



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

JAN 3 2018

Christopher A. Lawrence
Electricity Policy Analyst
National Electricity Delivery Division
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

Re: OE Docket No. PP-441; Application for Presidential Permit; Clean Power Northeast Development Inc.

Dear Mr. Lawrence:

We have reviewed the Notice of Application published in the Federal Register on December 4, 2017, regarding a Presidential Permit for Clean Power Northeast Development Inc (CPNE). The Notice states that CPNE has applied for a Presidential permit for the Atlantic Link Project to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada. The proposed Atlantic Link Project proposes to connect a subsea 1000 megawatt, high voltage current transmission cable system to deliver electricity from Atlantic Canada to Massachusetts. The final transmission cable system route is anticipated to be located within rights-of-way selected from two route alternatives. The two current route alternatives would connect Coleson Cove, New Brunswick, Canada to Plymouth, Massachusetts. The total length of the transmission cable system would be approximately 375 miles, depending on which route alternative is selected. Both route alternatives will transverse US federal waters and Massachusetts state waters.

We do not have enough information to provide comments regarding the effects of the proposed project on living marine resources or recommendations intended to minimize and avoid adverse effects at this time. The lead federal agency for this project, is required to consult with us under the Magnuson Stevens Fishery Conservation and Management Act (MSA), the Fish and Wildlife Coordination Act (FWCA), and Section 7 of the Endangered Species Act (ESA). This letter outlines our trust resources in the project area, the consultation responsibilities under the MSA, FWCA, and ESA, as well as additional information needs required for us to consult on this project.

Essential Fish Habitat

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires federal agencies to consult with us regarding any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect EFH identified under the MSA. The MSA defines EFH as "those waters and substrates necessary to fish spawning, breeding, feeding or growth to maturity." Our EFH regulations at 50 CFR Section 600.10 further defines EFH



adding, among other things, that “‘necessary’ means the habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem.”

Adverse effects to EFH are defined in our regulations as “any impact that reduces the quality or quantity of EFH.” 50 CFR Section 600.810(a) states:

An adverse effect may include direct or indirect physical, chemical or biological alterations of the water or substrate and any loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystems components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from action occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The EFH regulations at 50 CFR Section 600.920 outline that consultation procedure and enables federal agencies to use existing consultation/environmental review procedures to satisfy the MSA consultation requirements in certain circumstances. Insofar as this project involves EFH, this process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency’s obligations in this consultation procedure.

In order to satisfy consultation requirements of the EFH regulations pursuant to 50 CFR Section 600.920(e), an EFH assessment must be prepared to analyze the effects of the proposed action on EFH. The required contents of an EFH assessment include: 1) a description of the action; 2) an analysis of the potential adverse effects of the action on EFH and the managed species; 3) conclusions regarding the effects of the action on EFH; and 4) proposed mitigation, if applicable. Since, due to the scope, this project may result in substantial adverse impacts to EFH, an expanded EFH consultation would be necessary under the procedures outlined in 50 CFR Section 600.920(i).

In preparing an expanded EFH consultation, we encourage the lead federal agency to include additional information in the EFH assessment, including: 1) the results of on-site inspections to evaluate the habitat and site-specific effects; 2) the views of recognized experts on the habitat or the species that may be affected; 3) a review of pertinent literature and related information; and 4) an analysis of alternatives to the action that could avoid or minimize the adverse effects on EFH. We recommend coordination with us prior to completing on-site inspections to ensure the surveys will provide the appropriate level of information necessary for our consultation. We will need specific information to be addressed in the expanded EFH assessment, including: identification and evaluation of sensitive habitat types within the project area (e.g. hard-bottom habitats, biogenic, and deep-water mud habitats); an evaluation of habitat impacts that may result from proposed installation methods (e.g. remnant trench/mounding impacts, loss of sediment to adjacent areas, etc); pre-, concurrent, and post- construction monitoring; and proposed decommissioning procedures, if applicable. We encourage the lead federal agency to coordinate with us during the development of the expanded EFH assessment to ensure the information we will need is addressed in the assessment.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) provides authority for our involvement in evaluating impacts to fish and wildlife from proposed federal actions that may affect waters of the United States. The FWCA specifically requires that wildlife conservation be given equal consideration to other features of water resource development programs through planning, development, maintenance and coordination of wildlife conservation and rehabilitation. Wildlife and wildlife resources are defined by the Act to include: birds, fish, mammals and all other classes of wild animals and all types of aquatic and land vegetation upon which such wildlife dependent. These consultation and coordination activities are intended to prevent loss or damage to fish and wildlife resources and to provide appropriate measures to mitigate adverse impacts associated with proposed human activities.

While many of the impacts that would accrue to federally managed fishery resources under the MSA also would accrue to FWCA species, it is important to note that the interests of some species would not be represented adequately by relying on the EFH assessment alone. For instance, shellfish do not have an appropriate surrogate among the federally managed fishery resources that have EFH designated in the project vicinity and their needs and those of other non-represented species should be discussed at length in this section. Similarly, the behaviors and habitat needs of diadromous and estuary-dependent fishes may not be represented by a discussion surrounding marine fishes. The discussion for FWCA species should be designed around an ecological guild model that uses locally important species to evaluate the project impacts to organisms or populations associated with the various trophic levels and life history strategies exhibited by FWCA species known to occupy the project area as residents or transients. Focus should be on issues surrounding particular species, life history stages, or habitat components that would be most susceptible to the various potential impacts.

