

Appendix A: Consultation and Coordination

A.1 Introduction

This appendix discusses public, agency, and tribal involvement leading up to the preparation and publication of the New York Bight (NY Bight) Draft Programmatic Environmental Impact Statement (PEIS), including formal consultations, cooperating and participating agency and Cooperating Tribal Government exchanges, the public scoping comment period, and other correspondence. Interagency consultation, coordination, and correspondence throughout the development of the Draft PEIS occurred primarily through virtual meetings, teleconferences, and written communications (including email).

A.2 Consultations

A.2.1 Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA), as amended (16 United States Code [U.S.C.] 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 could affect a protected species or its critical habitat, that agency is required to consult with either the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS), depending upon the jurisdiction of the services. Pursuant to 50 Code of Federal Regulations (CFR) 402.07, the Bureau of Ocean Energy Management (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 is developing Programmatic Biological Assessments for listed species and designated critical habitats under NMFS and USFWS jurisdictions.

A.2.2 Tribal Consultation

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with Tribal Nations when federal actions have tribal implications. 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 Executive Order 13175 (BOEM 2018). BOEM implements tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and other engagement.

On November 30, 2022, in conjunction with a White House Tribal Summit held at the Department of the Interior, the Biden-Harris administration issued several directives and updates on Tribal policies including: Presidential Memorandum on Uniform Standards for Tribal Consultation (November 30, 2022); Department of the Interior Policy on Consultation with Indian Tribes (November 30, 2022); Department of the Interior Procedures for Consulting with Indian Tribes (November 30, 2022);

Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations (November 30, 2022); Department of the Interior Procedures for Consultation with Alaska Native Claims Settlement Act Corporations (November 30, 2022); Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making (Draft September 2022); Guidance for Federal Departments and Agencies on Indigenous Knowledge (November 30, 2022); Memorandum on Implementation of Guidance for Federal Departments and Agencies on Indigenous Knowledge (November 30, 2022); Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community Chapter 1: Policy and Responsibilities (November 30, 2022); and Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community Chapter 2: Committee on Collaborative and Cooperative Stewardship (November 30, 2022). Finally, on April 21, 2023, President Biden issued Executive Order 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All, which includes coverage for Tribal Nations.¹

On July 7, 2022, BOEM informed tribal leaders via email of the purpose of and anticipated publication date for the Notice of Intent (NOI) to prepare a PEIS for the NY Bight lease areas. On July 15, 2022, BOEM sent individual letters via email to tribal leaders with the Absentee-Shawnee Tribe of Indians of Oklahoma, The Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Mashpee Wampanoag Tribe, Mashantucket (Western) Pequot Tribal Nation, Mohegan Tribe of Connecticut, Shawnee Tribe, Stockbridge-Munsee Community Band of Mohican Indians, The Narragansett Indian Tribe, The Shinnecock Indian Nation, and the Wampanoag Tribe of Gay Head (Aquinnah). These letters notified them that the NOI to prepare a PEIS for the NY Bight lease areas was issued that day and noted that the scoping comment period was open until August 15, 2022. Additionally, the letters initiated formal consultation with twelve Tribes under the National Historic Preservation Act (NHPA) and invited them to be NHPA Section 106 consulting parties and Cooperating Tribal Governments for the PEIS. One tribal leader initially responded that they would not like to participate in discussions related to the NY Bight PEIS: the Mashantucket (Western) Pequot Tribal Nation. As of April 19, 2023, Michael Kickingbear Johnson, Mashantucket Pequot (Western) Tribal Historic Preservation Officer (THPO) informed BOEM that the Mashantucket (Western) Pequot Tribal Nation, “are again revising [their] areas of interest by expanding them.” BOEM has established a Cooperating Tribal Government relationship with the Tribe and has added them to the NHPA Consultation list. The Stockbridge-Munsee Community Band of Mohican Indians have also agreed to be a Cooperating Tribal Government on the NY Bight PEIS.

On September 21, 2022, a virtual meeting was held with Delaware Tribe of Indians, Stockbridge-Munsee Community Band of Mohican Indians, and Shinnecock Indian Nation distinguishing the NY Bight, Empire Wind, and Atlantic Shores lease areas. During that meeting, they requested a geophysical map, location(s) of trenches for transmission lines, key observation points (KOPs), as well as information on radiant heat from cables, how turbines may affect surface ocean temperatures, and how build out may

¹ Executive Order 14096 further embeds “environmental justice agenda into the work of federal agencies to achieve real, measurable progress that communities can count on.” This executive order and subsequent guidance will be incorporated into the Final PEIS.

affect migration patterns of keystone species, marine mammals, and ESA-listed species. A draft list of KOPs for the NY Bight lease areas was shared with all Section 106 consulting parties, which includes all invited Tribal Nations who did not decline the invitation to consult. Information regarding transmission lines for the NY Bight lease areas is currently unknown and will be shared at the project-specific stage.

