

DOCKETED

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Document Title:	National Oceanic and Atmospheric Administration Permit Guidance for proposed Trident Windsâ€™™ Project
Description:	5.9.16 Letter to Alla Weinstein at Trident Winds RE: Permit Guidance for Proposed Trident Winds' Project
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Office of National Marine Sanctuaries | West Coast Region
99 Pacific Street, Bldg 100, Suite F
Monterey, CA 93940

May 9, 2016

Alla Weinstein
Trident Winds
113 Cherry St, #34912
Seattle, WA 98104 – 2205

Re: Permit Guidance for Proposed Trident Winds' Project

Dear Ms. Weinstein:

The National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) received your letter dated February 5, 2016, in which you request permit guidance for potential wind energy development projects in national marine sanctuaries. The unsolicited lease proposal submitted by Trident Winds on January 14, 2016, to the Bureau of Ocean and Energy Management (BOEM) for a floating offshore wind project identifies an area located immediately outside the southwest boundary of Monterey Bay National Marine Sanctuary (MBNMS) and within the northwest boundary of an area nominated as the Chumash Heritage National Marine Sanctuary.

The National Marine Sanctuaries Act (NMSA) charges ONMS with the conservation and protection of marine resources within national marine sanctuaries. ONMS supports energy independence and the development of renewable energy sources, including wind. Renewable energy production is not inherently incompatible with national marine sanctuaries, and could possibly be allowed to the extent it is compatible with the NMSA and a sanctuary's purposes and regulations. ONMS has permit options to allow for otherwise prohibited activities within national marine sanctuaries provided findings can be made that evaluate effects to sanctuary resources.

Although renewable energy projects are not expressly prohibited within MBNMS, the wind farm considered by Trident Winds would involve one or more activities that are prohibited by MBNMS regulations, such as disturbance of submerged lands (15 CFR 922.132(a)). MBNMS regulations provide ONMS the authority to allow certain otherwise prohibited activities through the authorization of another agency's "lease, permit, license, approval, or other authorization" (15 CFR 922.132(e)). While the Energy Policy Act of 2005 restricts BOEM from issuing a renewable energy lease in a national marine sanctuary on the outer continental shelf, required permits by other agencies, such as the Army Corps of Engineers, could potentially provide a permit mechanism for ONMS to authorize. ONMS authorizations may be issued for a proposed project after consideration of permit review criteria and provided the authorization requirements identified in regulations at 15 CFR 922.49 are met. In issuing an authorization, the ONMS Director may impose "terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities", or may also object to issuance of the other agency's permit, lease, license or approval. MBNMS does not currently assess a fee for its review of an application for issuance of an authorization.

Olympic Coast
National Marine Sanctuary
115 E. Railroad Avenue
Suite 301
Port Angeles, WA 98362

Cordell Bank
National Marine Sanctuary
P.O. Box 159
Olema, CA 94950

Gulf of the Farallones
National Marine Sanctuary
The Presidio
991 Marine Drive
San Francisco, CA 94129

Monterey Bay
National Marine Sanctuary
99 Pacific Street
Suite 455A
Monterey, CA 93940

Channel Islands
National Marine Sanctuary
U.C. Santa Barbara
Ocean Science Bldg 514, MC 6155
Santa Barbara, CA 93106



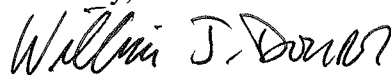
Further, Section 310 of the NMSA allows ONMS to issue special use permits (SUPs) for certain categories of activities that do not “destroy, cause the loss of, or injure sanctuary resources”, and are intended to allow access to and use of sanctuary resources. Related to Trident Winds’ proposal, the current list of applicable activities for which an SUP could be issued includes the continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary. The continued placement on the seabed of the large anchors Trident Winds proposes have not been evaluated to determine if they could be added to the list of applicable categories for an SUP. NMSA section 310 allows ONMS to assess fees for administrative costs, implementation and monitoring costs, as well as the fair market value of the use of sanctuary resources, such as the protection the seabed provides to a buried submarine cable.

Thus, current MBNMS and NMSA regulations could possibly allow ONMS to issue an authorization to place anchors for turbines and lay the transmission cable within the submerged lands of the sanctuary, and issue an SUP for continued placement of the transmission cable on or in the submerged lands of the sanctuary, provided the necessary findings are made. Regardless of the ONMS permit, authorization, or combination thereof, an ONMS action to consider the approval of the installation and operation of a renewable energy project within a national marine sanctuary would require an environmental analysis under the National Environmental Policy Act. We would envision conducting this review in conjunction with that which BOEM must conduct to review and take action on your lease request. ONMS would also use this environmental review to complete necessary interagency consultations under the Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act (among other applicable statutes).

Trident Winds’ lease request to BOEM proposes development of a wind farm in an area outside the boundary of MBNMS. Your February 5, 2016 letter requested guidance should a scenario arise wherein BOEM issues a lease to allow development of Trident Winds’ proposed wind farm prior to any designation of the proposed Chumash Heritage National Marine Sanctuary. If a new sanctuary is designated, its regulations could include a certification process whereby the ONMS Director is able to certify pre-existing “leases, permits, licenses or rights” in existence on the date of designation of the new national marine sanctuary, provided the holder of such authorization or right complied with certification procedures and criteria (15 CFR 922.47). While pre-existing leases, permits, or licenses may not be terminated by the ONMS Director, he or she may impose conditions of certification necessary to achieve the purposes for which the sanctuary was designated.

Please let me know if you require further information about the permit procedures for existing or proposed national marine sanctuaries as they relate to the wind farm proposed by Trident Winds. We look forward to further consultations with you and BOEM should your proposal advance.

Sincerely,



William J. Douros
Regional Director