

## Appendix A. Required Environmental Permits and Consultations

### A.1. Required Environmental Permits

Table A-1 includes a summary of federal, state, and local permits or approvals that are required for Project implementation.

**Table A-1 Required Environmental Permits and Approvals for the Proposed Project**

Agency/Regulatory Authority	Permit/Approval	Status
<b>Federal (Portions of the Project within Federal Jurisdiction)</b>		
BOEM	COP Approval	COP filed with BOEM on August 15, 2019. Updates to the COP were submitted on March 13, 2020, September 24, 2020, March 24, 2021, November 16, 2021/December 10, 2021, May 27, 2022, October 14, 2022, and April 24, 2023.
BSEE	Oil Spill Response Plan	Submitted with COP
FAA	FAA Form 7460-1, Notice of Proposed Construction or Alteration (for Hazard to Air Navigation Determination)	Received No Hazard to Air Navigation determination in February 2022; Oyster Creek Substation: Submitted in March 2023; BL England Substation application planned for submittal Q2 2023
NMFS	MMPA Section 101(a)(5) Letter of Authorization	Proposed Incidental Take Regulations published on October 26, 2022
USACE	CWA Section 404 and RHA Section 10 Individual Permit	Complete application received May 11, 2022; Public Notice published June 17, 2022
USACE	Section 408	Complete application received May 27, 2022
USCG	PATON authorization	Anticipate filing in July/August 2023
USCG	Local Notice to Mariners per Ports and Waterways Safety Act	Anticipate filing in August 2023
USEPA	CAA OCS Air Permit	Complete application received January 4, 2023
<b>State (Portions of the Project within State Jurisdiction)</b>		
NJDEP, DLUR	Waterfront Development Permit and Coastal Consistency Determination	Permit issued April 27, 2023
NJDEP, DLUR	Coastal Areas Facility Review Act Permit and Coastal Consistency Determination	Permit issued April 27, 2023

Agency/Regulatory Authority	Permit/Approval	Status
NJDEP, DLUR	Coastal Wetlands Permit	Permit issued April 27, 2023
NJDEP, DLUR	Flood Hazard Area Verification	Permit issued April 27, 2023
NJDEP, DLUR	Freshwater Wetlands Permit	Permit issued April 27, 2023
NJDEP, DLUR	Section 401 Water Quality Certification	Permit issued April 27, 2023
NJDEP, Division of Water Quality	Stormwater Construction General Permit (5G3)	Expected Q3 2023
NJDEP, Division of Water Quality	Short Term De Minimis General Permit (B7)	Expected Q3 2023
NJDEP, Bureau of Water Allocation and Well Permitting	Temporary Dewatering Permit	Expected Q3 2023
NJDEP, Bureau of Tidelands Management	Tidelands License	Expected Q3 2023
NJDEP, Green Acres Program	Major Diversion of Parkland	Diversion approved by the State House Commission March 9, 2023
NJDEP, Division of Parks and Forestry, Natural Heritage Program	New Jersey Endangered Species Conservation Act, threatened and endangered species consultation	Consultation concluded with permit issuance April 27, 2023
NJDEP, New Jersey Historic Preservation Office	NHPA Act Section 106 Review and New Jersey Register of Historic Places Act	Ongoing BOEM coordination as part of NHPA Section 106 process. Historic and cultural resources assessment was also part of the DLRP permit (issued April 27, 2023)
NJDEP, Site Remediation and Waste Management Program	Linear Construction Project Notification	Expected Q3 2023
NJDEP, Division of Parks and Forestry	Consultations and approvals for activities on State Lands and Parks	State House Commission approval received March 9, 2023; Right of Entry Agreement expected to be signed July 2023
New Jersey Department of Transportation	Highway Occupancy Permit	Expected Q3 2023
New Jersey Pinelands Commission	Development Application	No development application required.
<b>Local (Portions of the Project within Local Jurisdiction)</b>		
Ocean County Soil Conservation District	Soil Erosion and Sediment Control Plan Certification	Expected Q3 2023
Cape Atlantic Soil Conservation District	Soil Erosion and Sediment Control Plan Certification	Expected Q3 2023
Cape May County Division of Engineering	Utility Opening/Highway Occupancy Permit	Expected Q3 2023
Ocean City Engineering Department	Road Opening Permit	Expected Q3 2023

