



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240



Ms. Janet Snyder-Matthews, Ph.D.
National Park Service
Keeper of the Register
National Register of Historic Places
1201 Eye Street, NW (2280)
Washington, DC 20005

NOV 18 2009

RE: National Register Eligibility Opinion for Nantucket Sound as a Traditional Cultural Property, Cape Wind Energy Project.

Dear Dr. Matthews:

On October 9, 2009, in accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470f), and its implementing regulation, 36 CFR 800, the MMS submitted its "*National Register Eligibility Determination for Nantucket Sound as a Traditional Cultural Property and Historic Property*" to the Massachusetts State Historic Preservation Officer (SHPO) of the Massachusetts Historical Commission.

In its submission to SHPO, the MMS concluded that Nantucket Sound is not eligible for listing as a Traditional Cultural Property (TCP) or a historic property on the National Register of Historic Places (NRHP) because it does not meet any of the Criteria of Eligibility (36 CFR Part 60). On November 5, 2009, SHPO concluded that Nantucket Sound "is a Wampanoag Traditional Cultural Property that meets the Criteria of Eligibility for listing in the National Register of Historic Places under Criteria A, B, C, and D at the local level of significance."

The MMS disagrees with SHPO and stands by its original determination that Nantucket Sound is not eligible for listing as a TCP or historic property on the NRHP. Because of this disagreement, the MMS hereby seeks a formal Determination of Eligibility (36 CFR Part 63) from the Keeper of the National Register pursuant to 36 CFR 800.4(c)(2).

There are two attachments to this cover letter. Attachment 1 includes a brief description of the proposed Cape Wind Energy Project. Attachment 2 includes a discussion on points made in the SHPO's eligibility determination opinion with which the MMS disagrees. In addition, after consulting the regulations and talking with staff at the National Register, the MMS has included the following documentation to help the Register in its evaluation, (submitted via hard copy and electronic file):

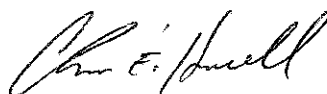
- MMS Nantucket Sound eligibility determination, with attachments (October 9, 2009)
- SHPO Nantucket Sound opinion (November 5, 2009)
- MMS eligibility determination for Wampanoag sites on Cape Cod and Martha's Vineyard (submitted to SHPO on November 17, 2009 and currently under consideration)



- NPS report on impacts to NHLs (October 20, 2009)
- MMS Finding of Adverse Effect (December 2008)
- Letter from the Advisory Council on Historic Preservation to MMS (June 23, 2009)
- NOAA Nautical Chart #13237 showing proposed project area (white dotted line shows Federal/State jurisdictional boundary)
- **Report No. 4.3.4-1.** Public Archeological Laboratory (PAL). 2006. Cape Wind Energy Project Visual Impact Assessment of Revised Layout on Multiple Historic Properties: Final Environmental Impact Report. Nantucket Sound: Cape Cod, Martha's Vineyard, and Nantucket, Massachusetts. PAL Report No. 1485.05. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I. September 2006.
- **Report No. 4.3.5-2.** Robinson, D. S., B. Ford, H. Herbster, and J. N. Waller, Jr. 2003. Marine Archaeological Sensitivity Assessment, Cape Wind Energy Project, Nantucket Sound, Massachusetts. Submitted by Public Archeological Laboratory. PAL Report No. 1485. Submitted to Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 4.3.5-3.** Robinson, D. S., B. Ford, H. Herbster, and J. N. Waller, Jr. 2004. Marine Archaeological Reconnaissance Survey Cape Wind Energy Project, Nantucket Sound, Massachusetts. Submitted by Public Archeological Laboratory. PAL Report No. 1485. Submitted to Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 4.3.5-4.** Public Archeological Laboratory (PAL), 2006. Supplement Report, Cape Wind Energy Project Nantucket Sound Massachusetts, Supplemental Marine Archaeological Reconnaissance Survey of Revised Layout Offshore Project Area. PAL Report No. 1485.06. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Pawtucket, R.I.
- **Report No. 5.3.3-2.** Environmental Design & Research, P.C. 2003. Visual Simulation Methodology. Cape Wind Project. Cape Cod, Martha's Vineyard and Nantucket, Massachusetts. Prepared for Cape Wind Associates, L.L.C., Boston, Mass. Syracuse, N.Y. November, 2003.

