# United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

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Memorandum

To: Director

From: Chris C. Oynes
Associate Director for Offshore Energy and Minerals Management

Subject: Recommendations for Decisions on Issuance of Outer Continental Shelf (OCS) Limited Leases Under the Interim Policy (IP) Offshore Delaware and New Jersey (May 2009)

Your decisions are requested on the areas to be leased offshore Delaware and New Jersey and the terms and conditions to be included in the five limited leases. The MMS IP authorizes the issuance of limited leases (a term of 5 years) for the installation of meteorological or marine data collection facilities to assess renewable energy resources (e.g., wind, wave, and ocean current) or for the testing of renewable energy technology to produce or support production of renewable energy on the OCS. In April 2008, the MMS selected 16 priority lease areas under the IP, including 7 offshore Delaware and New Jersey for wind energy resource data collection (i.e., meteorological towers). These 16 areas were identified in a Federal Register notice to determine whether competitive interest existed for the sites. Of the seven areas offshore Delaware and New Jersey, applications for IP limited leases on five areas were received and considered for issuance.

As required by the NEPA, the MMS prepared an environmental assessment (EA) to determine whether issuance of limited leases under MMS' IP authorizing wind resource data collection on seven lease blocks located on the OCS offshore Delaware and New Jersey would have a significant effect on the human environment and whether an environmental impact statement (EIS) must be prepared. The EA examined the proposed action to grant access to designated areas of the seabed of the OCS for initial wind and environment resource assessment activities. The purpose of the proposed action is to assist in a determination of the feasibility of commercial-scale renewable energy production on the OCS offshore Delaware and New Jersey. The proposed action is needed to adequately assess wind and environmental resources of the proposed lease areas due to the inadequacy or lack of existing site-specific data, in order to determine whether these locations are suitable and will support commercial-scale renewable energy production. Under the preferred alternative that the EA examined, MMS would issue seven leases offshore Delaware and New Jersey. The EA also examined an alternative that would involve the issuance of only four areas as well as the no action alternative. Based on the analyses in the EA, the MMS issued a Finding of No Significant Impact (FONSI) that no significant effects on the human environment would result from the issuance of seven leases for wind resource data collection on the OCS off the coasts of New Jersey and Delaware.

Decisions are required on the alternatives presented in the EA regarding the issuance of leases offshore Delaware and New Jersey, the adoption of mitigating measures in the form of lease stipulations to reduce potential use conflicts or potential environmental effects, and the adoption of the financial terms and conditions for the leases. Should you decide to proceed with lease issuance of these IP limited leases, we will send letters to the Governors of Delaware and New Jersey informing them of your decision to issue IP limited leases and your further decisions on their mitigating measures and financial terms pursuant to section 8(p) of the OCS Lands Act upon execution of the leases. The MMS will also formally announce the issuance of the leases via the publication of a Notice of Availability (NOA) for the EA and FONSI associated with the lease issuances. The NOA will be published in the Federal Register. The EA and FONSI will be available on the MMS website at www.mms.gov/offshore/renewableenergy/regulatoryinformation.htm.

## I. RANGE OF OPTIONS FOR LEASING

Various options for lease terms and conditions have been considered during the prelease process for the proposed lease areas offshore Delaware and New Jersey. Discussion of these options and OEMM's recommendations **(highlighted in bold)** for the leases are presented below.

A. Issue the Leases

- **Option 1 - Issue five limited leases described in this decision memorandum (The Proposed Action-The Preferred Alternative in the EA).**

  Five OCS limited leases are recommended for issuance offshore Delaware and New Jersey, located in Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, and 7033.

  On November 6, 2007, the MMS announced in the Federal Register an IP for authorization of leases for the installation of offshore data collection and technology-testing facilities on the OCS. The IP was developed as a measure to expedite resource data collection and technology-testing activities on the OCS in advance of the final regulations governing leases, easements, and rights-of way on the OCS for renewable energy activities that were published on April 29, 2009. The MMS accepted comments and nominations until January 7, 2008, regarding the authorization of OCS activities involving the installation of meteorological or marine data collection facilities to assess renewable energy resources (e.g., wind, wave, and ocean current) or to test renewable energy technology.

