



Energy Musings

Insights into the Energy Industry



Allen Brooks

Energy Musings contains articles and analyses dealing with important issues and developments within the energy industry, including historical perspective, with potentially significant implications for executives planning their companies' future.

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Is National Fisheries Pissed At BOEM?

The latest comment letter from the National Marine Fisheries Service to BOEM about the Beacon Wind offshore projects. NWFS has concerns with the plan and was sharply critical of the way BOEM has handled the agency's prior comments and concerns. The gauntlet was thrown down with the warning that continued ignoring of NWFS concerns would lead to a rejection of a "no jeopardy" ruling that would derail the wind farm's development. How much is the surge in whale deaths playing in this interagency dispute? Another dead whale washed ashore on Monday – now 66 since December 1, 2022.

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We recently read the August 14, 2023, cover letter to the Bureau of Ocean Energy Management (BOEM) from Michael Pentony, the Regional Administrator of the Greater Atlantic Regional Fisheries Office of the National Marine Fisheries Service (NMFS). NMFS is part of the National Oceanic and Atmospheric Administration (NOAA). The letter was in response to BOEM's request for comments related to its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the construction, operation, and decommissioning (COP) of Beacon Wind Energy LLC's proposed wind energy facilities (Beacon Wind 1 and 2) off the coast of Massachusetts.

Pentony wrote of his organization's concerns with the plan and recommended approaches to help ease the regulatory process. The letter also contained criticisms of BOEM's work, with NWFS' sharpest rebuke in the opening paragraph of Appendix A attached to the letter. The critical comment reflects frustration with BOEM's treatment of NWFS' input to previous requests for comments about various offshore wind projects. Here is what NWFS wrote in that opening paragraph in a section headed "Purpose and Need."

"Since NMFS is an action agency and anticipating a request for incidental take authorization under the MMPA [Marine Mammal Protection Act], we need our Purpose and Need for the action to be clearly stated in the EIS. While BOEM did provide cooperating agencies an opportunity to coordinate on development of the Purpose and Need for the EIS before publication of the NOI, corrections provided by NMFS were not incorporated in the Purpose and Need statement included in the NOI. Some of the edits made by BOEM are additional deviations from previously agreed upon language. We recommend this be corrected in the DEIS [Draft Environmental Impact Statement] by incorporating previously provided revisions for Beacon Wind and following template language developed through extensive interagency cooperation in 2022, including for the NMFS-specific purpose and need."

Where does this frustration with BOEM come from? Most likely it began with the December 1, 2021, comment letter about the Mayflower Wind (now known as SouthCoast Wind) NOI to prepare an EIS. In those comments, NMFS discussed the speed with which BOEM was putting out requests for input and information about various offshore wind projects, which was not allowing adequate time for the agency to respond. Pentony wrote in his cover letter for NWFS' comments on the SouthCoast Wind project:

"The high number of projects moving through the NEPA [National Environmental Policy Act] process between now and 2024 makes it very difficult for us to provide the detailed level of review and interagency cooperation we have provided in the past. The extensive interagency cooperation we have invested with you to improve the NEPA documents for previous wind energy projects is no longer feasible, and we will be required to take a more limited Cooperating Agency role in the process."

So BOEM was working so fast that a key agency that advises on the maritime and fishing environmental risks of offshore wind couldn't do its job properly. Is that like a doctor skipping an examination before telling you what you must do to cure an illness?



We can imagine the frustration officials at NMFS feel when they are pressured to rapidly complete preliminary assessments about the many marine mammal and fishery impacts of offshore wind projects the government is trying to ram through the system before the next election and a possible change in regime curtails some or all of these projects only to find that their recommendations ignored and/or changed. Disrespect? Interagency conflicts often exist given the massive sprawl of our government and overlapping mandates of agencies. Openly voicing frustration about conflicts is less common. What would elevate this frustration (maybe the next step) would be for the sentiment to be in the cover letter rather than in an appendix.