Should you have any questions or need additional clarification on any issue, please feel free to contact me anytime by phone (504)-736-2796, email Christopher.Horrell@mms.gov, or write to 1201 Elmwood Park Blvd., New Orleans, LA 70123.

Sincerely,



Christopher E. Horrell, Ph.D. R.P.A.
MMS Federal Preservation Officer

Enclosures

ENCLOSURE 1

Cape Wind Energy Project Description

In November 2001, Cape Wind Associates, LLC applied for a permit from the U.S. Army Corps of Engineers (USACE) under the Rivers and Harbors Act of 1899 to construct an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. Following the adoption of the Energy Policy Act of 2005 (EPAct) and its associated amendments to the Outer Continental Shelf Lands Act (OCSLA), the Department of the Interior was given statutory authority to issue leases, easements, or rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). Accordingly, Cape Wind Associates, LLC, submitted an application to MMS in 2005 to construct, operate, and eventually decommission an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts.

The project calls for 130, 3.6± megawatt (MW) wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern in 25 square miles of Nantucket Sound (Federal waters), just offshore Cape Cod, Martha's Vineyard, and Nantucket Island. With a maximum electric output of 468 megawatts and an average anticipated output of 182 megawatts, the facility is projected to generate up to three quarters of the Cape and Islands' electricity needs. Each of the 130 wind turbine generators would generate electricity independently. Solid dielectric submarine inner-array cables (33 kilovolt) from each wind turbine generator would interconnect within the array and terminate on an electrical service platform, which would serve as the common interconnection point for all of the wind turbines. The proposed submarine transmission cable system (115 kilovolt) from the electric service platform to the landfall location in Yarmouth is approximately 12.5 miles in length (7.6 miles of which falls within Massachusetts' territorial waters).

Nantucket Sound is a roughly triangular body of water generally bound by Cape Cod, Martha's Vineyard, and Nantucket Island.¹ Open bodies of water include Vineyard Sound to the west and the Atlantic Ocean to the east and south. Nantucket Sound encompasses between 500-600 square miles of ocean, most of which lie in Federal waters. The Cape Wind Energy Project would be located completely in Federal waters, aside from transmission cables running ashore through Massachusetts territorial waters. For reference, the northernmost turbines would be approximately 5.2 miles (8.4 km) from Point Gammon on the mainland; the southernmost turbines would be approximately 11 miles (17.7 km) from Nantucket Island (Great Point), and the westernmost turbines would be approximately 5.5 miles (8.9 km) from the island of Martha's Vineyard (Cape Poge) (see Figure 2.1.1-2). For additional information, please see the MMS Renewable Energy Projects page at: <http://www.mms.gov/offshore/RenewableEnergy/Projects.htm>.

¹ U.S. Geological Survey. Geographic Names Phase I data compilation (1976-1981). Various editions. 31-Dec-1981. Primarily from U.S. Geological Survey 1:24,000-scale topographic maps (or 1:25K, Puerto Rico 1:20K) and from U.S. Board on Geographic Names files. In some instances, from 1:62,500 scale or 1:250,000 scale maps.

ENCLOSURE 2

MMS Response to the Massachusetts SHPO opinion on the eligibility of Nantucket Sound for listing as a Traditional Cultural Property (TCP) on the National Register of Historic Places

The Minerals Management Service (MMS) is consulting with stakeholders, including the Massachusetts State Historic Preservation Officer (SHPO), the Mashpee Wampanoag Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah) in Section 106 consultations under the National Historic Preservation Act for the Cape Wind Energy Project. Section 106 consultations and Government-to-Government consultations with the Tribes are ongoing.

The Energy Policy Act of 2005 (EPA) amended Section 388 of the Outer Continental Shelf Lands Act (OCSLA), giving the Secretary of the Interior the authority to issue leases, easements, and rights-of-way for renewable energy development on the OCS. The Secretary has delegated this authority to the MMS. The MMS would like to clarify the distinction between Federal and State jurisdiction in and around the project area. The proposed project would be located entirely in Federal waters (with the exception of buried transmission lines running ashore), but would indirectly affect some onshore properties within the State of Massachusetts. The MMS's practice has been to assume a function similar to that of a SHPO with regard to archaeological finds resulting from MMS authorized activities where both the undertaking and the cultural resources are located wholly on the OCS (e.g. shipwrecks affected by oil and gas activities), and thus the custom has been to resolve issues of eligibility, if applicable, directly with the Keeper of the National Register. Here, Nantucket Sound falls partly in Massachusetts waters and partly on the OCS. The MMS would like to note that neither the waters of Nantucket Sound nor the project area lies on Tribal lands. Moreover, there are no Tribal lands that fall within the Area of Potential Effect (APE) of the undertaking.