Agency/Regulatory Authority	Permit/Approval	Status
Municipal/county building and zoning permits and approvals	Lacey Township, Ocean Township, Ocean City, Upper Township, Ocean County, Atlantic County, Cape May County	Expected Q3/Q4 2023

CAA = Clean Air Act; DLRP = Division of Land Resource Protection; DLUR = Division of Land Use Regulation; Q = quarter

## A.2. Consultation and Coordination

### A.2.1 Introduction

This section discusses public and agency involvement leading up to the preparation and publication of the Final EIS, including formal consultations, cooperating agency exchanges, the public scoping comment period, and correspondence. This section discusses public involvement in the preparation of this EIS, including BOEM's responses to public comments, formal consultations, and cooperating agency exchanges. Interagency consultation, coordination, and correspondence throughout the development of this Final EIS occurred primarily through virtual meetings, teleconferences, and written communications (including email). BOEM coordinated with numerous agencies throughout the development of this document, as listed in Section A.2.3.2, *Cooperating Agencies*.

### A.2.2 Consultations and Authorizations

The following section provides a summary and status of each consultation. BSEE, USACE, and USEPA are co-action agencies for the ESA, MSA, and NHPA consultations.

#### A.2.2.1. Coastal Zone Management Act

The Coastal Zone Management Act requires that any applicant for a required federal license or permit to conduct an activity, within the coastal zone or within the geographic location descriptions (i.e., areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects), affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. Although the Project's Lease Area does not fall within a Geographic Location Description for purposes of 16 USC 1456(c)(3)(A) and the implementing regulations at 15 CFR 930 Subparts D and E, following a request by NJDEP, Ocean Wind voluntarily submitted a federal consistency certification and a copy of the COP on March 30, 2021. Ocean Wind 1's COP (Ocean Wind 2023) provided the necessary data and information under 15 CFR 930.58. NJDEP will review the reasonably foreseeable effects of the Project on coastal use or resources for consistency with the enforceable policies of the New Jersey coastal zone management program. On March 31, 2021, NJDEP notified BOEM that NJDEP and Ocean Wind mutually agreed to stay NJDEP's 6-month consistency review period consistent with 15 CFR 930.60(b), and provided BOEM with a copy of the stay agreement. Pursuant to the executed extended stay agreement, the NJDEP issued a consistency determination on April 27, 2023. The state's concurrence is required before BOEM may approve or approve with conditions the Ocean Wind 1 COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

#### A.2.2.2. Endangered Species Act

Section 7(a)(2) of the ESA of 1973, as amended (16 USC 1531 et seq.), requires that each federal agency ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the

continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of those species. When the action of a federal agency may affect a protected species or its critical habitat, that agency is required to consult with either NMFS or USFWS, depending upon the jurisdiction. Pursuant to 50 CFR 402.07, BOEM has accepted designation as the lead federal agency for the purposes of fulfilling interagency consultation under Section 7 of the ESA for listed species under the jurisdiction of NMFS and USFWS. BOEM consulted on the proposed activities considered in this Final EIS with both NMFS and USFWS and has prepared biological assessments for listed species under their respective jurisdictions. NMFS's biological opinion was issued on April 3, 2023. USFWS's concurrence letter and biological opinion were issued on May 12, 2023.

#### **A.2.2.3. Government-to-Government Tribal Consultation**

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with tribes when federal actions have tribal implications, and Secretarial Order No. 3317 requires U.S. Department of the Interior agencies to develop and participate in meaningful consultation with federally recognized tribes where a tribal implication may arise. A June 29, 2018, memorandum outlines BOEM's current tribal consultation policy (BOEM 2018). This memorandum states that "consultation is a deliberative process that aims to create effective collaboration and informed federal decision-making" and is in keeping with the spirit and intent of the NHPA and NEPA, Executive and Secretarial Orders, and U.S. Department of the Interior Policy (BOEM 2018). BOEM implements tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and other engagement.

