

## **Appendix A**

### **Required Environmental Permits and Consultations**

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## Abbreviations and Acronyms

ACHP	Advisory Council on Historic Preservation
BA	Biological Assessment
BO	Biological Opinion
BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
EFH	essential fish habitat
EIS	Environmental Impact Statement
ESA	Endangered Species Act
ESP	electrical service platform
ITA	Incidental Take Authorization
LOA	Letter of Authorization
MMPA	Marine Mammal Protection Act
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NHL	National Historic Landmark
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOI	Notice of Intent
OECC	offshore export cable corridor
Project	New England Wind Project
ROD	Record of Decision
Secretary	Secretary of the Interior
USACE	U.S. Army Corps of Engineers
USC	U.S. Code
USCG	U.S. Coast Guard
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
WTG	wind turbine generator

## **A Required Environmental Permits and Consultations**

### **A.1 Introduction**

This appendix discusses required permitting and public, agency, and tribal involvement in the preparation of the New England Wind Project (proposed Project) Environmental Impact Statement (EIS). This involvement included formal consultations, cooperating agency exchanges, and a public scoping comment period. Table A.1-1 lists authorizations and permits; Section A.2.1 describes cooperating or participating federal agencies.

### **A.2 Other Federal and State Review**

Table A.1-1 provides a discussion of other required federal and state reviews, including legal authority, jurisdiction of the agency, and the regulatory process involved.

#### **A.2.1 Cooperating Agencies**

As part of the National Environmental Policy Act (NEPA) process, the Bureau of Ocean Energy Management (BOEM) invited other federal agencies and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. According to Council on Environmental Quality guidelines, qualified agencies and governments are those with “jurisdiction by law” or “special expertise” (Code of Federal Regulations, Title 40, Section 1501.8 [40 CFR § 1501.8]). 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 provided potential cooperating agencies participating in the process with a written summary of expectations, including time schedules and critical action dates, milestones, responsibilities, scope, detail of cooperating agencies’ contributions, and availability of pre-decisional information.

Table A.1-1 lists cooperating agency status. Section A.2.1 provides more specific details regarding federal agency roles and expertise.

**Table A.1-1: Cooperating Agencies, Required Permits, and Consultations for the Proposed Project**

Agency/Regulatory Authority	Permit/Approval	Status
<b>Federal</b>		
BOEM (lead federal agency)	COP Approval / ROD	COP filed with BOEM July 2, 2020 Revised COP filed June 28, 2021 Revised COP filed December 17, 2021 COP Addendum for Phase 2 OECC South Coast Variant filed April 22, 2022 Revised COP filed June 27, 2022 Revised COP filed August 9, 2023
	Site Assessment Plan Approval	Site Assessment Plan approved (for Lease Area OCS-A 0501) in May 2018
	NEPA Environmental Review	NOI published by BOEM June 30, 2021 Draft EIS issued December 23, 2022 Final EIS NOA published March 1, 2024
	Consultation under Section 7 of the ESA with NMFS and USFWS, coordination with the states under the Coastal Zone Management Act, government-to-government tribal consultations, consultation under Section 106 of the NHPA, and consultation with NMFS for EFH	NMFS ESA consultation package submitted September 7, 2022 and completed February 16, 2024 NMFS EFH consultation request submitted September 7, 2022 and completed October 20, 2023 USFWS ESA consultation initiated April 7, 2023 and completed September 28, 2023
BSEE	Oil Spill Response Plan	Provided as COP Appendix I-F
	Facility Design Report and Fabrication and Installation Report	To be filed
	Safety Management Plan	Provided as COP Appendix I-B
Federal Aviation Administration	No Hazard Determination (for activities at construction staging areas and vessel transits, if required)	To be filed
NMFS	Letter of Authorization <sup>a</sup>	Letter of Authorization request notice of receipt published in <i>Federal Register</i> August 22, 2022 Volume 87, Issue 161, p. 51345 Updated Letter of Authorization request notice of receipt published in <i>Federal Register</i> June 8, 2023 Volume 88, Issue 110, p. 37606

