fact, Massachusetts recently instituted stringent regulations concerning the burning of biomass for energy because of a life-cycle analysis which showed the overall environmental impact of such a project to be negative – surprising everyone.

Oddly, for such a large project like Cape Wind, there has never been a life cycle analysis performed. This is especially crucial as Cape Wind will use an enormous amount of steel and other materials, including rare earth elements largely mined unregulated in China and as pointed out earlier in these comments there are no restrictions for where Cape Wind can source materials. As a result, Cape Wind could easily source materials from environmentally unsustainable sources which could have a demonstrably worse impact on the environment than the small amount of emissions it will displace. We would urge the DOE in considering the Cape Wind application for a loan guarantee to insist on such a life-cycle analysis. We all may be very surprised with the answer.

The DOE should not be party to such sleight of hand. If Cape Wind is good for the environment, they should prove it, given the amount of promises made and money spent, or the DOE should demand that Cape Wind purchase from only the most sustainable sources. It would be a tragedy for a project claiming to be green to leverage a taxpayer guarantee to harm the environment outside the US.

#### **5. Cape Wind Will Not Foster Innovation, Lower Costs, or Result in More Offshore Wind Projects**

The proponents of the project often point out that the real goal of building Cape Wind is to establish an off-shore wind industry in the United States. If that is the case, then Cape Wind is simply not the project to support.

Even if Cape Wind gets built and performs as promised, the added cost to ratepayers will be so high – on the order of 150-200 million dollars per year on average - that that cost alone will be upsetting to ratepayers. It represents nearly 10% or even more increase in distribution charges,

depending on service territory.<sup>6</sup> This will cost tens of thousands of dollars in electricity increases per year for a number of companies already struggling under the high cost of power here. It is inconceivable that another power purchase contract will be made with Massachusetts utilities that have the same or similar cost structures to Cape Wind. In fact, recent legislation would make non-competitively bid deals like the one Cape Wind did with NGRID and NSTAR much more difficult to accomplish.

Further, the notion that future prices will drop to acceptable levels because of this project is fantasy. Prices would have to drop almost 75% to make offshore wind of this magnitude acceptable. There is no known technological change that depends on this project being built that would change the cost equation for off shore wind. If there are off the shelf or new technologies available that would lower Cape Wind's costs even marginally (such as new designs for more efficient turbines), then perhaps a project containing those advances should be financed, but not this outdated project.

## CONCLUSION

One of the hallmarks of DOE's review should be whether or not to commit taxpayer money for commensurate societal benefits. We do not believe there are societal benefits for committing taxpayer resources to the Cape Wind project.

DOE should not be swayed by promises or with incomplete or outdated data. Cape Wind has enjoyed every conceivable advantage and that should have resulted in financing without committing and risking taxpayers' money. The fact that they keep promising construction - *if only* they had another guarantee, or another contract, or another tax credit - simply means that Cape Wind is not a good deal. In any other business that had pre-sold 75% + of its output at a high price and with guaranteed escalators, financing would be easily available. Here it is not because the economics of the project are not sustainable. The absence of sustainability is a dire warning that DOE should not commit and risk taxpayer funding to Cape Wind.

Dollar for dollar, Cape Wind is a terrible investment for taxpayers and for ratepayers. It does not deliver on its promises for the environment. We believe a loan guarantee to Cape Wind would threaten the integrity of DOE's loan program. This is an outdated project at a time when new advances could mean lower prices and more meaningful pollution reductions.

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<sup>6</sup> While Cape Wind is clearly producing *energy* and should rightly be part of a ratepayer's *energy* charge, under Massachusetts law, the charge for Cape Wind will be added to a ratepayer's non-bypassable *distribution* charge. Also note that the increase will be double in NGRID's territory versus NSTAR territory since NGRID purchased double the amount that NSTAR did and their total system loads are similar.

We urge the DOE to reject this risky loan application and invest in more worthwhile projects that need such loan assistance.

Respectfully submitted,

Associated Industries of Massachusetts

By:

A handwritten signature in black ink that reads "Robert A. Rio". The signature is written in a cursive style with a large, prominent initial "R".

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# ATTACHMENT C



**NOAA** FISHERIES SERVICE  
 Northeast Fisheries Science Center  
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

**NEFSC**



## North Atlantic Right Whale Sightings



(right whale illustration courtesy of Pieter Folkens, ©2011)

**Display right whale sightings**

by date or date range

or by month across years

**Seasonal Management Areas**

- In Cape Cod Bay, MA: 1 January-15 May
- Off Race Point: 1 March-30 April
- Great South Channel: 1 April-31 July
- Mid-Atlantic U.S.: 1 November-30 April
- Southeast U.S.: 15 November-15 April

**Dynamic Management Areas**

- Nantucket DMA - active through May 13, 2013

Interactive map of North Atlantic right whale sightings contributed to NOAA between 2002 and present. Click on a symbol for more information on each sighting. Use the + and - to zoom in and out. Sightings of other species can be seen on the OBIS website. When using this map to view current sightings please keep in mind:

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Mariners are urged to use caution and proceed at safe speeds in areas where right whales occur. U.S. Law (50CF 224.105) prohibits operating vessels 65 feet (19.8 meters) or greater in excess of 10 knots in Seasonal Management Areas (SMAs) along the U.S. east coast. Mariners are also requested to route around voluntary speed reduction zones (Dynamic Management Areas—DMAs) or transit through them at 10 knots or less. Approaching right whales closer than 500 yards is a violation of federal and state law. [Please report all right whale sightings](#) from Virginia to Maine to 866-755-6622, and from Florida to North Carolina to 877-WHALE-HELP. Right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16. For more information about ship strike reduction regulations, please visit:

# ATTACHMENT D

# SAVE OUR SOUND

alliance to protect nantucket sound

April 30, 2013

Lieutenant General Thomas Bostick  
Chief of Engineers  
US Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314-1000

Dear General Bostick:

On April 15, 2013, the Alliance to Protect Nantucket Sound (Alliance) received a response from the U.S. Army Corps of Engineers (the Corps) to the Alliance's Freedom of Information Act (FOIA) request regarding documents relating to the September 8, 2012 modification of the Section 10 Rivers and Harbors Act permit issued to Cape Wind Associates for the Scientific Measurement Device Station (SMDS) now in place in Nantucket Sound. The modification extended the termination date of the permit from October 31, 2012 to October 31, 2017. The modification was accomplished without any public notice as required by 33 C.F.R. § 325.6(d). The purpose of this letter is to put the Corps on notice of its legal violations in issuing the modification and to request immediate remedial action.

