

**Finding of No Historic Properties Affected
For the
Issuance of Commercial Leases within the Maryland Wind Energy Area
For Wind Energy Development on the Outer Continental Shelf
under the “Smart from the Start” Initiative**

Finding

JUN 25 2012

The Bureau of Ocean Energy Management (BOEM) has made a Finding of No Historic Properties Affected for this undertaking. Through lease stipulations, BOEM will require the lessee to avoid, during geotechnical (sub-bottom) sampling activities, any potential historic properties identified through high-resolution geophysical surveys.

Documentation in Support of the Finding

I. Description of the Undertaking

Background

The Energy Policy Act of 2005, Pub. L. No. 109-58, added Section 8(p)(1)(C) to the Outer Continental Shelf (OCS) Lands Act (OCSLA), which grants the Secretary of the Interior the authority to issue leases, easements, or rights-of-way on the OCS for the purpose of renewable energy development, including wind energy development. *See* 43 U.S.C. § 1337(p)(1)(C). The Secretary delegated this authority to the former Minerals Management Service (MMS), now BOEM. On April 22, 2009, BOEM promulgated final regulations implementing this authority at 30 CFR Part 585.

Under the renewable energy regulations, the issuance of leases and subsequent approval of wind energy development on the OCS is a staged decision-making process. A commercial lease gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the lessee the right to use the leased area to develop its plans. *See* 30 CFR 585.600 and 585.601.

The next stage of the process is the submission of a site assessment plan (SAP), which contains the lessee’s detailed proposal for the construction of a meteorological tower and/or the installation of meteorological buoys on the leasehold. *See* 30 CFR 585.605 - 585.618. The lessee’s SAP must be approved by BOEM before it conducts these “site assessment” activities on the leasehold. BOEM may approve, approve with modification, or disapprove a lessee’s SAP. *See* 30 CFR 585.613.

The final stage of the process is the submission of a construction and operations plan (COP), a detailed plan for the construction and operation of a wind energy project on the leasehold. *See* 30 CFR 585.620-585.638. BOEM approval of a COP is a precondition to the construction of any wind energy facility on the OCS. *See* 30 CFR 585.628. As with

a SAP, BOEM may approve, approve with modification, or disapprove a lessee's COP. See 30 CFR 585.628.

The regulations also require that a lessee provide the results of surveys with its SAP and COP for the areas affected by the activities proposed in each plan (see 30 CFR 585.610(b) and 585.626, respectively), including the results of a shallow hazards survey, geological survey, geotechnical survey, and archaeological resource identification survey. BOEM refers to these surveys as "site characterization" activities and provides guidelines for the submission of the results of these activities. See also *Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 285* at: <http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/GGARCH4-11-2011-pdf.aspx>, which advise lessees to survey the entirety of the area they propose to impact.

On November 23, 2010, Secretary of the Interior Ken Salazar announced the "Smart from the Start" Atlantic wind energy initiative to facilitate the responsible development of wind energy on the Atlantic OCS. This initiative calls for the identification of areas of the Atlantic OCS that appear most suitable for commercial wind energy activities, while presenting the fewest apparent environmental and user conflicts. These areas are known as Wind Energy Areas (WEAs). In consultation with other Federal agencies, federally-recognized tribes, and state and local governments, through BOEM's intergovernmental renewable energy task forces, BOEM identified WEAs offshore New Jersey, Delaware, Maryland, and Virginia. BOEM prepared a single environmental assessment (EA) for the next two stages of its wind energy program (the issuance of leases and the approval of SAPs) for these four WEAs, pursuant to the National Environmental Policy Act (NEPA) (42 USC § 4321 et seq.), and published a Finding of No Significant Impact (FONSI) as a result (USDOJ, BOEM, 2012). Regarding impacts to cultural resources, the EA concluded that "the information generated from the lessee's initial site characterization activities, the unanticipated discoveries requirement, and existing regulatory measures would make the potential for seafloor/bottom-disturbing activities (e.g. core samples, anchorages...) to cause damage to historic resources very low."

During the preparation of the EA, BOEM determined that the proposed action within the WEAs constitute multiple undertakings, subject to Section 106 of the National Historic Preservation Act (16 USC § 470f), and its implementing regulations (36 CFR § 800):

- (1) Lease issuance (including reasonably foreseeable consequences associated with shallow hazards, geological, geotechnical, and archaeological resource surveys); and
- (2) Approval of a SAP (including reasonably foreseeable consequences associated with the installation and operation of a meteorological tower and/or meteorological buoys).

Because the decisions to issue leases and approve SAPs are complex (staged) and multiple, and because BOEM will not have the results of archaeological surveys prior to the issuance of leases and as such will be conducting its historic properties identification and evaluation effort in phases (36 CFR 800.4(b)(2)), BOEM drafted and implemented a Programmatic Agreement (Agreement) pursuant to 36 CFR 800.14(b) with its consulting

parties, including the Advisory Council on Historic Preservation (ACHP) (Appendix A). This Agreement provides for Section 106 consultation to continue through both the leasing process and BOEM's decision-making process regarding the approval, approval with modification, or disapproval of lessees' SAPs and will also allow for a phased identification and evaluation of historic properties (36 CFR 800.4(b)(2)). Furthermore, the Agreement establishes the process to determine and document the area of potential effects (APE) for each undertaking; to further identify historic properties located within each undertaking's APE that are listed in or eligible for listing in the National Register of Historic Places (National Register); to assess the potential adverse effects; and to avoid, reduce, or resolve any such effects through the process set forth in the Agreement.

BOEM is preparing to issue leases within the Maryland (MD) WEA. The Maryland Request for Interest (RFI) was published in November, 2010, and resulted in nine submissions of interest in obtaining commercial wind leases from eight entities. Two entities, who were later determined to be qualified to hold commercial wind leases in this area, nominated the entire RFI area. Therefore, BOEM was able to determine that there was competitive interest in the area, and moved forward with a publishing Call for Information and Nominations (Call) for a subset of the RFI area. The Call was published in February, 2012. BOEM is continuing to move forward under the competitive lease sale process outlined in 30 CFR 585.211 for the MD area, and it is possible that the entirety of the MD WEA will be leased.

This document outlines BOEM's compliance with Section 106 and documents the agency's finding of *No Historic Properties Affected* (Finding) under 36 CFR 800.4 (d)(1) for the proposed undertaking of issuing leases. BOEM has prepared this documentation in support of the Finding following the standards outlined at 36 CFR 800.11(d) and as fulfillment of Stipulation II.K of the Agreement (see above and Appendix A). This Finding and supporting documentation are being provided to the MD State Historic Preservation Officer (SHPO), the Narragansett Indian Tribe, the Shinnecock Indian Nation, the Lenape Indian Tribe, and the ACHP, as consulting parties under the Agreement. This Finding and supporting documentation will be made available for public inspection by placement on BOEM's public website prior to BOEM approving the undertaking.

Project Location and Description

The Call area offshore MD contains 9 whole OCS blocks and 11 partial blocks (Figure 1). The western edge of the Call area is approximately 10 nautical miles (nmi) from the Ocean City, Maryland coast, and the eastern edge is approximately 23 nmi from the Ocean City, Maryland coast. The longest portion of the north/south portion is approximately 13 nmi in length and the longest portion of the east/west portion is approximately 13 nmi in length. The entire area is approximately 94.04 square nmi; 79,706 acres; or 32,256 hectares.

BOEM Maryland Call for Information and Nominations Area

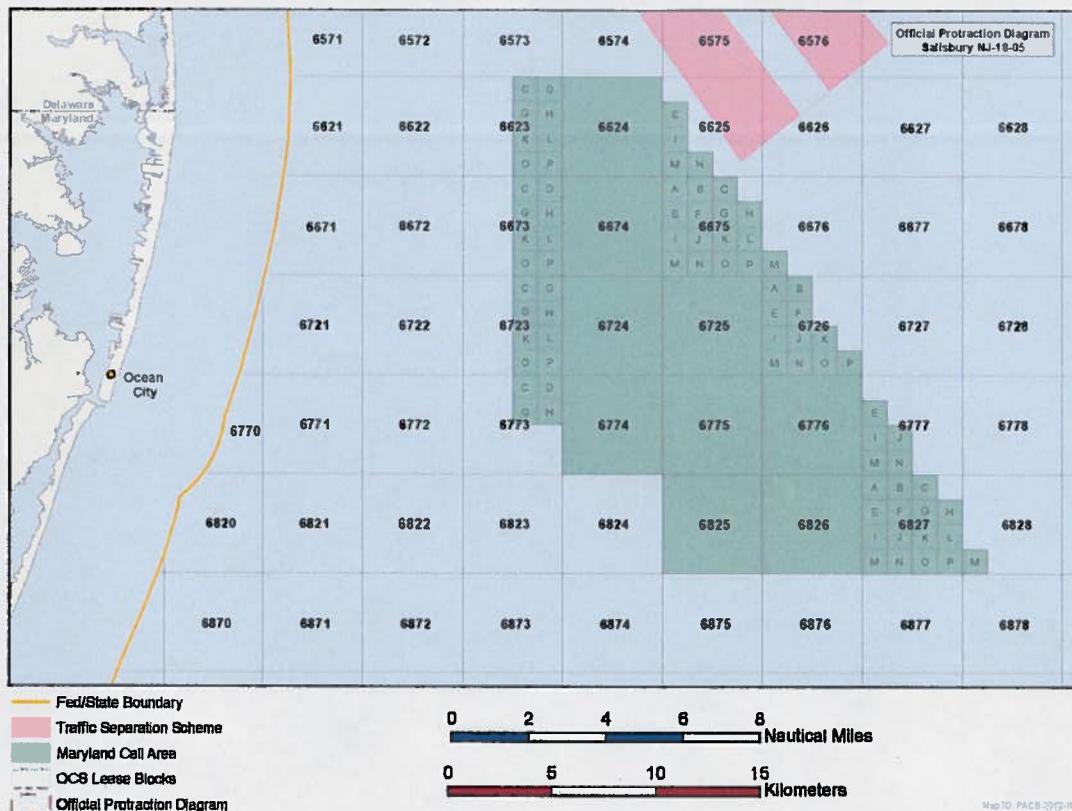


Figure 1. Maryland Wind Energy Area as depicted in the Call for Information and Nominations published in the Federal Register on February 3, 2012.

The proposed undertaking under discussion in this Finding includes only the issuance of commercial lease(s) and considers only the execution of associated site characterization activities on the commercial leasehold(s). Site characterization activities include both high resolution geophysical (HRG) surveys as well as geotechnical (sub-bottom) sampling. Although BOEM does not issue permits or approvals for these site characterization activities, it will not consider approving a lessee's SAP or COP if the required survey information is not included. As it is unlikely that any applicant would invest in undertaking these potentially expensive site characterizations prior to acquiring a lease (which would convey the exclusive right to apply for further approvals), and since the survey information must be submitted to BOEM before any SAP or COP could be approved, BOEM considers site characterization activities as actions connected to the issuance of lease(s).

The proposed undertaking does not, however, include cabling or connection to shore-based facilities, nor does it include consideration of commercial-scale facilities or construction or placement of any site assessment structures. Should lessee(s) propose to deploy site assessment structure(s) within the MD WEA, they would submit a SAP to BOEM, which BOEM would consider under Section 106 pursuant to Stipulation IV of

the Agreement. Should the lessee(s) propose to construct and operate commercial-scale facilities within the MD WEA, they would submit a COP to BOEM, which BOEM would consider under a separate Section 106 consultation.

Lessee(s) must submit the results of site characterization surveys with their SAP (30 CFR 585.610 and 585.611) and COP (30 CFR 585.626(a) and 585.627). The purpose of the HRG survey would be to acquire geophysical shallow hazards data, information pertaining to the presence or absence of archaeological resources, and to conduct bathymetric charting. BOEM anticipates that the HRG surveys would be conducted using the following equipment: depth sounder, magnetometer, side-scan sonar, and sub-bottom profiler. This equipment does not come in contact with the seafloor and is typically towed from a moving survey vessel that does not require anchoring.