Agency/Regulatory Authority	Permit/Approval	Status
U.S. Army Corps of Engineers	CWA Section 404 Permit (required for fill activities in waters of the United States)  Rivers and Harbors Act of 1899 Section 10 Individual Permit (required for structures and work within navigable waters and for structures on the OCS)	Individual Permit Application/ENG Form 4345/Joint Application Form submitted August 1, 2022  Complete Individual Permit Applications for Phase 1 and Phase 2 submitted December 8, 2022  Publication of Public Notices for Phase 1 and Phase 2 on December 23, 2022
USCG	Private Aid to Navigation authorization	To be filed
USEPA	USEPA permits under Section 316(b) of the CWA, including the National Pollutant Discharge Elimination System Permit(s)	To be filed
	OCS Air Permit	NOIs for Phase 1 and Phase 2 submitted January 28, 2022 Applications deemed complete on January 18, 2023 Public Notice issued for 38-day public comment on December 19, 2023
<b>Regional</b>		
ISO New England	Interconnection Authorization	Phase 1: interconnection request queue position #700 submitted December 15, 2017  Phase 2: interconnection request(s) under review
<b>State</b>		
Massachusetts Executive Office of Environmental Affairs	Certificate of the Secretary of Energy and Environmental Affairs on the Final Environmental Impact Report	Phase 1: Final Environmental Impact Report certificate for New England Wind 1 Connector issued January 28, 2022  Phase 2: Environmental notification form certificate issued December 9, 2022; Draft Environmental Impact Report certificate issued October 10, 2023
Massachusetts Energy Facilities Siting Board	General Law Ch. 164, § 69 Approval	Phase 1: Petition filed May 28, 2020; decision issued December 18, 2023 Phase 2: Petition filed November 1, 2022; Supplement filed May 12, 2023
Massachusetts Department of Public Utilities	General Law Ch. 164, § 72, Approval to Construct General Law Ch. 40A, § 3 Zoning Exemption (if needed)	Phase 1: Petitions filed May 28, 2020; decision issued December 18, 2023 Phase 2: Petition filed November 1, 2022
Massachusetts Department of Environmental Protection	Chapter 91 Waterways License and Dredge Permit / Water Quality Certification (Section 401 of the CWA)	Phase 1: Application filed May 5, 2022; 401 Water Quality Certification issued May 12, 2023 Phase 2: To be filed
	Approval of Easement (Drinking Water Regulations)	Phase 1: Not applicable Phase 2: To be filed (if needed)

Agency/Regulatory Authority	Permit/Approval	Status
Massachusetts Division of Marine Fisheries	Letter of Authorization and/or Scientific Permit (for surveys and pre-lay grapnel run)	To be filed
Massachusetts Department of Transportation	Non-Vehicular Access Permits	To be filed
	Rail Division Use and Occupancy License (if needed)	To be filed (if needed)
Massachusetts Board of Underwater Archaeological Resources	Special Use Permit	Special Use Permit 17-003 Renewal Application Permit approved February 26, 2021 Special Use Permit 21-006 Renewal Application Approved April 6, 2023
National Heritage and Endangered Species Program	Conservation and Management Permit (if needed)	Phase 1: Massachusetts ESA Determination issued April 1, 2022, with conditions and will not result in a Take of state-listed species Phase 2: To be filed (if needed)
Massachusetts Historical Commission	Archaeological Investigation Permits (950 Code of Massachusetts Regulation § 70.00)	BOEM consultation initiated June 30, 2021 Phase 1: Reconnaissance survey permit application filed May 4, 2020 State Archaeologist's Permit #4006 for Reconnaissance Survey issued May 12, 2020; amended and extended March 2, 2021 State Archaeologist's Permit #4101 issued June 14, 2021 Phase 2: Intensive survey permit application filed August 18, 2022 State Archaeologist's Permit #4227 for Intensive Survey issued October 4, 2022; amended and extended May 9, 2023
Massachusetts Office of Coastal Zone Management/Rhode Island Coastal Resources Management Council	Federal Consistency Determination (15 CFR § 930.57)	Included as COP Appendix III-S (Epsilon 2023) Massachusetts Office of Coastal Zone Management consistency review began September 14, 2022; 3-month notice issued December 14, 2022; consistency decision issued November 9, 2023 Rhode Island Coastal Resources Management Council consistency review initiated August 5, 2022; 3-month notice issued November 3, 2022; consistency decision issued October 19, 2023
Massachusetts State Legislature	Article 97 of the Amendments of Massachusetts Constitution	Phase 1: Approval issued July 28, 2022 Phase 2: To be filed
<b>Regional</b>		
Cape Cod Commission (Barnstable County)	Development of Regional Impact Review	Phase 1: Application filed June 10, 2022; Development of Regional Impact approval decision issued May 11, 2023 Phase 2: To be filed