Included in the Corps FOIA response is a letter dated September 8, 2011, from the Corps to Rachel Pachter, Assistant Project Manager for Cape Wind Associates granting the modification. Also included is a "Memo for the record FILE NUMBER: NAE-2006-26-36." The memo for the record states:

1. No change in circumstance exist [sic] that would warrant issuance of a new public notice. ACOE standard operating procedures encourages use of time extensions to increase efficiency and states [sic] time extensions will normally be granted when the regulation and policy frame work are substantively the same as existed for the original decision. The request for this time extension was submitted September 2, 2011 prior to the current deadline for removal of October 31, 2012 [sic]

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2. The original permit was issued prior to the Energy Policy Act of 2005 which created a new regulatory requirement for the proposed wind project. This SMDS was in place to provide data in advance of that project and it was anticipated that it could be removed 5 years after construction. However, it became evident that the new NEPA process started by BOEM (formerly BOEMRE and MMS) would not be completed within that 5 years and that additional data may be needed from it. The permit was modified in July 2007 to allow the SMDS to remain until October 2012. As that data [sic] approaches, and construction has not begun, it is evident that the project will not be completed by October 2012. The permit has also previously been modified to remove the financial assurances requirement once BOEM had this in place for their entire lease area.

As discussed below, this record does not support the modification action and is in violation of applicable law.

**I. The Corps' Decision to Grant Modification of the Section 10 Permit without Following 33 C.F.R. § 325.6(d) was Arbitrary and Capricious**

The foregoing explanation is not sufficient to support compliance with the Corps' regulations that allow modifications to section 10 permits, including extensions of time, only under limited circumstances. The pertinent regulation provides in part:

Extensions of time may be granted by the district engineer. The permittee must request the extension and explain the basis of the request, which will be granted unless the district engineer determines that an extension would be contrary to the public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2 of this part, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued.

33 C.F.R. § 325.6(d).

First, the regulation requires consideration by the district engineer of the public interest in deciding whether to grant the modification. The FOIA response did not include any document in which the public interest is considered in deciding to grant the modification, and no finding is set forth that such a determination was made.

Second, the regulation requires the processing of the request for extension under the regular procedures of 33 C.F.R. § 325.2, including issuance of a public notice "except that the processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued." This exception requires a positive determination by the district engineer to avoid the issuance of a public notice.

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The memo for the record cited above contains in paragraph 1 the Corps' finding that "[n]o change in circumstance exist [sic] that would warrant issuance of a new public notice." This finding is conclusory and contains no analysis of the circumstances either at the time of the original authorization or the modification.

In fact, the many factual statements contained in paragraph 2 above demonstrate that changed circumstances have in fact occurred: 1) the original permit was issued before the Energy Policy Act of 2005 (EPAAct) that created a new regulatory regime;<sup>1</sup> 2) originally it was anticipated that the SMDS could be removed within 5 years after its construction and this is no longer the case; 3) a new NEPA process had been conducted since the original permit; and 4) the permit was previously modified both to extend the termination date and to remove financial assurances. Despite this litany of changed circumstances referenced by the Corps, the Corps' provides no analysis of why these are not significant.

In fact, there are additional changes in circumstances that require public notice. Among the many such factors that require the Corps to have issued a notice:

- More than enough data have been gathered. The SMDS has been in place for over 10 years and the COP and lease have been issued, there nothing left for the DOI to approve. There is no need for more data.
- Cape Wind has modified the project size to reduce the proposal.
- A federal lease has been issued and a Construction and Operations Plan approved, eliminating the need for any additional data.
- Endangered right whales have been documented within the project area, including very close to the SMDS location. See Attachment 1.
- Cape Wind and other industry members have adopted voluntary restrictions associated with such towers for purposes of right whale protection, but those restrictions have not been applied to the SMDS. Attachment 2.
- Nantucket Sound, including the SMDS, has been designated a Traditional Cultural Property for purposes of section 106 of the National Historic Preservation Act (NHPA). The Corps has done nothing to comply for the SMDS.
- Cape Wind has conducted surveys in the area for archeological resources but none of this information has been made available.

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<sup>1</sup> This statement is flatly inconsistent with the Corps' policy stated in paragraph 1 that "time extensions will normally be granted when the regulation and policy frame work are substantively the same as existed for the original decision." As the Corps itself stated, the EPAAct "created a new regulatory requirement for the proposed wind project" associated with the SMDS. Moreover, the Corps' FOIA response demonstrates no consideration of the Administration's new policy on open government discussed below.

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The Corps' lack of any consideration of these and other factors, combined with its failure to address and provide any stated factual support for its finding, was arbitrary and capricious.

## II. The Corps' Decision to Grant Modification of the Section 10 Permit without a Public Process Violated Administration Policy

The Corps' decision to grant the modification of the Section 10 permit also violates Administration policy. On January 21, 2009, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies entitled "Transparency and Open Government" (Memorandum).<sup>2</sup> The President declared that the Administration will "work together to ensure the public trust and establish a system of transparency, public participation, and collaboration." He stated further:

Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policy-making and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Memorandum at. Under this mandate, even if an agency official could take any action without public involvement, the presumption in favor of participation and openness applies.

On December 8, 2009, the Office of Management and Budget issued the Open Government Directive (M-10-06) which described the principles of transparency, participation, and collaboration as "the cornerstone of an open government."<sup>3</sup> OMB's memorandum states:

The three principles of transparency, participation, and collaboration form the cornerstone of an open government. Transparency promotes accountability by providing the public with information about what the Government is doing. Participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society. Collaboration improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government and private institutions.

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<sup>2</sup> President Barack Obama, Memorandum on Transparency and Open Government (Jan. 21, 2009), *available at* <http://www.gpoaccess.gov/presdocs/2009/DCPD200900010.pdf>

<sup>3</sup> OMB Memorandum M-10-06, *Open Government Directive* (Dec. 8, 2009), *available at* [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf)

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Directive at page 1. These three principles apply directly to the modification of the Section 10 permit for the SMDS. Lastly, the OMB memorandum directs Executive Departments and Agencies to issue open government plans.

The Department of Defense (DOD) first released its Open Government Plan on April 7, 2010.<sup>4</sup> DOD's plan continues in the same vein as the Presidential and OMB directives, committing DOD to the open government policies adopted by the Administration.

The Corps' decision not to use the procedures set forth in 33 C.F.R. § 325.6(d), including the issuance of a public notice, falls short of the Administration's and DOD's own goals for transparency in government. Moreover, the Corps' failure to properly document its decision to avoid a public process exacerbates its violation of Administration policy.

### III. Request for Rescission of Modification and Use of Regular Procedures of 33 C.F.R. § 325.2

In light of the many shortcomings in both the Corps' decision making process and documentation of its decision to modify the Section 10 permit for the SMDS, the Alliance requests that the Corps 1) rescind its approval of the modification, 2) require Cape Wind to cease all operations of the SMDS, 3) follow the regular procedures of 33 C.F.R. § 325.2, including issuance of a public notice, before deciding whether or not to act on the modification, 4) due to the changes in circumstances noted above, reinstate consultation under section 106 of the NHPA and section 7(a)(2) of the Endangered Species Act; and 5) prepare a supplemental EA to replace the EA on the original permit application that is now seriously out of date. Failure to take such action will put the Corps in serious violation of numerous federal environmental statutes and regulations. Cape Wind is exploiting a federal resource for its own benefit and is being allowed to maintain the SMDS for no legitimate reason other than its desire to avoid the costs of removal. The Corps should not acquiesce to such an inappropriate privatization of federal public trust lands and waters and should either direct removal now or suspend SMDS use pending a renewed permitting procedure.