On March 19, 2021, BOEM initiated formal consultation with nine tribes under the NHPA and invited them to be NHPA Section 106 consulting parties to the Project through individual letters mailed and emailed to tribal leaders with the Absentee-Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, the Rappahannock Tribe, Shawnee Tribe, Stockbridge-Munsee Community Band of Mohican Indians, the Narragansett Indian Tribe, and the Shinnecock Indian Nation. Three tribal leaders responded that they would like to participate as consulting parties to the Project: the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community Band of Mohican Indians.

On March 30, 2021, BOEM sent another set of letters and emails to tribal leaders notifying them that the Notice of Intent (NOI) to prepare an EIS for the Project was issued that day and noted that the scoping comment period was open until April 29, 2021. BOEM then sent an email to tribal leaders on May 5, 2021, offering a government-to-government consultation meeting to discuss the public scoping information for the Project. BOEM held a government-to-government meeting with the tribes that responded, the Delaware Tribe of Indians and the Delaware Nation, on June 17, 2021. Both tribes expressed interest in continuing consultation for offshore wind, and emphasized the importance of early consultation in Project development. The Wampanoag Tribe of Gay Head Aquinnah notified BOEM that they would like to participate as a consulting party to the Project. Additional attempts were made to contact the Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Narragansett Indian Tribe, and Shinnecock Indian Nation via phone and email in August and September 2021; however, no responses have been received to date.

BOEM separately contacted the Mashantucket Pequot Tribal Nation on August 17, 2021, in response to a request to participate as a cooperating agency. The Mashantucket Pequot Tribal Nation confirmed they would like to consult with BOEM as a Cooperating Tribal Nation under NEPA and an NHPA Section 106 consulting party. However, in a letter dated November 22, 2021, the Mashantucket Pequot Tribal Nation indicated that they no longer wanted to consult on the Project.

BOEM sent an email to tribal leaders on October 7, 2022, offering a government-to-government consultation meeting to discuss the Draft EIS. BOEM held a government-to-government meeting with the tribes that responded, the Shinnecock Indian Nation and Delaware Tribe of Indians, on November 2, 2022.

#### **A.2.2.4. National Historic Preservation Act**

Section 106 of the NHPA (54 USC 306108) and its implementing regulations (36 CFR 800) require federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. BOEM has determined that the proposed Project is an undertaking subject to Section 106 review. The construction of WTGs and OSS, installation of inter-array cables, and development of staging areas are ground- or seabed-disturbing activities that may adversely affect archaeological resources. The presence of WTGs may also introduce visual elements out of character with the historic setting of historic structures or landscapes; in cases where historic setting is a contributing element of historic properties' eligibility for the NRHP, the Project may adversely affect those historic properties.

The Section 106 regulations at 36 CFR 800.8 provide for use of the NEPA substitution process to fulfill a federal agency's NHPA Section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. This process is commonly known as "NEPA substitution for Section 106" and BOEM is using this process and documentation required for the preparation of this EIS and the ROD to comply with Section 106. Appendix N of this Final EIS contains BOEM's Finding of Adverse Effect, which includes a description and summary of BOEM's consultation so far. On March 9, 2021, BOEM contacted ACHP and New Jersey SHPO to provide Project information and notify of BOEM's intention to use the NEPA process to fulfill Section 106 obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. BOEM will continue consulting with the New Jersey SHPO, ACHP, federally recognized tribes, and the consulting parties regarding the Finding of Adverse Effect and the resolution of adverse effects.

BOEM has and will be conducting Section 106 consultation meeting(s) on the Finding of Adverse Effect and the resolution of adverse effects, and the agency will be requesting the consulting parties to review and comment on the Finding of Adverse Effect and proposed resolution measures. BOEM held virtual NHPA Section 106 Consultation Meeting #1 on March 8, 2022, and shared with consulting parties a summary of the NHPA Section 106 Consultation Meeting #1 and materials presented at that meeting on March 31, 2022. BOEM held virtual NHPA Section 106 Consultation Meeting #2 on May 4, 2022, and shared with consulting parties a summary of the NHPA Section 106 Consultation Meeting #2 and materials presented at that meeting on June 8, 2022. BOEM held virtual NHPA Section 106 Consultation Meeting #3 on November 30, 2022, and shared with consulting parties a summary of the NHPA Section 106 Consultation Meeting #3 and materials presented at that meeting on November 30, 2022. BOEM held virtual NHPA Section 106 Consultation Meeting #4 on February 10, 2023, and shared with consulting parties a summary of the NHPA Section 106 Consultation Meeting #4 and materials presented at that meeting on February 22, 2023. BOEM held an additional consultation meeting with New Jersey Historic Preservation Office on February 24, 2022 to discuss the materials presented at NHPA Section 106 Consultation Meeting #4. BOEM plans to hold an additional consultation meeting to consult on the finding of effect and the resolution of adverse effects, to receive additional input regarding the EIS analysis, and to consult on a Memorandum of Agreement prior to issuing the ROD. BOEM will hold virtual NHPA Section 106 Consultation Meeting #5 in the second quarter of 2023.