Agency/Regulatory Authority	Permit/Approval	Status
Martha's Vineyard Commission	Development of Regional Impact Review	Phase 1: Application filed June 17, 2022; Development of Regional Impact approval decision issued September 19, 2022 Phase 2: Filed December 13, 2023
<b>Local</b>		
Barnstable Conservation Commission	Order of Conditions (Massachusetts Wetlands Protection Act and municipal wetland non-zoning bylaws)	Phase 1: NOI filed April 29, 2022, Order of Conditions issued October 17, 2023 Phase 2: To be filed
Barnstable Department of Public Works and/or Town Council	Street Opening Permits/Grants of Location	To be filed
Barnstable Planning/Zoning	Zoning approvals as necessary	To be filed
Edgartown Conservation Commission	Order of Conditions (Massachusetts Wetlands Protection Act and municipal wetland non-zoning bylaws)	Phase 1: NOI filed March 23, 2022; Superseding Order of Conditions issued by Massachusetts Department of Environmental Protection on May 16, 2023 Edgartown Wetland By-Law Permit issued by the Edgartown Conservation Commission September 13, 2023 Phase 2: Filed November 2, 2023
Nantucket Conservation Commission	Order of Conditions (Massachusetts Wetlands Protection Act and municipal wetland non-zoning bylaws)	Phase 1: Order of Conditions issued May 16, 2022 Phase 2: Order of Conditions issued December 18, 2023

BOEM = Bureau of Ocean Energy Management; BSEE = Bureau of Safety and Environmental Enforcement; CFR = Code of Federal Regulations; COP = Construction and Operations Plan; CWA = Clean Water Act; EFH = essential fish habitat; EIS = Environmental Impact Statement; ESA = Endangered Species Act; ESP = electrical service platform; LOA = Letter of Authorization; NEPA = National Environmental Policy Act; NHPA = National Historic Preservation Act; NMFS = National Marine Fisheries Service; NOA = Notice of Availability; NOI = Notice of Intent; OCS = Outer Continental Shelf; OECC = offshore export cable corridor; ROD = Record of Decision; USCG = U.S. Coast Guard; USEPA = U.S. Environmental Protection Agency; USFWS = U.S. Fish and Wildlife Service; WTG = wind turbine generator

<sup>a</sup> A revised LOA update memo was submitted to NMFS December 22, 2023, which provided updated information and modeling results for WTG and ESP installation methodologies including impact pile driving, vibratory pile setting, and drilling. Issuance of the LOA is anticipated after the Final EIS is published.

### **A.2.1.1 National Marine Fisheries Service**

The National Marine Fisheries Service (NMFS) 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 their jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to the Marine Mammal Protection Act (MMPA), as amended (U.S. Code, Title 16, Section 1316 et seq. [16 USC § 1361 et seq.]); the regulations governing the taking and importing of marine mammals (50 CFR Part 216); the Endangered Species Act (ESA; 16 USC § 1531 et seq.); and the regulations governing the taking, importing, and exporting of threatened and endangered species (50 CFR Parts 222–226). In accordance with 50 CFR Part 402, NMFS also serves as the consulting agency under Section 7 of the ESA for federal agencies proposing actions 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 Magnuson-Stevens Fishery Conservation and Management Act (MSA) and 50 CFR Part 600 when proposed actions may adversely affect essential fish habitat (EFH). The MMPA is the only authorization for NMFS that requires NEPA compliance, which will be met via adoption of BOEM’s EIS and issuance of the Record of Decision (ROD).

NMFS has multiple roles in the NEPA process and EIS for this major federal action. First, NMFS has a responsibility to serve as a cooperating agency based on its technical expertise and legal jurisdiction over multiple trust resources. NMFS’ role is to provide expert advice regarding the action’s impact with respect to EFHs as defined in the MSA, listed threatened and endangered species and designated critical habitat listed under the ESA, marine mammals protected by the MMPA, and commercial and recreational fisheries managed under the MSA.

Second, NMFS intends to adopt the EIS in support of its MMPA authorization decision after reviewing it and determining it to be sufficient. NMFS is required to review applications for Incidental Take Authorizations (ITA) under the MMPA, as amended (16 USC § 1361 et seq.) and issue an ITA if appropriate. In conjunction with the Construction and Operations Plan (COP), Park City Wind, LLC (the applicant) submitted an application to NMFS for an ITA for take (as defined by the MMPA)<sup>1</sup> of marine mammals incidental to proposed Project construction and associated activities. The decision to issue an ITA under the MMPA is considered a major federal action requiring NEPA review. Therefore, NMFS has an independent responsibility to comply with NEPA. Consistent with the regulations published by the Council on Environmental Quality (40 CFR § 1501.7(g)), NMFS intends to rely on the information and analyses in BOEM’s EIS to fulfill its NEPA obligations for ITA issuance, if applicable. NMFS intends to adopt the Final EIS for this purpose.