Thank you for considering these requests for action to cure a serious legal deficiency. Please contact me if you have any questions.

Very truly yours,



Audra Parker  
President & CEO  
Alliance to Protect Nantucket Sound

cc: Tommy Beaudreau, Director of BOEM

<sup>4</sup> DOD's Open Government Plan is available at <http://open.defense.gov/OpenGovernment@DoD.aspx>. DOD's Open Government Plan was reissued on April 9, 2012.

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## Attachment 1

Submitted to NOAA 866-755-6622 2 April13 (answering machine; date, location only)

Submitted by: William Rossiter, Cetacean Society International, 65 Redding Road-0953, Georgetown, CT 06829-0953, t/c: 203.770.8615, <rossiter@csiwhalesalive.org>

For: Donald Benefit, P.O.Box 877, Edgartown, MA 02539, 508-627-6691, c 508-566-1537 e (wife) <jenniferbenefit@aol.com>

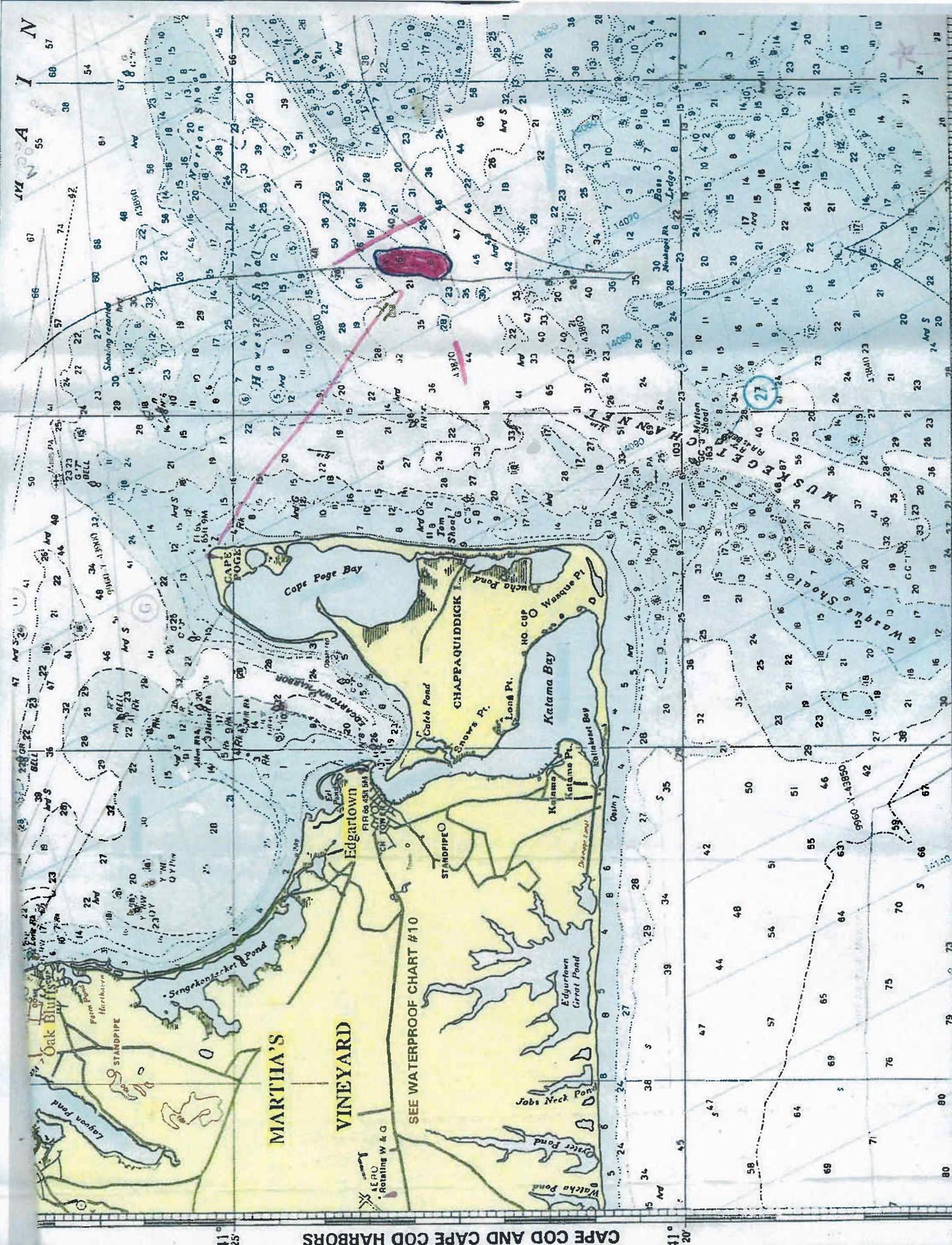
This reports an observation of a North Atlantic right whale mother and calf beginning about 1300, Sunday, July 11, 2004, in Nantucket Sound between Martha's Vineyard and Nantucket, at 70.23N 41.23W, "on 3 mile arc from land", 2nm E of the RN4 buoy. Donald Benefit's nautical chart datum for the observation is: 14 065.0 x 43 870.0.

The direct evidence of the observation are 4x6 prints taken by Jim Clingsmith or Robert Hathaway while guests on Donald Benefit's 36' conch boat. Mr. Benefit is a commercial fisherman who often makes his boat available to elderly fishermen on summer Sundays. The prints have store-processing imprinting on their backs <20040713> and frame numbers 1-9,12-14 (10, 11 are missing). Image 13 shows Point Poge light, Chappaquiddick Island, Martha's Vineyard. Frame 14 (breaching calf) shows two white water tanks (?) on shore.

Mr. Benefit said he approached what he thought was seaweed, until the whales moved. He would not have approached if he thought they were right whales, which he had never seen before but he was familiar with approach restrictions. He said the mother was still, and barely visible above the surface, braced against the "hump", a N-S area 6-8' deep and approximately 60 yards long known to local fishermen, colored red on the chart Mr. Benefit has provided.

The people on the boat realized the calf had been nursing when it pulled away just as the mother ejected milk, visible as a cloud in the water. Mr. Benefit stressed that the mother did not swim away, but appeared stabilized on purpose against the hump. The boat drifted away from the whales and no close approaches were made.

The photos were sent to William Rossiter, Cetacean Society International, 65 Redding Road-0953, Georgetown, CT 06829-0953, t/c: 203.770.8615, <rossiter@csiwhalesalive.org>, who scanned them at 4x6 2400dpi digital images on March 26, 2013. The full size digital images are available upon request, but several were also cropped to reduce the file sizes for downloading.



CAPE COD AND CAPE COD HARBORS

SOUNDINGS IN

70° 25'

70° 30'

CAPE COD AND CAPE COD HARBORS

70° 35'

#64

Search NEFSC



# North Atlantic Right Whale Sightings



(right whale illustration courtesy of Pieter Folkens, ©2011)



### Display right whale sightings

by date or date range

or by month across years

-----choose a month-----

### Seasonal Management Areas

- In Cape Cod Bay, MA: 1 January-15 May
- Off Race Point: 1 March-30 April
- Great South Channel: 1 April-31 July
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- Nantucket DMA - active through May 13, 2013

Interactive map of North Atlantic right whale sightings contributed to NOAA between 2002 and present. Click on a symbol for more information on each sighting. Use the + and - to zoom in and out. Sightings of other species can be seen on the OBIS website. When using this map to view current sightings please keep in mind.