Geotechnical (sub-bottom) sampling is conducted to assess the suitability of shallow foundation soils to support a structure or transmission cable under any operational and environmental conditions that might be encountered (including extreme events), and to document soil characteristics necessary for the design and installation of all structures and cables. Sub-bottom sampling obtains physical and chemical data on surface sediments to provide BOEM with a detailed geotechnical evaluation of the structure's foundation(s) based on analysis of soil borings from the site (e.g., 30 CFR 585.626(4)). The results allow for a thorough investigation of the stratigraphic and geoengineering properties of the sediment that may affect the foundations or anchoring systems of a wind energy project, which would be necessary for BOEM to consider a COP. The renewable energy regulations require sediment testing at the proposed site of any proposed bottom-founded structure. *See* 30 CFR 585.610(b) (SAP) and 585.626(a) (COP). BOEM assumes that one sub-bottom sample would be taken at the foundation location for each anticipated structure that would later be proposed in a SAP or COP.

Area of Potential Effects

As defined at 36 CFR 800.16(d), the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Specific to the undertaking under discussion in this Finding (the issuance of a lease and subsequent site characterization activities) the APE is considered as the depth and breadth of the seabed that could potentially be impacted by any proposed seafloor/bottom-disturbing activities. Included under these site characterization activities are HRG remote sensing surveys and geotechnical (sub-bottom) sampling. HRG surveys have no ability to impact historic properties because they do not contact the seafloor and because they do not require anchoring. However, geotechnical (sub-bottom) sampling may include the collection of core samples or soil borings and anchorages that could directly impact historic properties on the seafloor, if present.

Based on the distance from shore and the manner in which site characterization studies will likely occur, BOEM has concluded that the equipment and vessels performing these activities will be indistinguishable from existing lighted vessel traffic. Therefore, BOEM has not defined as part of the APE onshore areas from which the site characterization activities would be visible. In addition, there is no indication that the issuance of a lease and subsequent site characterization studies will involve expansion of existing port infrastructure. Therefore, onshore staging activities are not considered as part of the APE for this specific undertaking.

Consultation

BOEM initiated consultation in 2011 through letters of invitation, telephone calls, emails, meetings, webinars, and the circulation and discussion of the Agreement, in draft, that guides the Section 106 consultations for multiple undertakings, including the one forming the subject of this Finding. This outreach and notification included contacting over 85 individuals and entities, including federally-recognized tribes, local governments, SHPOs, state-recognized tribes, and the public (Table 1). Additionally, BOEM has conducted formal government-to-government consultation with the Narragansett Indian Tribe and the Shinnecock Indian Nation, both of whom chose to consult with BOEM and participate in the development of the Agreement. Furthermore, BOEM has identified and contacted 16 state-recognized tribes, one of whom, the Lenape Tribe of Delaware, chose to consult with BOEM and participate in the development of the Agreement.

On February 9, 2011, BOEM formally notified the public through the *Federal Register* (pages 7226-7228), that it was initiating the “Smart from the Start” wind energy initiative and that it would involve Federal agencies, states, tribes, local governments, wind power developers and the public as BOEM conducted the NEPA process and engaged in consultation, including consultation under Section 106 of the National Historic Preservation Act.

On March 11, 2011, BOEM’s Federal Preservation Officer, Dr. Brian Jordan, sent letters to potential consulting parties notifying them that BOEM had selected a WEA offshore MD and intended to prepare a regional EA that would consider the environmental consequences of: (1) issuing leases; (2) site characterization activities that lessees may undertake on those leases (e.g., geophysical, geotechnical, archaeological and biological surveys); and (3) the subsequent approval of site assessment activities on the leaseholds (e.g., installation and operation of meteorological towers and buoys) in specific WEAs identified offshore Delaware, Maryland, New Jersey, and Virginia (see Appendix B). BOEM notified the potential consulting parties that it had determined that issuing leases and subsequently approving site assessment activities in these WEAs constituted undertakings subject to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), and its implementing regulations (36 CFR § 800).

Table 1.

**Entities Solicited for Information and Concerns Regarding Historic Properties
and the Proposed Undertaking**

| Federally-recognized Tribes | State-recognized Tribes | Local Governments | Local Governments |
|---|-------------------------------------|---|--|
| Absentee Shawnee Tribe of Oklahoma | Cheroenhaka (Nottoway) Indian Tribe | Accomack-Northampton Planning District Commission | Town of Fenwick |
| Aroostook Band of Micmacs | Chickahominy Tribe | Atlantic City | Town of Ocean City |
| Catawba Indian Nation | Eastern Chickahominy Tribe | Berlin, MD | Town of Ocean City Council |
| Delaware Nation (Anadarko) | Lenape Indian Tribe of Delaware | Board of Supervisors Accomack County | Town of Ocean View |
| Delaware Nation (Bartlesville) | Mattaponi Tribe | City of Chesapeake | Town of South Bethany |
| Delaware Nation (Emporia) | Monacan Indian Nation | City of Hampton | Worcester County Commission |
| Eastern Band of Cherokee Indians | Nansemond Tribe | City of Lewes | |
| Eastern Shawnee Tribe of Oklahoma | Nanticoke Indian Association, Inc. | City of Millville | Additional Organizations |
| Houlton Band of Maliseet Indians | Nanticoke Lenni-Lenape Indians | City of Newport News | Lower Eastern Shore Heritage Council, Inc. |
| Mashpee Wampanoag Tribe | Nottoway Indian Tribe | City of Norfolk | Maryland Commission on Indian Affairs |
| Miccosukee Tribe | Pamunkey Tribe | City of Portsmouth | Preservation Maryland |
| Narragansett Indian Tribe | Patawomeck Indian Tribe | City of Rehoboth | |
| Oneida Indian Nation | Powhatan Renape Nation | City of Suffolk | |
| Onondaga Nation | Rampanough Mountain Indians | City of Virginia Beach | |
| Passamaquoddy Tribe (Indian Township) | Rappahannock Tribe | Dennis Township | |
| Passamaquoddy Tribe (Pleasant Point) | Upper Mattaponi Tribe | Egg Harbor City | |
| Penobscot Nation | | Egg Harbor Township | |
| Saint Regis Mohawk Tribe | | Hampton Roads Planning District Commission | |
| Seminole Tribe | | James City County | |
| Shinnecock Indian Nation | | Northampton/Accomack City | |
| Stockbridge-Munsee Community of Mohican Indians | | Ocean City | |
| Tuscarora Nation | | Office of Congressman Michael N. Castle | |
| Wampanoag Tribe of Gay Head (Aquinnah) | | Ship Bottom Borough | |
| | | Stafford Township | |
| | | Sussex County | |
| | | Sussex County Council | |
| | | Town of Bethany | |
| | | Town of Dewey Beach | |

The MD SHPO responded to this letter on April 15, 2011, recommending additional federally-recognized tribes and other parties to contact and inform regarding the undertakings (Appendix C).

Additional responses to BOEM's March 11, 2011, letters were received in the following months. A response from the Narragansett Indian Tribe detailed both the need for better protocols for identifying ancestral submerged paleolandscapes and recommending an inter-tribal panel to inform the protocol. The letter refers to recent archaeological evidence of ancestral relatives of the Narragansett inhabiting the continental shelf and coastal lands in the WEAs offshore New Jersey, Delaware, Maryland, and Virginia. The Narragansett recommended that, for the purpose of gathering oral history indicators of the presence or absence of submerged settlements, BOEM should form a panel of federally-recognized tribal historic preservation advisors comprised of Atlantic coastal Tribal Historic Preservation Officers (THPOs) and augmented by state-recognized coastal tribes. The Narragansett suggested that the panel would provide data to BOEM that could be incorporated into a database of likely areas that should be investigated by sub-bottom profiling in search of scientific evidence of submerged settlements. The results of these surveys would provide known areas of cultural sensitivity, guiding planning activities and avoidance areas for development activities.

One response was received from a state-recognized tribe. The Nanticoke Lenni-Lenape Tribal Nation of New Jersey responded that "the area[s] delineated on the map involve the traditional offshore areas of our tribe." BOEM will continue outreach to the Nanticoke Lenni-Lenape Tribal Nation and other tribes that may be affected by the proposed undertaking, and will continue to consult on relevant issues to ensure that their concerns are taken into consideration.

During the preparation of the EA, BOEM recognized that the agency had limited information regarding the presence of historic properties within the WEAs and would not have obtained or conducted an archaeological identification survey prior to the issuance of leases or the completion of the EA. Because the complete identification of historic properties would not take place until after leases were issued, BOEM drafted a programmatic agreement to establish the process through which consultation would continue regarding all information generated as a result of ongoing site characterization activities (see above, and Appendix A). This could then inform BOEM's future decisions regarding the approval, approval with modification, or disapproval of lessees' SAPs and COPs (30 CFR 585). Using a phased approach set out in a programmatic agreement would allow the consulting parties to participate in determining how potential adverse effects to newly identified historic properties would be addressed when BOEM considered lessees' plans, either by avoidance or mitigation.

On October 20, 2011, BOEM solicited public comments on the proposed undertakings as they pertain to historic properties. BOEM received three comments in response to this solicitation. These comments from Mainstream Renewable Power (United Kingdom [UK]); the Offshore Wind Development Coalition and American Wind Energy Association; and the National Trust for Historic Preservation can be viewed as originals

at regulations.gov by searching for Docket ID BOEM-2011-0111; a summary of each follows.

Ms. Cathryn Hooper of Mainstream Renewable Power (UK) wrote that potential impacts to individual properties can only be properly assessed on a case-by-case basis; therefore, it will not be possible to fully assess these issues prior to the submission of the COP. Early consultation and study, she continued, will provide developers and regulators with a better understanding of the sensitivity of different properties. Additionally, she opined that issues relating to historic properties are not sufficiently significant to delay the issue of a FONSI in the NEPA process. Finally, Ms. Hooper suggested four other issues that BOEM should take into account as part of the current consultation process: (1) visual impact of turbines; (2) onshore infrastructure including grid connection and design quality; (3) reviewing lessons learned by UK developers and regulatory authorities; and (4) benefits to the historic environment of offshore wind.

Mr. Jim Lanard of Offshore Wind Development Coalition and Mr. Tom Vinson of American Wind Energy Association (Washington, DC) wrote that the agency is in the process of satisfying its obligations under Section 106. They opined that the effects on historic properties from leases that do not authorize the construction or operation of offshore wind farms until BOEM approves a COP are negligible. Finally, they suggested that BOEM should issue a finding of "no adverse effect" under 36 CFR § 800 and proceed with issuing leases and approving SAPs in the Mid-Atlantic WEAs.

Ms. Betsy Merritt of the National Trust for Historic Preservation (Washington, DC) wrote with concern that the guidelines used by the Draft EA to identify archaeological resources may be inadequate. She expressed concern that BOEM had not adequately identified all Indian tribes with cultural ties to the areas encompassed by the Draft EA. "Even for the tribes that have been identified," she continued, "the EA indicates only that a form letter has been sent, and therefore, meaningful consultation has likely not occurred." Finally, Ms. Merritt requested that the Department of the Interior prepare a full Environmental Impact Statement prior to the approval of any COP, in order to ensure adequate consideration of significant impacts.

BOEM, with the consulting parties, will continue to involve the public through outreach, notifications, and request for comment throughout the Section 106 consultation process for both the issuance of renewable energy leases and consideration of subsequent SAPs. This includes publications in the *Federal Register* and on its website requesting information on historic properties and concerns regarding the undertakings.