### **A.2.1.2 Bureau of Safety and Environmental Enforcement**

The Bureau of Safety and Environmental Enforcement (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. The

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<sup>1</sup> The term “take” means “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal” (16 USC § 1362(3)(13)). The incidental take of a marine mammal falls under three categories: mortality, serious injury, or harassment (i.e., injury and/or disruption of behavioral patterns). Harassment, as defined in the MMPA for non-military readiness activities (Section 3(8)(A)), is 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) or 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 disruption of behavioral patterns (Level B harassment). Disruption of behavioral patterns includes, but is not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

reorganization of the Renewable Energy rules (30 CFR Parts 285, 585, and 586, enacted on January 31, 2023) reassigned existing regulations governing safety and environmental oversight and enforcement of Outer Continental Shelf (OCS) renewable energy activities from BOEM to BSEE.

#### **A.2.1.3 U.S. Coast Guard**

The U.S. Coast Guard (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 fall under their jurisdiction by law and special expertise. After review of the application, the USCG will issue a Private Aids to Navigation approval for installation of the wind turbine generators (WTG), electrical service platforms (ESP), and measurement buoys to alert mariners to potential hazards to navigation. The applicant will also submit a request for a Local Notice to Mariners publication to the USCG prior to vessel mobilization for construction activities.

#### **A.2.1.4 U.S. Environmental Protection Agency**

The U.S. Environmental Protection Agency (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 their jurisdiction by law and special expertise. The USEPA is responsible for issuing an OCS permit for the proposed Project under the Clean Air Act.

#### **A.2.1.5 U.S. Army Corps of Engineers**

The U.S. Army Corps of Engineers (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 their jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Under Section 404 of the CWA, USACE regulates the discharge of dredged or fill material into waters of the United States. The landward limit of jurisdiction in tidal waters (33 CFR § 328.4) extends to the high tide line, whereas the seaward limit is 3 nautical miles (3.5 miles), as measured from the baseline of the territorial seas. Under Section 10 of the Rivers and Harbors Act, USACE regulates the work and dredging from the mean high water line to the 3-nautical-mile (3.5 mile) limit and structures from the mean high water mark to the seaward limit of the OCS. 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.

#### **A.2.1.6 U.S. Fish and Wildlife Service**

The U.S. Fish and Wildlife Service (USFWS) is serving as a cooperating agency for the proposed Project. The 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, including species of concern. See Section A.2.2.2 for a summary of the ESA consultation to date with the USFWS.

#### **A.2.1.7 National Park Service**

The National Park Service is serving as a participating agency because there are multiple important National Park Service resources within the proposed Project vicinity, including the Gay Head Lighthouse and the Nantucket National Historic Landmark (NHL). There may also be Land and Water Conservation Fund State and Local Assistance sites impacted if more export cable locations are set. Should any potential impacts on National Park Service units or program lands be identified that require a National Park Service permit, the National Park Service will request a change to cooperating agency status under "jurisdiction by law" pursuant to 40 CFR § 1501.8.

## **A.2.2 Consultations**

The following section provides a summary and status of each consultation (ongoing, complete, and the opinion or finding of each consultation). The BSEE, U.S. Army Corps of Engineers, and USEPA are co-action agencies for the ESA, MSA, and National Historic Preservation Act (NHPA) 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 planned 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 to the maximum extent practicable. The applicant voluntarily submitted a federal consistency certification with the Rhode Island Coastal Resources Management Council on May 17, 2022, and to the Massachusetts Office of Coastal Zone Management on September 14, 2022, per 15 CFR § 930.76. The proposed Project COP (Epsilon 2023) provided the necessary data and information under 15 CFR § 930.58. Concurrence of the State of Rhode Island and the Commonwealth of Massachusetts is required before BOEM may approve, or approve with conditions, the COP in accordance with 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 has requested consultation on the proposed activities considered in the Final EIS with both NMFS and USFWS for listed species under their respective jurisdictions. According to BOEM's Biological Assessments (BA) for the NMFS and USFWS, there is designated critical habitat in the Southern Wind Development Area for nine species. The sections below describe the status of consultations with NMFS and USFWS.

#### **National Marine Fisheries Service**

BOEM initially submitted a BA for the proposed Project to NMFS and requested formal consultation under Section 7 of the ESA on September 7, 2022. A revised BOEM BA was submitted on May 8, 2023 (BOEM 2023). NMFS initiated consultation on June 15, 2023. The BOEM BA assesses impacts from all aspects of the proposed Project, including construction, operation, maintenance, and decommissioning on marine ESA-listed species (non-marine species consultation is discussed below). Formal consultation will be completed with the issuance of a NMFS Biological Opinion (BO). The scope of the BOEM BA and NMFS BO covers the entirety of potential effects on ESA-listed species and designated critical habitat associated with the proposed Project. The BOEM BA evaluated four marine mammals that may occur in the geographic analysis area for the proposed Project (EIS Section 3.7, Marine Mammals) and may be affected by the Proposed Action, including the North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis borealis*), and sperm whales (*Physeter microcephalus*). Of particular importance is the occurrence of the critically endangered North Atlantic right whales known to frequent the area at certain times of year. These species rely on OCS habitats for a variety of important life functions, including feeding, breeding, nursery grounds, socializing, and migration. Other species that may occur in the Action Area and may be affected by the Proposed Action include the Northwest Atlantic Distinct Population Segment of loggerhead sea turtles (*Caretta caretta*), North Atlantic Distinct Population Segment of green sea turtles (*Chelonia*