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- A specific date or date range may contain few or no sightings. This does not mean right whales were not present. Approximately 500 right whales live along the eastern seaboard of the US for much of the year, but effort to find them is typically limited to seasonal whale watches or researchers dedicated to locating seasonal habitats. The whereabouts of most of the individuals in the population is unknown for much of the year.
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## North Atlantic Right Whale Sightings

SIGHTINGDATE	GROUPSIZE	LAT	LON	REGION	SPECIESID	CATEGORY	MOM CALF
26 JUL 2012	1	42.86	-69.06	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	6	42.86	-69.11	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	3	42.87	-69.10	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	3	42.81	-69.07	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	3	42.83	-69.08	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	1	42.89	-69.41	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	3	42.25	-66.33	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	2	42.18	-66.20	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	11	42.19	-66.16	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	2	42.18	-66.09	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	2	42.25	-66.31	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	1	42.25	-66.32	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	8	42.16	-66.41	Northeast	Definite	Dedicated Eg Aerial	
22 JUL 2012	1	42.20	-66.79	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2012	1	42.30	-69.02	Northeast	Definite	Dedicated Eg Aerial	
16 JUL 2012	2	42.67	-69.72	Northeast	Definite	Opportunistic	
14 JUL 2012	2	42.71	-70.17	Northeast	Definite	Whale watch	
12 JUL 2012	8	42.59	-68.88	Northeast	Definite	Dedicated Eg Aerial	
12 JUL 2012	1	42.98	-69.08	Northeast	Definite	Dedicated Eg Aerial	
12 JUL 2012	1	42.99	-69.13	Northeast	Definite	Dedicated Eg Aerial	
12 JUL 2012	4	40.80	-72.48	Northeast	Probable	Opportunistic	Yes
10 JUL 2012	1	42.28	-69.96	Northeast	Definite	Dedicated Eg Aerial	
10 JUL 2012	2	42.26	-69.97	Northeast	Definite	Dedicated Eg Aerial	Yes
10 JUL 2012	6	42.67	-70.07	Northeast	Probable	Fishing Vessel	
30 JUL 2011	2	43.06	-70.20	Northeast	Definite	Whale watch	
20 JUL 2011	1	42.16	-70.20	Northeast	Definite	Opportunistic	
20 JUL 2011	2	41.51	-70.62	Northeast	Definite	Opportunistic	
19 JUL 2011	1	42.04	-70.01	Northeast	Definite	Opportunistic	
17 JUL 2011	1	42.10	-70.12	Northeast	Definite	Whale watch	
17 JUL 2011	1	42.98	-70.23	Northeast	Definite	Whale watch	
11 JUL 2011	1	44.48	-66.63	Northeast	Definite	Whale watch	
30 JUL 2010	1	42.89	-70.13	Northeast	Definite	Opportunistic	
30 JUL 2010	1	42.61	-70.30	Northeast	Definite	Opportunistic	
29 JUL 2010	2	42.69	-70.20	Northeast	Definite	Whale watch	
25 JUL 2010	3	42.67	-70.37	Northeast	Definite	Whale watch	
17 JUL 2010	1	41.05	-71.83	Northeast	Definite	Fishing Vessel	
13 JUL 2010	1	42.64	-70.29	Northeast	Definite	Whale watch	
08 JUL 2010	2	42.20	-70.17	Northeast	Definite	Whale watch	
06 JUL 2010	2	42.55	-70.63	Northeast	Definite	Whale watch	
03 JUL 2010	2	42.81	-70.57	Northeast	Definite	Whale watch	
03 JUL 2010	2	42.68	-70.68	Northeast	Definite	Opportunistic	
21 JUL 2009	2	42.07	-70.25	Northeast	Definite	Whale watch	Yes
20 JUL 2009	1	42.68	-68.84	Northeast	Definite	Dedicated Eg Aerial	
20 JUL 2009	3	41.69	-68.88	Northeast	Definite	Opportunistic	
20 JUL 2009	7	41.79	-68.85	Northeast	Definite	Opportunistic	
18 JUL 2009	1	40.68	-69.90	Northeast	Definite	Opportunistic	
15 JUL 2009	3	44.67	-66.43	Northeast	Definite	Dedicated Eg Shipboard	
14 JUL 2009	17	41.91	-68.77	Northeast	Definite	Dedicated Eg Aerial	
14 JUL 2009	6	42.21	-68.95	Northeast	Definite	Dedicated Eg Aerial	
14 JUL 2009	3	42.12	-65.92	Northeast	Definite	Opportunistic	
13 JUL 2009	13	41.24	-69.51	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2009	3	42.32	-68.72	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2009	17	42.42	-68.55	Northeast	Definite	Dedicated Eg Aerial	