In September through November 2011, BOEM sent letters to all potential consulting parties, including those suggested by the SHPOs, notifying them that BOEM had prepared the draft regional EA mentioned herein and wanted to consult on the matter (see Appendix D for a copy of the September 16, 2011, letter sent to the MD SHPO, noting that a similar letter was sent to all parties listed in Table 1). BOEM requested that the parties review the EA and offer any information not previously shared related to known historic sites or cultural properties within the areas that may be affected by

leasing, site characterization activities, and the placement of meteorological structures in the WEAs. On November 4, 2011, the MD SHPO replied to BOEM with concurrence that the programmatic approach appeared satisfactory (Appendix E) and on November 16, 2011, the MD SHPO provided additional specific comments regarding the agreement (Appendix F). Additionally, on October 20, 2011, BOEM invited the ACHP to participate in the Section 106 consultations and preparation of the Agreement (see Appendix G). On October 24, 2011, the Advisory Council replied to Mr. Tommy Beaudreau, BOEM's Director, that it would participate in the consultations and preparation of the Agreement (see Appendix H).

BOEM held multiple consultation meetings regarding this undertaking, including:

- September 15, 2011, to meet with the Narragansett Indian Tribe in government-to-government consultation (in person);
- October 11, 2011, to initiate Section 106 with all consulting parties and to present the draft Agreement (via webinar);
- November 9, 2011, to discuss revisions to, and comments received on, the draft Agreement with all consulting parties (via webinar);
- November 30, 2011, to meet with the Shinnecock Indian Nation in government-to-government consultation (in person);
- December 15, 2011, to discuss revisions to and comments received on the draft Agreement with all consulting parties (via webinar);
- February 21, 2012, to implement the finalized and executed Agreement and to meet the provisions of Stipulation I (via webinar); and
- April 26, 2012, to fulfill Stipulation II of the Agreement for lease issuance offshore MD (in person); and
- May 1, 2012, to meet with the Narragansett Indian Tribe in government-to-government consultation (in person).

The April 26, 2012, Section 106 consultation meeting was held at the Maryland Historical Trust in Crownsville, MD for the purpose of consulting on the scope of identification efforts and to consider lease stipulations relating to historic properties recommended by the parties. This consultation meeting served as fulfillment of Stipulations II.A, -B, -E, -F, -H, -I, -J, and -K of the Agreement (*see* Appendix A) for lease issuance offshore MD. As a result of this consultation, various items, described below, were recommended for inclusion in MD leases by the parties, including the Shinnecock Indian Nation and the MD SHPO. The Narragansett Indian Tribe did not attend the meeting, but had recommended lease stipulations during previous meetings under the Agreement that they requested be considered for all four of the WEAs, which also are included below. Final lease stipulation language, including any changes to BOEM's existing post review discoveries clause (see below), will be published for public comment in the MD Proposed Sale Notice and finalized in the MD Final Sale Notice.

Items Recommended by the Consulting Parties

- The lessee should notify BOEM by phone within 24 hours of any post-review discovery.
- BOEM should notify the appropriate parties via telephone and email within 48 hours of any post-review discovery.
- Where the post-review discoveries clause refers to halting any seafloor/bottom-disturbing activities, this should include all activities within a 50-meter (m; 164-foot [ft]) buffer zone around the maximum discernible extent of the resource.
- The person(s) preparing the archaeological report should meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology (48 FR 44738-44739) and exhibit experience conducting high-resolution marine geophysical surveys including the acquisition, processing, and archaeological interpretation of magnetometer, side scan sonar, and seismic reflection data.
- A single Native American representative acceptable to the leadership of the Narragansett Indian Tribe, the Shinnecock Indian Nation, and the Lenape Tribe of Delaware should be allowed to monitor archaeological survey and geotechnical testing.
- The lessee and its archaeologist should hold pre-survey meetings as early as possible in the planning process to discuss the survey plan with BOEM and with the single Native American representative.
- The lessee and its archaeologist should certify in the lessee's archaeological reports (by submitting a signed statement with its SAP and COP), that the marine geophysical survey (including data acquisition patterning and instrumentation) was designed in consultation with the archaeologist to meet the specific requirements of marine archaeological surveys, and that the archaeologist was afforded an opportunity to be present onboard the survey vessel during data collection to inspect data quality. That statement should also describe any variances from the archaeological survey plan that occurred or problems that were encountered during data acquisition, processing, and analyses.

Post-Review Discoveries Clause

Under Stipulation II.G, the Agreement requires that a post-review discoveries clause be included in the lease. This proposed lease stipulation details the actions that the lessee is required to take in the event of a post-review discovery during the implementation of an undertaking. In this event, BOEM will follow the post-review discoveries process outlined at 36 CFR 800.13(b)(3). BOEM has an existing post-review discoveries clause detailing what actions a lessee should take in such an event, found at 30 CFR § 585, and presented below. This clause may be altered by inclusion of items recommended by the consulting parties, such as reducing the 72-hour notification window to 24 hours (see above, first bullet). Final lease stipulation language, including any changes to the post review discoveries clause (see below), will be published for public comment in the MD Proposed Sale Notice and finalized in the MD Final Sale Notice.

If the lessee, while conducting activities, discovers a potential archaeological resource such as the presence of a shipwreck (e.g., a sonar image or visual confirmation of an iron, steel, or wooden hull, wooden timbers, anchors, concentrations of historic objects, piles of ballast rock), prehistoric artifacts, and/or relict landforms, etc. within the project area the applicant is to:

- 1) Immediately halt seafloor/bottom-disturbing activities within the area of discovery;
- 2) Notify the appropriate BOEM Office of Renewable Energy Programs Environment Branch Chief within 72 hours of its discovery; and
- 3) Keep the location of the discovery confidential and take no action that may adversely affect the archaeological resource until BOEM has made an evaluation and instructs the applicant on how to proceed (30 CFR 585.802(a)(1)-(3), 585.902(e)).

BOEM may require the lessee to conduct additional investigations to determine if the resource is eligible for listing in the National Register of Historic Places (30 CFR 585.802(b)). BOEM will do this if: (1) the site has been impacted by the lessee's project activities; or (2) impacts to the site or to the area of potential effect cannot be avoided. If investigations indicate that the resources is potentially eligible for listing in the National Register of Historic Places, BOEM will tell the lessee how to protect the resources or how to mitigate adverse effects to the site. If BOEM incurs costs in protecting the resource, under Section 110(g) of the National Historic Preservation Act, BOEM may charge the lessee reasonable costs for carrying out preservation responsibilities under the OCS Lands Act (30 CFR 585.802(c-d)).

II. Description of the Steps Taken to Identify Historic Properties

Existing and Available Information

BOEM has reviewed existing and available information regarding historic properties that may be present within the MD WEA. Sources of this information include consultation with the appropriate parties and the public, gathering information shared by the MD SHPO's office, and accessing information gathered by BOEM for an updated study of archaeological resource potential on the Atlantic OCS (TRC 2011). The study compiles information on historic shipwrecks in the Atlantic Shipwreck Database (ASD) and additionally models the potential for pre-European contact sites based on reconstruction of past landscapes, human settlement patterns, and site formation and preservation conditions.

Existing governmental databases form the core of the data for BOEM's ASD and include: The National Oceanic and Atmospheric Administration (NOAA) Automated Wreck and Obstructions Information System (AWOIS), a database of wrecks and obstructions compiled from hydrographic surveys and field reports, and the U.S. Navy Non-Submarine Contact List (NSC), a database created for military use in distinguishing shipwrecks from submarines hiding on the ocean floor. The U.S. Navy also maintains a

database entitled Partial List of Foundered U.S. Navy Craft which is included in the ASD. Commercial databases were also compiled including The Global Maritime Wrecks Database and the International Registry of Sunken Ships (TRC 2011). The inherent expectation for utilizing multiple sources of information for the same area, however, is that these databases often include redundant listings for the same shipwrecks. Where listings are reasonably close geographically, and/or contain similar enough information to be understood to be one shipwreck location or obstruction, they were analyzed for the purposes of the Finding to contain only one potential shipwreck location or obstruction.

The accuracy of location information is quantified in the ASD by a ranking between “1” and “4”. Shipwrecks that have been positively located through recent survey are given a location reliability rank of “1”. Those shipwrecks with specific locations provided by informants, reported in literature, or marked on a map are considered a “2”. A location reliability of “3” indicates that the location is given generally rather than specifically by an informant, in the literature, or on a map. Those locations that are unreliable or vague, such as “off the coast of North Carolina” or “at sea” are ranked at “4”.

Historic Shipwrecks and Obstructions within the MD WEA

BOEM’s currently known information on historic shipwrecks and obstructions located within the MD WEA consist of seven potential shipwrecks. These include three identified vessels, three unidentified vessels and one other obstruction that may represent potential shipwrecks (Table 2; TRC 2011). Of the three identified shipwrecks, *Elizabeth Palmer*, *Washingtonian*, and *WL Steed* have readily available historical documentation and some are known as recreational diving locations. No information is currently known regarding the remaining unidentified vessels and obstruction.

Table 2.

Known Shipwrecks within the MD WEA.

| Vessel Name/Obstruction | Description | Year Built | Year Lost | Locational Reliability |
|-------------------------|--------------------------|------------|-----------|------------------------|
| <i>Washingtonian</i> | Steam Freighter | 1914 | 1/26/1915 | 2 |
| <i>Elizabeth Palmer</i> | Wooden 5-masted schooner | 1903 | 1/26/1915 | 2 |
| <i>WL Steed</i> | Steam Tanker | 1918 | 2/2/1942 | 1 |
| Unknown Vessel | n/a | n/a | n/a | 2 |
| Unknown Vessel | n/a | n/a | n/a | 2 |
| Unknown Vessel | n/a | n/a | n/a | 2 |
| Unknown Obstruction | n/a | n/a | n/a | 2 |

On January 26, 1915, the steam freighter *Washingtonian*, travelling from Hawaii with a cargo of approximately 10,000 lbs of sugar, collided with the wooden schooner *Elizabeth Palmer* approximately 20 nmi off Fenwick Island, DE (Gentile 2002, Langley and Jordan 2007). The *Washingtonian* sank within 10 minutes coming to rest in approximately 80 ft (24.4 meters (m)) of water and the *Elizabeth Palmer* sank shortly

after in approximately 50 ft (15.2 m) of water. Both wrecks lie approximately within 3.5 nmi of each other. The event was documented in contemporary newspaper accounts and was considered a noteworthy disaster. Constructed less than a year earlier for use in the sugar trade between Hawaii, the Pacific Coast, and New York via the recently constructed Panama Canal, the *Washingtonian* was one of the largest American freighters of the time (*New York Times* 1915). The *Elizabeth Palmer*, described as one of the largest American sailing vessels of the time, was sailing from Portland, ME to Norfolk, VA. The *New York Times* (1915) estimated the financial loss due to the collision at over \$2 million and reported that the loss of the sugar cargo aboard the *Washingtonian* had the potential to have a noticeable impact on the war-stunted global sugar market.

The other identified shipwreck within the MD WEA is the *WL Steed*, a 416-foot (126.7-m) steam tanker constructed in 1918 by the Bethlehem Shipbuilding Corporation (Gentile 2002; Figure 2). The *WL Steed* was sunk February 2, 1942, during an attack by the German submarine U-103 while carrying over 65,000 barrels of crude oil *en route* to New York. The tanker came to rest in approximately 50 ft (15.2 m) of water approximately 15 miles offshore Fenwick Island.