*mydas*), leatherback sea turtles (*Dermochelys coriacea*), and Kemp's ridley sea turtles (*Lepidochelys kempii*). BOEM, NMFS, and the applicant will further consult and coordinate to ensure that effects from post-construction monitoring activities are mitigated to the level of least practicable adverse impact. The analysis of effects and conclusions of the final BO is incorporated by reference and summarized into the Final EIS. The BOEM BA is available at <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south>.

## U.S. Fish and Wildlife Service

On November 30, 2021, in preparation of the NEPA process and the BA for non-marine species such as birds and bats, BOEM used USFWS's Information for Planning and Consultation system to determine if any ESA-listed, proposed, or candidate species may be present in the onshore and offshore proposed Project area. The report identified four ESA-listed species with potential to occur in the proposed Project area: northern long-eared bat (*Myotis septentrionalis*), Piping Plover (*Charadrius melodus*), Rufa Red Knot (*Calidris canutus rufa*), and Roseate Tern (*Sterna dougallii dougallii*) (USFWS 2023). An additional Information for Planning and Consultation report was run on April 13, 2023, due to the proposed listing of the tri-colored bat (*Perimyotis subflavus*), which has the potential to occur in the proposed Project area.

On December 23, 2022, BOEM submitted a BA to USFWS (BOEM 2022a) and requested formal consultation. On March 28, 2023, BOEM submitted an addendum to the BA with new analysis using the updated Stochastic Collision Risk Assessment for Movement model for USFWS-listed bird species. An additional addendum was submitted on July 7, 2023, to address the potential listing of the tri-colored bat anticipated for September 14, 2023. Formal consultation with USFWS was completed on September 28, 2023, with the issuance of a USFWS letter of concurrence and BO. The scope of the BOEM BA and USFWS BO covers the entirety of potential impacts on ESA-listed species and designated critical habitat associated with the proposed Project. The BOEM BA assessed the impacts of all aspects of the proposed Project, including construction, operation, maintenance, and decommissioning on all currently listed or proposed USFWS-listed species that have the potential to be affected by proposed Project activities. The analysis of impacts and conclusions of the final USFWS BO are incorporated by reference and summarized into the Final EIS. The BOEM BA is available at <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south>.

### A.2.2.3 Government-to-Government Tribal Consultations

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with tribes when federal actions have tribal implications. 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. BOEM's tribal consultation policy 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 June 30, 2021, BOEM issued the Notice of Intent (NOI) to prepare an EIS for the proposed Project in the *Federal Register* (Volume 86, Issue 123 [June 30, 2021] p. 34782 [86 Fed. Reg. 123 p. 34782]) Subsequently, BOEM sent a letter to consulting parties notifying them of the NOI issuance. The purpose of the letter was to share information regarding the NOI, including information about public scoping meetings, provide detail on how to make comments on the NOI, and invite the tribes to participate in a group consultation meeting to discuss public scoping information.

BOEM invited Tribal Historic Preservation Officers to virtual NEPA scoping meetings on July 18, July 23, and July 26, 2021. During these meetings BOEM shared information regarding proposed alternatives and cultural resources in the proposed Project area, including mitigation and monitoring measures to avoid, minimize, or mitigate any adverse effects on cultural resources. Subsequently, BOEM prepared, approved, and distributed the *Scoping Summary Report* (BOEM 2022b) to cooperating agencies and Tribal Historic Preservation Officers.

BOEM held government-to-government consultation meetings with the Delaware Nation, the Delaware Tribe of Indians, the Mashantucket (Western) Pequot Tribal Nation, the Mashpee Wampanoag Tribe of Massachusetts, and the Wampanoag Tribe of Gay Head (Aquinnah) on August 13, 2021, and May 26, 2022. BOEM held a government-to-government consultation meeting with the Delaware Nation, the Mashantucket (Western) Pequot Tribal Nation, the Mashpee Wampanoag Tribe of Massachusetts, and the Wampanoag Tribe of Gay Head (Aquinnah) on November 4, 2021. BOEM held a government-to-government consultation meeting with the Wampanoag Tribe of Gay Head (Aquinnah) on May 2, 2022. This meeting was followed by a subsequent meeting on June 1, 2022. Additionally, on June 2, 2022, the BOEM Director met in-person with the Mashpee Wampanoag Tribe of Massachusetts to provide information to the Tribal Council. An additional government-to-government meeting was held on March 23, 2023.