  Following the initial announcement in November 2007, the MMS received more than 40 nominations of areas proposed for limited leasing off the west and east coasts of the U.S. The MMS reviewed in detail all nominations received and, in April 2008, established a subset of 16 proposed lease priority areas in light of considerations such as technological complexity, timing needs, competing use issues, and relationships to relevant state-supported renewable energy activities, as well as limited available MMS staff and budget

resources for processing and managing limited leases. We also took into consideration the desirability of furthering the advancement of the renewable energy resource types cited in the nominations—wind, current, and wave. The seven proposed leasing locations off of the New Jersey and Delaware coasts were chosen primarily because the installation of data collection facilities relating to wind would support the concurrent efforts by those States to foster commercial development of wind power.

On April 18, 2008, the MMS provided public notice of the priority lease areas for the purpose of determining competitive interest as required by Energy Policy Act of 2005 (EPAct) and also for receiving relevant environmental or other information [Federal Register Docket No. MMS–2008–OMM–0020]. A technical clarification pertaining to this notice was later published on April 30, 2008 [Federal Register Docket No. MMS–2008–OMM–0020]. The comment period closed on June 30, 2008. The MMS did not receive any interest from other parties in the six proposed lease areas off New Jersey and single proposed lease area off Delaware and determined that there was no competitive interest in the seven proposed lease areas. Ultimately, the MMS received only four applications for proposed lease areas off New Jersey and one application for the single proposed lease area off Delaware.

Both Delaware and New Jersey have strong renewable energy portfolio standards (RPS) where offshore wind development plays a key role. In June 2008, Bluewater Wind LLC signed a 25-year power purchase agreement (PPA) with Delmarva Power to sell up to 200 megawatts (MW) of power from a proposed OCS offshore wind facility.

The New Jersey Board of Public Utilities (BPU) has issued and awarded a grant to develop a 350 MW capacity wind power project on the OCS. In addition, the State recently revised its Energy Master Plan in late 2008 calling for at least 1,000 MW of offshore wind energy by 2012 and at least 3,000 MW by 2020.

The lease instrument was proposed in an Information Collection Notice on December 14, 2007, [Docket No. MMS–2007–OMM–0072] and later published on April 21, 2008, [Docket No. MMS–2007–OMM–0072] in the Federal Register. In addition to other details, the lease instrument outlines and confirms the lease term and financial assurance amount. The lease term of five years provides developers with sufficient time to install, operate, and decommission a meteorological tower and/or other data collection devices for the purposes of resource data collection. The lease also requires the lessee to maintain at all times a surety bond or other form of financial assurance approved by lessor in the amount of $300,000, and requires the lessee to furnish such additional financial assurance as may be required by lessor if, at any time during the term of this lease, lessor deems such additional financial assurance to be necessary. The bond provides necessary financial assurance to cover costs of decommissioning in the event the company becomes insolvent or cannot meet its financial obligations under the lease.

Issuance of the five leases will allow the developers to conduct initial wind and environment resource assessment activities to assist in a determination of the feasibility of commercial-scale renewable energy production on the OCS offshore Delaware and New Jersey. Leases would be issued for Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, and 7033 authorizing wind resource data collection activities.

- Option 2 - Issue fewer limited leases offshore New Jersey (Alternative A—Reduced Number of Leases in the EA)

The option would result in leasing Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, and 6936, and deferring the issuance of the Wilmington NJ 18-02 Block 7033 until a later time. At this time, the MMS has not received applications for Wilmington NJ 18-02 Block 7131 and Hudson Canyon NJ18-03 Block 6451.

The types of activities expected to occur under Option 2 would be similar to those expected under Option 1. However, there would be substantially less activity related to the construction, operation and decommissioning of just four meteorological towers. Consequently, the already negligible to minor potential impacts related to the proposed action would be even less under this option.

