

A photograph of a wind turbine on the ocean, viewed from a low angle. The turbine is white and stands against a blue sky with some clouds. The ocean is visible in the background. The image is partially obscured by a dark blue geometric shape that forms the background for the text.

# Appendix A

## Required Environmental Permits and Consultations



# 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 Atlantic Shores South Project implementation.

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

| Agency/Regulatory Authority  | Permit/Approval   | Project 1 Approval/ Completion Date   | Project 2 Approval/ Completion Date   |
|--|---|---|---|
| <b>Federal (Portions of the Project within Federal Jurisdiction)</b> |   |   |   |
| BOEM   | SAP approval  | 4/8/2021  | 4/8/2021  |
|  | NEPA Environmental Review   | Expected Q1 2024  | Expected Q1 2024  |
|  | COP approval/ ROD   | Expected Q2 2024  | Expected Q2 2024  |
|  | Consultation under Section 7 of the ESA with NMFS and USFWS, coordination with New Jersey under the CZMA, government-to-government tribal consultations, consultation under Section 106 of the NHPA, consultation with DoD, authorization application with NMFS under the MMPA, and consultation with NMFS for Essential Fish Habitat | Consultations and authorization applications conducted concurrently with NEPA and COP review and approval process | Consultations and authorization applications conducted concurrently with NEPA and COP review and approval process |
|  | Facility Design Report and Fabrication and Installation Report  | Expected Q3 2024  | Expected Q3 2024  |
| BSEE   | OSRP  | Expected Q1 2024  | Expected Q1 2024  |
| FAA  | Determination of No Hazard to Air Navigation  | Expected Q3 2024  | Expected Q3 2024  |
| NMFS   | MMPA Section 101(a)(5) Letter of Authorization  | Expected Q2 2024  | Expected Q2 2024  |
| USACE  | CWA Section 404 Permit (required for discharge of dredged materials and placement of foundations, scour protection, and cable protection)   | Expected Q2 2024  | Expected Q2 2024  |
|  | RHA Section 10 Individual Permit (required for all offshore structures and dredging activities)   | Expected Q2 2024  | Expected Q2 2024  |

| Agency/Regulatory Authority  | Permit/Approval  | Project 1 Approval/ Completion Date   | Project 2 Approval/ Completion Date   |
|--|--|---|---|
|  | Section 103 of the Marine Protection, Research, and Sanctuaries Act (for dredged material disposal, if required) | Expected Q2 2024  | Expected Q2 2024  |
|  | Section 408 (required for impacts to Civil Works projects)   | Expected Q2 2024  | Expected Q2 2024  |
| USEPA  | CAA OCS Air Permit   | Expected Q2 2024  | Expected Q2 2024  |
| USCG   | Private Aid to Navigation authorization  | Expected Q2 2024  | Expected Q2 2024  |
| <b>State (Portions of the Project within State Jurisdiction)</b>       |  |   |   |
| BPU  | Approval of Petition from electric distribution company for interconnection                                      | To be determined (TBD) – local electric distribution company to file petition with BPU          | TBD – local electric distribution company to file petition with BPU                             |
| NJDEP, Bureau of Tidelands Management, Tidelands Resource Council      | Tidelands License, Lease, or Grant   | Expected Q2 2024  | Expected Q2 2024  |
| NJDEP, Coastal Management Program                                      | Concurrence with Federal Coastal Zone Consistency Determination  | Expected Q2 2024  | Expected Q2 2024  |
| NJDEP, Division of Land Resource Protection                            | Waterfront Development Individual Permit – Water/Upland  | Expected Q2 2024  | Expected Q2 2024  |
|  | Coastal Area Facility Review Act Permit  |   |   |
|  | Coastal Wetlands Permit  |   |   |
|  | CWA Section 401, State Water Quality Certificate   |   |   |
|  | Freshwater Wetlands General or Individual Permit   |   |   |
|  | Flood Hazard Area Individual Permit or Verification  |   |   |
|  | Dredging-related permits, as applicable  |   |   |
| Dredged material disposal permits, as applicable                       |  |   |   |
| NJDEP, Division of Parks and Forestry, Natural Heritage Program        | State Species Consultation   | Consultation conducted in conjunction with NJDEP review and approval process (expected Q2 2024) | Consultation conducted in conjunction with NJDEP review and approval process (expected Q2 2024) |
| NJDEP, Division of Water Quality, Bureau of Nonpoint Pollution Control | NJPDES 5G3 Stormwater General Construction Permit  | TBD   | TBD   |