On March 21, 2022, BOEM shared with consulting parties the complete terrestrial archaeological resources report, complete marine archaeological resources report, complete historic resources visual effects assessment, and complete cumulative historic resources visual effects analysis. At that time, BOEM also shared with consulting parties a technical memorandum detailing the delineation of the APE

for the Project. BOEM shared with consulting parties a supplemental architectural intensive-level survey report on April 1, 2022. On November 11, 2022, BOEM shared with consulting parties the revised terrestrial archaeological resources report, revised marine archaeological resources report, revised historic resources visual effects assessment, revised architectural intensive-level survey report, and revised cumulative historic resources visual effects analysis. BOEM also distributed a consulting parties comments response matrix, which itemizes consultation comments received from consulting parties on documents distributed by BOEM on March 21 and April 1, 2022, and provides BOEM's responses to those comments.

BOEM distributed a Notice of Availability to notify the consulting parties that the Draft EIS was available for public review and comment for the period of June 24 to August 8, 2022. On November 11, 2022, BOEM shared with consulting parties the revised Appendix N, *Finding of Adverse Effect for the Ocean Wind 1 Construction and Operations Plan*, with attachments including the draft Memorandum of Agreement. BOEM published the Final EIS on May 26, 2023.

BOEM fulfilled public involvement requirements for Section 106 of the NHPA through the NEPA public scoping and public meetings process, pursuant to 36 CFR 800.2(d)(3). The Scoping Summary Report (BOEM 2021), available on BOEM's Project-specific website, summarizes comments on historic preservation issues. On March 17, 2021, BOEM initiated consultation with nine federally recognized tribes: Absentee-Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, the Rappahannock Tribe, Shawnee Tribe, Stockbridge-Munsee Community Band of Mohican Indians, the Narragansett Indian Tribe, and the Shinnecock Indian Nation (Section A.2.2.3). On May 5, 2021, BOEM invited Absentee-Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, the Narragansett Indian Tribe, Shawnee Tribe, Stockbridge-Munsee Community Band of Mohican Indians, and the Shinnecock Indian Nation to participate in a government-to-government consultation meeting. On May 17, 2021, BOEM corresponded with tribes who responded to the government-to-government consultation meeting invitation—the Delaware Nation and Delaware Tribe of Indians—to schedule the meeting during a day and time of mutual availability. BOEM followed up the request for scheduling on May 27 and June 1, 2021. On June 8, 2021, BOEM invited the Delaware Nation and Delaware Tribe of Indians to participate in a government-to-government consultation meeting on Thursday, June 17, 2021. BOEM hosted a government-to-government consultation meeting with the Delaware Nation and Delaware Tribe of Indians on June 17, 2021, and distributed a draft meeting summary of the June 17, 2021, government-to-government consultation meeting and requested representatives from the Delaware Nation and Delaware Tribe of Indians provide comment on July 2, 2021. BOEM reached out via phone to the Absentee-Shawnee Tribe of Indians of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Narragansett Indian Tribe, Shawnee Tribe, and the Shinnecock Indian Nation on August 5, 2021, August 17, 2021, and September 3, 2021, to remind them of the March 30, 2021, invitations to participate as Section 106 consulting parties or NEPA cooperating agencies and requested their feedback. The Stockbridge-Munsee Community Band of Mohican Indians notified BOEM of their interest in participating as a consulting party on September 27, 2021. The Shinnecock Indian Nation notified BOEM of their interest in participating as a consulting party on September 27, 2021. The Wampanoag Tribe of Gay Head (Aquinnah) notified BOEM of their interest in participating as a consulting party on September 27, 2021. BOEM requested information on sites of religious and cultural significance to the tribes that the proposed Project could affect, and BOEM offered its assistance in providing additional details and information on the proposed Project to the tribes. The Mashantucket Pequot Tribal Nation later contacted BOEM to request participation as a sovereign tribal nation in the NEPA cooperating agency review process, and BOEM added this tribal nation to the Project as a participant in the cooperating agency review process as well as a consulting party on November 19, 2021. However, in a letter dated November 22, 2021, the Mashantucket Pequot Tribal Nation indicated that they no longer wanted to consult on the Project.

