



March 22, 2007

Ian Bowles, Secretary  
Executive Office of Environmental Affairs  
MEPA Office  
Attn: Anne Canaday, EOEI #12643  
100 Cambridge Street, Suite 900  
Boston MA 02114

Margo Fenn, Executive Director  
Cape Cod Commission  
3225 Main Street  
Barnstable, Massachusetts 02630

**Re: EOEA No. 12643, Cape Wind Energy Project, Nantucket Sound**  
Cape Cod Commission DRI File No. **JR#20084**  
Army Corps of Engineers File No. **NAE-2004-338-1**

Dear Secretary Bowles and Executive Director Fenn:

On behalf of Mass Audubon, I submit the following comments on the Final Environmental Impact Report (FEIR) for the Cape Wind Energy Project to the Massachusetts Environmental Policy Act (MEPA) Unit and to the Cape Cod Commission, which is reviewing the project as a Development of Regional Impact (DRI). Mass Audubon previously submitted a detailed comment letter and associated *Challenge Proposal* (attached) on the joint federal, CCC, and state review of the Draft EIR/Environmental Impact Statement (EIS).

The FEIR review is limited to aspects of the project which are located in state waters and therefore subject to state jurisdiction. Mass Audubon will submit additional comments on the turbine array and other aspects of the project's impacts in federal waters when the revised Draft EIS is filed for public review by the Department of the Interior's Minerals Management Service.

Mass Audubon recommends that the sale of Renewable Energy Credits and the electricity generated by the project should be confined to Massachusetts.

**Monitoring, Mitigation, Adaptive Management, and the Challenge Proposal**

Mass Audubon's *Challenge Proposal* focused primarily on data gaps associated with the risk assessment to the portion of the project in federal waters and not subject to state jurisdiction. A key element of our *Challenge* is the development of comprehensive post-construction monitoring protocols, an adaptive management plan, and related project mitigation. This is relevant to both state and federal jurisdictions of the project. We note that in several places in the FEIR the

project proponent makes reference to their "...work with MMS to design and implement post-construction monitoring which will be guided by an Environmental Management System (EMS) **currently under development as required by MMS**, which will include adaptive management measures as the results of the monitoring are evaluated. The EMS will include the involvement of a technical advisory group." Post-construction monitoring and adaptive management is relevant to all phases of project construction and operations, regardless of jurisdiction, and we strongly encourage the Secretary to make state permitting of this project contingent on the submission and approval of a comprehensive adaptive management plan. We strongly recommend that this adaptive management plan address and include the measures identified in Mass Audubon's *Challenge Proposal*.

The remaining comments in this letter focus on impacts and mitigation in state waters, including the construction of the transmission lines as well as shipping activity to and from the wind turbine array site on Horseshoe Shoals.

### **Impacts in State Waters and EFSB Permit**

Mass Audubon intervened in the Energy Facility Siting Board (EFSB) permit review for the transmission cable. Mass Audubon owns property in the vicinity of both the Lewis Bay landfall route and the Popponesett Spit. These properties are respectively, Egg Island which is sandy area exposed a low tide and utilized by coastal waterbirds for resting and feeding, and portions of Popponesett Spit, which is a barrier beach where Piping Plovers and other coastal waterbirds nest. Mass Audubon generally supported the transmission cable route selected by the EFSB in its permit approval, involving a landfall through Lewis Bay. We opposed the alternative through Popponesett Spit, which was not selected as the approved route in the EFSB permit.

However, the EFSB decision did not include conditions which Mass Audubon's experts testified were necessary and appropriate to avoid and minimize construction related impacts to rare coastal waterbirds, particularly Piping Plovers (state and federally listed as Threatened) and Least Terns (state listed as Special Concern) that nest on Kalmus Beach and Great Island near the landfall, and/or their roosting and feeding habitat in Lewis Bay. More specific conditions regarding seasonal construction restrictions and monitoring of coastal waterbird activity in the area are needed, and we request that these conditions be imposed through other, wetlands related local, state, and federal permits. Please see attached letter from Mass Audubon to the EFSB dated August 31, 2004 commenting on the tentative EFSB decision. The final EFSB decision did not include changes from the tentative decision as we requested.

The entire route of the cable transmission line is located entirely in habitat of Roseate, Common, and Least Terns. Least Terns, in particular, forage close to shore and within Lewis Bay. The FEIR concludes that impacts to these species are minor and refers the reader to those relevant sections of the document in Section 3.6. However, this latter section is silent on any impact of the cable laying through this habitat (e.g. disturbance to birds during construction, impacts on forage fish species), focusing instead on the collision risk with the turbines. This is may be an appropriate focus, but we reiterate our comments to the EFSB Tentative Decision that monitoring must be done for possible impacts to state-listed species during cable laying offshore and onshore. Potential construction disturbance to birds, even if short-term, should be addressed.