| Agency/Regulatory Authority                                      | Permit/Approval   | Project 1 Approval/Completion Date  | Project 2 Approval/Completion Date  |
|--|---|---|---|
| NJDEP Green Acres Program  | Green Acres Diversion approval, if required   | Expected Q2 2024 (review schedule is highly dependent on when the next State House Commission meeting is held)  | Expected Q2 2024 (review schedule is highly dependent on when the next State House Commission meeting is held)  |
| NJDEP, Historic Preservation Office                              | Review Procedures under the New Jersey Register of Historic Places Act                      | Consultation conducted in conjunction with NEPA review and NJDEP review and approval process (expected Q2 2024) | Consultation conducted in conjunction with NEPA review and NJDEP review and approval process (expected Q2 2024) |
|  | Consultation under Section 106 of the NHPA of 1966  |   |   |
| NJDEP, Water Allocation and Well Permitting                      | Water Use (dewatering during construction)  | TBD   | TBD   |
| New Jersey Department of Military and Veterans Affairs           | Approval to land cables at Monmouth Landfall in Sea Girt, New Jersey, at the U.S. Army NGTC | TBD   | TBD   |
| NJDOT, Division of Right of Way and Access Management            | Highway Occupancy Permit  | Expected Q2 2024  | Expected Q2 2024  |
| New Jersey Pinelands Commission                                  | Application for Development/Certificate of Filing   | Expected Q2 2024  | Expected Q2 2024  |
| <b>Local (Portions of the Project within Local Jurisdiction)</b> |   |   |   |
| Atlantic County Department of Regional Planning and Development  | Highway Occupancy Permit / Utility Permit   | Expected Q2 2024  | N/A   |
| Borough of Sea Girt  | Site Plan Approval  | N/A   | Expected Q2 2024  |
|  | Zoning Permit   | N/A   | Expected Q2 2024  |
|  | Building Permit   | N/A   | Expected Q2 2024  |
|  | Site Development Stormwater Management Plan   | N/A   | Expected Q2 2024  |
| Cape Atlantic Conservation District                              | Soil Erosion and Sediment Control Plan Certification  | Expected Q2 2024  | N/A   |
|  | Stormwater Construction Permit  | Expected Q2 2024  | N/A   |
| City of Atlantic City  | Site Plan Approval for O&M Facility (Atlantic City)   | Site plan application to be filed at least 12 months prior to start of construction activities                  | The O&M Facility would support Project 1 and Project 2 – Plan and permit approval expected Q2 2024              |
|  | Construction Permit for O&M Facility  | Construction permit would be applied for after Site Plan Approval   |   |

| Agency/Regulatory Authority                     | Permit/Approval  | Project 1 Approval/ Completion Date                                   | Project 2 Approval/ Completion Date |
|---|--|---|-------------------------------------|
|   | Stormwater Management Plan Approval for O&M Facility             | Stormwater management plan to be submitted with Site Plan Application |                                     |
| City of Pleasantville                           | Stormwater Control for Major Development (if required)           | Expected Q2 2024  | N/A                                 |
|   | Street Opening Permit  | Expected Q2 2024  | N/A                                 |
|   | Land Use/Zoning Permit   | Expected Q2 2024  | N/A                                 |
| Freehold Soil Conservation District             | Certification of Soil Erosion and Sediment Control               | N/A   | Expected Q2 2024                    |
|   | Stormwater Construction Permit                                   | N/A   | Expected Q2 2024                    |
| Monmouth County Highway Division of Inspections | Road Opening Permit  | N/A   | Expected Q2 2024                    |
| Township of Egg Harbor                          | Zoning Permit  | Expected Q2 2024  | N/A                                 |
|   | Construction Permit  | Expected Q2 2024  | N/A                                 |
|   | Certificate of Occupancy   | Expected Q2 2024  | N/A                                 |
|   | Street Opening Permit  | Expected Q2 2024  | N/A                                 |
|   | Site Plan Approval   | Expected Q2 2024  | N/A                                 |
| Township of Howell                              | Division of Land Use and Planning – Land Development Application | N/A   | Expected Q2 2024                    |
|   | Division of Engineering – Plot Plan Approval                     | N/A   | Expected Q2 2024                    |
|   | Tree Removal Permit  | N/A   | Expected Q2 2024                    |
| Township of Wall                                | Major Site Plan Approval   | N/A   | Expected Q2 2024                    |
|   | Site Development Stormwater Management Plan                      | N/A   | Expected Q2 2024                    |
|   | Development/Zoning Permit  | N/A   | Expected Q2 2024                    |
|   | Construction Permit  | N/A   | Expected Q2 2024                    |
|   | Tree Removal Plan  | N/A   | Expected Q2 2024                    |
|   | Conditional Permit   | N/A   | Expected Q2 2024                    |
|   | Street Opening Permit  | N/A   | Expected Q2 2024                    |

Notes:

The status of federal permits and approvals can be reviewed at the FAST-41 Permitting Dashboard:

<https://www.permits.performance.gov/permitting-project/atlantic-shores-south>.