Fewer meteorological towers, however, would reduce the opportunities to collect critical meteorological, oceanographic, and biological data that are necessary for ultimate deployment of commercial-scale renewable energy production offshore New Jersey on the OCS. The data necessary to successfully determine the feasibility of these three lease areas for commercial wind energy development from a dedicated data collection facility could be impinged and baseline environmental information that informs subsequent approvals would be limited. Consequently, this option would result in a reduction of the number of sites to collect such data that could limit the number of possible sites to develop commercial-scale renewable energy production on the OCS offshore New Jersey.

- Option 3 - Defer all leasing on the OCS offshore Delaware and New Jersey under the IP (Alternative B—No Action in the EA).

  The option would result in deferring the issuance of leases for Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, and 7033 until a later time.

Under Option 3, no leases would be issued under the IP authorizing installation of a data collection facility and associated activities offshore Delaware or New Jersey. Any potential environmental and socioeconomic impacts from these activities would not occur or would be postponed. However, opportunities for the collection of meteorological, oceanographic, and biological data in these offshore areas would also not occur or would be postponed.

The data necessary to successfully determine the feasibility of the lease areas for commercial wind energy development from a dedicated data collection facility could not be obtained and baseline environmental information that informs subsequent approvals could not be collected. Under this option, Bluewater Wind LLC, Deepwater Wind LLC, and Fishermen's Energy of New Jersey would not be allowed to collect data necessary to develop commercial-scale renewable energy production on the OCS offshore Delaware or New Jersey.

B. Adopt Mitigation Measures as Stipulations to the Leases

- **Option 1 – Adopt all 20 stipulations developed for the leases with one additional stipulation for Wilmington NJ 18-02 Block 6931.**

  Twenty mitigation measures are recommended for adoption as lease stipulations for all five leases, which are attached to this decision memorandum in a summary form and in Exhibit "B" in full form.

  An additional lease stipulation specific to Wilmington NJ 18-02 Block 6931, is recommended for that particular lease as described below.

  In addition to the 20 lease stipulations for all 5 leases, if the MMS decides to issue the 5 leases, this option provides one additional stipulation to the lease for Wilmington NJ 18-02 Block 6931 to address the United States Coast Guard (USCG) and tug/barge industry's concerns and restrict the location of the meteorological tower. It is important to note that the USCG and the tug/barge industry raised concerns regarding the installation or construction of a meteorological tower in Wilmington NJ 18-02 Block 6931. While not charted, the tug/barge industry uses a traditional transit route that runs through Block 6931 to go to/from north and south ports along the New Jersey coastline. Depending on the exact location of the meteorological tower, safe distances needed for passing could be compromised. In order to minimize potential risks, the MMS, USCG, and the tug/barge industry reached an agreement to restrict the location of the meteorological tower to the southeastern portion of the block (569 hectares). This additional stipulation to the lease for this block would address safety concerns related to transit routes and passing distances raised by the USCG and tug/barge industry. This additional stipulation would not be added to the other four lease blocks discussed in this decision memorandum.

  The additional stipulation for the lease for Wilmington NJ 18-02 Block 6931 to Fishermen's Energy of New Jersey is the following:

  - *Stipulation No. 21 – Location of Meteorological Tower* — The location of the meteorological tower must be in the Southeast section of Block 6931, as described in Appendix D of the lease developed for Fishermen's Energy of New Jersey.

- Option 2 – Adopt the 20 stipulations developed for all five leases, with no additional stipulation for Wilmington NJ 18-02 Block 6931.

This option provides that the twenty mitigation measures recommended above would be adopted as lease stipulations for all five leases, which are attached to this decision memo in both summary form and in full. However, this option would not include the additional stipulation developed for Wilmington NJ 18-02 Block 6931 to address the USCG's concerns with the tug/barge transit route.

- Option 3 – Adopt no stipulations for the leases.

  This option would involve the issuance of leases for Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, and 7033 authorizing wind resource data collection activities with no additional stipulations. The leases would not include any stipulations pertaining to any specific activities or mitigation measures resulting from the environmental analysis of the proposed leases or other Federal or State consultation processes.

