

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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PUBLIC EMPLOYEES FOR )  
ENVIRONMENTAL RESPONSIBILITY, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 10-1067 (RBW) (DAR)  
 )  
TOMMY P. BEAUDREU, et al.,<sup>1</sup> ) Consolidated with:  
 )  
Defendants, ) Civil Action No. 10-1073  
 ) Civil Action No. 10-1079  
CAPE WIND ASSOCIATES, LLC, ) Civil Action No. 10-1238  
 )  
Intervenor. )  

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ALLIANCE TO PROTECT )  
NANTUCKET SOUND, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SALLY JEWELL, et al., )  
 )  
Defendants, )  
 )  
CAPE WIND ASSOCIATES, LLC, )  
 )  
Intervenor. )  

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TOWN OF BARNSTABLE, )  
MASSACHUSETTS, )  
 )  
Plaintiff, )  
 )  
v. )

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<sup>1</sup> Individuals sued in their official capacity have been replaced in the case caption and throughout the memorandum opinion issued this same date in accordance with Federal Rule of Civil Procedure 25.

SALLY JEWELL, et al., )  
 )  
 Defendants, )  
 )  
 CAPE WIND ASSOCIATES, LLC, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )  
 )  
 THE WAMPANOAG TRIBE OF GAY )  
 HEAD (AQUINNAH) )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOMMY P. BEAUDREU, et al., )  
 )  
 Defendants, )  
 )  
 CAPE WIND ASSOCIATES, LLC, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

**ORDER**

For the reasons stated in the Memorandum Opinion issued this same date it is

**ORDERED** that the PEER et al. Plaintiffs’ Memorandum in Support of Their Motion for Summary Judgment on Their Claims under the Endangered Species Act and Migratory Bird Treaty Act is **GRANTED IN PART AND DENIED IN PART**. Specifically, the Court grants summary judgment to these plaintiffs on their claims that the FWS violated the ESA by failing to make an independent determination regarding whether the feathering operational adjustment was a reasonable and prudent measure, and the case is **REMANDED** to the FWS for it to issue reasonable and prudent measures in accordance with this Court’s Memorandum Opinion. The Court also grants summary judgment to these plaintiffs on their claims that the NMFS violated

the ESA by failing to issue an incidental take statement for the take of North Atlantic right whales, and the case is **REMANDED** to the NMFS for it to formulate and issue an incidental take statement in accordance with this Court's Memorandum Opinion. The plaintiffs' motion is denied in all other respects. It is further

**ORDERED** that Federal Defendants' Cross-Motion for Summary Judgment, ECF No. 205, and Intervenor Cape Wind Associates LLC's Motion for Summary Judgment, ECF No. 203, are **GRANTED IN PART AND DENIED IN PART**. Specifically, the Court grants summary judgment to the defendants in all respects except as to the FWS's failure to make an independent determination regarding whether the feathering operational adjustment was a reasonable and prudent measure, and the NMFS's failure to issue an incidental take statement for the take of North Atlantic Right Whales. It is further

**ORDERED** that Plaintiff the Wampanoag Tribe of Gay Head (Aquinnah) Motion for Summary Judgment is **DENIED**, and that the defendants' cross-motions for summary judgment, ECF Nos. 209, 210, are **GRANTED**. It is further

**ORDERED** that the Plaintiffs' Joint Motion for Summary Judgment on all Remaining Claims is **DENIED**, and that the defendants' cross-motions for summary judgment, ECF Nos. 300, 303, are **GRANTED**. It is further

**ORDERED** that the Plaintiffs' Rule 56(e) Motion for Discovery Necessary to Explain Defendants' Citation to Documents Withheld as "Deliberative" and Other Extra-Record Assertions or, in the Alternative, to Strike, is **DENIED**. It is further

**ORDERED** that this case is **ADMINISTRATIVELY CLOSED** until notification is provided to the Court that the FWS and the NMFS have complied with the terms of this Order.

**SO ORDERED** this 14th day of March, 2014.

REGGIE B. WALTON  
United States District Judge