NMFS is a ‘cooperating agency’ under the various fishery, wildlife, and endangered species acts that spell out its responsibilities. It is also an ‘action agency’ for the project because it may need to grant incidental take authorizations for harm to marine mammals and fish species caused during the construction of the wind farm. Thus, NMFS plays an important role in the review and approval process of offshore wind projects. Therefore, when NMFS says, in response to the request from BOEM, “we identify resources of particular concern and recommended approaches to help facilitate an efficient regulatory process,” our ears perk up.

The chart below shows the various leases and proposed wind farms in the Massachusetts-Rhode Island offshore wind area. In the chart, SouthCoast Wind (formerly Mayflower Wind) is the purple lease, while Beacon Wind 1 and 2 are in the adjacent tan block labeled Bay State Wind. Beacon Wind 1 will occupy the northern portion of the lease block while Beacon Wind 2 will occupy the southern portion. Revolution Wind was just approved by BOEM, while South Fork Wind and Vineyard Wind were approved earlier and are under construction.

Exhibit 1. Massachusetts-Rhode Island Wind Leases And Nantucket Shoals



Source: The New Bedford Light

In its Beacon Wind comments, NMFS specifically identified concerns over the “potential project-specific and cumulative effects of offshore wind development on protected species.” That is an interesting comment given BOEM approving Revolution Wind as the fourth offshore wind project, ensuring a rapid growth in the number of wind turbines in the area.



The significance of that large number of wind turbines was outlined by NWFS in its comments on SouthCoast Wind's NOI. NWFS wrote:

“Emerging information suggests that the physical presence of wind turbine structures and associated wind energy extraction will have at least localized effects on oceanographic and atmospheric conditions that may affect prey and subsequently whales. Studies have shown that offshore wind turbines can alter horizontal currents and vertical water column stratification that influence the distribution of planktonic right whale prey. These risks are especially relevant in relation to the Mayflower lease area due to the proximity of Nantucket Shoals as an ecologically important feature, and the high prevalence of right whales in the area.”

Those comments were made nearly two years ago. Since then, we have seen a wave of whale deaths, mostly caused by vessel strikes. However, as the above comment highlights, wind turbines and their construction generate underwater noise that is known to cause disorientation of marine mammals and often deafness making them vulnerable to vessel strikes. Additionally, the construction activity can alter the whales' food supply, causing them to wander into shipping lanes where they are struck and killed. Because we only learn of whale deaths when their carcasses wash ashore, where they are struck is impossible to ascertain with certainty. Moreover, carcasses that sink to the ocean floor prevent the determination of the exact number of whale deaths. However, BOEM and NWFS officials continue to state there is no direct link between offshore wind construction and whale deaths. Yet, NWFS in its comments acknowledges the potential for linkage.

In its concerns, NWFS listed the North Atlantic right whale, as well as *“commercially and recreationally important fish species, marine mammals, and sea turtles,”* as at-risk populations. The deteriorating health of the North American right whale population has become more evident with the 2022 Stock Assessment Report showing the population shrinking to 338 whales from the prior estimate of 350. Moreover, there are only an estimated 100 calving females, which limits the population's growth potential. This endangered species needs increased government protection and research.

As seen in the wind lease chart, there is an area to the north of the leases labeled Nantucket Shoals. This is *“a bathymetric feature that supports tidal mixing fronts. These fronts are areas of sharp discontinuities in water mass characteristics driven by converging tidal forces and are important feeding locations for many species because physical forces concentrate small plankton prey items. Nantucket Shoals is a demonstrated foraging hotspot for marine mammals, sea turtles, and birds. In particular, the Shoals and adjacent waters, which overlap the Beacon lease area, are areas with persistent North Atlantic right whale aggregations with observations of feeding and surface active groups during most months of the year. The area is frequented by adults, juveniles, and calves, with animals sighted in all months of the year but in the highest densities during the winter and spring.”*

Given the importance of this area for the foraging and breeding of North American right whales, NWFS proposed a *“conservation buffer”* of roughly 20 kilometers of the 30-meter isobath in the Nantucket Shoals in the spring of 2021 in a letter to BOEM. The concept of a lease area devoid of wind turbines was only incorporated as an alternative development scenario for evaluation in the proposed SouthCoast Wind COP analysis.