C. Rental Rate

- **Option 1 - Issue leases with a rental rate of $3 per acre per year.**

  A rental rate of $3 per acre per year is recommended for the five OCS limited leases proposed offshore Delaware and New Jersey. Proceeding with this option would result in MMS requiring the payment of rent for the limited lease that provides a fair return for use of the OCS. The rate of $3 per acre per year was determined to be an amount that would not impede development of renewable energy production on the OCS. In determining this rate, MMS took into consideration the fact that the lease activities offer no opportunities for revenue from energy production and no priority right for subsequent commercial development.

- Option 2 - Issue leases with a rental rate of $7 per acre per year.

  This option provides that the five proposed OCS limited leases would be issued with a rental rate of $7 per acre per year. The rate is modeled after the rental rate proposed by the MMS for the OCS Central Planning Area (CPA) Gulf of Mexico (GOM) Oil and Gas Lease Sale 208 (March 2009). This rental rate applies to oil and gas leases for areas in water depths of 200 meters or less and allows for commercial production of mineral resources. Renewable energy limited leases do not permit production nor provide a priority right for subsequent commercial development. This rental rate of $7 per acre per year offers a fair return for use of the OCS but may impede development of renewable energy production on the OCS.

## II. CONSULTATION ON LEASES

Pursuant to its statutory mandates, the MMS coordinated closely with the States as it considered the proposals for the issuance of limited leases under the IP offshore Delaware and New Jersey. The MMS consulted with the Delaware Department of Natural Resources and Environmental Control (DNREC) and the New Jersey Department of Environmental Protection (NJDEP) on a regular basis via phone, email, and in-person meetings. The discussions with State agencies assisted the MMS in determining the States' interests and concerns, as well as identify available information, and form cooperative working arrangement(s) with the States in the consideration of proposed activities under the IP. Specific instances of consultation per the OCS Lands Act, the Coastal Zone Management Act (CZMA), and the National Environmental Policy Act (NEPA) are described below.

Section 43 U.S.C. 1337, Section 8(p)(7)

Section 8(p)(7) of the OCS Lands Act requires the Secretary to "provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way." Accordingly, staff from the Office of Alternative Energy Programs (OAEP) met with State officials from Delaware and New Jersey in March 2008 to discuss the nominations received off the coast of their respective states. On August 4, 2008, we sent letters to the Governors of Delaware and New Jersey informing them that the MMS was moving forwarded with proposed lease areas off their coast. On April 21, 2009, we sent the proposed lease and proposed lease stipulations to the relevant State agencies for Delaware and New Jersey, including, but not limited to, the Delaware DNREC, the New Jersey DEP, the Delaware Public Service Commission (PSC), and the New Jersey Board of Public Utilities (BPU). If you decide to issue these leases, the MMS will send letters to the Governors of Delaware and New Jersey to notify the States that leases have been issued once the leases are sent to the lessees for signature.

Coastal Zone Management Consistency Determinations

The MMS prepared a Consistency Determination (CD) for the proposed leases offshore New Jersey that was sent to the State of New Jersey on March 6, 2009, documenting the consistency of the proposed leases with the coastal zone management (CZM) program of that State. The MMS also prepared a Negative Determination (ND) for the proposed lease offshore Delaware, which was sent to the State of Delaware on March 20, 2009. These documents evaluated potential effects from the proposed lease activities. The MMS finds that the proposed leases are consistent to the maximum extent practicable with the enforceable policies of the States' federally approved CZM programs. The States were given 60 days and 90 days, respectively, to respond to the MMS as to whether they agree or disagree with the determinations.

The MMS received a response letter from New Jersey DEP dated May 7, 2009, in which it stated that it determined that the project, as currently proposed, is consistent with the enforceable policies of the New Jersey Coastal Management Program. The State requested that any observations of New Jersey State endangered, threatened, and special concern species (blue, fin,

sei, humpback, North Atlantic right and sperm whales, bottlenose dolphin, harbor porpoise, and Kemp's ridley, green, loggerhead, hawksbill and leatherback turtles) made during the course of construction, maintenance, operation, and decommissioning of the facilities authorized by these leases be shared with the State.