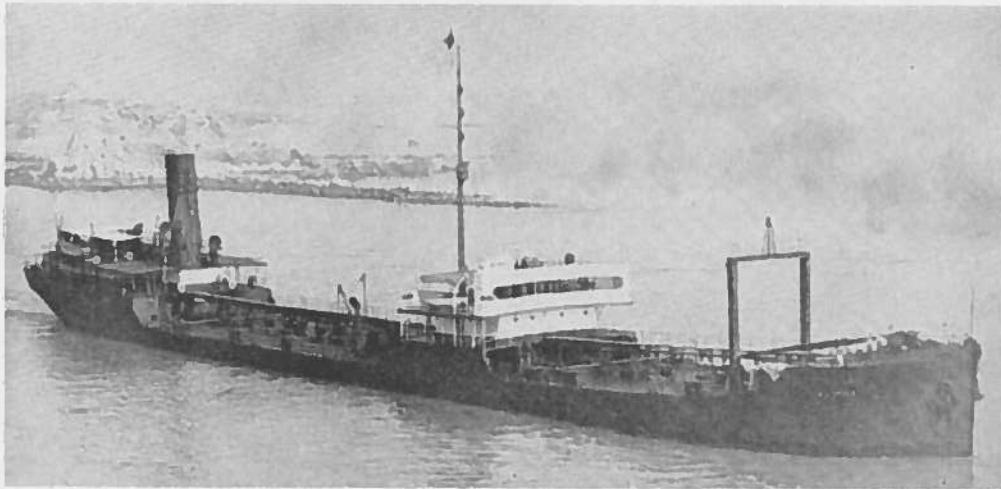


Figure 2. *The WL Steed* (Gentile 2002:217).

Submerged Pre-contact Archaeological Resources within the MD WEA

Offshore archaeological resources that may exist within the MD WEA also include submerged pre-contact sites or landforms that have a high potential to contain these sites. No sites have been previously identified within the MD WEA; however, the area is located within a region of the OCS that was formerly exposed above sea level and available to human occupation during the last ice age. Because of this, the entirety of the MD WEA is within an area that is considered to have the potential for the presence of submerged pre-contact archaeological sites (TRC 2011:105).

Within the greater Mid-Atlantic OCS, two specific areas have been identified that are considered to have a high potential for containing intact pre-contact archaeological sites. These areas, located approximately 40 miles to the south of the MD WEA, contain relict

broad coastal zone landforms which included coastal barrier islands backed by large shallow bays 13,000 years BP (TRC 2011:99). This environmental setting was inundated during a period of rapid sea level rise, therefore, if present, potential sites in this area may have been less exposed to erosion associated with marine transgression. These landforms remain to be investigated and are not definitive indicators of the survival of archaeological resources.

Archaeological potential

No site-specific archaeological identification surveys have been conducted to date within the MD WEA. Several shipwrecks have been previously identified therein and based on the location of the WEA to historic shipping routes and because it has been demonstrated that archaeological sites have been identified in this general region and in similar settings, there is the potential for the presence of additional, unidentified historic period cultural resources to be located within the WEA.

Based on available information regarding paleoshoreline positions, relative sea level rise, and regional geology, the MD WEA is also considered to have the potential to contain relict landforms that have the potential to contain pre-contact archaeological sites.

Required Elements in the Lease(s)

As discussed herein, BOEM has determined that geotechnical (sub-bottom) sampling may impact historic properties. If the lessee conducts HRG surveys prior to conducting geotechnical (sub-bottom) sampling, the lessee will be able to avoid impacts to historic properties. Therefore, BOEM will require the lessee to conduct HRG surveys prior to conducting geotechnical (sub-bottom) sampling and when a potential historic property is identified, the lessee will be required to avoid it. Inclusion of the following elements in the lease(s) will ensure avoidance of historic properties and is a requirement of this Finding. The following language will be included in leases issued offshore Maryland under the Smart from the Start Initiative:

The lessee may only conduct geotechnical (sub-bottom) sampling activities in areas of the leasehold in which an analysis of the results of geophysical surveys has been completed for that area. The geophysical surveys must meet BOEM's minimum standards (*see [Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 285](#)*), and the analysis must be completed by a qualified marine archaeologist who both meets the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738- 44739) and has experience analyzing marine geophysical data. This analysis must include a determination whether any potential archaeological resources are present in the area and the geotechnical (sub-bottom) sampling activities must avoid potential archaeological resources by a minimum of 50.0 m (164.0 ft). The avoidance distance must be calculated from the maximum discernible extent of the archaeological resource. In no case may the lessee's actions impact a potential archaeological resource without BOEM's prior approval.

Therefore, *No historic properties will be affected* for this lease issuance undertaking, consistent with 36 CFR 800.4(d).

III. The Basis for the Determination of No Historic Properties Affected

This finding is based on the review conducted by BOEM of existing and available information, consultation with interested and affected parties, and the conclusions drawn from this information. The mandatory avoidance measures that will be included in the lease will ensure that the proposed undertaking will not affect historic properties.

Concurrence by:

Elizabeth Cole, Administrator, Review and
Compliance, Maryland Historical Trust

Date

REFERENCES

Gentile, Gary. 2002. *Shipwrecks of Delaware and Maryland*. Gary Gentile Publications, Philadelphia, PA.

Langley, Susan B. M. and Brian A. Jordan. 2007. *Archaeological Overview and Remote Sensing Survey for Maritime Resources in Maryland State Waters from the Ocean City Inlet to the Delaware Line, Worcester County, Maryland*. Maryland Historical Trust, Crownsville, MD.

New York Times. 1915. Two Big Ships Sink in Collision at Sea. *New York Times*, January 27, 1915. New York, NY.

TRC Environmental Corporation (TRC). 2011. Draft: Prehistoric Site Potential and Historic Shipwrecks on the Atlantic Outer Continental Shelf. BOEM Study GM-09-10. Pending Publication. Prepared under BOEM contract GS-10F-0401M M09PD00024, TRC Environmental Corporation, Norcross, GA. Accessed May 2012.

U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM). 2012. *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia; Final Environmental Assessment*. Office of Renewable Energy Programs, Herndon, Virginia.

APPENDICES

Appendix A: Programmatic Agreement

Appendix B: Correspondence from BOEM to MD SHPO, March 11, 2011

Appendix C: Correspondence from MD SHPO to BOEM, April 15, 2011

Appendix D: Correspondence from BOEM to MD SHPO, September 16, 2011; a similar letter was sent to all potential consulting parties between September and November 2011

Appendix E: Correspondence from MD SHPO to BOEM, November 4, 2011

Appendix F: Correspondence from MD SHPO to BOEM, November 16, 2011

Appendix G: Correspondence from BOEM to the Advisory Council on Historic Preservation, October 20, 2011

Appendix H: Correspondence from the Advisory Council on Historic Preservation to BOEM, October 24, 2011

PROGRAMMATIC AGREEMENT

Among

The U.S. Department of the Interior, Bureau of Ocean Energy Management;
the State Historic Preservation Officers of Delaware, Maryland, New Jersey, and Virginia;
The Advisory Council on Historic Preservation;
The Narragansett Indian Tribe; and the Shinnecock Indian Nation

Regarding

the “Smart from the Start” Atlantic Wind Energy Initiative:
Leasing and Site Assessment Activities within the Wind Energy Areas
offshore Delaware, Maryland, New Jersey, and Virginia

WHEREAS, the Bureau of Ocean Energy Management (BOEM) has embarked upon the “Smart from the Start” Atlantic Wind Energy Initiative for the responsible development of wind energy resources on the Atlantic Outer Continental Shelf (OCS), pursuant to Section 8(p)(1)(c) of the Outer Continental Shelf Lands Act (OCSLA), which was enacted in the Energy Policy Act of 2005, and the implementing regulations at 30 CFR part 585; and

WHEREAS, under the “Smart from the Start” Initiative BOEM has identified areas on the OCS offshore the States of Delaware (DE), Maryland (MD), New Jersey (NJ), and Virginia (VA) (Wind Energy Areas (WEAs)) that appear most suitable for future wind energy activities; BOEM may issue leases within these areas; and BOEM may approve site assessment plans (SAPs) on these leases; and

WHEREAS, BOEM has determined that both the issuance of a renewable energy lease and the subsequent approval of a SAP on a lease constitute undertakings subject to Section 106 of the National Historic Preservation Act (NHPA; 16 U.S.C. § 470f), and its implementing regulations (36 CFR 800); and

WHEREAS, BOEM is analyzing the environmental consequences of issuing leases and approving SAPs within these WEAs in accordance with the Department of the Interior’s regulations implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*); and

WHEREAS, under the renewable energy regulations, the process for issuing renewable energy leases on the OCS and approving plans for activities on those leases is a staged decision-making process; and

WHEREAS, under the current renewable energy regulations (30 CFR part 585), the decision to issue a lease or leases is distinct and separate from a decision to approve, approve with modification, or disapprove a SAP; and

WHEREAS, the issuance of a renewable energy lease grants the lessee the exclusive right to submit plans for BOEM approval pursuant to 30 CFR part 585; and

WHEREAS, pursuant to 30 CFR part 585, the approval of a SAP grants the lessee the right to install and operate one or more meteorological facilities (e.g. meteorological towers and/or buoys) in the lease area for the site assessment term of the lease; and

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

WHEREAS, the proposed undertakings would be located in identified WEAs on the OCS offshore DE, MD, NJ, and VA; and

WHEREAS, BOEM proposes that the Areas of Potential Effects (APE) for the undertakings, as defined in 36 CFR § 800.16(d) of the Advisory Council on Historic Preservation’s (ACHP’s) regulations implementing Section 106 of the NHPA, are defined as (1) the depth and breadth of the seabed that could potentially be impacted by proposed seafloor/bottom-disturbing activities (e.g., core samples, anchorages and installation of meteorological towers and buoys); and (2) the viewshed from which lighted meteorological structures would be visible; and (3) any areas on land used for staging the offshore work; and

WHEREAS, the undertakings subject to this Programmatic Agreement (Agreement) are limited to site assessment activities only (placement of meteorological towers and buoys for the site assessment term of the lease) and the issuing of leases: (1) giving the lessee the exclusive right to submit a SAP; and (2) on which lessees are anticipated to conduct site characterization activities to meet the information requirements in the renewable energy regulations for submitting a SAP and construction and operations plan (COP); and

WHEREAS, there will be neither shore-based facilities nor cabling installed and any construction and operations activities that might include such cables or shore-based facilities would be considered under a separate Section 106 consultation; and

WHEREAS, under the current renewable energy regulations, BOEM may offer a number of leases within a WEA simultaneously under a competitive lease issuance process, or it may issue a single lease for a given area via the noncompetitive lease issuance process; and

WHEREAS, the issuance of leases among the various WEAs may not be issued simultaneously, and could occur over a number of years; and

WHEREAS, under the current regulations, a SAP for a particular lease must be submitted within six (6) months of competitive lease issuance and within sixty (60) calendar days of a determination of no competitive interest; and

WHEREAS, the ACHP’s implementing regulations for Section 106 (36 CFR § 800) prescribe a process that seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among parties with an interest in the effects of the undertakings, commencing at the early stages of the process; and

WHEREAS, BOEM has identified and consulted with the State Historic Preservation Offices (SHPOs) for DE, MD, NJ, and VA, (collectively, “the SHPOs”); and

WHEREAS, the Section 106 consultations described in this Agreement will be used to, *inter alia*, establish a process to determine and document the APEs for each undertaking; further identify historic properties located within each undertaking’s APE that are listed in, or eligible

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

for listing in the National Register of Historic Places (National Register); and assess the potential adverse effects and avoid, reduce, or resolve any such effects through the process set forth in this Agreement; and

WHEREAS, according to 36 CFR § 800.16(l)(1) historic property means

any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria; and

WHEREAS, BOEM initiated consultation in 2011 through letters of invitation, telephone calls, emails, meetings, webinars, and the circulation and discussion of this agreement in draft; and this outreach and notification included contacting over 85 individuals and entities, including Tribes, local governments, SHPOs, state-recognized Tribes, and the public; and

WHEREAS, BOEM has initiated formal government-to-government consultation with the following Federally-recognized Indian Tribes (Tribes): the Narragansett Indian Tribe and the Shinnecock Indian Nation; and

WHEREAS, these Tribes have chosen to consult with BOEM and participate in the development of this Agreement, in which the term Tribe refers to them, consistent with the meaning of 36 CFR § 800.16(m); and