BOEM continues to consult with these and other tribes on the proposed Project, as well as other developments in offshore wind.

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

Section 106 of the NHPA (54 USC § 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. BOEM has determined that the proposed Project is an undertaking subject to Section 106 review. The construction of WTGs and ESPs, installation of electrical support 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 National Register of Historic Places, the proposed Project may adversely affect those historic properties. 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 2022b), available on BOEM's Project-specific website, summarizes comments on historic preservation issues.<sup>2</sup>

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 the EIS and the ROD to comply with Section 106. Appendix J of the Final EIS contains BOEM's Finding of Adverse Effect, which includes a description and summary of BOEM's consultation to date. On June 10, 2021, BOEM contacted ACHP and Massachusetts State Historic Preservation Officer to provide proposed 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 Massachusetts State Historic Preservation Officer, ACHP, federally

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<sup>2</sup> <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-formerly-vineyard-wind-south>

recognized tribes, and the consulting parties regarding the Finding of Adverse Effect and the resolution of adverse effect.

BOEM conducted Section 106 consultation meeting(s) on the Finding of Adverse Effect and the resolution of adverse effects, and the agency has requested that the consulting parties review and comment on the Finding of Adverse Effect and proposed resolution measures. Five NHPA Section 106 consultation meetings were held virtually with consulting parties on March 3, 2022, February 8, 2023, June 15, 2023, September 14, 2023, and December 13, 2023. BOEM fulfilled public meetings process, pursuant to 36 § CFR 800.2(d)(3).

On June 14, 2021, BOEM initiated consultation on the proposed Project with eight federally recognized tribes: the Delaware Nation, the Delaware Tribe of Indians, the Mashantucket (Western) Pequot Tribal Nation, the Mashpee Wampanoag Tribe of Massachusetts, the Mohegan Indian Tribe of Connecticut, the Narraganset Indian Tribe, the Shinnecock Indian Nation of New York, and the Wampanoag Tribe of Gay Head (Aquinnah). Additional notifications were sent on November 22, 2021, with the design changes and project name change, following the additional scoping period. Additionally, parties were again invited to participate after BOEM held an initial NHPA Section 106 consultation meeting virtually on March 3, 2022.

On June 30, 2021, BOEM informed the federally recognized tribes of its intent to use the NEPA process to fulfill its review obligations for the proposed Project under NHPA Section 106 in lieu of the procedures set forth in 36 CFR §§ 800.3 through 800.6. Using the NEPA process is permitted by 36 CFR § 800.8(c), 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.

On June 14, 2021, BOEM contacted representatives of local governments, state and local historical societies, and other federal agencies to solicit information on historic properties and determine their interest in participating as consulting parties. Participants that have accepted consulting party status for the NHPA Section 106 consultation are listed in Table A.2-1.

**Table A.2-1: Participating Consulting Parties for National Historic Preservation Act Section 106 Consultation**

Participants in the Section 106 Process	Participating Consulting Party
State Historic Preservation Officers and state agencies	Massachusetts Historical Commission, Massachusetts Board of Underwater Archaeological Resources Rhode Island Historical Preservation & Heritage Commission
Federal agencies	ACHP BSEE National Park Service U.S. Army Corps of Engineers U.S. Naval History and Heritage Command USEPA
Federally recognized tribes	Mashantucket (Western) Pequot Tribal Nation Mashpee Wampanoag Tribe of Massachusetts Wampanoag Tribe of Gay Head (Aquinnah)

Participants in the Section 106 Process	Participating Consulting Party
Local governments	Cape Cod Commission County of Dukes County of Bristol Martha’s Vineyard Commission Nantucket Historical Commission (withdrew September 10, 2020) Nantucket Historic District Commission (withdrew September 10, 2020) Nantucket Planning and Economic Development Commission (withdrew September 10, 2020) Town and County of Nantucket (withdrew August 27, 2020) Town of Barnstable, Historical Commission
Nongovernmental organizations or groups	Alliance to Protect Nantucket Sound Gay Head Lighthouse Advisory Board Maria Mitchell Association (Dark Skies Initiative); withdrew August 27, 2020 Nantucket Preservation Trust (withdrew August 27, 2020)