The Delaware DNREC sent a letter to the MMS dated April 24, 2009, stating it concurred with the ND for the proposed lease of Block 6325 for the purpose of constructing and operating a meteorological tower.

## III. COMPLIANCE WITH NEPA

The MMS has prepared an EA to determine whether issuance of limited leases under MMS' IP authorizing wind resource data collection on seven lease blocks located on the OCS offshore Delaware and New Jersey would have a significant effect on the human environment and whether an EIS must be prepared. Based on the analyses in the EA, the MMS issued a FONSI concluding that no significant effects on the human environment had been identified that would result from the issuance of leases for wind resource data collection on the OCS off the coasts of New Jersey and Delaware.

The purpose of the proposed action is to grant access to the designated areas of the seabed of the OCS for initial wind and environment resource assessment activities to assist in a determination of the feasibility of commercial-scale renewable energy production on the OCS offshore Delaware and New Jersey. The proposed action is needed to adequately assess wind and environmental resources of the proposed lease areas due to the inadequacy or lack of existing site-specific data, in order to determine whether these locations are suitable and will support commercial-scale renewable energy production.

In order to describe the level of activity that could reasonably result from issuance of any of the proposed leases over its lease term of five years, the MMS developed an activity scenario based on proposals submitted for the nominations, additional information provided by the nominees as well as extensive discussions with them.

### Alternatives Considered in the EA

The Proposed Action – The Preferred Alternative

Under the proposed action, as set forth in the EA (MMS' preferred alternative); the MMS would issue seven leases off Delaware and New Jersey proposed under the IP (Note: the MMS only received five applications for IP projects). The seven proposed lease blocks are Salisbury NJ 18–05 Block 6325, Hudson Canyon NJ 18–03 Block 6451, and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, 7033, and 7131. These leases would grant the lessees the exclusive right, subject to the terms and conditions of the leases, to conduct limited renewable energy activities including construction, operation and decommissioning of meteorological and oceanographic data collection facilities on the leased areas. Following issuance of the leases, each lessee would be required to submit a "Project Plan" to the MMS, which would be reviewed by the MMS

before the lessee may commence construction activities. Each "Project Plan" would explain construction procedural details and the engineering specifications of the facility. These limited leases, issued pursuant to the IP, would confer no priority rights to subsequently develop a renewable energy facility on the OCS for generating electricity or other produced energy for commercial sale or distribution.

Alternative A—Reduced Number of Leases

Under Alternative A, fewer leases would be issued offshore New Jersey for the installation of meteorological or marine data collection facilities to assess renewable energy resources. Leases would be issued under the IP authorizing such activities in only four of the seven blocks proposed: 6325, 6738, 6931, and 6936. Leases for Blocks 7131, 7033, and 6451 would not be issued at this time.

The types of activities expected to occur under Alternative A would be similar to those expected under the proposed action. However, there would be substantially less activity related to the construction, operation and decommissioning of just four meteorological towers. Consequently, the already negligible to minor potential impacts related to the proposed action would be even less under Alternative A. Moreover, the mitigation measures listed below would further reduce or eliminate the potential impacts from the four meteorological towers and their associated activities.

Fewer meteorological towers, however, would reduce the opportunities to collect critical meteorological, oceanographic, and biological data that are necessary for ultimate deployment of commercial-scale renewable energy production offshore New Jersey on the OCS. The data necessary to successfully determine the feasibility of these three lease areas for commercial wind energy development from a dedicated data collection facility could be impinged and baseline environmental information that informs subsequent approvals would be limited. Consequently, Alternative A would result in a reduction of the number of sites to collect such data that could limit the number of possible sites to develop commercial-scale renewable energy production on the OCS offshore New Jersey.

Alternative B—No Action

The NEPA requires the analysis of a no-action alternative. Under the no-action alternative, no leases would be issued under the IP authorizing installation of a data collection facility and associated activities offshore Delaware or New Jersey. Any potential environmental and socioeconomic impacts from these activities would not occur or would be postponed. However, opportunities for the collection of meteorological, oceanographic, and biological data in these offshore areas would also not occur or would be postponed.