WHEREAS, BOEM shall continue to consult with these Tribes to identify properties of religious and cultural significance that may be eligible for listing in the National Register (Traditional Cultural Properties or TCPs) and that may be affected by these undertakings; and

WHEREAS, BOEM has identified and contacted 16 state-recognized Tribes, none of which have chosen to consult with BOEM and participate in the development of this Agreement; and

WHEREAS, in accordance with Section 106, Federal agencies are required to take into account the effects of their undertakings on historic properties; and

WHEREAS, BOEM, in consultation with the SHPOs and with their assistance, has begun implementing an outreach plan to involve the public and to identify other consulting parties through outreach, notifications, and request for comment; and

WHEREAS, through this outreach, TCPs eligible for inclusion in the National Register that are associated with the mid-Atlantic seafaring traditions may be identified; and

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

WHEREAS, BOEM currently has limited information regarding the presence of historic properties located on the Atlantic OCS in the areas within the WEAs that may be subject to leasing; and

WHEREAS, one of the primary reasons BOEM requires lessees to submit the results of site characterization surveys in a SAP is so that potential historic properties within the lease area that could be affected by the installation and operation of meteorological facilities can be identified and adverse effects to them avoided, minimized, or as appropriate mitigated; and

WHEREAS, BOEM has determined that the identification and evaluation of possible historic properties shall be conducted in phases, so the consultation process provided for in this Agreement shall necessarily continue throughout both stages of the decision-making process: lease issuance and SAP consideration; and

WHEREAS, the ACHP’s regulations at 36 CFR § 800.14(b)(3) provide for developing Programmatic Agreements for complex or multiple undertakings; and

WHEREAS, future commercial-scale development that may or may not occur within the WEAs is a separate undertaking and would be considered under future, separate Section 106 consultation(s); and

WHEREAS, BOEM, the SHPOs, and the ACHP are signatories to this Agreement; and

WHEREAS, BOEM has asked the Narragansett Indian Tribe and the Shinnecock Indian Nation to sign this Agreement as invited signatories; and

WHEREAS, BOEM has a policy for post-review discoveries to ensure that the identification and evaluation of historic properties, assessment of effects, and development of treatment and mitigation plans for unforeseen effects to previously-identified historic properties and/or historic properties discovered during implementation of the projects are properly coordinated (*See Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 285*, Section IV.B, “Unanticipated Discoveries (Chance Finds)”, available online at http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Notices_to_Lessees,_Operators_and_Applicants); and

WHEREAS, BOEM has guidelines for surveys that: (1) meet or exceed the Secretary of the Interior’s standards for identification surveys; (2) help ensure that all identification surveys be carried out by professionals meeting the Secretary of the Interior’s professional qualifications; and (3) recommend that analysis for viewshed impacts follow applicable, established guidelines (*Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 285*, available online at: http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Notices_to_Lessees,_Operators_and_Applicants); and

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

WHEREAS, both the post-review discoveries policy and guidelines for survey activities will be subject to future alteration as consultations progress, technology improves, and scientific studies take place;

NOW, THEREFORE, BOEM, the ACHP, the SHPOs, Tribes, and the other concurring parties (the Parties), agree that the undertakings shall be implemented in accordance with the stipulations below in order to: (1) take into account foreseen and unforeseen future effects to historic properties; and (2) give consulting parties continued opportunity to consult on the scope of identification efforts, identification of historic properties, evaluation of historic significance, assessment of adverse effects, and avoidance and mitigation of any identified, potentially affected historic properties.

STIPULATIONS

BOEM shall ensure that the following measures are carried out:

- I. Within 30 calendar days of execution of the Agreement, BOEM shall hold a consultation meeting or webinar with all Parties to ensure that the consulting parties have a common understanding of how BOEM shall administer the offshore wind leasing and plan approval process in the mid-Atlantic WEAs. BOEM shall:
 - A. Explain its legal obligations and limitations under OCSLA, the renewable energy regulations at 30 CFR part 585, and other laws and regulations pertaining to these undertakings.
 - B. Explain the leasing and plan approval process as provided in the renewable energy regulations.
 - C. Review those Section 106 compliance activities that have already occurred with respect to the undertakings, which are the subject of consultation pursuant to this Agreement.
 - D. Consult with the Parties on how APEs shall be defined for leases and SAPs within the WEAs, including those submerged areas that may have once been dry land since the last glacial maximum and could contain archaeological sites eligible for listing in the National Register.
 - E. Confirm each Party’s geographic interests to determine the portions of the WEAs on which that Party wishes to be consulted.
 - F. Solicit information on known historic properties within the APE that are located within the WEAs and/or may be outside of the WEAs but may potentially be indirectly affected by the undertaking.

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

- G. Invite the Tribes and local interest groups to consult on TCPs that are located within the WEAs and/or may be outside of the WEAs but may potentially be indirectly affected by the undertaking.
 - H. Discuss strategies BOEM shall use to identify other historic properties that may be affected.
 - I. Discuss BOEM’s existing policy for post-review discoveries and solicit suggestions for its improvement.
 - J. Propose a plan for how future consultation shall proceed throughout the term of this agreement.
- II. Prior to issuing a lease, BOEM shall:
- A. Share with the Appropriate Parties (the appropriate SHPO and other signatories to this Agreement who have confirmed interest in the APE that may be affected by the undertaking, and other consulting parties) existing, non-proprietary information regarding the area BOEM proposes to lease, including BOEM’s APE for each lease.
 - B. Solicit additional information on historic properties from the Appropriate Parties, and the public within the APE.
 - C. For competitive lease issuance, BOEM shall utilize the Proposed Sale Notices to solicit additional information on historic properties from the public in the area(s) BOEM proposes to lease.
 - D. Invite the Tribes to consult on TCPs that are located within the WEAs and/or potentially affected by the undertaking.
 - E. Discuss with the Appropriate Parties other identification methods BOEM should consider to meet its “reasonable and good faith” identification standard (as described in BOEM’s *Guidelines for Providing Geological and Geophysical, Hazards, and Archaeological Information Pursuant to 30 CFR Part 285*).
 - F. Consult with the Appropriate Parties to develop a process for addressing any post-review discoveries that may be made.
 - G. Place a stipulation in the lease addressing post-review discoveries.
 - H. Consider whether additional lease stipulations regarding the presence of, or effects to cultural or historic properties are appropriate.

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

- I. Treat all potential historic properties as eligible for inclusion on the National Register unless it is determined in consultation with the appropriate SHPO and relevant signatories that a property lacks integrity or does not meet the National Register criteria, consistent with 36 CFR 800.4(c).
 - J. In consultation with the Appropriate Parties, make determinations of effect consistent with 36 CFR 800.4(d).
 - K. Resolve adverse effects, where practicable, by avoiding historic properties and recording a finding of *No historic properties affected*, or *No adverse effect*, consistent with 36 CFR 800.4(d) and 800.5(b).
 - L. If adverse effects to historic properties cannot be avoided, BOEM shall:
 - 1. Consult with the Appropriate Parties and provide the public an opportunity to comment on the eligibility of the properties;
 - 2. Seek to resolve the adverse effects through minimizing and mitigating those effects in consultation with the Appropriate Parties and the public, as described in 36 CFR § 800.6.
- III. If a lease is issued, BOEM shall invite the lessee to participate in the consultation process pursuant to 36 CFR § 2(c)(4) insofar as its lease is concerned. This may include an offer to facilitate a Memorandum of Agreement (MOA) between the lessee, those Parties interested in the lease area, and BOEM.
- IV. Prior to approving, approving with modification, or disapproving a SAP, BOEM shall:
- A. Share with Appropriate Parties existing, non-proprietary information regarding the lease area, including the results of the lessee’s or BOEM’s surveys, available information on the size, nature, and location of the proposed temporary meteorological buoys or towers, and whether these can be seen from the shoreline.
 - B. Request from the Appropriate Parties information on historic properties within the APE that could be affected by the installation of meteorological facilities on a lease issued within the WEAs.
 - C. Request that the Tribes consult on TCPs that are located within the relevant lease area and/or potentially affected by the installation of meteorological facilities on the lease.
 - D. Consider scheduling a consultation meeting with the Appropriate Parties to (1) review the results of the identification steps, (2) discuss what additional steps to take and/or methods to be used for further identification of historic properties that may be

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

deemed necessary by BOEM, (3) and solicit their opinions on which identified resources may meet the National Register criteria.

- E. Treat all identified potential historic properties as eligible for inclusion in the National Register unless it is determined in consultation with the Appropriate Parties that a property lacks integrity or does not meet the National Register criteria, consistent with 36 CFR 800.4(c).
- F. Before making determinations of effect and adverse effect, consult with the Appropriate Parties consistent with 36 CFR 800.4 and 800.5.
- G. Resolve adverse effects, where practicable, by avoiding historic properties and recording a finding of *No historic properties affected*, or *No adverse effect* consistent with 36 CFR 800.4(d) and 800.5(b).
- H. If adverse effects to historic properties cannot be avoided, BOEM shall, in consultation with the Parties, seek to resolve the adverse effects through minimizing and mitigating those effects and provide the public an opportunity to comment on the proposed mitigation, as described in 36 CFR 800.6.

V. CONSULTATION WITH TRIBES

- A. In addition to consultation as described in Part I of this Agreement, BOEM shall continue to consult with the Tribes throughout the implementation of this Agreement in a government-to-government manner consistent with Executive Order 13175, Presidential memoranda, and any Department of the Interior policies, on subjects related to the undertakings.

VI. PUBLIC PARTICIPATION

- A. Because BOEM and the Parties recognize the importance of public participation in the Section 106 process, BOEM shall provide opportunities for continuing public participation in Section 106-related activities, and shall consult with the Parties on possible approaches for keeping the public involved and informed throughout the term of the Agreement.
- B. BOEM shall keep the public informed and may produce reports on historic properties and on the Section 106 process that may be made available to the public at BOEM’s headquarters, on the BOEM website, and through other reasonable means insofar as the information shared conforms to the confidentiality clause of this Agreement (Stipulation VII).

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

VII. CONFIDENTIALITY

- A. Because BOEM and the Parties agree that it is important to withhold from disclosure sensitive information such as that which is protected by NHPA Section 304 (16 U.S.C. § 470w-3) (*e.g.*, the location, character and ownership of an historic resource, if disclosure would cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners), BOEM shall:
1. Request that, by the second consultation meeting, each Party inform the other Parties if, by law or policy, it is unable to withhold sensitive data from public release.
 2. Arrange for the Parties to consult as needed on how to protect such information collected or generated under this Agreement.
 3. Follow, as appropriate, 36 CFR 800.11(c) for authorization to withhold information pursuant to NHPA Section 304, and otherwise withhold sensitive information to the extent allowable by laws including the Freedom of Information Act, 5 U.S.C. § 552, through the Department of the Interior regulations at 43 CFR Part 2.
 4. Request that the Parties agree that materials generated during consultation be treated by the Parties as internal and pre-decisional until they are formally released, although the Parties understand that they may need to be released by one of the Parties if required by law.

VIII. ADMINISTRATIVE STIPULATIONS

- A. In coordinating reviews, BOEM shall follow this process:
1. Standard Review: The Parties shall have a standard review period of thirty (30) calendar days for commenting on all documents, resource evaluations of significance, treatment plans, and specifications which are developed under the terms of this Agreement, from the date they are sent by BOEM via electronic media (email or secure website).
 2. Expedited Request for Review: The Parties recognize the time-sensitive nature of this work and shall attempt to expedite comments or concurrence when BOEM so requests. The expedited comment period shall not be less than fifteen (15) calendar days from the date BOEM sends such a request via electronic media.

