

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 the Mayflower Wind Project’s (Project) implementation.

Table A-1. Required environmental permits and consultations for the proposed Project

Agency/Regulatory Authority	Permit/Approval	Status
Federal (Portions of the Project within Federal Jurisdiction)		
Bureau of Ocean Energy Management (BOEM)	Construction and Operations Plan (COP) Approval	COP filed with BOEM on February 15, 2021. Updates to the COP were submitted on August 30, 2021, October 28, 2021, March 17, 2022, and December 22, 2022.
Department of Defense (DoD)	Informal Project Notification Form	Submitted May 2020
National Marine Fisheries Service (NMFS)	Marine Mammal Protection Act (MMPA) Incidental Take Regulations and Letter of Authorization	Application accepted as complete September 2022
U.S. Army Corps of Engineers (USACE)	Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Individual Permit	Submitted December 2022
U.S. Coast Guard (USCG)	Private Aids to Navigation (PATON) authorization	Planned
USCG	Local Notice to Mariners per Ports and Waterways Safety Act	Planned
U.S. Environmental Protection Agency (USEPA)	Clean Air Act Outer Continental Shelf (OCS) Air Permit	Submitted November 2022
USEPA	National Pollutant Discharge Elimination System General Permit	Submitted October 2022
Federal Aviation Administration	Determination of No Hazard, if required	Planned
Bureau of Safety and Environmental Enforcement (BSEE)	Oil Spill Response Plan	Planned
State (Portions of the Project within State Jurisdiction)		
Massachusetts Executive Office of Energy and Environmental Affairs	Massachusetts Environmental Policy Act (MEPA) Environmental Notification Form (ENF) or Environmental Impact Report (EIR) and Certificate of Secretary of Energy and Environmental Affairs	Falmouth ENF filed November 17, 2021. EIR planned for 2023. Brayton Point ENF filed August 12, 2022. EIR planned for 2023.

Agency/Regulatory Authority	Permit/Approval	Status
Massachusetts Energy Facility Siting Board (MA EFSB)	Siting Petition pursuant to G.L. c. 164, 69J and Certificate of Environmental and Public Need (Section 72 Approval Consolidated with MA EFSB)	Filed November 17, 2021 for Falmouth. Filed May 27, 2022 for Brayton Point.
Massachusetts Department of Public Utilities	Section 72 petition pursuant to G.L. c. 164, 72 and Zoning petition pursuant to G.L. c. 40A, 3	Filed November 17, 2021 for Falmouth. Filed May 27, 2022 for Brayton Point.
Massachusetts Department of Environmental Protection (MassDEP)	Chapter 91 Waterways License/Permit for dredge, fill, or structures in waterways or tidelands	Planned
	Section 401 Water Quality Certification	Planned
Massachusetts Office of Coastal Zone Management	Coastal Zone Management Consistency Determination	Submitted February 15, 2021. Updates provided January 13, 2022.
Massachusetts Department of Transportation	State Highway Access/ Easement/ Right-of-Way Permits	Planned
Massachusetts Historical Commission	Project Notification Form/Field Investigation Permits (980 Code of Massachusetts Regulations 70.00)	Submitted February 14, 2020 for Falmouth and July 26, 2021 for Brayton Point.
	Section 106 Consultation	Initiated October 1, 2021. Notice of Intent (NOI) provided November 1, 2021.
Massachusetts Board of Underwater Archaeological Resources (BUAR)	Section 106 Consultation	Initiated September 29, 2021. NOI provided November 1, 2021.
Massachusetts Fisheries and Wildlife (MassWildlife) – Natural Heritage & Endangered Species Program (NHESP)	Endangered Species Act Checklist and Conservation and Management Permit (if needed) or No-Take Determination	Planned
Rhode Island Coastal Resources Management Council (RICRMC)	Coastal Zone Management Consistency Determination	Filed in 2021. Revised version filed March 16, 2022.
RICRMC	Freshwater Wetlands Permit	Planned
RICRMC	Category B Assent and Submerged Lands License	Planned
Rhode Island Energy Facility Siting Board (RI EFSB)	Certificate of necessity/public utility	Filed May 31, 2022.
Rhode Island Historical Preservation and Heritage Commission (RIHPHC)	Archaeological Permit	Phase 1 permit issued December 17, 2021. Marine Archaeological Resources Assessment submitted March 16, 2022.