On March 30, 2021, BOEM contacted representatives of local governments, state and local historical societies, economic development commissions, and other federal agencies to solicit information on historic properties and determine their interest in participating as consulting parties. During the period of April 13–16, 2021, outreach was conducted by phone to confirm receipt of correspondence among the governments and organizations that had not responded to the invitation to consult.

On November 18, 2022, BOEM contacted representatives for eight of the ten aboveground historic properties within the Project’s visual APE determined by BOEM to be adversely affected by the Project that had not previously accepted consulting party status to determine their interest in participating as consulting parties. On February 2, 2023, and February 15, 2023, BOEM contacted representatives for seven additional aboveground historic properties within the Project’s visual APE determined by BOEM to be adversely affected by the Project that had not previously accepted consulting party status to determine their interest in participating as consulting parties. On March 28, 2023, BOEM contacted representatives of all 17 historic properties within the Project’s visual APE determined by BOEM to be adversely affected by the Project, inviting those parties that had not previously accepted consulting party status to participate as consulting parties and to invite participating consulting parties to a meeting with BOEM to discuss Applicant-proposed mitigation to resolve the adverse effects from the Project on their respective properties. Participants that have accepted consulting party status for the NHPA Section 106 Consultation are listed in Table A-2.

**Table A-2 NHPA Section 106 Consulting Parties**

<b>Participants in the Section 106 Process</b>	<b>Participating Consulting Parties</b>
SHPOs and state agencies	NJDEP, Historic Preservation Office NJDEP, Office of Historic Site & Parks New Jersey Historic Trust
Federal agencies	ACHP BSEE USACE USEPA USCG National Park Service U.S. Naval History and Heritage Command
Federally recognized tribes	Delaware Nation Delaware Tribe of Indians Stockbridge-Munsee Community Band of Mohican Indians The Shinnecock Indian Nation Wampanoag Tribe of Gay Head (Aquinnah)

Participants in the Section 106 Process	Participating Consulting Parties
Local governments	Atlantic County Cape May City Cape May County City of North Wildwood Harvey Cedars Borough Linwood City Margate City Ocean City Sea Isle City Somers Point City Stafford Township
Nongovernmental organizations or groups	Absecon Lighthouse Flanders Condominium Association Garden State Seafood Association House at 114 South Harvard Avenue Long Beach Island Historical Association Ritz Condominium Association Rutgers University Save Lucy Committee, Inc. The Noyes Museum of Art Vassar Square Condominiums

#### **A.2.2.5. Magnuson-Stevens Fishery Conservation and Management Act**

Pursuant to Section 305(b) of the MSA, federal agencies are required to consult with NMFS on any action that may result in adverse effects on EFH. NMFS regulations implementing the EFH provisions of the MSA can be found at 50 CFR 600. As provided for in 50 CFR 600.920(b), BOEM has accepted designation as the lead agency for the purposes of fulfilling EFH consultation obligations under Section 305(b) of the MSA. Certain OCS activities authorized by BOEM may result in adverse effects on EFH and, therefore, require consultation with NMFS. BOEM prepared and submitted an EFH Assessment to NMFS, which was deemed complete for EFH consultation to initiate on December 16, 2022. In a letter dated February 24, 2023, NMFS issued Conservation Recommendations, to which BOEM will provide a detailed response prior to issuance of the ROD.