Authority to issue the OCS Air Permit currently lies with EPA Region 2, but the State of New Jersey has taken actions towards obtaining delegated authority to issue and enforce OCS air permits. Per 40 CFR 52.11(b), that delegation can occur when New Jersey has demonstrated that the state has adopted the appropriate portions of the regulation into state law, and has adequate authority, resources, and administrative procedures to implement the regulation. New Jersey incorporated 40 CFR Part 55 into the NJDEP regulations (at NJAC 7:27-30) effective May 4, 2020.

**Table A-2. Required environmental permits and approvals for the connected action**

| Agency/Regulatory Authority | Permit/Approval  | Approval/Completion Date |
|-----------------------------|--|--------------------------|
| USACE                       | Nationwide Permit 3/Nationwide Permit 13 - Maintenance   | TBD                      |
|                             | Standard Permit – Atlantic City-Wide Dredging Project: NAP-2021-00573-95, issued with special conditions, March 15, 2022 | TBD                      |

## A.2 Consultation and Coordination

### A.2.1 Introduction

This section discusses public, tribal, and agency involvement leading up to the preparation and publication of the Draft EIS, including formal consultations, cooperating agency exchanges, the public scoping comment period, and correspondence. 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 and Authorizations

#### A.2.2.1 Coastal Zone Management Act

The CZMA requires that federal actions within the coastal zone or within the geographic location descriptions (i.e., areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects) affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state’s federally approved coastal management program. A portion of the Project, specifically the export cable component, is located within New Jersey’s designated coastal zone and will require an authorization and issuance of an Individual Permit by USACE through Section 10 of the RHA and Section 505 of the CWA (15 CFR Part 930, Subpart D), which requires a federal consistency review under the CZMA (16 USC 1456), Section 307 (c)(3)(A) and 15 CFR Part 930.

Although the Project’s Lease Area does not fall within a Geographic Location Description for purposes of 16 USC 1456(c)(3)(A) and the implementing regulations at 15 CFR Part 930 Subparts D and E, Atlantic Shores intends to voluntarily submit a federal consistency certification. The state’s concurrence is required before BOEM may approve or approve with conditions the Atlantic Shores COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

#### A.2.2.2 Endangered Species Act

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

modification of critical habitat of those species. When the action of a federal agency may affect a protected species or its critical habitat, that agency is required to consult with either NMFS or USFWS, depending upon the jurisdiction. Pursuant to 50 CFR 402.07, BOEM has accepted designation as the lead federal agency for the purposes of fulfilling interagency consultation under Section 7 of the ESA for listed species under the jurisdiction of NMFS and USFWS. BOEM is consulting on the proposed activities considered in this Draft EIS with both NMFS and USFWS and has prepared biological assessments for listed species and designated critical habitat under their respective jurisdictions.

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

EO 13175, *Consultation and Coordination with Indian Tribal Governments*, commits federal agencies to engage in government-to-government consultation with federally recognized tribes when federal actions have tribal implications, and DOI policy requires all department bureaus and offices to consult on departmental actions with tribal implications (DOI 2015). 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 EO 13175 (BOEM 2018). BOEM implements tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and other engagement.

In a letter dated November 5, 2021, BOEM notified tribal leaders that the Notice of Intent (NOI) to prepare an EIS for the Project was issued, and of the public scoping period from September 30 through November 1, 2021. On October 27, 2021, BOEM emailed the Absentee-Shawnee Tribe of Indians of Oklahoma, the Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Mashantucket (Western) Pequot Tribe, Mashpee Wampanoag Tribe, Narragansett Indian Tribe, Shawnee Tribe, Shinnecock Indian Nation, Stockbridge-Munsee Community Band of Mohican Indians, and Wampanoag Tribe of Gay Head (Aquinnah) offering government-to-government consultation to discuss the public scoping information for the Project. BOEM held a government-to-government meeting with the Delaware Tribe of Indians and the Delaware Nation on November 15, 2021. Both tribes expressed interest in continuing consultation for offshore wind and emphasized the importance of early consultation in Project development. BOEM made additional attempts to contact the Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, Narragansett Indian Tribe, and Shinnecock Indian Nation via phone and email in August and September 2022. The Absentee-Shawnee Tribe of Indians of Oklahoma confirmed in a January 30, 2023 email that the Project area is not in their area of interest. The Mashantucket (Western) Pequot Tribe initially declined to participate in consultations for the Project on November 22, 2021; however, on April 19, 2023, they indicated the Project is in their revised area of interest and therefore requested to receive notifications for the Project. As a result, BOEM added the Mashantucket (Western) Pequot Tribe as a consulting party, and the Tribe will be invited to be a cooperating Tribal government for the Project.