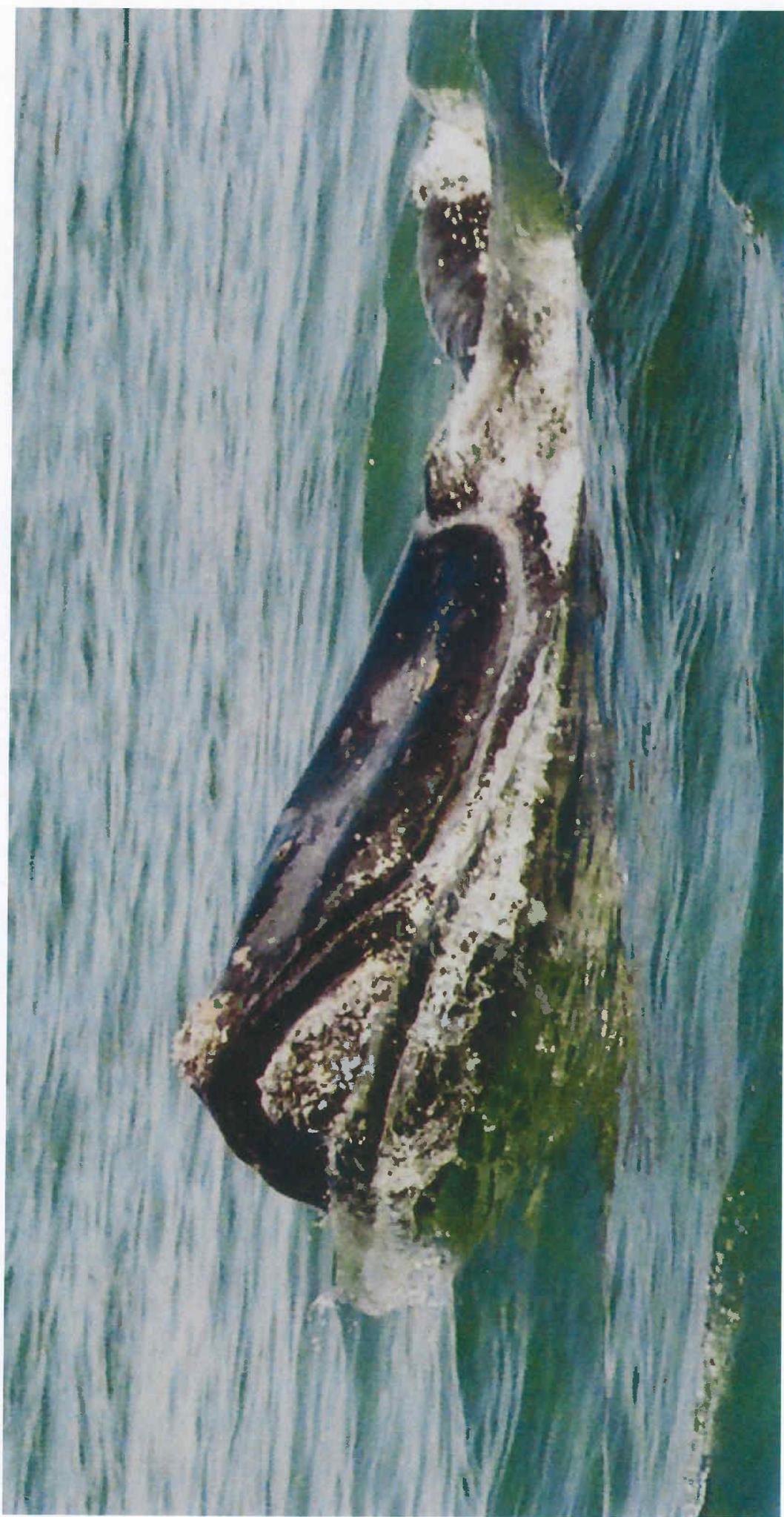
11 JUL 2009	10	42.25	-68.98	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2009	8	42.42	-68.98	Northeast	Definite	Dedicated Eg Aerial	Yes
11 JUL 2009	1	42.38	-68.35	Northeast	Definite	Dedicated Eg Aerial	
07 JUL 2009	1	42.50	-68.83	Northeast	Definite	Opportunistic	
07 JUL 2009	7	42.24	-69.14	Northeast	Definite	Dedicated Eg Aerial	Yes
06 JUL 2009	7	41.42	-68.90	Northeast	Definite	Opportunistic	
06 JUL 2009	3	43.00	-69.07	Northeast	Definite	Dedicated Eg Aerial	Yes
06 JUL 2009	2	42.97	-69.52	Northeast	Definite	Dedicated Eg Aerial	Yes
06 JUL 2009	5	41.63	-68.63	Northeast	Definite	Opportunistic	
05 JUL 2009	1	41.73	-68.48	Northeast	Definite	Opportunistic	
05 JUL 2009	1	41.60	-68.67	Northeast	Definite	Opportunistic	
05 JUL 2009	2	43.00	-69.43	Northeast	Definite	Opportunistic	
04 JUL 2009	5	42.22	-67.67	Northeast	Definite	Opportunistic	
30 JUL 2008	2	42.28	-66.88	Northeast	Definite	Dedicated Eg Aerial	
30 JUL 2008	1	42.22	-66.63	Northeast	Definite	Dedicated Eg Aerial	
30 JUL 2008	2	42.12	-66.87	Northeast	Definite	Dedicated Eg Aerial	
30 JUL 2008	5	42.35	-66.40	Northeast	Definite	Dedicated Eg Aerial	
29 JUL 2008	11	42.17	-67.07	Northeast	Definite	Dedicated Eg Aerial	
29 JUL 2008	2	42.17	-66.87	Northeast	Definite	Dedicated Eg Aerial	
29 JUL 2008	1	42.13	-67.23	Northeast	Definite	Dedicated Eg Aerial	
29 JUL 2008	1	42.31	-67.34	Northeast	Definite	Dedicated Eg Aerial	
28 JUL 2008	17	44.68	-66.42	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2008	10	42.15	-67.33	Northeast	Definite	Dedicated Eg Aerial	
26 JUL 2008	1	42.10	-67.63	Northeast	Definite	Dedicated Eg Aerial	
25 JUL 2008	1	40.55	-70.37	Northeast	Probable	Opportunistic	
18 JUL 2008	8	42.22	-68.16	Northeast	Probable	Commercial vessel	
16 JUL 2008	1	42.00	-68.70	Northeast	Definite	Dedicated Eg Aerial	
15 JUL 2008	2	42.30	-70.32	Northeast	Probable	Opportunistic	
13 JUL 2008	1	41.98	-67.99	Northeast	Definite	Opportunistic	
12 JUL 2008	1	41.65	-68.87	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2008	1	42.27	-66.10	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2008	1	42.35	-66.90	Northeast	Definite	Dedicated Eg Aerial	
11 JUL 2008	6	42.32	-66.42	Northeast	Definite	Dedicated Eg Aerial	
10 JUL 2008	1	42.02	-70.15	Northeast	Definite	Whale watch	
10 JUL 2008	25	41.92	-68.30	Northeast	Definite	Dedicated Eg Aerial	
10 JUL 2008	2	42.02	-68.18	Northeast	Definite	Dedicated Eg Aerial	
10 JUL 2008	13	41.93	-68.13	Northeast	Definite	Dedicated Eg Aerial	
31 JUL 2007	1	43.95	-68.09	Northeast	Definite	Whale watch	
27 JUL 2007	1	42.28	-65.91	Northeast	Definite	Dedicated Eg Shipboard	
24 JUL 2007	20	41.55	-68.68	Northeast	Definite	Dedicated Eg Aerial	
24 JUL 2007	6	41.38	-68.83	Northeast	Definite	Dedicated Eg Aerial	
24 JUL 2007	4	41.28	-68.95	Northeast	Definite	Dedicated Eg Aerial	
16 JUL 2007	2	42.28	-70.31	Northeast	Definite	Whale watch	
14 JUL 2007	1	42.30	-67.30	Northeast	Probable	US Coast Guard	
14 JUL 2007	2	42.42	-70.43	Northeast	Definite	Whale watch	
13 JUL 2007	1	42.53	-70.38	Northeast	Probable	US Coast Guard	
03 JUL 2007	2	42.25	-70.02	Northeast	Definite	Opportunistic	Yes
03 JUL 2007	1	44.60	-66.60	Northeast	Definite	Whale watch	
02 JUL 2007	2	44.38	-67.05	Northeast	Definite	Dedicated Eg Aerial	Yes
01 JUL 2007	2	41.97	-68.81	Northeast	Definite	Dedicated Eg Aerial	
28 JUL 2006	1	40.81	-67.13	Northeast	Definite	US Coast Guard	
22 JUL 2006	1	41.33	-71.52	Northeast	Probable	Whale watch	
17 JUL 2006	1	42.44	-70.49	Northeast	Definite	Whale watch	
14 JUL 2006	18	44.63	-66.49	Northeast	Definite	Dedicated Eg Shipboard	Yes
14 JUL 2006	2	41.50	-69.60	Northeast	Probable	Commercial vessel	
11 JUL 2006	1	41.51	-70.64	Northeast	Probable	Opportunistic	