#### **A.2.2.6. Marine Mammal Protection Act**

Section 101(a) of the MMPA (16 USC 1361) prohibits persons or vessels subject to the jurisdiction of the United States from taking any marine mammal in waters or on lands under the jurisdiction of the United States or on the high seas (16 USC 1372(a)(1), (a)(2)). Sections 101(a)(5)(A) and (D) of the MMPA provide exceptions to the prohibition on take, which give NMFS the authority to authorize the incidental but not intentional take of small numbers of marine mammals, provided certain findings are made and statutory and regulatory procedures are met. Under Section 3 of the MMPA, “take” is defined as “harass, capture, hunt, kill, or attempt to harass, capture, hunt, or kill any marine mammal.” The incidental take of a marine mammal falls under three categories: mortality, serious injury, and harassment. Harassment is

further defined as Take authorizations divide underwater noise effects on marine mammals into Level A and Level B harassment categories. MMPA regulations define Level A or Level B harassment as follows:

- Level A: Any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment) and
- Level B: Any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but that does not have the potential to injure a marine mammal or marine mammal stock in the wild (Level B harassment) (16 USC 1362)

Level A harassment includes physiological impacts associated with PTS (and other non-serious injuries), whereas Level B harassment includes physiological impacts associated with TTS, masking, and behavioral effects (discussed in greater detail below).

Entities seeking to obtain authorization for the incidental take of marine mammals under NMFS jurisdiction must submit such a request (in the form of an application). Incidental Take Authorizations may be issued as either (1) regulations and associated Letters of Authorization, or (2) an Incidental Harassment Authorization. Letters of Authorizations may be issued for up to a maximum period of 5 years, and Incidental Harassment Authorizations may be issued for a maximum period of 1 year. NMFS has also promulgated regulations to implement the provisions of the MMPA governing the taking and importing of marine mammals (50 CFR 216) and has published application instructions that prescribe the procedures necessary to apply for an Incidental Take Authorization. Applicants seeking to obtain authorization for the incidental take of marine mammals under NMFS' jurisdiction must comply with these regulations and application instructions in addition to the provisions of the MMPA.

Once NMFS determines an application is adequate and complete, NMFS has a corresponding duty to determine whether and how to authorize take of marine mammals incidental to the activities described in the application. To authorize the incidental take of marine mammals, NMFS evaluates the best available scientific information to determine whether the take would have a negligible impact on the affected marine mammal species or stocks and an immitigable impact on their availability for taking for subsistence uses. NMFS must also prescribe the "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, and on the availability of those species or stocks for subsistence uses, as well as monitoring and reporting requirements.

Ocean Wind submitted a Letter of Authorization application to NMFS on October 1, 2021. The application was reviewed and considered complete on February 11, 2022. NMFS published a Notice of Receipt in the Federal Register on March 7, 2022. NMFS published the proposed Incidental Take Regulations in the *Federal Register* on October 26, 2022.

#### **A.2.2.7. Clean Water Act and Rivers and Harbors Act**

Section 404 of the CWA (33 USC 1344) regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. A permit from USACE is required regardless of whether the work is temporary or permanent and includes discharges such as dewatering of dredged material prior to disposal and temporary fills for cofferdams and work areas. Section 10 of the RHA (33 USC 403) regulates the construction of any structure in or over navigable waters of the U.S. and prohibits the creation of any obstruction to the navigable capacity of any water of the U.S. A Section 10 permit is required for structures or work that affect the course, location, or condition of the waterbody, including dredging/excavation, submarine cable installation, and WTGs/OSS. Ocean Wind submitted an application to USACE on April 27, 2022. The application was reviewed and considered complete on May 11, 2022. USACE published a Public Notice on the Philadelphia District's website on June 17, 2022.

“Section 408 permission” is required pursuant to Section 14 of the RHA (33 USC 408) for any proposed alterations that have the potential to alter, occupy, or use any federally authorized civil works projects. The Section 408 review verifies that changes to authorized USACE Civil Works projects will not be injurious to the public interest and will not impair the usefulness of the project. Ocean Wind submitted an application to USACE on April 27, 2022, which was determined complete on May 27, 2022. A final permit decision is anticipated to be rendered by October 2023.