Agency/Regulatory Authority	Permit/Approval	Status
RIHPHC	Section 106 Consultation	Initiated September 29, 2022. NOI provided November 1, 2021.
Rhode Island Department of Environment	Water Quality Certification and Dredging Permit	Planned
Rhode Island Department of Environment	Rhode Island Pollution Discharge Elimination System General Permit for Stormwater Discharge Associated with Construction Activity	Planned
Rhode Island Department of Transportation	Utility Permit/Physical Alteration Permit	Planned
Local (Portions of the Project within Local Jurisdiction)		
Cape Cod Commission	Development of Regional Impact Review	Planned
Martha's Vineyard Commission	Development of Regional Impact Review	Planned
Falmouth, Portsmouth, and/or Somerset Planning and Zoning Boards	Local Planning/Zoning Approvals (if needed)	Planned
Falmouth and Somerset Conservation Commissions	Notice of Intent and Order of Conditions (Massachusetts Wetland Protection Act and municipal wetland non-zoning bylaws)	Planned
Edgartown, Oak Bluffs, Tisbury, and Nantucket Conservation Commissions	Notice of Intent and Order of Conditions (Massachusetts Wetlands Protection Act and municipal wetland non-zoning bylaws) for offshore route (if needed as dictated by final offshore route)	Planned
Falmouth, Portsmouth, and Somerset Department of Public Works, Board of Selectmen, and/or Town Council	Street Opening Permits/Grants of Location	Planned

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 Draft Environmental Impact Statement (EIS), including formal consultations, cooperating agency exchanges, the public scoping comment period, and correspondence. This section discusses public involvement in the preparation of this Draft EIS, including BOEM's responses to public comments, formal consultations, and cooperating agency exchanges. Interagency consultation, coordination, and correspondence throughout the development of this Draft 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

A.2.2.1 Coastal Zone Management Act

The Coastal Zone Management Act requires that federal actions within and outside the coastal zone that have reasonably foreseeable effects on any coastal use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. On February 15, 2021, Mayflower Wind submitted a federal consistency certification with the Massachusetts Office of Coastal Zone Management, with a revised version filed by Mayflower Wind on January 13, 2022. Mayflower Wind's COP (Mayflower Wind 2022) provided the necessary data and information under 15 Code of Federal Regulations (CFR) 930.58. The state's concurrence is required before BOEM may approve or approve with conditions the Mayflower Wind 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 Endangered Species Act (ESA) of 1973, as amended (16 United States Code [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 U.S. Fish and Wildlife Service (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 will consult on the proposed activities considered in this Draft EIS with both NMFS and USFWS and is preparing Biological Assessments for listed species under their respective jurisdictions.

A.2.2.3 Government-to-Government Tribal Consultation

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with tribal nations 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 tribal nations 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 National Historic Preservation Act (NHPA) and National Environmental Policy Act (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.

From September 29 to November 1, 2021, BOEM initiated formal consultation with eight tribal nations 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 Delaware Nation, the Delaware Tribe of Indians, the Mashantucket Pequot Tribal Nation, the Mashpee Wampanoag Tribe, the Mohegan Tribe of Connecticut, the Narragansett Indian Tribe, the Shinnecock Indian Nation, and the Wampanoag Tribe of Gay Head (Aquinnah). Five tribal nations responded that they would like to participate as consulting parties to the Project: the Mashantucket Pequot Tribal Nation, the Mashpee Wampanoag Tribe, the Narragansett Indian Tribe, the Shinnecock Indian Nation, and the Wampanoag Tribe of Gay Head (Aquinnah). The Delaware Tribe of Indians and the Mohegan Tribe of Connecticut did not respond to BOEM's initiation of consultation, however BOEM has included these tribal nations in all consulting party communications and considers them consulting parties.