ACHP = Advisory Council on Historic Preservation; BSEE = Bureau of Safety and Environmental Enforcement; USEPA = U.S. Environmental Protection Agency

Due to the presence of the Nantucket NHL within the area of potential effect for the Proposed Action, BOEM is currently in the process of completing its requirements under Section 110(f) of the NHPA (54 USC § 306107) and 36 CFR § 800.10(a). Section 110(f) of the NHPA requires federal agencies, “to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to NHLs that may be directly and adversely affected by an undertaking.” Section 110(f) of the NHPA and 36 CFR § 800.10 also require federal agencies to request that the ACHP participate in the consultation, require the agency official to notify the Secretary of the Interior (Secretary) of any consultation involving an NHL, and invite the Secretary to participate in the consultation where there may be an adverse effect.

To comply with Section 110(f) of the NHPA, BOEM has analyzed, and continues to analyze, alternatives and mitigation and monitoring measures to minimize adverse visual effects of the Proposed Action on the Nantucket NHL. To reduce or minimize daytime visual effects, the Proposed Action would use paint schemes that lower the visual contrast of the WTGs against the background, and to minimize nighttime effects, would use an aircraft detection light system. BOEM is currently considering additional mitigation and monitoring measures in consultation with consulting parties to further mitigate the adverse effects as part of the NHPA Section 106 review of the Proposed Action.

In addition to BOEM’s actions to minimize harm to the Nantucket NHL, BOEM requested ACHP participation in the NHPA Section 106 review for the Proposed Action in a June 16, 2021, letter. The ACHP accepted BOEM’s request and has continued to participate throughout the NHPA Section 106 review process. BOEM, in consultation with consulting parties, will make final determinations on mitigation and monitoring measures to resolve adverse effects on the Nantucket NHL as part of the NHPA Section 106 review for the Proposed Action. ACHP will then review the proposed mitigation and monitoring measures to resolve adverse effects, as well as consulting party comments, fulfill their role in Section 110(f).

To comply with the requirement to notify the Secretary of any consultations involving an NHL, BOEM has consulted with the National Park Service's NHL Program.<sup>3</sup> BOEM requested that the National Park Service participate in the NHPA Section 106 review for the Proposed Action in a June 14, 2021, letter, and the National Park Service began participating in the NHPA Section 106 review consultation at that time. BOEM will continue to consult with the National Park Service throughout the NHPA Section 106 review consultations for the Proposed Action.

#### **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 in 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 OCS activities authorized by BOEM may result in adverse effects on EFH and, therefore, require consultation with NMFS. BOEM developed an EFH Assessment concurrent with the Final EIS and transmitted the findings of that EFH Assessment to NMFS on September 7, 2022, and was completed on October 20, 2023. The Final EIS summarizes and discusses the assessment's key findings and will incorporate the entire assessment by reference. BOEM's EFH Assessment determined that the Proposed Action would adversely affect the quality and quantity of EFH for several species of managed fish.

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

Section 101(a) of the MMPA (16 USC § 1361 et seq.) 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. ITAs may be issued as either (1) regulations and associated Letters of Authorization (LOA).<sup>4</sup> LOAs may be issued for up to a maximum period of 5 years. NMFS has also promulgated regulations to implement the provisions of the MMPA governing the taking and importing of marine mammals (50 CFR Part 216) and has published application instructions that prescribe the procedures necessary to apply for an ITA. U.S. citizens 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 unmitigable impact on their availability for taking for subsistence uses. NMFS must also prescribe the "means of effecting the least practicable adverse impact"

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<sup>3</sup> The Secretary has delegated the authority for responsibility under 36 CFR § 800.10(c) to the National Park Service NHL Program.

<sup>4</sup> Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant).

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.

In July 2022, the applicant submitted an initial request to NMFS for an LOA for non-lethal take of marine mammals, pursuant to MMPA Section 101(a)(5)(A), for the take of marine mammals incidental to the proposed Project's construction (Table A.1-1). While reviewing the applicant's request for an LOA, NMFS has an independent responsibility to comply with NEPA. NMFS is relying on the information and analyses in this EIS, as NMFS intends to adopt this EIS and sign a ROD, if NMFS determines this EIS to be sufficient to support NMFS's separate Proposed Action and decision under the MMPA.

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

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

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

On June 30, 2021, BOEM issued an NOI to prepare an EIS consistent with the regulations implementing NEPA (42 USC § 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives (Notice of Intent to Prepare an Environmental Impact Statement for the Vineyard Wind South Project Offshore Massachusetts [since renamed the New England Wind Project]) in the *Federal Register* (86 Fed. Reg. 123 p. 34782). The NOI commenced the public scoping process for identifying issues and potential alternatives for consideration in the EIS.