#### 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 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 OSSs, 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 setting of historic structures or landscapes; in cases where the 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(c) 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 known as "NEPA substitution for Section 106," and BOEM is using this process and documentation required for the preparation of this EIS and the ROD to comply with Section 106. Appendix I of this Draft EIS contains BOEM's Determination of Effect for NHPA Section 106 Consultation, which includes a description and summary of BOEM's consultation so far. BOEM will continue consulting with the New Jersey Historic Preservation Office (NJHPO; the New Jersey SHPO), ACHP, federally recognized tribes, and other consulting parties regarding the Finding of Adverse Effect and the resolution of adverse effects. BOEM has and will hold Section 106 consultation meeting(s) on the identification of historic properties, the finding of adverse effect, and the resolution of adverse effects. BOEM will request that the consulting parties review and comment on the finding of adverse effect and proposed mitigation 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 October 15, 2021, BOEM contacted the ACHP and NJHPO to provide Project information and notify of BOEM's intention to use the NEPA substitution process to fulfill Section 106 obligations under 36 CFR 800.8(c) in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

On November 5 and 8, 2021, BOEM contacted 11 federally recognized tribes with information about the Project and an invitation to be a consulting party to the NHPA Section 106 review of the COP. The tribes contacted include: the Absentee-Shawnee Tribe of Indians of Oklahoma, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Mashantucket (Western) Pequot Tribe, Mashpee Wampanoag Tribe, Shawnee Tribe, Stockbridge-Munsee Community Band of Mohican Indians, The Delaware Nation, The Narragansett Indian Tribe, The Shinnecock Indian Nation, and Wampanoag Tribe of Gay Head (Aquinnah). BOEM also used this correspondence to notify of its intention to use the NEPA substitution process for Section 106 purposes, as described in 36 CFR 800.8(c), during its review. The Stockbridge-Munsee Community Band of Mohican Indians declined to participate as a consulting party for the Project on November 12, 2021. The Mashantucket (Western) Pequot Tribe initially declined to

participate in consultations for the Project on November 22, 2021; however, on April 19, 2023, they indicated the Project is in their revised area of interest and therefore requested to receive notifications for the Project. As a result, BOEM added the Mashantucket (Western) Pequot Tribe as a consulting party for the Project. The Absentee-Shawnee Tribe of Indians of Oklahoma indicated on January 30, 2023, that the Project area is not in their area of interest. BOEM has included any tribe that did not respond to the invitation to consult in all consulting party communications and considers them consulting parties for the Project.

Between November 5 and December 20, 2021, BOEM corresponded with a total of 259 points of contact from governments and organizations by mail and email, including information about the Project, an invitation to be a consulting party to the NHPA Section 106 review of the COP, and the NOI to prepare an EIS. BOEM also used this correspondence to notify of its intention to use the NEPA substitution process for Section 106 purposes, as described in 36 CFR 800.8(c), during its review. BOEM has included any government and organization that did not respond to the invitation to consult in all consulting party communications and considers them consulting parties for the Project.

On August 30, 2022, BOEM held virtual NHPA Section 106 Consultation Meeting #1. The presentation included a brief Project overview, review of NEPA Substitution for 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.

NHPA Section 106 consulting parties for the Project as of February 2023 are listed in Table A-3. Additional details on NHPA consultations can be found in Appendix I of this Draft EIS.