In its *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (2008) (pg 19), the Advisory Council on Historic Preservation cites to *National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Bulletin 38), which makes clear that for a Traditional Cultural Property to be found eligible for the National Register, it must meet the existing criteria for eligibility as a building, site, structure, object, or district. *National Register Bulletin: How to Apply the National Register Criteria for Evaluation* (Bulletin 15) also clearly defines categories of historic property types, and both bulletins explain that the National Register is not used to list intangible values, even "significant" ones. Contrary to the established guidance, SHPO erroneously asserts that a TCP is an additional "special historic 'property type'" in and of itself. SHPO then construes language at page 11 of Bulletin 38 ("the NR discourages the nomination of natural features without sound documentation of their significance") to conclude that the general prohibition against the eligibility of waterbodies, an established tenet in Bulletin 15 at page 5 ("...the National Register excludes from the definition of 'site' natural waterways or bodies of water..."), does not apply to Nantucket Sound, or in fact to any appropriately documented TCP. We recognize that a few discrete bodies of water have, on rare occasions, been found to meet eligibility requirements. Nantucket Sound, however, is a vast, 600-square mile body of water open to the North Atlantic Ocean. It is not a small or

small or isolated waterway that possesses easily discernable boundaries. The MMS does not read the Bulletin 38 discussion at page 11 as superseding the guidance provided in Bulletin 15.²

The MMS does not disagree that Nantucket Sound is important to the Tribes, and has been throughout history, as demonstrated in the rich ethnographic/ethnohistoric documentation that SHPO cited in her opinion document. MMS appreciates the comprehensive research SHPO conducted and included in her opinion document. However, for reasons discussed herein, and those that MMS included in its original determination submitted to Massachusetts SHPO on October 9, 2009, the MMS concludes that Nantucket Sound is not eligible for listing on the National Register as a Traditional Cultural Property or as a historic property.

Criterion A

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion A due to its association with the ancient and historical Native American exploration and settlement of the area, and with the central events of the Wampanoag origin story of Moshup and Squant/Squannit. While these historic activities and events involving Moshup certainly are important to the Wampanoag culture and tradition, the MMS disagrees with SHPO that the vastness of Nantucket Sound can indeed be considered a “site” or “property” in this context. Nantucket Sound is not a specific site that can be considered under this criterion. No single event or pattern of events is associated with any particular location on or within the Sound.

SHPO relies heavily upon ethnohistoric data in describing the contribution of Nantucket Sound on the development of the Wampanoag culture. It should be noted, however, that SHPO cites many maritime activities that took place outside the Sound as examples of contributing events. While Nantucket Sound’s bountiful marine resources were an important factor in the development of the Wampanoag socioeconomic culture, this impact is not in any way unique; the significance is diminished by the fact that the same argument could be made for any coastal maritime community, including that of the descendents of the Anglo-Europeans and more recent settlers, who likewise depended upon shell fishing, fishing, and whaling for subsistence and commerce. Under the SHPO’s analysis, any place that is culturally significant would also be eligible for listing. Not every TCP is eligible (as discussed in Bulletin 38, pages 1, 2, 3, 11-12). SHPO fails to draw a distinction between culturally important places and historic places.

Bulletin 38 at pp12-13 offers an example of how an appropriately designated property under Criterion A should exhibit the contributions made by the social or ethnic group in question. As stated, “...the ongoing participation of an ethnic or social group in an area’s history, reflected in a neighborhood’s buildings, streetscapes or patterns of social activity, constitutes such a series of events.” This is not the case for Nantucket Sound, however; the ongoing participation/contribution of the Tribes to the area’s history is not exhibited by, or visible upon viewing, the setting or seascape of Nantucket Sound. This illustrates once again that the water body is not the appropriate object upon which the cultural context depends.

² It is notable that natural waterways are explicitly excluded from the list in Bulletin 15 at page 5 that includes “natural features (such as a rock formation) having cultural significance” as appropriate examples of sites.