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

3. If a Party cannot meet BOEM’s expedited review period request, it shall so notify BOEM in writing within the fifteen (15) calendar day period. If a Party fails to provide comments or respond within the time frame requested by BOEM (either standard or expedited), then BOEM may proceed as though it has received concurrence from that Party. BOEM shall consider all comments received within the review period.
 4. All Parties will send correspondence and materials for review and via electronic media unless a Party requests, in writing, that BOEM transmit the materials by an alternate method specified by that Party. BOEM will attempt to accommodate these requests. However, the time and expense involved in transmitting review materials by an alternate method may preclude BOEM from accommodating these requests, in which case BOEM will send the review materials to that Party via electronic media. In any case, should BOEM transmit the review materials by the alternate method identified by the Party, the review period will begin on the date they are or would have otherwise been sent via electronic media.
 5. Each Party shall designate a point of contact for carrying out this Agreement and provide this contact’s information to the other Parties, updating it as necessary while this Agreement is in force. Updating a point of contact alone shall not necessitate an amendment to this Agreement.
- B. Dispute Resolution. Should any Signatory or Invited Signatory object in writing to BOEM regarding an action carried out in accordance with this Agreement, or lack of compliance with the terms of this Agreement, the Signatories and Invited Signatories shall consult to resolve the objection. Should the Signatories and Invited Signatories be unable to resolve the disagreement, BOEM shall forward its background information on the dispute as well as its proposed resolution of the dispute to the ACHP. Within 45 calendar days after receipt of all pertinent documentation, the ACHP shall either: (1) provide BOEM with written recommendations, which BOEM shall take into account in reaching a final decision regarding the dispute; or (2) notify BOEM that it shall comment pursuant to 36 CFR 800.7(c), and proceed to comment. BOEM shall take this ACHP comment into account, in accordance with 36 CFR 800.7(c)(4). Any ACHP recommendation or comment shall be understood to pertain only to the subject matter of the dispute; BOEM’s responsibility to carry out all actions under this Agreement that are not subjects of dispute shall remain unchanged.
- C. Amendments. Any Signatory or Invited Signatory may propose to BOEM in writing that the Agreement be amended, whereupon BOEM shall consult with the Parties to consider such amendment. This Agreement may then be amended when agreed to in writing by all Signatories and Invited Signatories, becoming effective on the date that the amendment is executed by the ACHP as the last Signatory.

Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

- D. Adding Federal Agencies. In the event that another Federal agency believes it has Section 106 responsibilities related to the undertakings which are the subject of this Agreement, that agency may attempt to satisfy its Section 106 responsibilities by agreeing in writing to the terms of this Agreement and notifying and consulting with the SHPOs and the ACHP. Any modifications to this agreement that may be necessary for meeting that agency’s Section 106 obligations shall be considered in accordance with Stipulation VIII.C of this Agreement.
- E. Term of Agreement. The Agreement shall remain in full force until BOEM makes a final decision on the last SAP submitted under a lease issued under this portion of the “Smart from the Start” initiative, or for ten (10) years from the date the agreement is executed, defined as the date the last signatory signs, whichever is earlier, unless otherwise extended by amendment in accordance with Stipulation VIII.C of this Agreement.
- F. Termination.
1. If any Signatory or Invited Signatory determines that the terms of the Agreement cannot or are not being carried out, that Party shall notify the other Signatories and Invited Signatories in writing and consult with them to seek amendment of the Agreement. If within sixty (60) calendar days, an amendment cannot be made, any Signatory or Invited Signatory may terminate the Agreement upon written notice to the other Signatories and Invited Signatories.
 2. If termination is occasioned by BOEM’s final decision on the last SAP contemplated under this portion of the “Smart from the Start” Initiative, BOEM shall notify the Parties and the public, in writing.
- G. Anti-Deficiency Act. Pursuant to 31 U.S.C. § 1341(a)(1), nothing in this Agreement shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or obligation for the further expenditure of money in excess of such appropriations.
- H. Existing Law and Rights. Nothing in this Agreement shall abrogate existing laws or the rights of any consulting party or agency party to this Agreement.
- I. Compliance with Section 106. Execution and implementation of this Agreement evidences that BOEM has satisfied its Section 106 responsibilities for all aspects of these proposed undertakings by taking into account the effects of these undertakings on historic properties and affording the ACHP a reasonable opportunity to comment with regard to the undertakings.

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

By:



Date: 12-21-11

Maureen A. Bornholdt
Program Manager, Office of Renewable Energy Programs
Bureau of Ocean Energy Management

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia



Date: 1/20/2012

Timothy A. Slavin
Director
and State Historic Preservation Officer

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia



Date: 1-18-12

J. Rodney Little
Maryland State Historic Preservation Officer
Maryland State Historic Preservation Office

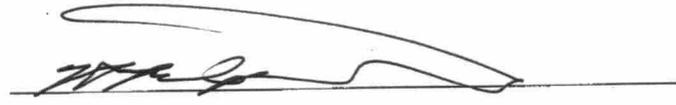
Programmatic Agreement concerning the “Smart from the Start” Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia



Date: JAN. 31, 2012

Daniel D. Saunders
Deputy State Historic Preservation Officer
New Jersey State Historic Preservation Office
New Jersey Department of Environmental Protection

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia



Date: 4/18/12

Kathleen S. Kilpatrick, Director
Department of Historic Resources and Virginia State Historic Preservation Officer
Virginia State Historic Preservation Office

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia



Date: 01/11/2012

[NAME] John Brown

[TITLE] Narragansett Indian Tribal Historic Preservation Officer
Narragansett Indian Tribe

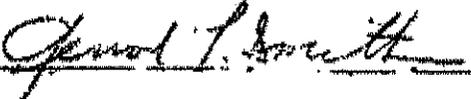
Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia

TRUSTEES OF THE SHINNECOCK INDIAN NATION



RANDY KING
TRUSTEE, CHAIRMAN

Date: 1/20/2012



GERROD SMITH
TRUSTEE,

Date: 1/20/2012



FRED BESS
TRUSTEE,

Date: 01/20/2012

Programmatic Agreement concerning the "Smart from the Start" Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey and Virginia



Date: 1/31/12

John M. Fowler
Executive Director
Advisory Council on Historic Preservation



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

Washington, DC 20240

Mr. Rodney Little
State Historic Preservation Officer
Maryland Historical Trust
100 Community Place, 3rd Floor
Crownsville, Maryland 21032-2023

MAR 11 2011

Dear Mr. Little:

On November 23, 2010, Secretary of the Interior Ken Salazar announced the “Smart from the Start” renewable energy initiative to streamline responsible renewable wind energy development on the Atlantic Outer Continental Shelf (OCS) by identifying areas most conducive to wind energy development, coordinating environmental studies, and utilizing large-scale planning and an expedited leasing process. These Wind Energy Areas (WEAs), under consideration for future leasing, may be further refined or modified as a result of any comments received on public notices, results of environmental analyses and consultations. More information on the “Smart from the Start” initiative can be found in the February 9, 2011, Notice of Intent (NOI) to Prepare an environmental assessment (EA) for leasing offshore the Mid-Atlantic States (76 FR 7226).

Under the “Smart from the Start” initiative, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is planning to prepare a regional environmental assessment that will consider the environmental consequences of (1) issuing leases; (2) site characterization activities that lessees may undertake on those leases (e.g., geophysical, geotechnical, archaeological and biological surveys); and (3) the subsequent approval of site assessment activities on the leaseholds (e.g., installation and operation of meteorological towers and buoys) in specific WEAs identified offshore New Jersey, Delaware, Maryland, and Virginia. See the enclosed NOI (which describes the WEAs). BOEMRE has determined that issuing leases and subsequently approving site assessment activities in these WEAs constitute an undertaking subject to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations (36 CFR 800).

Although bottom-disturbing activities (e.g., core sampling and associated anchoring and placement of meteorological structures) on the OCS have the potential to affect historic properties, BOEMRE feels that the archaeological and geophysical surveys that lessees will undertake (in part, to identify these resources on the seafloor in the first instance) will likely avoid or minimize effects of the proposed undertaking (i.e., BOEMRE issuing leases and subsequently approving site assessment activities) on historic properties.

Similarly, while it is possible that some meteorological towers may be visible from shore, BOEMRE believes that the impact these structures may have on historic properties will likely be negligible, if there is any impact at all. Nevertheless, BOEMRE is initiating this formal Section 106 consultation pursuant to 36 CFR 800.2(c)(1) to ensure that a wide range of views and information is taken into consideration as early in the decision-making process as possible.

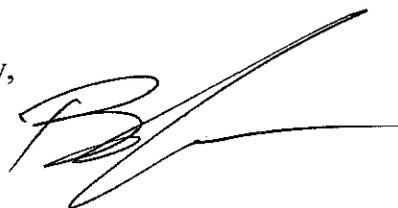
Although the proposed undertaking is situated in Federal waters, BOEMRE is requesting the views of the State Historic Preservation Officer (SHPO) and your office on further actions to identify the Area of Potential Effect (APE) and any historic properties that may be affected by the proposed project, as required by 36 CFR 800.4. BOEMRE acknowledges that a SHPO may possess knowledge or special expertise regarding historic properties within the proposed project area. In addition, BOEMRE is requesting any information you may have regarding other parties, tribes, or members of the public you believe should be included in the consultation process as per 36 CFR 800.3(f).

Please find enclosed the necessary documentation regarding the proposed project area for the Federal undertaking, per 36 CFR 800.11. BOEMRE is acting as the lead Federal agency fulfilling the collective Federal responsibilities under 36 CFR 800.2(a)(2), while the U.S. Army Corps of Engineers will act as a co-consulting agency due to their permitting authority of bottom-founded structures on the OCS (33 U.S.C. 403).

BOEMRE invites comments regarding any other concerns that the proposed undertaking may raise. Should you have any questions about this undertaking you may contact Kathleen Tyree at (703) 787-1623 or Kathleen.Tyree@BOEMRE.gov.

Thank you in advance for your timely response and cooperation. I look forward to receiving your response within 30 days of receipt of this submittal in accordance with 36 CFR 800.3(c)(4).

Sincerely,



Brian Jordan, Ph.D.
Federal Preservation Officer
Headquarters Archaeologist

Enclosures:

NOI
MAP of Proposed Project Area

cc: Elizabeth Hughes, Deputy, Maryland Historical Trust
Michael Day, Deputy, Maryland Historical Trust



RECEIVED
4/21/11
in O AEP

Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary

Matthew J. Power
Deputy Secretary

April 15, 2011

Dr. Brian Jordan
Federal Preservation Officer / Headquarters Archaeologist
Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE)
Environmental Division
381 Elden Street, MS 4042
Herndon, VA 20170-4817

Re: Commercial Wind Lease Issuance and Site Characterization Activities
Atlantic Outer Continental Shelf Offshore NJ, DE, MD and VA
Section 106 Review – DOI/BOEMRE

Dear  Dr. Jordan:

Thank you for your recent letter, dated March 11, 2011 and received by the Maryland Historical Trust (Trust) on March 17, 2011, regarding the above-referenced initiative.

Your letter afforded official notification of this undertaking and initiated consultation with the Trust, Maryland's State Historic Preservation Office, pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. We appreciated the informal briefing regarding BOEMRE's off shore wind energy development that you gave to Trust staff members on February 16, 2011. Trust staff also attended the Maryland BOEMRE Renewable Energy Task Force meeting on March 23, 2011, which provided us with a better understanding of the nature, scope, and schedule for the off shore commercial wind lease efforts. We reviewed the submitted materials and offer the following preliminary comments.

According to the information provided, the current undertaking entails the following three actions:

1. Issuing leases;
2. Implementing site characterization activities that lessees may conduct on those lease areas (such as geophysical, geotechnical, biological, and archeological surveys); and
3. Subsequent approval of site assessment activities on the leaseholds (installation and operation of meteorological towers and buoys).

BOEMRE is preparing a regional environmental assessment to cover these actions. At this point, it is difficult to say what effects, if any, the current activities of lease issuance, site characterization, and site assessment activities would have on historic and archeological properties. We await further consultation with BOEMRE and other involved parties as project planning progresses for the lease areas beyond Maryland's shore.