10 JUL 2006	1	42.18	-70.33	Northeast	Definite	Whale watch	
07 JUL 2006	1	40.63	-73.28	Northeast	Probable	US Coast Guard	
06 JUL 2006	1	42.41	-70.47	Northeast	Probable	Opportunistic	
06 JUL 2006	27	44.70	-66.52	Northeast	Definite	Dedicated Eg Shipboard	
05 JUL 2006	3	44.68	-66.53	Northeast	Definite	Dedicated Eg Shipboard	
04 JUL 2006	24	44.65	-66.52	Northeast	Definite	Dedicated Eg Shipboard	Yes
03 JUL 2006	1	41.71	-68.98	Northeast	Definite	Dedicated Eg Aerial	
03 JUL 2006	71	44.69	-66.45	Northeast	Definite	Dedicated Eg Shipboard	Yes
03 JUL 2006	1	42.10	-68.76	Northeast	Definite	Dedicated Eg Aerial	
03 JUL 2006	1	42.20	-68.64	Northeast	Definite	Dedicated Eg Aerial	
03 JUL 2006	1	42.51	-70.57	Northeast	Probable	Whale watch	
20 JUL 2005	2	42.26	-70.27	Northeast	Definite	Whale watch	
20 JUL 2005	2	42.30	-70.32	Northeast	Definite	Whale watch	
11 JUL 2004	2	41.38	-70.38	Northeast	Definite	Commercial vessel	Yes











## Attachment 2

December 12, 2012

Maureen Bornholdt  
Renewable Energy Program Manager  
Office of Renewable Energy  
Bureau of Ocean Energy Management  
381 Elden Street  
Herndon, Virginia 20170

**RE: Proposed Mitigation Measures to Protect North Atlantic Right Whales from Site Assessment and Characterization Activities of Offshore Wind Energy Development in the Mid-Atlantic Wind Energy Areas**

Dear Ms. Bornholdt:

The undersigned parties write to inform you of a landmark agreement reached with respect to additional mitigation measures to protect the North Atlantic right whale while undertaking certain site assessment and characterization activities necessary for offshore wind energy development in the mid-Atlantic Wind Energy Areas. The agreement is the result of an extensive and collaborative effort between leading offshore wind developers and conservation Non-Governmental Organizations, who came together voluntarily to address these issues to forward their mutual interest in the sustainable deployment of offshore wind, with input from leading North Atlantic right whale scientific experts.

The North Atlantic right whale is the focus of this agreement because it is a critical endangered species. Our organizations are deeply committed to the development of clean renewable wind energy as expeditiously as possible and in an environmentally responsible manner.

In August and September of this year, the parties to this agreement briefed staff within the Renewable Energy Program at the Bureau of Ocean Energy Management and staff within the Office of Protected Resources at the National Oceanic Atmospheric Administration's (NOAA) National Marine Fisheries Service. We also briefed NOAA's Director of Policy and General Counsel. We have generally incorporated the feedback from these briefings into these measures, and we appreciate the engagement of your staff.

The agreed-upon measures are specific to activities in the mid-Atlantic Wind Energy Areas only. This agreement does not exempt any developer, party to the agreement, from any of the project design criteria that are detailed in Appendix B of the January 2012 Environmental Assessment of Commercial Wind Lease issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia (mid-Atlantic EA). The measures set forth in this agreement do however reflect the commitment of any developer, or party to the agreement, to undertake these steps, beyond existing requirements, to provide additional protections for the North Atlantic right whale. The agreed upon measures are within the range of alternatives considered in the Mid-Atlantic EA. The agreement is not intended to indicate any insufficiency in the mid-Atlantic EA analysis. We have agreed to the following mitigation measures **to protect the North Atlantic right**

whale, when it migrates through the Mid-Atlantic, during site assessment and characterization activities related to offshore wind energy development in the Mid-Atlantic Wind Energy Areas. The agreement is limited to these specific activities in these specific areas.

**Seasonal Restrictions on Sub-bottom Profiling and on Pile Driving for Meteorological Tower**

**Installation:** Seasonal restrictions on sub-bottom profiling and pile driving for meteorological tower installation shall be as follows:

**May 1 – October 31, The Green Period:** during this period sub-bottom profiling and pile driving for meteorological tower installation can occur in accordance with the mitigation requirements specified in the mid-Atlantic EA and additional mitigation measures contained in this agreement, as applicable.

**March 22 – April 30 and November 1 – November 22, The Yellow Period:** during this period sub-bottom profiling and pile driving for meteorological tower installation can occur in accordance with the mitigation requirements specified in the mid-Atlantic EA and additional mitigation measures contained in this agreement, as applicable, provided that the Developer completes a site specific risk assessment that includes:

- an assessment of the potential for Right Whale activity during period of survey;
- an acoustic assessment of the specific equipment to be used; and
- a site specific Marine Mammal Harassment Avoidance Plan.

The risk assessment shall be made available to BOEM, NMFS, and to the NGO parties of this agreement prior to commencement of activities.

**November 23 – March 21, The Red Period:** this period shall be a seasonal exclusion for all pile driving and sub-bottom profiling activity.

1. **Vessel Speed Restriction:** A 10 knot speed limit restriction during the period November 1 – April 30 on all vessels of any length associated with site assessment surveys and site characterization activities, including survey vessels as well as support vessels, operating in and transiting to and from the Wind Energy Area.
2. **Use of Noise Attenuation and Source Level Reduction Technology to Reduce Sound during Meteorological Tower Construction:** *During The Yellow Period (March 22 – April 30 and November 1 – November 22):* The developer shall use the best commercially available technology, such as bubble curtains, cushion blocks, temporary noise attenuation pile design, vibratory pile drivers and/or press-in pile drivers, in order to reduce the pile driver source levels and horizontal propagation, unless such technology is prohibitively expensive for the project. The developer will employ engineering expertise to determine the best available technology for each pile driving site (or this may be done programmatically for a series of sites) and the engineering analysis and cost analysis shall be made available.

3. **Establishment of Exclusion Zone:** A minimum 500 m (1640 ft) radius exclusion zone for all marine mammals and sea turtles shall be established around the sub-bottom profiler with an exception for dolphins that, in the determination of the visual observers, are approaching the vessel at a speed and vector that indicates voluntary approach to bow-ride. The presumed 500 meter exclusion zone should be confirmed using sound source validation before sub-bottom profiling begins, and the exclusion zone should be enlarged for the duration of site characterization activity if the 160 dB isopleth extends beyond 500 meters from the source. For sound source validation, developers will conduct in-field empirical measurements of the distances in the broadside and endfire directions at which broadband received levels (for boomer sources) or received levels at each operating frequency (for chirp sources) below 22 kHz reach 180 and 160 dB re 1  $\mu$ Pa (RMS) for the sub-bottom profiling source that will be employed. Results will be reported to BOEM and NMFS and made available within five days.
4. **Real-time Monitoring Effort:**

May 1 – October 31, The Green Period:

**Sub-bottom profiling:** Provide 2 dedicated, qualified NMFS-approved observers (1 on/1 off) at each sub-bottom profiling site to effectively maintain a steady visual watch during the course of the sub-bottom profiling.