The data necessary to successfully determine the feasibility of the lease areas for commercial wind energy development from a dedicated data collection facility could not be obtained and baseline environmental information that informs subsequent approvals could not be collected. Under the no-action alternative, Bluewater Wind LLC, Deepwater Wind LLC, and Fishermen's

Energy of New Jersey would not be allowed to collect data necessary to develop commercial-scale renewable energy production on the OCS offshore Delaware or New Jersey.

**Environmental Mitigation Measures**

For offshore cultural resources and biologically sensitive habitats, the MMS' primary mitigation strategy has and will continue to be avoidance. The exact location of meteorological towers would be adjusted to avoid adverse effects to offshore cultural resources or biologically sensitive habitats, if present.

Mitigation measures in the form of lease stipulations would be included in the lease terms and conditions; and therefore, would be enforceable as part of the lease. The following nine lease stipulations are proposed to ensure environmental protection, consistent environmental policy, and safety as required by the NEPA, or are needed for compliance with 40 CFR 1500.2(f) regarding the requirement for Federal agencies to avoid or minimize any possible adverse effects of their action upon the quality of the human environment:

1. Biological Surveys and Reports Stipulation;
2. Reduction or Elimination of the Potential for Adverse Impact Activities on Protected Species from Construction Stipulation;
3. Reduction or Elimination of the Potential for Adverse Impacts from Pile Driving Stipulation;
4. Vessel Strike Avoidance Stipulation;
5. Marine Trash and Debris Awareness and Elimination Stipulation;
6. Reduction or Elimination of the Potential for Adverse Impacts to Birds and Bats Stipulation;
7. Archaeological Resources Stipulation;
8. Notification of Fishermen Stipulation; and
9. Site Clearance Stipulation.

These stipulations are presented in detail in Appendix A of the EA. These mitigation measures were developed through the analysis presented in Chapter 4.1 of the EA and through consultation with other Federal and State agencies described in Chapter 5 of the EA. Operational compliance of the requirements of the lease and adopted stipulations would be enforced through the MMS on-site inspection program.

**Biological Consultations**

The following paragraphs summarize the biological consultations held for the proposed leases offshore Delaware and New Jersey.

Endangered Species Act

In accordance with Section 7 of the Endangered Species Act, the MMS consults with NOAA Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) prior to

issuing leases to mitigate potential adverse effects to protected species by subsequent renewable energy resource assessment activities.

The MMS consulted informally with NMFS on the proposed leases offshore Delaware and New Jersey. The consultation was initiated in February 2009 and amended in April 2009 when the MMS entered into joint consultation with the U.S. Army Corps of Engineers (ACOE) as a cooperating agency on the EA. The informal consultation with NMFS on the issuance of the proposed leases was concluded with receipt of the NMFS' response on May 14, 2009. The NMFS concluded that the proposed leases and associated activities offshore Delaware and New Jersey are not likely to adversely affect any listed species under NMFS jurisdiction.

The MMS consulted informally with USFWS on the proposed leases offshore Delaware and New Jersey as well. On February 26, 2009, the USFWS concurred with MMS's Biological Assessment (BA) and concluded in their informal consultation that the proposed meteorological towers are not likely to adversely affect the three listed species under USFWS' jurisdiction: the roseate tern, piping plover, and red knot. The USFWS also noted that biological data should be collected to support future environmental analyses and further recommended that visibility sensors be installed on the towers.

Essential Fish Habitat (EFH)

Pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, Federal agencies are required to consult with NMFS on any action that may result in adverse effects to EFH. The NMFS published the final rule implementing the EFH provisions of the Magnuson-Stevens Fisheries Conservation and Management Act (50 CFR Part 600) on January 17, 2002. Certain OCS activities authorized by MMS may result in adverse effects to EFH, and therefore require EFH consultation.