On October 8, 2021, BOEM sent a Memorandum of Understanding to the Delaware Nation, Delaware Tribe of Indians, the Mashantucket Pequot Tribal Nation, the Mashpee Wampanoag Tribe, the Mohegan Tribe of Connecticut, the Narragansett Indian Tribe, the Shinnecock Indian Nation, and the Wampanoag Tribe of Gay Head (Aquinnah) to establish a cooperating agency relationship with the purpose of preparing an EIS. One tribe, the Delaware Nation, declined the invitation to be a consulting party on October 13, 2021.

On November 2, 2021, BOEM sent another set of letters and emails to tribal leaders notifying them that the NOI to prepare an EIS for the Project was issued that day and noted that the scoping comment period was open until December 2, 2021. The letter also offered a government-to-government consultation meeting to discuss the public scoping information for the Project and to request input regarding alternatives for consideration, the identification of historic properties, potential effects to historic properties, and potential measures to avoid, minimize and/or mitigate impacts on environmental and cultural resources to be analyzed in the EIS. BOEM held a government-to-government meeting with the tribal nations that responded, the Mashantucket Pequot Tribal Nation, the Mashpee Wampanoag Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah), on November 19, 2021. The tribal nations expressed interest in continuing consultation for offshore wind, and emphasized the importance of early consultation in Project development.

On May 2, 2022, BOEM held a government-to-government meeting specifically with the Chairwoman, Tribal Historic Preservation Officer, and council members of the Wampanoag Tribe of Gay Head (Aquinnah). In the meeting, BOEM introduced and discuss the overall renewable energy program and process and summarized details and status of projects off the coast of New England. Topics identified for future discussion included cumulative visual simulations and resource impacts, the transmission process that is part of a lease, decommissioning process and oversight, proposed mitigation plans and agreements, and the Tribal capacity-building initiatives.

On June 1, 2022, BOEM held a government-to-government meeting with the Chairwoman and Council members of the Wampanoag Tribe of Gay Head (Aquinnah). This meeting was a follow up to the May 2, 2022 meeting to continue the collective conversation on various topics and tribal concerns related to offshore wind development off the New England coast.

On June 2, 2022, the BOEM Director met in-person with the Mashpee Wampanoag Tribe to provide the Tribal Council with an overview of the current state of wind farm permitting off the coast of New England, including the Gulf of Maine; discuss and receive feedback on project and regional biological and economic concerns and potential mitigation strategies; discuss and receive feedback on cumulative visual impacts and simulations; discuss and receive feedback on other programmatic topics including transmission as part of a lease and capacity-building initiatives.

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 wind turbine generators (WTGs) and offshore substation platforms (OSPs), installation of interarray 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 Record of Decision to comply with Section 106. Appendix I of this Draft EIS contains BOEM's Determination of Effect for NHPA Section 16 Consultation, which includes a description and summary of BOEM's consultation so far. BOEM will continue consulting with the Massachusetts Historical Commission (the Massachusetts SHPO), the Rhode Island Historical Preservation & Heritage Commission (RIHPHC; the Rhode Island SHPO), and the Massachusetts Board of Underwater Archaeological Resources (BUAR), ACHP, federally recognized tribal nations, 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 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 2022), available on BOEM's Project-specific website, summarizes comments on historic

preservation issues. On September 29, 2021, BOEM initiated consultation with eight federally recognized tribal nations: the Delaware Nation, Delaware Tribe of Indians, Mashantucket Pequot Tribal Nation, Mashpee Wampanoag Tribe, Mohegan Tribe of Connecticut, Narragansett Indian Tribe, Shinnecock Indian Nation, and Wampanoag Tribe of Gay Head (Aquinnah) (Section A.2.2.3, *Government-to-Government Tribal Consultation*). The following five tribal nations notified BOEM of their interest in participating as a consulting party: the Mashantucket Pequot Tribal Nation on October 19, 2021; the Mashpee Wampanoag Tribe on October 6, 2021; the Narragansett Indian Tribe on November 1, 2021; the Shinnecock Indian Nation on February 4, 2022; and the Wampanoag Tribe of Gay Head (Aquinnah) on November 1, 2021. The following two tribal nations did not respond to BOEM’s initiation of consultation, however BOEM has included these tribal nations in all consulting party communications and considers them consulting parties: the Delaware Tribe of Indians; and the Mohegan Tribe of Connecticut. One tribe, the Delaware Nation, declined the invitation to be a consulting party on October 13, 2021. BOEM requested information from tribal consulting parties on sites of religious and cultural significance to the tribal nations that the proposed Project could affect, and BOEM offered its assistance in providing additional details and information on the proposed Project to the tribal nations.