BOEM held three virtual public scoping meetings on July 19, July 23, and July 26, 2021, to solicit feedback and identify issues and potential alternatives for consideration in the EIS. Throughout the scoping process, federal agencies; state, local, and tribal 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 and monitoring measures to be analyzed in the EIS, as well as provide additional information. BOEM 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), and sought public input through the NOI regarding historic properties and potential effects on historic properties from activities associated with the COP. BOEM also used this scoping process to begin informal ESA consultation. The formal scoping period lasted from June 30 through July 30, 2021.

BOEM received comment submissions on the NOI via the following mechanisms:

- Electronic submissions received via [www.regulations.gov](http://www.regulations.gov) on docket number BOEM-2022-0070
- Electronic submissions received via email to a BOEM representative
- Comments submitted verbally at each of the public scoping meetings

On August 19, 2021, the applicant (then operating as Vineyard Wind, LLC) notified BOEM of the potential need to establish offshore export cable corridors (OECC) for Phase 2 of the proposed Project, beyond those previously identified in the COP. The applicant also notified BOEM of a change in the proposed Project's name, from the Vineyard Wind South Project to the New England Wind Project. On November 22, 2021, BOEM issued a Notice of Additional Public Scoping and Name Change to announce the project name change, and to assess the potential impacts of the Phase 2 OECC alternative routes (86 Fed. Reg. 222 [November 22, 2021] p. 66334). This notice commenced a second public scoping process from November 22 through December 22, 2021, that was similar in intent and purpose to the first scoping process, focusing on the newly proposed Phase 2 OECC alternative routes. BOEM posted

information, including a video presentation to its website to provide supporting information on the Phase 2 OECC alternatives. BOEM received comments via [www.regulations.gov](http://www.regulations.gov) during this second scoping period.

BOEM reviewed and addressed, as appropriate, all scoping comments (from both rounds of scoping) in the development of the Final EIS and used the comments to identify alternatives for analysis. A *Scoping Summary Report* (BOEM 2022b) summarizing the submissions and the methods for analyzing them is available on BOEM’s website at <https://www.boem.gov/new-england-wind>. In addition, all public scoping submissions received is available online at <http://www.regulations.gov> by typing “BOEM-2022-0070” in the search field. As detailed in the *Scoping Summary Report*, the resource areas or NEPA topics most referenced in the scoping comments include birds, marine mammals, the NEPA process (including public engagement), socioeconomics, and planned actions (i.e., cumulative impacts).

### **A.2.3.2 Distribution of the Draft Environmental Impact Statement for Review and Comment**

On December 23, 2022, BOEM issued a Notice of Availability (NOA) 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/new-england-wind-formerly-vineyard-wind-south>. Notification was provided as indicated in Appendix N, List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent, of the Draft EIS. Hard copies and digital copies of the Draft EIS were delivered to entities as requested. The NOA commenced the 60-day public review and comment period of the Draft EIS. 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 “New England 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](http://www.regulations.gov) web portal by navigating to <https://www.regulations.gov/>, searching for docket number “BOEM-2022-0070,” and submitting a comment.
- By attending one of the public hearings on the dates listed in the NOA 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, Responses to Comments on the Draft Environmental Impact Statement, 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-2022-0070” in the search field.

### **A.2.3.3 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/new-england-wind-formerly-vineyard-wind-south>. 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, operations, and decommissioning of the proposed Project. Notification will be provided as indicated in Appendix N of the Final EIS.

### A.3 References

- BOEM (Bureau of Ocean Energy Management). 2018. BOEM Tribal Consultation Guidance. Memorandum issued June 29, 2018. Accessed: July 27, 2022. Retrieved from: <https://www.boem.gov/about-boem/tribal-engagement>
- BOEM (Bureau of Ocean Energy Management). 2022a. *New England Wind Project Biological Assessment*. For the U.S. Fish and Wildlife Service.
- BOEM (Bureau of Ocean Energy Management). 2022b. *Scoping Summary Report*. New England Wind Project.
- BOEM (Bureau of Ocean Energy Management). 2023. *New England Wind Project Biological Assessment*. For the National Marine Fisheries Service.
- Epsilon (Epsilon Associates, Inc.). 2023. *Draft New England Wind Construction and Operations Plan for Lease Area OCS-A 0534*. New England Wind Project. Retrieved from: <https://www.boem.gov/renewable-energy/state-activities/new-england-wind-ocs-0534-construction-and-operations-plan>
- USFWS (U.S. Fish and Wildlife Service). 2023. IPaC Information for Planning and Consulting. Accessed: November 30, 2021. Retrieved from <https://ipac.ecosphere.fws.gov/>