**Pile driving during meteorological tower installation:** Provide a minimum of 4 dedicated, qualified NMFS-approved observers (2 on/2 off with each observer covering 180 degrees from bow to stern) at each pile driving site to effectively maintain a steady visual watch during the course of the pile driving activity and to provide for effective monitoring in all directions around the sound source.

March 21 – April 30 and November 1 – November 22, The Yellow Period:

**Sub-bottom profiling:** Provide a minimum of 2 dedicated, qualified NMFS-approved observers (1 on/1 off) at each sub-bottom profiling site to effectively maintain a steady visual watch during the course of the sub-bottom profiling. Four dedicated, qualified NMFS-approved observers (2 on/ 2 off) shall be provided if the source vessel is of sufficient size to accommodate the two additional personnel. Observers employed during *The Yellow Period* shall have at least 1 year of experience as professional marine mammal observers or equivalent academic experience.

**Pile driving during meteorological tower installation:** Provide a minimum of 4 dedicated, qualified NMFS-approved observers (2 on/2 off, with each observer covering 180 degrees from bow to stern) at each pile driving site to effectively maintain a steady visual watch during the course of the pile driving activity and to provide for effective monitoring in all directions around the sound source. Observers employed during *The*

**Yellow Period** shall have at least 1 year of experience as professional marine mammal observers or equivalent academic experience.

**Visibility:** Sub-bottom profiling can take place at night if the site specific risk assessment shows acceptable results in night conditions. Pile-driving will not take place at night. Developer will not start driving a pile unless, under normal circumstances, completion of the pile can be achieved during daylight hours. In the event that the developer begins driving a pile with the plan to achieve full penetration during daylight hours, but a situation arises that jeopardizes pile penetration if the drive is not completed, the developer may continue driving the pile into nighttime hours to protect human health, the environment, or completion of the drive.

If the exclusion zone is obscured by fog, no sub-bottom profiling or pile-driving activity, including ramp-up, will be initiated until the exclusion zone is visible for 30 minutes.

**Aerial surveys: During only the March 22-April 30 portion of The Yellow Period:** During pile driving, in order to focus effort on detecting right whales as they approach the source on their northward migration, aerial surveys will be conducted on the south side of the acoustic source. During aerial surveys, the developer will maintain a partially extended exclusion zone for North Atlantic right whales, shutting down if any right whale is observed within the smaller of the 120 dB isopleth or 30-kilometer radius around the south side of the source.

**November 23 – March 21, The Red Period: N/A**

We agree that these mitigation measures will remain in place for at least four years. At that time they may be revised to reflect new information and best practices that have become available.

To reiterate, this agreement is only applicable to site characterization and site assessment activities in the mid-Atlantic Wind Energy Areas. It does not apply to the construction and operations phases, nor does it imply or suggest what measures may be appropriate at the construction and operations phases. Construction and Operations Plans (COPs) will be subject to a separate environmental review, permitting and approval process by the federal government.

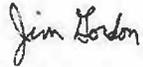
#### **Next Steps**

We expect to reach out to other stakeholders to join in this agreement as we move forward, and we will keep you posted on this process. Please feel free to contact us if you have any questions, and we look forward to continuing to work with you as we move forward with the deployment of sustainable offshore wind in the United States.

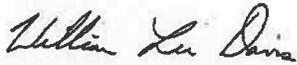
Sincerely,



Jeff Grybowski  
CEO  
**Deepwater Wind**



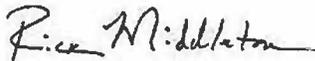
Jim Gordon  
President  
**Energy Management, Inc.**



William Lee Davis  
President  
**Bluewater Wind Delaware LLC**



Scott Kraus, PhD  
Vice President for Research  
**New England Aquarium**



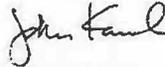
Rick Middleton  
Executive Director  
**Southern Environmental Law Center**



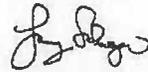
Margie Alt  
Executive Director  
**Environment America**



Frances Beinecke  
President  
**Natural Resources Defense Council**



John Kassel  
President  
**Conservation Law Foundation**



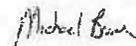
Larry Schweiger  
President and CEO  
**National Wildlife Federation**



Andrew Sharpless  
CEO  
**Oceana**



Azzidine Downes  
Executive Vice President  
**International Fund for Animal Welfare**



Michael Brune  
Executive Director  
**Sierra Club**

c: Sally Yozell, Director of Policy, NOAA  
Lois Shiffer, General Counsel, NOAA

# PERKINS COIE LLP

## PROOF OF DELIVERY

**DATE:** May 1, 2013

**FROM:** SAVE OUR SOUND (Perkins Coie LLP)

### DELIVERED TO :

<b>Matthew McMillen</b> Director, Environmental Compliance DOE Loan Programs Office U.S. Department of Energy LP 10 Room 4B196 1000 Independence Avenue, SW Washington D.C. 20585 Phone: 202-586-8336	<b>Mr. Todd Stribley</b> DOE Loan Programs Office U.S. Department of Energy LP 10 Room 4B196 1000 Independence Avenue, SW Washington D.C. 20585 Phone: 202-586-8336
--	---

Received by:

X BARB GLAVICH-KWIATEK  
Print Name

X Barb Glavich-Kwiatk  
Signature

X 5-1-13  
Date

## Exhibit 9e



May 14, 2013

*Sent via Messenger and E-mail*

Matthew McMillen  
Director, Environmental Compliance  
DOE Loan Programs Office  
U.S. Department of Energy LP 10  
Room 4B196  
1000 Independence Avenue, SW  
Washington D.C. 20585

Mr. Todd Stribley  
DOE Loan Programs Office  
U.S. Department of Energy LP 10  
Room 4B196  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Mr. McMillen and Mr. Stribley:

The Alliance to Protect Nantucket Sound (the "Alliance") submits this supplemental letter in response to the Federal Register notice issued on February 8, 2013, which confirmed the ongoing review period for the Department of Energy's ("DOE") adoption of the Final Environmental Impact Statement ("FEIS") for the Cape Wind Project ("Project") issued on January 1, 2009 by the Minerals Management Service ("MMS")<sup>1</sup> of the U.S. Department of the Interior, "EIS No. 20120401, Final EIS, DOE, MA, Adoption" 78 Fed. Reg. 9388 (Feb. 8, 2013) (hereinafter "February 8, 2013 Notice").<sup>2</sup>

Under the National Environmental Policy Act ("NEPA"), the review period for the FEIS does not close until a Record of Decision is formally issued for the proposed action, 40 C.F.R. §1505.2, thus the following new information must be considered by DOE in its review of the Cape Wind FEIS.

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<sup>1</sup> MMS is the predecessor to the current federal agency, the Bureau of Ocean Energy Management.

<sup>2</sup> See also "Public Comment Opportunities" on DOE's website, available at <http://energy.gov/nepa/eis-0470-us-department-energy-loan-guarantee-cape-wind-energy-Project-outer-continental-shelf>.