#### **A.2.2.8. Clean Air Act**

The OCS Air Regulations (40 CFR 55) establish the applicable air pollution control requirements, including provisions related to permitting, monitoring, reporting, fees, compliance, and enforcement, for facilities subject to the Clean Air Act (CAA) Section 328. Ocean Wind submitted an initial OCS Air Permit application on March 29, 2022. Revised applications were submitted on July 19, 2022 and September 30, 2022. EPA deemed the application complete on January 4, 2023.

### **A.2.3 Development of Draft Environmental Impact Statement**

This section provides an overview of the development of the Draft EIS, including public scoping, cooperating agency involvement, and distribution of the Draft EIS for public review and comment.

#### **A.2.3.1. Scoping**

On March 30, 2021, BOEM issued an NOI to prepare an EIS consistent with NEPA regulations (42 USC 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives (83 *Federal Register* 13777). The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the EIS. The formal scoping period was from March 30 through April 29, 2021. BOEM held three virtual public scoping meetings to solicit feedback and to identify issues and potential alternatives for consideration in the EIS. Throughout this timeframe, federal agencies, state and local governments, and the general public had the opportunity to help BOEM identify potential significant resources and issues, IPFs, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to analyze in the EIS, as well as provide additional information. BOEM also used the NEPA scoping process to initiate the Section 106 consultation process under the NHPA (54 USC 300101 et seq.), as permitted by 36 CFR 800.2(d)(3), which requires federal agencies to assess the effects of projects on historic properties. Additionally, BOEM informed its Section 106 consultation by seeking public comment and input through the NOI regarding the identification of historic properties or potential effects on historic properties from activities associated with approval of the COP (Ocean Wind 2023). The NOI requested comments from the public in written form, delivered by hand or by mail, or through the [regulations.gov](https://www.regulations.gov) web portal.

BOEM held three virtual scoping meetings on April 13, 15, and 20, 2021. BOEM reviewed and considered all scoping comments in the development of the Draft EIS, and used the comments to identify alternatives for analysis. A Scoping Summary Report (BOEM 2021) summarizing the submissions received and the methods for analyzing them is available on BOEM’s website at <https://www.boem.gov/renewable-energy/state-activities/ocean-wind-1>. In addition, all public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing “BOEM-2021-0024” in the search field. As detailed in the Scoping Summary Report, the resource areas or NEPA topics most referenced in the scoping comments include NEPA/Public Involvement Process; recreation and tourism; mitigation and monitoring; commercial fisheries and for-hire recreational fishing; birds; demographics, employment and economics; and others.

#### **A.2.3.2. Cooperating Agencies**

BOEM invited other federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the Draft EIS. According to CEQ guidelines, qualified agencies and governments are those with “jurisdiction by law or special expertise” (CEQ 1981). BOEM asked potential cooperating agencies to consider their authority and capacity to assume the responsibilities of a cooperating agency, and to be aware that an agency’s role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. BOEM also asked agencies to consider the “Factors for Determining Cooperating Agency Status” in Attachment 1 to CEQ’s January 30, 2002, Memorandum for the Heads of Federal Agencies (CEQ 2002). BOEM held interagency meetings on May 18, 2020, and on March 2, May 24, June 29, July 19, 2021, and January 13, 2022, to discuss the environmental review process, schedule, responsibilities, consultation, and potential alternatives.

The following federal agencies and state governments have supported preparation of the Final EIS as cooperating agencies:

- NMFS
- National Park Service
- USACE
- BSEE
- USEPA
- USCG
- USFWS
- DOD
- NJDEP
- New York State Department of State (NYSDOS)
- New Jersey BPU

NMFS is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involve activities that have the potential to affect marine resources under its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to the MMPA, as amended (16 USC 1361 et seq.); the regulations governing the taking and importing of marine mammals (50 CFR 216); the ESA (16 USC 1531 et seq.); and the regulations governing the taking, importing, and exporting of threatened and endangered species (50 CFR 222–226). In accordance with 50 CFR 402, NMFS also serves as the Consulting Agency under Section 7 of the ESA for federal agencies proposing action that may affect marine resources listed as threatened or endangered. NMFS has additional responsibilities to conserve and manage fishery resources of the United States, which include the authority to engage in consultations with other federal agencies pursuant to the MSA and 50 CFR 600 when proposed actions may adversely affect EFH. The MMPA is the only authorization for NMFS that requires NEPA compliance. NMFS intends to adopt BOEM’s Final EIS if, after independent review and analysis, NMFS determines the Final EIS to be sufficient to support the authorization.