An EFH consultation on the leases proposed offshore Delaware and New Jersey was initiated January 5, 2009. The NMFS concurred by letter dated February 12, 2009, that the information presented in the MMS' EFH Assessment satisfied the consultation procedures outlined in 50 CFR Section 600.920. In a joint letter with the ACOE dated April 14, 2009, the MMS amended its consultation with NMFS to include the ACOE as part of a joint consultation on the proposed action, due to that agency's role as a cooperating agency on the EA. The NMFS agreed that impacts to EFH and associated fishery resources resulting from activities conducted under the proposed leases would be minimal provided that the MMS-proposed mitigating measures were included as part of the proposed leases. The NMFS requested to review specific "Project Plans" as they become available and the MMS concurred. Unless there are significant changes to the proposed lease activities or new information becomes available, no further EFH consultation is required for this action.

## IV. POTENTIAL ENVIRONMENTAL EFFECTS

Based on the environmental review set forth in the EA, the MMS has determined that no significant effects on the human environment have been identified that would result from the

issuance of leases for wind resource data collection on the OCS off the coasts of New Jersey and Delaware. According to the analyses set forth in Chapter 4.1 of the EA, approval of lease issuances would result in the following impacts:

*Air Quality:* Due to the short duration or low level of emissions from routine activities, potential impacts on ambient air quality from the proposed action would be negligible to minor. A non-routine event such as a diesel spill would have short-term, minor impacts on ambient air quality. Due to the distance from shore, neither routine activities nor non-routine events would impact onshore air quality, including the Brigantine Class I Area.

*Water Quality:* Impacts to coastal and marine waters from routine activities associated with the proposed action should be of a short duration and remain minimal, as long as regulatory requirements are followed. Minimal impacts would result from a spill since diesel is light and would evaporate and biodegrade within a few days. Since collisions occur infrequently, the potential impacts to water quality are not expected to be significant.

*Coastal Habitats:* No direct impacts on coastal habitats would occur from routine activities as a result of the proposed action due to the distance of the proposed leases from shore and the use of existing coastal facilities. Indirect impacts from routine activities may occur from wake erosion caused by vessel traffic in support of the proposed action. Assuming approach channels to ports used would be armored and speed limits enforced, a negligible increase, if any, to wake induced erosion may occur. Assuming compliance with USCG requirements relating to prevention and control of oil spills, potential impacts to coastal habitats from an accidental diesel fuel spill would be avoided or minimized.

*Benthic Resources:* Impacts of site assessment surveys, and construction, operation, and removal of meteorological towers on benthic communities would be short-term in duration and negligible in extent. The main potential impacts from routine activities on benthic communities would be direct contact by anchors, driven piles, and scour protection that could cause crushing or smothering. If contact occurs, the ability of soft-bottom communities to recover in number of individuals to pre-disturbance levels may take 1-3 years. Recovery of community composition or trophic structure that exploits all ecologic niches available may take longer. Potential impacts from non-routine events, such as a diesel spill, are also considered to be negligible, because a diesel spill would likely be restricted to the sea surface and would dissipate rapidly. For benthic communities, the MMS' primary mitigation strategy is avoidance. The exact location of meteorological towers would be adjusted to avoid adverse effects to sensitive benthic communities, if present.

*Marine Mammals:* Effects to marine mammals are expected to be short term and would result in minimal to negligible behavioral harassment and would not result in injury or death. The mitigation and monitoring measures proposed would minimize or eliminate the potential for harmful effects on marine mammals from vessel traffic, seismic surveys, construction activities including pile driving, and accidental introduction of trash and debris. Therefore, the proposed action would not significantly affect marine mammals.

*Sea Turtles:* Effects to sea turtles are expected to be short term and would result in minimal to negligible impacts. The mitigation and monitoring measures proposed would minimize or eliminate the potential for harmful effects on sea turtles from vessel traffic, seismic surveys, construction activities including pile driving, and intentional and/or accidental introduction of trash and debris. Therefore, the proposed action would not significantly affect sea turtles.

*Birds:* While birds may be affected by vessel discharges and the presence of meteorological towers, accidental fuel release is unlikely and the risk of collision would be minor due to the small number of meteorological towers proposed and their distance offshore. The proposed mitigation measures would reduce or eliminate the potential for effects from the presence of meteorological towers on birds. Therefore, the proposed action would not significantly impact marine and coastal birds, including ESA-listed and migratory birds.