Additionally, the following Tribes were invited to participate in quarterly Environmental Justice Forums, beginning in October 2022: the Mashpee Wampanoag, Aquinnah Wampanoag, Mohegan, Stockbridge-Munsee Community Band of Mohican Indians, Delaware Tribe of Indians, The Delaware Nation, The Narragansett Indian Tribe, Shinnecock Indian Nation, Shawnee Nation, Eastern Shawnee Tribe of Oklahoma, and Absentee-Shawnee Tribe of Indians of Oklahoma. Impacts from noise on marine mammals was discussed during the Environmental Justice Forums, and supporting resources were also shared with participants. See Section 3.6.4.1.6, *Environmental Justice Engagement*, for more information on the Environmental Justice Forums.

On November 2, 2022, the NY Bight PEIS was discussed on the Atlantic Quarterly meeting tribal call with BOEM Director Amanda Lefton. On January 10, 2023, BOEM held a virtual meeting to share the location of the NY Bight lease areas including a map of the bathymetry, areas of cultural significance for consideration as KOPs, a field opportunity to Block Island, Native American history, and their connection to the shipwrecks. The following representatives attended: Carissa Speck, Delaware Nation Historic Preservation Director; Katelyn Lucas, Delaware Nation Historic Preservation Assistant; Jeff Bendremer, Registered Professional Archaeologist, Stockbridge-Munsee THPO; Susan Bachor, Delaware Tribe THPO and Archaeologist; Kevin Devine, Aquinnah Wampanoag Tribal Council; Jeremy Dennis, Shinnecock Indian Nation Assistant THPO; Kelly Dennis, Shinnecock Council of Trustees Secretary (and Secretary's Tribal Advisory Committee member); and Kelsey Leonard, Shinnecock Tribal Member (and Committee on Offshore Science and Assessment member). On April 27, 2023, Erin Paden, Shawnee Tribe THPO asked to be taken off all NY Bight related correspondence. As of October 2023, no Tribes have requested formal government-to-government consultation on the NY Bight PEIS.

A.2.3 National Historic Preservation Act

Section 106 of the NHPA (54 U.S.C. 306108) and its implementing regulations (36 CFR part 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. In anticipation of the project-level review of Construction and Operation Plans (COPs) for each of the NY Bight lease areas, BOEM has identified an opportunity to engage the appropriate federally recognized Tribes, State Historic Preservation Offices (SHPO) and consulting parties to develop a Programmatic Agreement that outlines the project-level review process; identifies avoidance, minimization, mitigation, and monitoring (AMMM) measures; and provides templates for key documents that may be required in the course of project-level Section 106 consultation. Appendix I, *NHPA Section 106 Summary*, of the Draft PEIS contains a summary of BOEM's Section 106 programmatic review, including a description and summary of BOEM's consultation so far.

On July 15, 2022, BOEM contacted representatives of other federal agencies, federally recognized Tribes, state and local governments, preservation organizations, lessees of the six NY Bight lease areas and other potentially interested parties to determine their interest in participating in the programmatic Section 106 review as consulting parties. Invitations were extended to additional organizations as they were identified. Those parties that have confirmed their desire to participate in the programmatic Section 106 review of the NY Bight as of December 1, 2023, are listed in Table A1.

BOEM conducted Section 106 early coordination meetings with ACHP on September 7, 2022, and with the New Jersey and New York SHPOs and ACHP on September 21, 2022, and January 10, 2023. BOEM conducted a Section 106 consultation meeting with consulting parties on March 13, 2023 to introduce the objectives for the NY Bight programmatic Section 106 review and solicit input on the development of the Programmatic Agreement. BOEM conducted a second Section 106 consultation meeting on August 3, 2023 to present an introduction to BOEM’s analysis of impacts on scenic and visual resources including a preview of the development of photo simulations of development scenarios for the NY Bight lease areas and to provide an overview of BOEM’s progress on the development of the Programmatic Agreement.

In the course of consultation activities, BOEM has identified additional organizations or agencies that may have an interest in the effects of offshore wind development on cultural resources and has continued to invite such parties to participate in the programmatic Section 106 review. BOEM will continue consulting with federally recognized Tribes, New Jersey SHPO, New York SHPO, ACHP, and other consulting parties regarding the project-level review procedures and the development of programmatic AMMM measures that could be adopted at the COP stage to resolve adverse effects on historic properties.