The National Park Service is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect National Park Service resources under its jurisdiction by law and special expertise. The National Park Service is also participating as a consulting party for consultation under Section 106 of the NHPA.

USACE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Sections 10 and 14 of the RHA and Section 404 of the CWA. As an offshore wind energy project, the Project needs to be situated offshore in the water. Consequently, the fill activities associated with the Project, which consist of the inter-array cables, armoring at the base of the WTG foundations, protective cable armoring for the export cables, and temporary cofferdams, are water dependent. Issuance of Section 10 or Section 404 permits requires NEPA compliance, which will be met via adoption of BOEM's EIS and issuance of the ROD.

BSEE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect marine resources under its jurisdiction by law and special expertise; and safety, compliance, and enforcement issues. Pursuant to a December 2020 Memorandum of Agreement between BOEM and BSEE, BSEE conducts activities, consults, and advises BOEM on safety and environmental enforcement for renewable energy projects.

USEPA is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise, including air quality and water quality.

USCG is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect navigation and safety issues that fall under its jurisdiction by law and special expertise.

USFWS is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. USFWS also serves as the consulting agency under Section 7 of the ESA for federal agencies proposing actions that may affect terrestrial resources listed as threatened or endangered.

DOD is serving as a cooperating agency pursuant to 40 CFR 1501.8 because it has special expertise with respect to potential impacts that may occur as a result of the Proposed Action.

NJDEP, NYSDOS, and New Jersey BPU are serving as cooperating agencies pursuant to 40 CFR 1501.8 because they have special expertise with respect to potential impacts that may occur as a result of the Proposed Action.

#### **A.2.3.3. Distribution of the Draft Environmental Impact Statement for Review and Comment**

On June 24, 2022, BOEM published a Notice of Availability for the Draft EIS. The Draft EIS was made available in electronic format for public viewing at <https://www.boem.gov/renewable-energy/state-activities/ocean-wind-1>. Notification was provided as indicated in Appendix K of the Draft EIS. Hard copies and digital copies of the Draft EIS were delivered to entities as requested. The Notice of Availability commenced the 45-day public review and comment period of the Draft EIS. On August 3, 2022, BOEM announced the 15-day extension of the public review and comment period. BOEM held three virtual public hearings to solicit feedback and identify issues for consideration in preparing the Final EIS. Throughout the public review and comment period, government agencies, members of the public, and interested stakeholders had the opportunity to provide comments on the Draft EIS in various ways, including the following:

- In hard copy form, delivered by mail, enclosed in an envelope labeled "Ocean Wind 1 COP EIS" and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166.

- Through the [regulations.gov](https://www.regulations.gov) web portal by navigating to <https://www.regulations.gov/>, searching for docket number “BOEM-2022-0021,” and submitting a comment.
- By attending one of the public hearings on the dates listed in the notice of availability and providing written or verbal comments.

BOEM reviewed and considered all comment submissions in the development of the Final EIS. BOEM’s evaluation of public submissions focused on those comments within the submissions that were identified as substantive. EIS Appendix O describes the public comment processing methodology and includes comment responses. All public comment submissions received on the Draft EIS can be viewed online at <https://www.regulations.gov/> by typing “BOEM-2022-0021” in the search field.

#### **A.2.3.4. Distribution of the Final Environmental Impact Statement**

The Final EIS is available in electronic form for public viewing at <https://www.boem.gov/renewable-energy/state-activities/ocean-wind-1>. Hard copies and digital copies of the Final EIS can be requested by contacting the Program Manager, Office of Renewable Energy Programs in Sterling, Virginia. Publication of the Final EIS initiates a minimum 30-day mandatory waiting period, during which BOEM is required to pause before issuing a ROD. The ROD will state clearly whether BOEM intends to approve, approve with conditions, or disapprove the COP for construction, operation, and eventual decommissioning of the Project. Notification will be provided as indicated in Appendix K of the Final EIS.

### **A.3. References Cited**

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