*Bats:* While it is unlikely that bat species would be foraging or migrating through the area, these mammals may on occasion be driven to the project area by prevailing winds and weather. If present, avoidance or attraction responses to the structures because of noise, lighting, and the visual presence could occur. The risk of collision is minor. The proposed mitigation measures, including the use of anti-perching devices, lighting restrictions, and prohibition on guy wires would further reduce or eliminate potential impacts. Because of the geographic distance between the proposed leases, there would be no additive effect on bats of constructing all seven proposed meteorological towers. The proposed data collection activities may assist in future environmental analyses of impacts of OCS activities on bats.

*Fish Resources and Essential Fish Habitat (EFH):* Due to the small number of vessel trips and limited construction required, the noise associated with siting, construction, operation, and decommissioning activities would have no detectable or persistent effects on fish resources. Localized turbidity is expected to be minimal due to the nature of the substrate, the limited area of activity, and the use of technologies that minimize sediment disturbance. Fish attraction to the meteorological towers is not expected to be marked since each would be a single structure, with less complexity than true artificial reefs. The positive and negative effects to EFH of the small amount of extra hard surface habitat would be negligible and be lost at decommissioning. The proposed mitigation measures would reduce potential impacts of noise from pile driving on fish and accidental loss of trash and debris on EFH.

*Offshore Cultural Resources:* Should contact between the proposed bottom-disturbing activities and an offshore cultural site occur, there would likely be damage to or loss of significant and/or unique archaeological information. However, the proposed Archaeological Resources Stipulation would reduce or eliminate the risk of such impacts from occurring. Therefore, no impacts to offshore cultural resources are expected.

*Recreational Resources:* Due to the distance of the proposed lease areas from shore and that no new coastal infrastructure is proposed, no impacts to coastal recreational resources are expected. The proposed mitigation measure would further reduce or eliminate the risk of impacts from the accidental release of trash and debris on recreational beach usage.

*Demographics:* The proposed leases would be located 8-17 miles from the nearest shoreline. Therefore, activities occurring within the proposed lease areas would have no impacts on environmental or health effects on minority or low-income people. Only the use of existing coastal facilities has the potential to impact minority or low-income people. However, several existing fabrication sites, staging areas, and ports in Delaware and New Jersey would support survey, construction, operation and decommissioning activities. No expansion of these existing areas is anticipated to support the proposed action. Due to the distance from shore and the use of existing facilities, the proposed action would not have disproportionately high or adverse environmental or health effects on minority or low-income people.

*Land Use and Coastal Infrastructure:* Existing ports or industrial areas are expected to be used, and expansion of these existing facilities is not anticipated to support the proposed action. Therefore, no significant impact on land use or coastal infrastructure is expected.

*Commercial and Recreational Fishing Activities:* The small increase in vessel activity that would occur and the presence of the meteorological towers would not measurably affect commercial or recreational fishing activities, catchability of fish and shellfish, or navigation. Any impacts would be of short duration, a limited area, and temporary. The proposed mitigation measures would further reduce or eliminate the impacts due to noise from pile driving and intentional and/or accidental introduction of debris into the marine environment.

## IV. DECISION ACTION

After careful consideration, the MMS has decided to proceed with the proposed action and to issue five leases for Salisbury NJ 18–05 Block 6325 and Wilmington NJ 18-02 Blocks 6738, 6931, 6936, and 7033 authorizing wind resource data collection activities, as described under the proposed action of the EA and as presented in Option A.1 of this Decision Memorandum. The MMS has also decided to adopt the twenty lease stipulations developed for these five leases and adopt the additional lease stipulation developed for the lease located in Wilmington NJ 18-02 Block 6931 as described in Option B.1. Further, the MMS has decided to proceed with the rental rate proposed in Option C.1.

Issuance of these leases is an important step in the development of renewable energy generation on the OCS.

Attachments

I concur:

Walter D. Cruickshank
Acting Director
Minerals Management Service

6-12-2009
Date