From September 29 to October 7, 2021, BOEM corresponded with governments and organizations by mail and email to provide information about the Project and extend an invitation to be a consulting party to the NHPA Section 106 review of the COP. BOEM also used this correspondence to notify of its intention to use the NEPA process for Section 106 purposes, as described in 36 CFR 800.8(c), during its review. On November 1, 2021, BOEM notified consulting parties of its issuance of a NOI to prepare an EIS consistent with NEPA regulations to assess the potential impacts of the Proposed Action and alternatives. On July 7, 2022, BOEM held virtual NHPA Section 106 Consultation Meeting #1. The presentation included a brief Project overview, review of NEPA substitution for the NHPA Section 106 process, overview of Section 106 consultation opportunities for the Project, NHPA Section 110(f) compliance requirements, and a question-and-answer session with discussion. For additional information on Section 106 consultation and coordination, see Appendix I, Section I.2.2.3 *NHPA Section 106 Consultations*. Participants that have accepted consulting party status for the NHPA Section 106 Consultation are listed in Table A-2. During the consultations, additional parties were made known to BOEM and were added as they were identified; these additional parties are included in this list.

Table A-2. Participating consulting parties

Participants in the Section 106 Process	Participating Consulting Parties
SHPOs and state agencies	Massachusetts Board of Underwater Archaeological Resources (BUAR) Massachusetts Historical Commission Rhode Island Historical Preservation & Heritage Commission (RIHPHC)
Federal agencies or facilities	Advisory Council on Historic Preservation (ACHP) BSEE National Park Service (NPS) USACE

Participants in the Section 106 Process	Participating Consulting Parties
Federally recognized tribal nations	Delaware Tribe of Indians Mashantucket Pequot Tribal Nation Mashpee Wampanoag Tribe Mohegan Tribe of Connecticut Narragansett Indian Tribe Shinnecock Indian Nation Wampanoag Tribe of Gay Head (Aquinnah)
Non-federally recognized tribal nations	Chappaquiddick Tribe of Wampanoag Nation
Local governments	Cape Cod Commission City of East Providence, Rhode Island City of New Bedford and New Bedford Port Authority, Massachusetts Falmouth Historical Commission Martha's Vineyard Commission Nantucket Historic District Commission Nantucket Historical Commission Nantucket Planning & Economic Development Commission (represented by Cultural Heritage Partners [CHP]) Town of Aquinnah, Massachusetts Town of Barnstable, Historical Commission, Massachusetts Town of Bristol, Rhode Island Town of Falmouth, Massachusetts Town of Jamestown, Rhode Island Town of Middletown, Rhode Island Town of Nantucket, Massachusetts (represented by CHP) Town of Somerset, Massachusetts, Historical Commission Town of South Kingstown, Rhode Island Town of Swansea, Massachusetts Town of Warren, Rhode Island Town of Westport, Massachusetts
Nongovernmental organizations or groups	Alliance to Protect Nantucket Sound (APNS) Gay Head Lighthouse Advisory Board Nantucket Preservation Trust The Maria Mitchell Association
Lessee	Mayflower Wind Energy LLC

A.2.2.5 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 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 developed a draft EFH Assessment concurrent with the Draft EIS and transmitted the draft EFH Assessment to NMFS on October 21, 2022.

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. 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.

Mayflower Wind submitted an application for incidental take regulations and a Letter of Authorization to NMFS on March 18, 2022. The application was reviewed and considered complete on September 19, 2022. NMFS published a Notice of Receipt in the Federal Register on October 17, 2022.