Criterion B

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion B due to its association with Moshup and Squant/Squannit. Criterion B is traditionally meant to refer to historically significant human beings rather than worshiped figures, mythical creatures, Gods, or demigods, as suggested in the many examples cited in Bulletin 15. However, as discussed in Bulletin 38, a “person” under Criterion B may refer to gods or demigods who feature in the traditions of a group. While there is no doubt that Moshup and Squant are individually significant within a historic context to the Wampanoag People, and that they are associated with portions of Nantucket Sound through the Wampanoag’s story, the places associated with Moshup and Squant/Squannit in documented ethnography, folklore, and cited literature point more to how the significance of these individuals relate to a specific site on land (the Cliffs of Gay Head on the West end of Martha’s Vineyard). Importantly, although Moshup is credited with the creation of Nantucket Island and the open water that exists between Martha’s Vineyard and the Elizabeth Islands (which are actually located to the west of Nantucket Sound, between Vineyard Sound and Buzzard’s Bay, outside of the Area of Potential Effect), according to the Wampanoag story, Moshup himself is not responsible for the creation of Nantucket Sound. No archaeological sites, structures, districts, or properties associated with Moshup and Squant/Squannit are located on Nantucket Sound itself.

Criterion C

SHPO argues that Nantucket Sound qualifies as a TCP under Criterion C as a “significant and distinguishable entity” integral to the Wampanoag traditions, practices, narratives, culture and religion. Bulletins 15 and 38 make clear that Criterion C is intended to apply to “constructed entities—that is, buildings, structures, or built objects,” (i.e. man-made structures), not large geographical landscapes, seascapes or water bodies. According to the Bulletin 15 at page 17, a significant and distinguishable entity whose components may lack individual distinction is termed a “district.” Districts possess a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. SHPO has misinterpreted and misapplied this criterion to Nantucket Sound. Nantucket Sound (some 600 square miles) does not qualify as a TCP or historic property, as suggested in the SHPO’s opinion, because Nantucket Sound is not a man-made structure, and there is no evidence of any archaeological sites, buildings, structures, objects, or other archaeological features that are united historically by plan or physical development on or within the Sound.

Criterion D

SHPO argues that past and future archaeological data collected from Nantucket Sound has yielded and is likely to yield important cultural, historical, and scientific information “through archaeology, history, and ethnography,” and thus qualifies as a TCP under Criterion D. SHPO also characterizes the presence of organic material in some core samples as “a major scientific discovery.” The MMS disagrees. The MMS recognizes that humans occupied the Nantucket Shelf Region up to 12,500 BP when Nantucket Sound was dry land. However, while there may be discrete areas or spot finds (see discussion in Report 4.3.5-3) where submerged prehistoric cultural resources could be discovered, the entire seafloor under Nantucket Sound should not be considered an archaeological “site,” and the data suggests that the majority of such evidence likely has been removed through time via marine transgression, sea level rise, and other

geological processes.³ The requirement for integrity of the physical condition of the seabed is not met. Regardless, the MMS does not believe that Nantucket Sound qualifies as a TCP or historic property under Criterion D. As stated in Report 4.3.5-2, page 39, "...the data indicate that a majority of the offshore study area has a low probability for containing submerged prehistoric cultural resources, because of extensive disturbance to the formerly exposed and inhabitable pre-inundation landscape that has resulted from the marine transgression of the area." Importantly, even for a more discrete location such as the proposed project area of Horseshoe Shoal, all survey and vibracore data collected to date show no indication or evidence of human habitation nor a continuously intact preserved paleolandscape. It is important to note that SHPO's conclusions represent an inappropriate characterization of the vibracore data evaluated in the attached reports; while in certain locations contextually intact paleosols were found, this should not be interpreted as a stratigraphically and/or continuously "intact upland deciduous forest floor," and certainly not an "intact, submerged ancient landscape" as SHPO alleges. Similarly, while the discovery of organic deposits in some core samples indicate the former presence of a shallow aquatic, terrestrial, or forest environment, this in itself does not provide direct evidence of human habitation.

³ The *National Register Bulletin 15* (at pg. 49) does provide an example of sites that are considered not eligible under Criterion D (sites that have "lost [their] stratigraphic context due to subsequent land alterations"); under these circumstances the site would not possess integrity of location.