Endangered Species Act

Several species listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, as amended are at least seasonally present in the area proposed for pipeline installation. These include:

Cetaceans

North Atlantic Right whale (*Eubalaena glacialis*): Endangered
Fin whale (*Balaenoptera physalus*): Endangered

Sea Turtles

Northwest Atlantic Distinct Population Segment (DPS) of Loggerhead sea turtle (*Caretta caretta*): Threatened
Leatherback sea turtle (*Dermochelys coriacea*): Endangered
Kemp's ridley sea turtle (*Lepidochelys kempi*): Endangered
North Atlantic DPS of Green sea turtle (*Chelonia mydas*): Endangered

Fish

Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*): Gulf of Maine Distinct Population Segment: Threatened
New York Bight and Chesapeake Bay DPS of Atlantic sturgeon: Endangered

Shortnose sturgeon (*Acipenser brevirostrum*): Endangered
Gulf of Maine DPS of Atlantic salmon (*Salmo salar*): Endangered

Additionally, it appears that the action area overlaps with critical habitat designated for the North Atlantic right whale. More information on these species and critical habitat is available on our webpage: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/listing/index.html>.

Under Section 7(a)(2) of the ESA, each Federal agency is required to insure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of any endangered or threatened species. Consultation would be necessary for any permits, authorizations, leases, easements or right of ways issued by DOE or any other federal agency. It is our understanding that DOE will be the lead Federal agency for any section 7 consultation regarding the Atlantic Pipeline project and that you would coordinate with any other Federal action agencies so that one consultation would be completed for the project. We expect that any environmental documentation regarding the proposed project will fully examine all potential impacts to NMFS listed species and designated critical habitat including: impacts of construction and operation, any pre-construction geophysical and/or geotechnical surveys, effects on prey, vessel traffic, benthic impacts, and impacts to water quality. More information on the section 7 process is available on our webpage: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>.

Marine Mammal Protection Act

All marine mammals receive protection under the Marine Mammal Protection Act (MMPA) of 1972, as amended. The MMPA prohibits, with certain exceptions, the take of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. NMFS may issue permits under MMPA Section 104 (16 U.S.C. 1374) to persons that authorize the taking or importing of specific species of marine mammals.

As noted above regarding listed species, any environmental documentation should fully examine all potential impacts to species protected under the MMPA including: effects on prey, effects to behavior, vessel traffic, benthic impacts, and impacts to water quality. If incidental take of marine mammals is anticipated, a take authorization would be required. We recommend that any project developer discuss permitting needs with NMFS' Office of Protected Resources Permits, Conservation, & Education Division (301-713-2289). Information on the MMPA permitting process is online at: http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.html.

We encourage DOE and the developer to continue to work with us as project plans become more developed to identify and evaluate the potential for impacts to the species under our jurisdiction. These informal discussions can greatly facilitate consultation. Should you have any questions regarding listed species or ESA consultation, please contact Julie Crocker in our Protected Resources Division ((978)282-8480 or Julie.Crocker@Noaa.gov).

National Environmental Policy Act, Commercial and Recreational Fisheries

The proposed project will transverse federal waters supporting multiple commercial and recreational fisheries. In addition to statutory requirements discussed above, impacts to these

fisheries should be addressed through the National Environmental Policy Act (NEPA) process. The NEPA documents should include a robust discussion of fishing activities occurring within the vicinity of the proposed route. Potential impacts to these fisheries should be fully evaluated and assessed. Such impacts include displacement impacts during construction activities, the potential for gear interactions with exposed (e.g. due to scouring, obstacles preventing adequate burial, etc) cable sections, any proposed armoring, and maintenance and decommissioning activities. It is important to note that all fishery resources within the project area, whether managed under federal or state programs, are viewed by us as NOAA-trust resources. Accordingly, we will seek to avoid and minimize adverse effects to these resources to the maximum extent practicable. A good source of data on fisheries, ecosystem, and ocean resources can be found on the Northeast Regional data portal at www.northeastoceandataportal.org.

Conclusion

Based on our review of the Federal Register Notice of Application, this project will require coordination and consultation with our agency during the federal permit review process. We hope the information we have provided in this letter will help inform and guide the lead federal agency to ensure we receive the necessary information to be able to complete our consultations in a timely and effective manner. Thank you for the opportunity to comment on this important project. If you have any questions regarding the EFH and FWCA consultation, please contact Alison Verkade at 978-281-9266.

Sincerely,

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

Louis A. Chiarella
Assistant Regional Administrator
For Habitat Conservation

cc: Joshua Gange, BOEM
Julie Crocker, PRD
Ed Reiner, EPA
Sarah Wilkinson, USACOE
Tom Nies, NEFMC
Chris Moore, MAFMC
Lisa Havel, ASMFC