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 November 1, 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 (86 Federal Register 60270). The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the EIS. The formal scoping period was from November 1 through December 1, 2021. Three virtual scoping meetings were held on November 10, 15, and 18, 2021. During this timeframe, federal agencies, state and local governments, and the general public had the opportunity to help BOEM identify potential significant resources and issues, impact-producing factors,

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. The NOI requested comments from the public in written form, delivered by mail, or through the regulations.gov web portal. The public could also submit oral comments at the three virtual scoping meetings hosted by BOEM.

A Scoping Summary Report (BOEM 2022) summarizing the submissions received and the methods for analyzing them is available on BOEM’s website at <https://www.boem.gov/mayflower-wind>. In addition, all public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing “BOEM-2021-0062” 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 Council on Environmental Quality (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 August 6, 2021, September 23, 2021, January 5, 2022, March 8, 2022, and October 28, 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 Draft EIS as cooperating agencies:

- NMFS
- USACE
- BSEE
- USEPA
- USCG

- Massachusetts Office of Coastal Zone Management
- RICRMC
- New York State Department of State

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.

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 USACE’s jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Sections 10 and 14 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act, approved on March 3, 1899 (33 USC 403), prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States; the excavating from or depositing of material in such waters; or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the OCS, by Section 4(f) of the Outer Continental Shelf Lands Act of 1953, as amended (43 USC 1333(e)). Section 14 of the Rivers and Harbors Act (33 USC 408) provides that USACE must grant permission for any temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. The purpose of USACE’s Section 408 review is to evaluate the applicant’s request and determine whether the proposed alterations would be injurious to the public interest or would impair the usefulness of the proposed Project. This review is needed to ensure that congressionally authorized projects continue to provide their intended benefits to the public. Section 404 of the Clean Water Act (33 USC 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites (33 CFR 323.) The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the USEPA in conjunction with the Secretary of the Army and

published in 40 CFR 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation and anchorage of such a prohibition in reaching their decision. Furthermore, the Administrator can deny, prohibit, restrict, or withdraw the use of any defined area as a disposal site whenever they determine, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas (40 CFR 230). Under Section 10 of the Rivers and Harbors Act, activities regulated between the mean high water mark and the 3-nautical-mile limit of the territorial seas may include dredging, cable installation, and cable protection installation. Regulated structures include the cables and the cable protection. Structures regulated under Section 10 on the OCS may include the offshore export cables, WTGs, OSPs, interarray cables, OSP inter-link cables, scour protection, and cable protection. Under Section 404 of the Clean Water Act, USACE regulates the placement of dredged or fill material into waters of the United States. In tidal waters, Section 404 activities are regulated between the high tide line and the 3-nautical-mile mark as measured from the baseline of the territorial seas. The Section 404 fill activities associated with the Project may include the redeposition of dredged material associated with sand wave dredging and cable installation work, the redeposition of dredged material associated with horizontal directional drilling, the placement of cable scour protection, and the installation of any temporary cofferdams. 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 Record of Decision.

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. USCG is the Federal On Scene Coordinator for spills in the Lease Area. USCG encourages coordination with all stakeholders to ensure information regarding worst case discharges and response strategies are incorporated into the Area Contingency Plan.

Massachusetts Office of Coastal Zone Management, RICRMC, and New York State Department of State 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

The Draft EIS is available in electronic format for public viewing at <https://www.boem.gov/renewable-energy/state-activities/mayflower-wind>. Hard copies and digital copies of the Draft EIS can be requested by contacting the BOEM Program Manager, Office of Renewable Energy in Sterling, Virginia. Publication of the Draft EIS 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 “Mayflower Wind COP EIS” and addressed to Program Manager, Office of Renewable Energy, 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/](https://www.regulations.gov) and searching for docket number “BOEM-2023-0011.” Click the “Comment” button to the right of the document link. 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 EIS, as appropriate. EIS notification lists for the Project are provided in Appendix M, *Distribution List*.

A.3 References Cited

Bureau of Ocean Energy Management (BOEM). 2018. *Tribal Consultation Guidance*. June 29, 2018.

Available: <https://www.boem.gov/sites/default/files/about-boem/Public-Engagement/Tribal-Communities/BOEM-Tribal-Consultation-Guidance-with-Memo.pdf>.

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