The current undertaking does *not* include or address the construction and operation of any actual commercial wind energy facilities within the lease areas. BOEMRE would address such actions during future project planning and develop one or more environmental impact statements. It is during this later phase of planning when BOEMRE would identify the full scope of any construction and operation effort (including the size and extent of wind turbines, construction assembly and staging areas, associated energy connection facilities, etc.). Such actions may have the potential to affect historic properties off shore as well as on land.

Brian Jordan
Commercial Wind Lease Issuance and Site Characterization Activities
Atlantic Outer Continental Shelf Offshore NJ, DE, MD and VA
April 15, 2011
Page 2 of 3

During our meeting on February 16, 2010, you mentioned several studies / documents under development by BOEMRE that have relevance for cultural resources and historic preservation issues. These include a general study to assess the potential for surviving cultural resources located in the offshore and coastal areas; a GIS and line of sight tool that will serve as a visual and analytical guide to help assess the visual effects of offshore wind energy development on land based resources; and a scope of work for the underwater archeological survey investigations that lessees would be conducting as part of the site characterization activities. We would appreciate receiving copies of these documents when they are available, as they will provide useful information to inform cultural resources review and management decisions as project planning progresses.

Your letter requested information regarding other parties, tribes, or members of the public who should be invited to participate in the Section 106 consultation for this undertaking. For your reference, we have attached a copy of the contact information for federally recognized tribes that have expressed an interest in consulting on Maryland projects with involvement from the Federal Highway Administration (FHWA). FHWA, in coordination with the MD State Highway Administration, made a concerted effort over the last several years to identify and reach out to federal tribes that may be interested in consulting on their projects. BOEMRE may want to consider implementing a comparable effort to identify what tribes, if any, are interested in the offshore wind energy development efforts.

Other organizations you may want to inform about the undertaking include the Maryland Commission on Indian Affairs, the Lower Eastern Shore Heritage Council, Inc., and Preservation Maryland, see contact information below. Additional agencies and other parties may arise through future consultation and as a result of BOEMRE's outreach efforts during its preparation of the environmental assessment.

Maryland Commission on Indian Affairs
E. Keith Colston, Administrator
301 West Preston Street, Suite 1500
Baltimore, MD 21201
410-767-7631
Email: KColston@goci.state.md.us
Website: www.americanindian.maryland.gov/index.html

Lower Eastern Shore Heritage Council, Inc.
Mr. Jay Parker, Executive Director
P.O. Box 4601
Salisbury, MD 21803
E-mail: leshc1@aol.com
Website: www.lowershoreheritage.org

Preservation Maryland
Tyler Gearhart, Executive Director
24 W. Saratoga Street
Baltimore, MD 21201
410-685-2886
E-mail: PM@preservemd.org
Website: www.preservemd.org

Brian Jordan
Commercial Wind Lease Issuance and Site Characterization Activities
Atlantic Outer Continental Shelf Offshore NJ, DE, MD and VA
April 15, 2011
Page 3 of 3

We appreciate BOEMRE's proactive endeavors to consider effects on historic properties early in project planning efforts for this important initiative. We look forward to working with BOEMRE, other involved agencies and any consulting parties to successfully complete the Section 106 review for the various phases of project planning and implementation. If you have questions or require further assistance, please contact Beth Cole, Administrator, Project Review and Compliance at 410-514-7631 / bcole@mdp.state.md.us or Troy Nowak, Assistant Underwater Archeologist at 410-514-7668 or tnowak@mdp.state.md.us.

Thank you for providing us this opportunity to comment.

Sincerely,



J. Rodney Little
Director / State Historic Preservation Officer

JRL/EJC/201101066

Attachment – Contact Information for Federally Recognized Tribes for SHA Consultation (8-16-10)

cc: Kathleen Tyree (BOEMRE)
Andrew Gohn (MEA)
Sean Kiernan (MDP)

Contact Information for Federally Recognized Tribes for SHA Consultation

(8-16-10)

Oneida Indian Nation

Raymond Halbritter, Nation Representative
5218 Patrick Road
Verona, NY 13478

cc to:

Jesse Bergevin, Historic Resources Specialist
1256 Union Street, P.O. Box 662
Oneida, NY 13421-0662

315-829-8463
jbergevin@oneida-nation.org

Onondaga Nation

Tony Gonyea, Faithkeeper
RR 1, Box 319 B
Nedrow, NY 13120

315-952-3109
ononationhispres@aol.com

(Shannon Keller O'Loughlin no longer works for Onondaga. She now represents the Seneca Nation of Indians.)

Tuscarora Nation

Stuart Patterson, Chief
Tuscarora Nation, Chiefs Council
1983 Upper Mountain Rd.
Sanborn, NY 14132

716-298-5114
no email

The Delaware Nation

Tamara Francis, Cultural Preservation Director
Cultural Preservation Department
The Delaware Nation
P.O. Box 825
Anadarko, OK 73005

405-247-2448, ext. 1180
405 247-8905 (Fax)
tfrancis@delawarenation.com

cc to:

Kerry Holton, Tribal President (male)
The Delaware Nation
P.O. Box 825
Anadarko, OK 73005

Jason Ross, Museum/Section 106 Assistant
same address

405 247-2448
jross@delawarenation.com

Eastern Shawnee Tribe

Ms. Robin Dushane
Cultural Preservation Director
Eastern Shawnee Tribe
P.O. Box 350
Seneca, MO 64865

918-666-2435 ext. 247
918-533-4101 cell
rdushane@estoo.net

Absentee-Shawnee Tribe of Oklahoma

Ms. Karen Kaniatobe
Tribal Historic Preservation Officer
2025 S. Gordon Cooper Drive
Shawnee, OK 74801

405-275-4030 ext. 199
405-878-4533 FAX
kkaniatobe@astribe.com

Saint Regis Mohawk Tribe

Mr. Arnold Printup, THPO
Saint Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655

518-358-2272 ext. 164
arnold.printup@srmt-nsn.gov
518-358-3203 (Fax)

Please cc: Carol Ebright on all SHA letters to tribes



United States Department of the Interior

BUREAU OF OCEAN ENERGY
MANAGEMENT, REGULATION AND ENFORCEMENT

Washington, DC 20240

SEP 16 2011

Mr. Jay Rodney Little
State Historic Preservation Officer
Maryland Historical Trust
100 Community Place, 3rd Floor
Crownsville, Maryland 21032-2023

Dear Mr. ^{Rodney}Little

On November 23, 2010, Secretary of the Interior Ken Salazar announced the “Smart from the Start” renewable energy initiative to simplify responsible renewable wind energy development on the Atlantic Outer Continental Shelf (OCS) by identifying areas most conducive to wind energy development, coordinating environmental studies, and utilizing large-scale planning and an expedited leasing process. These Wind Energy Areas (WEAs) under consideration for future leasing, may be further refined or modified as a result of any comments received on public notices, results of environmental analyses, and consultations with the tribes, the public, and other Federal and state agencies. More information on the “Smart from the Start” initiative can be found in the February 9, 2011, Notice of Intent (NOI) to Prepare an environmental assessment (EA) for leasing offshore the Mid-Atlantic States (76 FR 7226).

Under the “Smart from the Start” initiative, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) has prepared a draft regional EA that will consider the environmental consequences of (1) issuing leases; (2) site characterization activities that lessees may undertake on those leases (e.g., geophysical, geotechnical, archaeological and biological surveys); and (3) the subsequent approval of site assessment activities on the leaseholds (e.g., installation and operation of meteorological towers and buoys) in specific WEAs identified offshore New Jersey, Delaware, Maryland, and Virginia. The full text of the draft EA, including maps depicting the project areas for each state, can be obtained at: http://www.boemre.gov/offshore/RenewableEnergy/PDFs/MidAtlanticWEAs_DraftEA.pdf and is included in this mailing.

BOEMRE has determined that issuing leases and subsequently approving site assessment activities in these WEAs constitute an undertaking subject to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations (36 CFR 800). The Maryland Historical Trust has been identified as possibly having information pertinent to historic resources in the area. BOEMRE respectfully requests that the Maryland Historical Trust review the EA and offer any information (not previously shared) related to known historic sites or cultural properties within the areas that may be affected by leasing, site characterization activities, and the construction of meteorological towers in the WEAs. This information will allow the agency to consider and document potential effects to historic properties early in the Section 106 process in accordance with 36 CFR 800.4 and 800.5.

Although bottom-disturbing activities (e.g., core sampling and associated anchoring and placement of meteorological structures) on the OCS have the potential to affect historic properties, BOEMRE feels that the archaeological and geophysical surveys that lessees will undertake (in part, to identify these resources on the seafloor in the first instance) will likely avoid or minimize effects of the proposed undertaking (i.e., BOEMRE issuing leases and subsequently approving site assessment activities) on historic properties. Similarly, while it is possible that some meteorological towers may be visible from shore, BOEMRE believes that the impact these structures may have on historic properties will likely be negligible, if there is any impact at all.

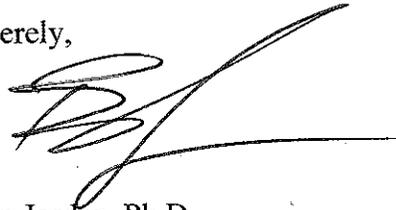
Please find the necessary documentation regarding the proposed project area for the Federal undertaking, per 36 CFR 800.11, enclosed. BOEMRE is acting as the lead Federal agency fulfilling the collective Federal responsibilities under 36 CFR 800.2(a)(2), while the U.S. Army Corps of Engineers will act a co-consulting agency due to their permitting authority of bottom-founded structures on the OCS (33 U.S.C. 403).

BOEMRE invites comments regarding any other concerns that the proposed undertaking may raise. BOEMRE intends to use the standard Section 106 process as described in 36 CFR 800.3 through 800.6, and requests that Maryland Historical Trust respond to this letter so that we may discuss this undertaking and any other identified areas of interest. Should you, or your representative, have any questions about this undertaking you may contact BOEMRE Archaeologist Brandi Carrier Jones at (703) 787-1623 or Brandi.CarrierJones@boemre.gov. Any correspondence may also be sent to Ms. Carrier Jones at the following address:

Department of the Interior
Bureau of Ocean Energy Management, Regulation and Enforcement
Office of Offshore Alternative Energy Programs
381 Elden Street, MS 4090
Herndon, VA 20170-4817

Thank you in advance for your timely response and cooperation. I look forward to receiving your response within 30 days of receipt of this submittal.

Sincerely,



Brian Jordan, Ph.D.
Federal Preservation Officer
Headquarters Archaeologist

Enclosures:

Mid-Atlantic Regional EA
MAP of Proposed Project Area



Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

November 4, 2011



Dr. Brian Jordan
Federal Preservation Officer / Headquarters Archaeologist
Bureau of Ocean Energy Management (BOEM)
Office of Offshore Alternative Energy Programs
381 Elden Street, MS 4090
Herndon, VA 20170-4817

Re: Smart from the Start Atlantic Wind Energy Initiative
Leasing and Site Assessment Activities within the
Wind Energy Areas (WEAs) offshore NJ, DE, MD, and VA
Section 106 Review – DOI/BOEM

Dear Dr. Jordan:

Thank you for your recent letter and email submittals to the Maryland Historical Trust (Trust) as part of ongoing consultation for the above-referenced initiative, pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966. Trust staff appreciated the opportunity to participate in the Section 106 consultation webinar meeting on October 11, 2011, which provided us with a good sense of BOEM's intended consultation process for the off shore leasing and site assessment efforts. We reviewed the submitted materials and offer the following preliminary comments.