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**4 Barnstable Road, Hyannis, Massachusetts 02601**  
□ 508-775-9767 □ Fax: 508-775-9725

### **EEA Secretary Convinced New Bedford Will Be Staging Area for Cape Wind**

It has come to the attention of the Alliance that the Commonwealth of Massachusetts's top energy and environmental official, Secretary of Energy and Environmental Affairs Richard Sullivan, is certain that New Bedford will be the staging area for Cape Wind even though Cape Wind to date has denied a new location for the proposed Project's staging area. During a hearing before the House Committee on Bonding, Capital Expenditures and State Assets of the Commonwealth, Secretary Sullivan stated that he is "*absolutely convinced*" that the South Terminal in New Bedford will be the primary staging area for Cape Wind, despite the offshore wind farm's developers exploring other options in Rhode Island [Quonset, Rhode Island]." Murphy, Matt, "Top official 'convinced' Cape Wind plans primary base in New Bedford," State House News Service, at 1 (May 8, 2013) (emphasis added) (Attachment 1); *see also* Testimony of Secretary Sullivan (Attachment 1). Secretary Sullivan was testifying before the Committee regarding Governor Patrick's bond bill for environmental and energy capital spending, which includes an allocation of approximately \$24 million for the South Terminal project in New Bedford, Massachusetts. Sullivan is reported as also stating that the South Terminal construction project is on a tight 19-month construction cycle to meet the timetable for Cape Wind. *Id.*

Cape Wind has made it clear it is seeking to "hide" the use of New Bedford as the staging site for the Cape Wind Project because this change would require additional environmental reviews. A move to a new staging location would require additional review by the Environmental Protection Agency for Cape Wind's air permit and would also require additional review by the Department of Interior under NEPA, the National Historic Preservation Act, and the Endangered Species Act. Even if the Quonset site is used for part of the initial consultation, the Project may ultimately make use of New Bedford, a project component not considered to date. Thus, it is critical DOE take heed to this new information, which confirms Cape Wind intends to move its staging location.

### **Offshore Wind Projects Impose Significant Impacts to Fishing and Marine Safety**

New information from Europe has confirmed significant impacts to fishing and marine navigation because of offshore wind projects. In an article published in May, 2013 regarding the fishing industry in the United Kingdom, it was reported that "fishing in and near wind farms is difficult for most kinds of fishermen," and that "impacts of wind farms on fish stocks and the marine environment are largely unknown." Stevens, Lorelei, "England's wind farm experience offers critical lessons for U.S. fishing industry," Commercial Fisheries News, at 3 (May 2013) (Attachment 2).

In addition, the article further confirms that radar interference from the spinning blades of wind turbines "makes it difficult – if not impossible – to track other vessels inside the array." *Id.* at 2. The Alliance has repeatedly stressed the potential marine navigation risks associated with the Cape Wind Project, which create the strong likelihood for accidents and threats to public safety.

**4 Barnstable Road, Hyannis, Massachusetts 02601**

□ 508-775-9767 □ Fax: 508-775-9725

The presence of navigation risks by the Project has been confirmed by the administrative record for the pending litigation over Cape Wind. Additionally, a new study issued by the McGowan Group, entitled "Report of: A Comparative Analysis of The Development and Application of Marine Navigation Safety and Marine Environmental Protection Criteria for Offshore Renewable Energy Installations" concluded that the Cape Wind Project is fatally flawed as currently designed and sited, and is incompatible with the needs of marine transportation in Nantucket Sound. The Alliance has previously submitted this study to DOE for its consideration. Nevertheless, to date the U.S. Coast Guard, BOEM and now DOE have continued to ignore these very real navigation safety risks. Cape Wind has also turned a blind eye to these risks, and as a result has failed to adequately mitigate the navigation and public safety risks created by the Cape Wind Project.

### **Cape Wind Must Be Located Further Offshore to Avoid Noise Impacts**

Research conducted on the effects of low frequency noise pollution from offshore wind farms show the potential for health effects. Studies done in the United States and the United Kingdom show the potential of low frequency noise from wind farms affect public health. In fact, a recent study by ear, nose and throat specialists in the United Kingdom, found that "infrasound can have physiological effects. ...the outer hair cells of the cochlea respond to infrasound, which could affect the functioning of the ear. Another study looked at how the auditory cortex of the brain can also be activated by low-frequency noise, which could produce health effects." Arlsen, Audrey, "Could Wind Turbines Be Toxic to the Ear?," NPR, *available at* [http://www.npr.org/blogs/health/2013/03/27/175468025/could-wind-turbines-be-toxic-to-the-ear?utm\\_medium=Email&utm\\_source=share](http://www.npr.org/blogs/health/2013/03/27/175468025/could-wind-turbines-be-toxic-to-the-ear?utm_medium=Email&utm_source=share) (Apr. 2, 2013) (Attachment 3).

Additionally, studies show that offshore wind farms must be a certain distance from residential areas to avoid low frequency noise impacts to these areas. Based on studies in Denmark, the A-weighted sound pressure calculated at a distance corresponding to four times total height is 39.2 dB(A) for the small turbines representing an average nominal power of 950 kW and 38.0 dB(A) for the large turbines representing an average nominal power of 2500 kW. Based on this information, "it can be extrapolated that 128 turbines increase the noise power by 21 dB. [And] in order to reduce that power to be the equivalent of a single turbine, the distance from 128 turbines needs to be 12 miles." Baglino, Mike, "Low Frequency Noise Impacts of Offshore Wind" (Attachment 4). As a result, "the proposed Cape Wind project of 130 wind turbines must be a minimum of 12 miles offshore to avoid low frequency noise impacts to residents." *Id.* Currently, the Project is expected to be as close as 5.2 miles to Point Gammon. *See* Cape Wind, FAQs, available at <http://www.capewind.org/FAQ-Category4-Cape+Wind+Basics-Parent0-myfaq-yes.htm>.

DOE must take this new information into consideration as it moves forward with the due diligence review of Cape Wind's loan guarantee application, and more specifically the Project's FEIS. DOE is obligated to ensure that its decision is based on an adequate and accurate record.

**4 Barnstable Road, Hyannis, Massachusetts 02601**

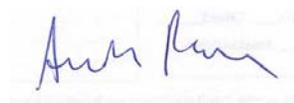
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The Alliance restates for the record that DOE has failed to take the necessary steps to approve a loan guarantee or other action committing federal funds. DOE has a responsibility to administer the Federal Loan Guarantee Program in an objective and responsible manner and to protect the interests of the nation's taxpayers when utilizing taxpayer monies to fund projects under this program.

Thank you for considering these comments. Please contact the undersigned at (508) 775-9767 should you have any questions.

Sincerely,



Audra Parker  
President and CEO

cc: The Honorable Sally Jewell, Secretary of the Interior  
Daniel B. Poneman, Acting Secretary of Energy  
David G. Frantz, Acting Executive Director, Loan Programs Office, DOE  
Tommy Beaudreau, Director, Bureau of Ocean Energy Management

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