Table A1. Participating consulting parties for the NY Bight PEIS

Organization Type	Participating Consulting Parties
Federal Government	U.S. Advisory Council on Historic Preservation
Federal Government	U.S. Army Corps of Engineers
Federal Government	U.S. Bureau of Safety and Environmental Enforcement
Federal Government	U.S. Environmental Protection Agency
Federal Government	U.S. National Park Service
Federally Recognized Tribe	Absentee-Shawnee Tribe of Indians of Oklahoma
Federally Recognized Tribe	Delaware Tribe of Indians
Federally Recognized Tribe	Eastern Shawnee Tribe of Oklahoma
Federally Recognized Tribe	Mashantucket (Western) Pequot Tribal Nation
Federally Recognized Tribe	Mashpee Wampanoag Tribe
Federally Recognized Tribe	Mohegan Tribe of Connecticut
Federally Recognized Tribe	Stockbridge-Munsee Community Band of Mohican Indians
Federally Recognized Tribe	The Delaware Nation
Federally Recognized Tribe	The Narragansett Indian Tribe
Federally Recognized Tribe	The Shinnecock Indian Nation
Federally Recognized Tribe	Wampanoag Tribe of Gay Head (Aquinnah)
Lessee	Atlantic Shores Offshore Wind Bight (OCS-A 0541)

Organization Type	Participating Consulting Parties
Lessee	Attentive Energy (OCS-A 0538)
Lessee	Bluepoint Wind (OCS-A 0537)
Lessee	Community Offshore Wind (OCS-A 0539)
Lessee	Invenergy (OCS-A 0542)
Lessee	Vineyard Mid-Atlantic Offshore Wind (OCS-A 0544)
Local Government	Atlantic County
Local Government	Avon-by-the-Sea Borough
Local Government	Borough of Beach Haven
Local Government	Borough of Highlands
Local Government	Borough of Point Pleasant Beach
Local Government	Borough of Sea Bright
Local Government	Borough of Seaside Park
Local Government	Borough of Spring Lake
Local Government	Cape May County
Local Government	City of Absecon
Local Government	City of Asbury Park
Local Government	City of Hoboken
Local Government	Monmouth County
Local Government	Monmouth County Park System
Local Government	Nassau County
Local Government	Suffolk County
Local Government	Town of Babylon
Local Government	Town of Islip
Local Government	Town of Oyster Bay
Local Government	Township of Brick
Local Government	Township of Hamilton
Local Government	Township of Middletown
Local Government	Township of Stafford
Local Government	Village of Bellport
Local Government	Village of Patchogue
Other Potentially Interested Parties	Green-Wood Cemetery
Other Potentially Interested Parties	Hempstead Harbor Protection Committee
Other Potentially Interested Parties	Point O'Woods Association
Preservation Organization	Bay Shore Historical Society
Preservation Organization	Greater Cape May Historical Society
Preservation Organization	Historic Districts Council
Preservation Organization	Historical Society of Highlands
Preservation Organization	Ocean City Historical Museum
Preservation Organization	Preservation Alliance of Spring Lake
Preservation Organization	Romer Shoal Light
Preservation Organization	Save Long Island Beach Inc.
Preservation Organization	The Noyes Museum of Art

Organization Type	Participating Consulting Parties
Preservation Organization	West Bank Lighthouse
State Government	New Jersey State Museum
State Government	New York State Parks, Recreation & Historic Preservation, Long Island State Parks Region 9
State Government	New York State Parks, Recreation and Historic Preservation
State Government (SHPO)	New Jersey Department of Environmental Protection, Historic Preservation Office
State Government (SHPO)	New York State Historic Preservation Office
State Recognized Tribe	Lenape Indian Tribe of Delaware

A.2.4 Magnuson-Stevens Fishery Conservation and Management Act

Pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), federal agencies are required to consult with NMFS on any action that may result in adverse effects on Essential Fish Habitat (EFH). NMFS regulations implementing the EFH provisions of the MSA can be found at 50 CFR part 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 Outer Continental Shelf (OCS) activities authorized by BOEM may result in adverse effects on EFH and, therefore, require consultation with NMFS. At this programmatic stage, an EFH Assessment and consultation are not being undertaken. Project-specific EFH Assessments will be prepared for each offshore wind project during the COP-specific NEPA process.

A.3 Development of Draft Environmental Impact Statement

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

A.3.1 Scoping

On July 15, 2022, BOEM issued a NOI to prepare a PEIS consistent with National Environmental Policy Act (NEPA) regulations (42 U.S.C. 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives [87 *Federal Register* 42495]. The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the PEIS. The formal scoping period was from July 15, 2022, through August 15, 2022, but was extended until August 30, 2022. BOEM held three virtual public scoping meetings on July 28, 2022, August 2, 2022, and August 4, 2022, to share information, solicit feedback, and to answer questions. Throughout the scoping period, federal agencies, Tribal Nations, and state and local governments, and the general public had the opportunity to help BOEM identify potentially significant resources and issues, impact-producing factors (IPFs), reasonable alternatives, and potential mitigation measures to analyze in the PEIS, as well as provide additional information. BOEM also used the NEPA scoping process to initiate the Section 106 consultation process under the NHPA (54 U.S.C. 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. The NOI requested comments from the public in written form, delivered by hand or by mail, or through the regulations.gov web portal.