The concerns expressed by NWFS about the SouthCoast Wind COP were repeated in the agency's views about Beacon Wind's COP because its plan calls for turbines to be installed throughout the entirety of the lease area. As NMFS points out, based on the language of *"the draft BOEM-NMFS Right Whale Strategy, developers should avoid proposing development in areas that may impact high-value habitat and/or high-use areas used for important life history functions such as North Atlantic right whale foraging, migrating, mating, or calving."*

That draft strategy evolved from the earlier letter from NWFS to BOEM proposing the conservation buffer. The fact this reference was to a draft strategy means it has not been adopted as a formal policy. Why?

NWFS wrote in its latest cover letter, *"we recommend BOEM and Beacon Wind avoid development in this area (i.e., within 20 km of the 30-meter isobath) altogether and that avoidance be built into all project alternatives carried forward for evaluation. If the project is developed as described in the COP (i.e., WTG placement throughout the full extent of the lease area) it may present concerns for reaching a 'no jeopardy' conclusion under the eventual ESA section 7 consultation for this project."*

The threat of not being able to reach a 'no jeopardy' conclusion is significant and may be a warning that the draft right whale strategy should be formalized. Not being able to reach a no jeopardy conclusion would preclude Beacon Wind 1 from being built without a substantial redesign that would shrink the planned generating capacity, unless even larger than currently available wind turbines are used. What would that do to the project's economics and its ability to satisfy its Power Purchase Agreement (PPA)? Delivering clean energy to satisfy state mandates seems to be the primary standard BOEM uses in approving projects, regardless of whether that is the appropriate standard. Meeting state clean energy mandates should be weighed against the impact of the wind farm on ocean resources and marine industries, not disproportionately favored.

Beacon Wind 1 has another major issue according to NWFS, which is its power transmission cables. NWFS wrote that *"The export cable route proposed through Long Island Sound has the potential to substantially impact estuarine habitats as it transects the entirety of Long Island Sound."* They note that there are both soft and hard ocean bottoms throughout Long Island Sound along with areas of important submerged aquatic vegetation that support *"important nursery habitats for several federally managed species, including rocky complex habitats."* As a result, NWFS proposes that BOEM develop a specific discrete alternative to be fully evaluated. NWFS' choice is an onshore route. When we saw that alternative, we only saw dollar signs popping up before the eyes of the developer. We are not sure where such a transmission line would land to go overland to its targeted grid connection in Queens, New York. Maybe it would land at the tip of Long Island or possibly in Waterford, Connecticut where a spur from the proposed cable is targeted. We cannot imagine what such an onshore cable would cost to install and how long it would take to secure the permits needed to transition all the towns and cities to reach its grid target. A deal killer?

However, when we were rereading the SouthCoast Wind comments, we noted that NWFS was not happy with its preferred transmission cable routes. SouthCoast Wind proposed that the cable would cross Rhode Island state waters, go up the Sakonnet River and into Mount Hope Bay, and then land at Brayton Point, Massachusetts where it would connect to the ISO-NE grid. NWFS also was concerned about the final water route section of the alternative Falmouth cable route. Because both proposed routes traverse sensitive fish habitats, NWFS also recommended an



onshore route for the cable as its preferred option. That option was not embraced, which explains why SouthCoast Wind is in a legal battle to force the Rhode Island Energy Facility Siting Board to move forward with an analysis of this project, presumably leading to its approval, even though the developer recently canceled its PPAs with Massachusetts utilities before rebidding the project in the upcoming 2024 Massachusetts offshore wind solicitation.

If BOEM continues to ignore or treat the NWFS comments with disdain, we will see a breakdown in the working relationship of the regulators and put future offshore wind projects in jeopardy. We do not know what pressure NWFS is under because of the recent surge in whale deaths and the growing opposition to offshore wind as a result. In that context, we believe NWFS is pissed at its treatment by BOEM who is responsible for approving offshore wind farms and is warning it before having to reject projects to deliver its message.

Contact Allen Brooks:
gallenbrooks@gmail.com
www.energy-musings.com
EnergyMusings.substack.com