Your recent letter, dated September 16, 2011, informed the Trust of BOEM's Draft Environmental Assessment (EA), *Commercial Wind Lease Issuance And Site Characterization Activities On The Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, And Virginia - Draft Environmental Assessment*, available for review online. The letter also requested information regarding any cultural resources, of which we may be aware, located within the WEAs that may be affected by leasing, site characterization activities, and construction of meteorological towers in the WEAs. Trust staff reviewed the EA and we have no specific new information regarding known or likely cultural resources in the WEAs or comments on the EA. Nevertheless, the WEAs certainly have the potential to contain significant resources eligible for inclusion in the National Register of Historic Places that have not yet been identified. The specific site assessment studies undertaken as part of project planning may generate new data on this issue. We look forward to receiving the results of any applicable investigations, when available.

As discussed at the Section 106 consultation webinar, BOEM prepared a draft Programmatic Agreement (PA), *Programmatic Agreement among the Bureau of Ocean Energy Management, the DE SHPO, the MD SHPO, the NJ SHPO, the VA SHPO, the Advisory Council on Historic Preservation, and the Narragansett Indian Tribe Regarding the Smart from the Start Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore Delaware, Maryland, New Jersey, and Virginia*. BOEM provided an electronic copy of the draft PA to the various consulting parties on October 21, 2011, for review and comment. Trust staff reviewed the document, and we are pleased with the overall spirit, intent, and consultation process outlined in the agreement. We have no substantive comments to offer at this time and anticipate that some additional editing will help clarify the stipulated consultation process and various involved parties as leasing and site assessment activities proceed. We do wish to express our reservations regarding Stipulation IV.A.4, which provides for the submittal of review documents via email. Our computer systems have difficulty accepting, opening and reading complex documents, maps, and plans. It may be more

Brian Jordan
Smart from the Start Atlantic Wind Energy Initiative
Leasing and Site Assessment Activities
November 4, 2011
Page 2 of 2

effective to submit such materials on a disc or post them on a secure website. We await copy of the revised draft PA for final review prior to signature.

We appreciate BOEM's positive efforts to include the State Historic Preservation Offices in the consultation for the current undertaking, and consider the effects of the initiative on historic properties during project planning. We look forward to working with BOEM and the other consulting parties to execute the PA and implement its consultation process as the leasing and site assessment portion of the initiative proceeds. If you have questions or require further assistance, please contact Beth Cole, Administrator, Project Review and Compliance at 410-514-7631 / bcole@mdp.state.md.us or Troy Nowak, Assistant Underwater Archeologist at 410-514-7668 or tnowak@mdp.state.md.us.

Thank you for providing us this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Rodney Little". The signature is fluid and cursive, with a long horizontal stroke at the end.

J. Rodney Little
Director / State Historic Preservation Officer

JRL/EJC/TJN/201103731/201104137
cc: Brandi Carrier Jones (BOEM)
Thomas McCulloch (ACHP)
Andrew Gohn (MEA)



Maryland Department of Planning
Maryland Historical Trust

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor

Richard Eberhart Hall
Secretary
Matthew J. Power
Deputy Secretary

November 16, 2011

Dr. Brian Jordan
Federal Preservation Officer / Headquarters Archaeologist
Bureau of Ocean Energy Management (BOEM)
Office of Offshore Alternative Energy Programs
Submitted via Email

Re: Smart from the Start Atlantic Wind Energy Initiative Leasing and Site Assessment Activities within the Wind Energy Areas (WEAs) offshore NJ, DE, MD, and VA

Dear Dr. Jordan:

Thank you for providing the Maryland Historical Trust (Trust) / MD SHPO with a copy of the revised draft PA for the *Smart from the Start Atlantic Wind Energy Initiative: Leasing and Site Assessment Activities within the Wind Energy Areas offshore DE, MD, NJ, and VA*. Trust staff members carefully reviewed the document. The revised draft PA provides greater clarity concerning the review responsibilities and consultation process established under the PA, and reflects the issues raised by the various consulting parties during the review of the first draft. As mentioned in our prior correspondence, the Trust is comfortable with the spirit, intent, and processes specified in the draft PA. We have a few minor comments on the current draft for your consideration in finalizing the document for signature.

1. WHEREAS CLAUSE (page 4, lines 19-20): We do not believe that BOEMs existing guidelines meet or exceed the guidelines established by the Maryland SHPO for submerged cultural resources surveys. We also do not feel that a comparison between federal and state survey guidelines is appropriate.

Please remove page 4, lines 19-20 [“(2) meet or exceed those standards and guidelines established by the affected states’ SHPO”] from the document, provide us with a copy of BOEM’s current guidelines, and insert a reference to those guidelines in this clause.

2. Stipulation II. E. (page 6, lines 6-7): We request clarification and suggest: “Discuss with the Parties other identification methods BOEM should consider to meet its “reasonable and good faith” identification standards (as described in _____; or insert appropriate reference here) that deviate from BOEM’s guidelines (as described in _____; or insert appropriate reference here) in effect at the time of lease issuance.”
3. Stipulation IV.D. (page 7, lines 11-12): We request clarification and suggest: “Discuss what additional steps to take, and methods to be used for further identification of *historic properties* beyond BOEM’s guidelines (as described in _____; or insert appropriate reference here).
4. Stipulation IV.E. (page 7, lines 13-16): Please provide a reference for BOEM’s guidelines.
5. Stipulation IV.G (page 7, line 23): Please add the phrase “consistent with 36 CFR 800.4(c)” to set some parameters for the consultation with the appropriate SHPO regarding eligibility determinations.

6. Stipulation IV.I (page 7, lines 26-27): Please change to: “. . . a finding of *No historic properties affected*, consistent with 36 CFR 800.4 (d)(1).”
7. Stipulation IV.J.2 (page 7, line 33): For consistency with Stipulation II.M.2, please add the phrase “as described in 36 CFR 800.6.”
8. Stipulation IV.K (page 7, lines 34 – 35): What is meant by the statement “consider other Section 106 matters pertaining to the undertakings?” It is not clear to us what other potential issues are not addressed in the above-stated process. This stipulation could lead to misunderstandings regarding issues that may be addressed under this PA.
9. Stipulation VIII.A.6 (page 9, line 26): Should this read “found at Stipulation VIII.C (below).”-?

We appreciate this opportunity to comment on the revised draft PA, and look forward to participating in the upcoming webinar tentatively set for December 15, 2011. If you have questions or require further assistance, please contact Troy J. Nowak, Assistant State Underwater Archeologist at tnowak@mdp.state.md.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy J. Nowak', with a long horizontal line extending to the right.

Troy J. Nowak
Assistant State Underwater Archaeologist
Maryland Historical Trust

EJC/TJN/201104515

CC: Brandi Carrier Jones (BOEM)



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT

WASHINGTON, DC 20240-0001

OCT 20 2011

Dr. Thomas McCulloch, Ph.D., R.P.A.
Senior Archaeologist
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Washington, D.C. 20004

Dear Dr. McCulloch:

The Smart from the Start Initiative, announced on November 23, 2010 by Secretary of the Interior Ken Salazar, wind energy initiative was designed in part to identify areas that appear to be most suitable for wind energy development. These Wind Energy Areas (WEAs) were identified through Bureau of Ocean Energy Management (BOEM) Intergovernmental Task Forces comprised of state, local, and tribal officials; comments received on public notices; and consultations.¹

BOEM is considering (1) issuing leases, and (2) subsequently approving site assessment plans (SAPs) for those leaseholds within four WEAs offshore Delaware, Maryland, New Jersey, and Virginia.

The leases issued by BOEM would give the lessees the exclusive right to submit a SAP for BOEM's approval. The SAP includes details such as where site assessment structures (e.g., meteorological towers and buoys) would be placed; and the results of site characterization survey data, which includes cultural resources survey and archaeological inventory.²

BOEM has determined that issuing leases and approving site assessment activities constitute an undertaking subject to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), and its implementing regulations (36 CFR 800).

Furthermore, BOEM has determined that bottom-disturbing activities (e.g., core sampling and associated anchoring and placement of meteorological structures) on the Outer Continental Shelf (OCS) have the potential to affect historic properties. If it is determined through consultation that historic properties might be adversely affected by the undertaking, BOEM intends to resolve adverse effects primarily through avoidance.

¹ Additional information, including detailed maps of the WEAs, is available at:

http://www.boemre.gov/offshore/RenewableEnergy/PDFs/MidAtlanticWEAs_DraftEA.pdf

² Leases will not allow the lessee to construct any commercial-scale wind generating facilities. A separate, site- and project-specific Section 106 consultation would take place in the future, should a lessee ultimately propose the construction of a commercial wind energy facility in a COP. 30 CFR 285.620-.626.

Conversely, while it is possible that some meteorological towers may be visible from shore, BOEM believes that these structures would be indistinguishable from lighted vessel traffic and because of their temporary nature will have negligible impacts on historic properties.

BOEM currently has limited information regarding the presence or absence of historic properties within the WEAs. One of the primary reasons BOEM requires lessees to submit the results of site characterization surveys in a SAP is so that potential cultural resources on the leasehold can be identified. Because the complete identification of historic properties would not take place until after leases are issued, BOEM is drafting a Programmatic Agreement (PA) to establish the process through which consultation will continue regarding all information generated as a result of ongoing site characterization activities. This will inform BOEM's future decisions regarding the approval, approval with modification, or disapproval of lessees' SAPs (30 CFR 285.605-.613). Using a phased approach set out in a PA will allow the consulting parties to participate in determining how potential adverse affects to newly identified historic properties will be addressed when BOEM considers lessees' SAPs – either by avoidance or mitigation.

BOEM currently is drafting a proposed PA to discuss with the consulting parties, and invites the Advisory Council on Historic Preservation's participation in this Section 106 consultation. Should you, or your representative, have any additional questions you may contact me at (703) 787-1549 or Brandi.CarrierJones@boem.gov or BOEM's Federal Preservation Officer, Dr. Brian Jordan, at (703) 787-1748 or Brian.Jordan@boem.gov. Correspondence may also be sent to my attention at the following address:

Department of the Interior
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
381 Elden Street, HM 1328
Herndon, Virginia 20170-4817

With Warm Regards,

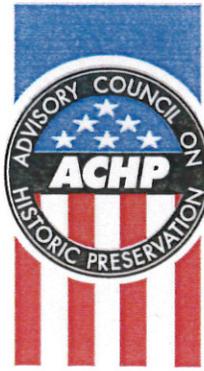
A handwritten signature in black ink, appearing to read 'Brandi Carrier Jones', with a long horizontal line extending to the right.

Brandi Carrier Jones
Archaeologist

Milford Wayne Donaldson, FAIA
Chairman

Clement A. Price Ph.D.
Vice Chairman

John M. Fowler
Executive Director



Preserving America's Heritage

October 24, 2011

Mr. Tommy Beaudreau
Director
Bureau of Ocean Energy Management
1849 C Street, NW
Washington, D.C. 20240

Ref: Smart from the Start identification of mid-Atlantic Wind Energy Areas offshore
Delaware, Maryland, New Jersey, and Virginia

Dear Mr. Beaudreau:

The Advisory Council on Historic Preservation (ACHP) has been invited by the Bureau of Ocean Energy Management (BOEM) to participate in the referenced undertaking to help ensure that historic properties are fully considered in wind energy development off the mid-Atlantic coast. Pursuant to the Criteria for Council Involvement in Reviewing Individual Section 106 Cases (Appendix A to our regulations, 36 CFR Part 800) we believe the criteria are met for our participation in this undertaking. Issuing leases and approving site assessment plans for leaseholds will be a very complex activity that may present substantial impacts to important historic properties or involve questions of policy or interpretation. Accordingly, the ACHP will participate in consultation with BOEM and other stakeholders to seek ways to avoid, reduce, or mitigate adverse effects to historic properties.

By copy of this letter we are also notifying Dr. Brian Jordan, BOEM's Federal Preservation Officer, of our decision to participate in consultation.

Our participation will be handled by Dr. Tom McCulloch, who can be reached at 202-606-8554 or at tmcculloch@achp.gov. We look forward to working with Reclamation on this important project.

Sincerely,

John M. Fowler
Executive Director