BOEM received a total of 43 comments during the scoping period. BOEM reviewed and considered all scoping comments in the development of the Draft PEIS. A scoping summary report summarizing the submissions received and the methods for analyzing them is available in Appendix O, *Scoping Report*, of the PEIS. In addition, all public scoping comments received can be viewed online at <http://www.regulations.gov> by typing “BOEM-2022-0034” in the search field. As detailed in the scoping summary report, the resource areas or NEPA topics most referenced in the scoping comments were the Purpose and Need, the Proposed Action, Public Engagement, Commercial and For-Hire Recreational Fishing, Marine Mammals, Navigation and Vessel Traffic, and Scenic and Visual Resources.

A.3.2 Cooperating and Participating Agencies and Cooperating Tribal Governments

BOEM invited other federal agencies, Tribal Nations, and state and local governments to consider becoming cooperating agencies in the preparation of the Draft PEIS. According to Council of Environmental Quality (CEQ) guidelines, qualified agencies and governments are those with “jurisdiction by law or special expertise” (CEQ 1981). BOEM also invited agencies that do not have jurisdiction by law or special expertise but that have a vested interest in the Draft PEIS to engage as participating agencies. Agreeing to engage as a cooperating or participating agency allowed agencies the opportunity to participate in discussions and contribute to the development of the Draft PEIS.

BOEM held interagency meetings with cooperating and participating agencies on September 12, 2022, December 2, 2022, and August 7, 2023, to discuss the environmental review process, schedule, responsibilities, consultation, and potential alternatives. BOEM also met individually and in small groups with cooperating and participating agencies who requested additional discussion on the PEIS at various times throughout development of the Draft PEIS.

The following federal agencies, Tribal Nations, and state and local governments have supported preparation of the Draft PEIS as cooperating and participating agencies and Cooperating Tribal Governments:

Cooperating Agencies

- Bureau of Safety and Environmental Enforcement
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- New Jersey Department of Environmental Protection
- National Park Service
- New Bedford Port Authority
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service

- U.S. Army Corps of Engineers
- New York State Department of State
- Massachusetts Office of Coastal Zone Management
- New York State Department of Environmental Conservation
- New Jersey Board of Public Utilities

Cooperating Tribal Governments

- Mashantucket (Western) Pequot Tribal Nation
- Stockbridge-Munsee Community, Band of Mohican Indians

Participating Agencies

- New York City Mayor’s Office of Environmental Coordination

A.3.3 Distribution of the Draft Programmatic Environmental Impact Statement for Review and Comment

The Draft PEIS is available in electronic format for public viewing at <https://www.boem.gov/renewable-energy/state-activities/new-york-bight>. Hard copies of the Draft PEIS can be requested by contacting BOEM, Office of Environmental Programs in Sterling, Virginia at (703) 787-1703. Publication of the Draft PEIS initiates a 45-day comment period where government agencies, members of the public, and interested stakeholders can provide comments and input. BOEM will accept comments in any of the following ways:

- In hard copy form, delivered by mail, enclosed in an envelope labeled “NY BIGHT PEIS” and addressed to Chief, Division of Environmental Assessment, Office of Environmental Programs, Bureau of Ocean Energy Management, 45600 Woodland Road (VAM-OEP), Sterling, Virginia 20166.
- Through the regulations.gov web portal by navigating to <https://www.regulations.gov/>, searching for docket number “BOEM-2024-0001,” and clicking the “Comment” button. Enter your information and comment, then click “Submit Comment.”
- By attending one of the public meetings on the dates listed in the notice of availability and providing written or verbal comments.

BOEM will use comments received during the public comment period to inform its preparation of the Final PEIS, as appropriate. PEIS notification lists are provided in Appendix N, *Distribution List*.

A.4 References Cited

[BOEM] Bureau of Ocean Energy Management. 2018. Tribal consultation guidance. 2023 Jun 29. US Department of the Interior, Bureau of Ocean Energy Management.
<https://www.boem.gov/sites/default/files/about-boem/Public-Engagement/Tribal-Communities/BOEM-Tribal-Consultation-Guidance-with-Memo.pdf>.

[CEQ] Council on Environmental Quality. 1981. Memorandum to agencies: Forty most asked questions concerning CEQ's National Environmental Policy Act regulation. Amended 1986. Washington (DC): Council on Environmental Quality. Report No.: 46 Fed. Reg. 18026.
<https://www.energy.gov/sites/prod/files/2018/06/f53/G-CEQ-40Questions.pdf>.