



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUL 25 2018

James Bennett  
Chief, Office of Renewable Energy Programs  
U.S. Department of Interior  
Bureau of Ocean Energy Management  
45600 Woodland Road, VAM-OREP  
Sterling, Virginia 20166

Re: Lead Agency Designation for OCS Wind Energy Development Projects in BOEM  
Atlantic Planning Areas

Dear Mr. Bennett:

As you know, the U.S. Environmental Protection Agency offices in Region 1, Region 2, and Region 4 have been in communication with the Bureau of Ocean Energy Management (BOEM) regarding the respective federal actions to be carried out by both agencies regarding offshore wind development projects within designated Planning Areas on the Outer Continental Shelf (OCS) off the Atlantic coast.<sup>1</sup> The EPA understands that BOEM is proposing to approve Site Assessment Plans (SAPs) and Construction and Operation Plans (COPs) for multiple wind energy development projects pursuant to its authority under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337(p)(1)(c). (collectively, "OCS Projects"). As explained in more detail below, these OCS Projects may require permits from the EPA as OCS sources subject to section 328 of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* Because our respective federal undertakings pertain to the same OCS Projects, in the interest of efficiency and consistent with federal law, the EPA writes to request that BOEM assume the lead Federal agency role for compliance with the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, the Magnuson-Stevens Act (MSA), 16 U.S.C. § 1801 *et seq.*, and the National Historic Preservation Act (NHPA), 54 U.S.C. 300101 *et seq.*

Section 328(a) of the Clean Air Act (CAA) requires the EPA to establish requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the CAA (the Prevention of Significant Deterioration permitting requirements). To comply with this statutory mandate, on September 4, 1992, the EPA promulgated 40 C.F.R. part 55, which established requirements to control air pollution from OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the stated objectives of section 328(a)(1) of the CAA. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude and offshore the North Slope of Alaska.

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<sup>1</sup> A map of the BOEM Planning Areas on the Atlantic Coast is available at <https://www.boem.gov/Atlantic-OCS-Planning-Area/>.



The EPA intends to continue to actively participate in BOEM's processes under the National Environmental Policy Act (NEPA) for each of the OCS Projects off the Atlantic coast. In addition to our support of BOEM's efforts to develop sound environmental analyses for the projects, we also plan to take advantage of these analyses and associated consultation under the ESA, the MSA, and the NHPA to support our OCS air permit activity. The EPA believes designating BOEM as the lead Federal agency will result in increased efficiency in coordinating and communicating with consulting parties, less duplicative analyses and paperwork, and more clarity and consistency in reaching findings and determinations. The EPA is also required by the OCS permitting regulations to ensure the projects will not cause or contribute to an exceedance of any National Ambient Air Quality Standard.

Under Section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), the EPA must ensure that any action authorized, funded, or carried out by the EPA is not likely to jeopardize the continued existence of any federally listed endangered species or threatened species or result in the destruction or adverse modification of such species' designated critical habitat. If the EPA's action (i.e. permit issuance) may affect a federally listed species or designated critical habitat, Section 7(a)(4) of the ESA and relevant implementing regulations at 50 C.F.R. part 402 require consultation between the EPA and the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), depending on the species at issue. See 16 U.S.C. §1536(a)(2); see also 50 CFR §§ 402.13 and 402.14. Further, the ESA regulations provide that where more than one federal agency is involved in an action, the consultation requirements may be fulfilled by a designated lead agency on behalf of itself and the other involved agencies. See 50 CFR §§ 402.07. The EPA believes that its OCS permitting actions are interrelated to, or interdependent with, BOEM's SAP and COP approvals pertaining to the OCS projects in the Atlantic Planning Areas. Accordingly, pursuant to 50 C.F.R. 402.07, the EPA requests that BOEM serve as the designated lead agency for the purposes of fulfilling the agencies' collective obligations under Section 7 of the ESA.

In accordance with Section 305(b)(2) of the MSA, 16 U.S.C. § 1855(b)(2), federal agencies are required to consult with the NMFS on any action that may result in adverse effects on essential fish habitat (EFH). As provided for in 50 C.F.R. § 600.920(b), the EPA is requesting BOEM serve as the designated lead agency for the purposes of fulfilling the agencies' collective obligations under Section 305(b) of the MSA.

Section 106 of the NHPA, 16 U.S.C. 470f, and the implementing regulations at 36 C.F.R. part 800 require federal agencies to consider the effect of their actions on historic properties and afford the opportunity for the Advisory Council on Historic Preservation (ACHP) and consulting parties to consult on the Federal undertaking. The EPA's issuance of OCS air permits are Federal undertakings under the NHPA. Because the air permits are interrelated to BOEM's SAP and COP approvals, the EPA is requesting BOEM act as the lead Federal agency pursuant to 36 C.F.R. 800.2(a)(2) to fulfill the agencies' collective responsibilities under the NHPA. Furthermore, the ACHP encourages federal agencies to designate a lead agency for Section 106 reviews for both FAST-41 covered projects and Executive Order 13807 major infrastructure projects to support review coordination and efficiency.<sup>2</sup>

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<sup>2</sup> See "Frequently Asked Questions About Lead Federal Agencies in Section 106 Review." June 1, 2018. Available online at <http://achp.gov/docs/FAQ-2018.pdf>.

As previously discussed with BOEM staff, the EPA appreciates BOEM's willingness to serve as the lead Federal agency on the statutes discussed in this letter. We understand that BOEM will consider the effects of EPA's permitting action in fulfilling its consultation obligations under each of these statutes. We request that BOEM acknowledge and accept the designation as the lead Federal agency for ESA, MSA, and NHPA, and formally notify the appropriate authorities under each of the statutes of this development.

The EPA also respectfully requests to be designated as a co-action agency for all proposed and future ESA, MSA, and NHPA compliance activities associated with the OCS Projects, and to be kept informed of the status of all consultation activities. Additionally, although this lead agency designation applies generally to the OCS Projects in the designated Atlantic Planning Areas, EPA will notify BOEM when it receives a permit application for a specific project to ensure it falls within the scope of the consultation efforts led by BOEM.

For projects in EPA Region 1, please direct correspondence to:

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5 Post Office Square, Suite 100  
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For projects in EPA Region 2, please direct correspondence to:

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EPA Region 2  
25<sup>th</sup> Floor  
290 Broadway  
New York, New York 10007

For projects in EPA Region 4, please direct correspondence to:

Kelly Fortin  
EPA Region 4  
61 Forsyth Street, S.W.  
Mail Code: APTMD-APS  
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Should you have any questions or concerns about this letter, please feel free to contact Eric Wortman (617-918-1624) in EPA Region 1, Stephanie Lamster (212-637-3465) in EPA Region 2, or Kelly Fortin (404-562-9117) in EPA Region 4.

Sincerely,



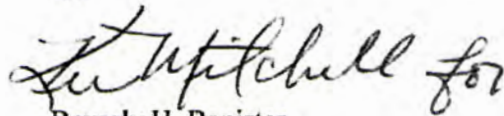
Alexandra Dunn  
Regional Administrator  
EPA Region 1

and



John Filippelli  
Director  
Clean Air and Sustainability Division  
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and



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Director  
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EPA Region 4

cc: Michelle Morin, BOEM  
Ian Slayton, BOEM  
Brian Hooker, BOEM  
David Bigger, BOEM  
Richard Warner, BOEM