Least Terns forage primarily close to shore within Lewis Bay, and currently breed on Kalmus Beach. Construction is scheduled to take place during the summer of 2009, after May 1, but a specific timeline was not provided. The months of May through early August are the breeding period for Least Terns, and even a short-term affect on forage species can affect chick survival. If their food sources are affected (such as sand lance), even for a short amount of time, this could alter chick survival.

Considering the potential impacts to state-listed species, we recommend that the nearshore portion of the cable laying construction be limited to after the breeding season for Piping Plovers and Least Terns, (May 1 – August).

Potential avian mitigation projects such as beach nourishment projects designed to enhance coastal waterbird habitat should be also considered in regards to the project.

### **Marine Resources**

#### SECTION 3.7: PROTECTED MARINE RESOURCES

Further details are needed on mitigation for construction related impacts to whales, pinnepids, and sea turtles. Although Nantucket Sound is not a major area for the three endangered great whale species, they do occasionally pass through the area. To reduce the chance of collisions with vessels, the proponent should consider employing a warning system based on aerial surveys, during times when high levels of construction related shipping of materials to and from the site coincide with the time of year when whales, other marine mammals, or sea turtles may be present. A system similar to that utilized to warn ships captains when right whales are in the shipping lanes in Massachusetts Bays should be considered.

The only site-specific data in the FEIR on sea turtle use of Nantucket Sound are from Mass Audubon's aerial surveys. For the sake of completeness, the proponent and permitting agencies should also consider information on strandings, particularly of loggerheads, along the shores of Nantucket Sound. We do not anticipate major impacts on sea turtles as a result of the project, although the increased vessel traffic and the danger of collisions is a concern. The proponents address this by stating that vessel speeds will be kept to a minimum, at least for the larger vessels

For all protected species using Nantucket Sound, collisions with the increased number of vessels involved in the construction and maintenance of the turbines is a potential threat. Proper training of vessel crews is essential since it will be very difficult to enforce the speed limits.

Table 3.7-5. It should be noted that there will be a temporary increase of Total Suspended Solids in both Massachusetts and federal waters as a result of construction.

#### SECTION 3.8: FINFISH

P3-179: Lewis Bay is the only area mentioned with regards to winter flounder spawning. The entire Nantucket Sound is considered essential fish habitat (EFH) for all life stages of winter flounder. Therefore, the proposed limitation on construction activities from January 1 through

May 1 to protect spawning by winter flounder may need to be applied to other areas as well. The proponent should consult with the Massachusetts Division of Marine Fisheries in this regard, and permits should incorporate mitigation to protect all Essential Fish Habitat.

#### SECTION 3.10: SUBMERGED AQUATIC VEGETATION

Mass Audubon commented to the EFSB regarding the eelgrass bed in Lewis Bay. The FEIR indicates the proponent is planning to monitor this eelgrass bed and to mitigate, if necessary. We suggest they consult with scientists from EPA and Massachusetts Division of Marine Fisheries for protocols to determine eelgrass density within the bed. In addition, we suggest they be required to do greater than a 1:1 restoration for any impacts, since a restored bed may not carry out the same functions as a natural bed, at least in the short term.

#### **Conclusion:**

Mass Audubon has identified several aspects of mitigation for work in state waters related to construction of the transmission line and management of shipping traffic through the Sound. We reserve comments on the turbine array itself at this time and will comment further when the EIS is released for public review.

We urge the proponent to adopt comprehensive post-construction monitoring protocols, an adaptive management plan, and related project mitigation, as described in our *Challenge Proposal*.

Thank you for the opportunity to submit comments on the Cape Wind Energy Project.

Sincerely,



Laura A. Johnson  
President

cc: Governor Deval Patrick  
Massachusetts Congressional Delegation  
Cape and Islands Legislative Delegation  
Senator Pam Resor, co-chair Environment, Natural Resources and Ag. Committee  
Rep. Frank Smizk, co-chair Environment, Natural Resources and Ag. Committee  
Johnnie Burton, Director Minerals Management Service  
Michael Bartlett, Regional Director, U.S. Fish & Wildlife Service  
Tom French, Massachusetts Division of Fisheries & Wildlife  
Bruce Carlisle, Acting Director, Coastal Zone Management  
Jim Gordon, President, Cape Wind  
Greg Watson, VP MTC Renewable Energy Trust  
Phillip Warburg, President, Conservation Law Foundation  
Susan Nickerson, Executive Director, Alliance to Protect Nantucket Sound