**Table A-3. NHPA Section 106 consulting parties**

| Organization Type           | Organization  |
|-----------------------------|---|
| Federal agencies            | U.S. Advisory Council on Historic Preservation<br>U.S. Army Corps of Engineers<br>U.S. Bureau of Safety and Environmental Enforcement<br>U.S. Coast Guard<br>U.S. National Park Service<br>U.S. Naval History and Heritage Command (Underwater Archaeology Branch)                  |
| Federally recognized tribes | Delaware Tribe of Indians<br>Eastern Shawnee Tribe of Oklahoma<br>Mashantucket (Western) Pequot Tribe<br>Mashpee Wampanoag Tribe<br>Shawnee Tribe<br>The Delaware Nation<br>The Narragansett Indian Tribe<br>The Shinnecock Indian Nation<br>Wampanoag Tribe of Gay Head (Aquinnah) |
| SHPOs and state agencies    | New Jersey Department of Environmental Protection<br>New Jersey Historic Preservation Office (NJHPO)  |
| State recognized tribes     | Lenape Indian Tribe of Delaware   |

| Organization Type                       | Organization  |
|---|---|
| Local governments                       | Atlantic County<br>Atlantic County, Department of Regional Planning and Development<br>Borough of Bay Head<br>Borough of Beach Haven<br>Borough of Harvey Cedars<br>Borough of Point Pleasant Beach<br>Borough of Sea Girt<br>Borough of Seaside Park<br>Borough of Stone Harbor<br>Borough of West Cape May<br>Cape May County (represented by Cultural Heritage Partners)<br>City of Brigantine<br>City of Cape May<br>City of Linwood<br>City of Margate<br>City of North Wildwood<br>City of Ocean City<br>City of Sea Isle City<br>City of Somers Point<br>Galloway Township<br>Long Beach Township<br>Stafford Township<br>Township of Brick<br>Township of Upper |
| Nongovernmental organizations or groups | Greater Cape May Historic Society<br>Hereford Inlet Lighthouse<br>Save Lucy Committee, Inc. (represented by Rutala Associates, LLC)<br>Save Long Beach Island, Inc.<br>The Noyes Museum of Art  |

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

Pursuant to Section 305(b) of the MSA, federal agencies are required to consult with NMFS on any action that may result in adverse effects on EFH. NMFS regulations implementing the EFH provisions of the MSA can be found at 50 CFR 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 a draft EFH Assessment concurrent with the Draft EIS and transmitted the draft EFH Assessment to NMFS on August 3, 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. Entities seeking to obtain authorization for the incidental take of marine mammals under NMFS jurisdiction must submit such a request (in the form of an application). Incidental Take Authorizations may be issued as either (1) regulations and associated Letters of Authorization, or (2) an Incidental Harassment Authorization. Letters of Authorizations may be issued for up to a maximum period of 5 years, and Incidental Harassment Authorizations may be issued for a maximum period of 1 year. NMFS has also promulgated regulations to implement the provisions of the MMPA governing the taking and importing of marine mammals (50 CFR Part 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.

Atlantic Shores submitted a Letter of Authorization application to NMFS on February 28, 2022. The application was reviewed and considered complete on August 25, 2022. NMFS published a Notice of Receipt in the *Federal Register* on September 29, 2022.

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

Section 404 of the CWA (33 USC 1344) regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. A permit from USACE is required regardless of whether the work is temporary or permanent and includes discharges such as dewatering of dredged material prior to disposal and temporary fills for cofferdams and work areas. Section 10 of the RHA (33 USC 403) regulates the construction of any structure in or over navigable waters of the U.S. and prohibits the creation of any obstruction to the navigable capacity of any water of the U.S. A Section 10 permit is required for structures or work that affect the course, location, or condition of the water body, including dredging and excavation, submarine cable installation, and WTGs and OSSs. Atlantic Shores South completed the Pre-Construction Notification (PCN) for approval under Section 404 of the CWA and Section 10 of the RHA to USACE on November 14, 2022.

"Section 408 permission" is required pursuant to Section 14 of the RHA (33 USC 408) for any proposed alterations that have the potential to alter, occupy, or use any federally authorized civil works projects. The Section 408 review verifies that changes to authorized USACE Civil Works projects will not be injurious to the public interest and will not impair the usefulness of the project. Atlantic Shores

submitted a complete application for Section 408 approval for the Project to USACE on January 20, 2023, following the receipt of a completeness determination on November 21, 2022.

Atlantic Shores is pursuing a USACE Nationwide Permit 3 or USACE Nationwide Permit 13 to install an approximately 356-foot (109-meter) bulkhead composed of steel or composite vinyl sheet piles within the Inlet Marina, in Atlantic City, New Jersey. In addition, Atlantic Shores is coordinating with the City of Atlantic City to perform dredging of basins within the Inlet Marina. The planned bulkhead and maintenance dredging activities would be conducted regardless of the construction and installation of the Proposed Action. However, the bulkhead and dredging are necessary for the use of the proposed O&M facility included in the Proposed Action. Therefore, the bulkhead and dredging activities are analyzed in the Draft EIS as a connected action under NEPA, per 40 CFR 1501.9(e)(1). The City of Atlantic City obtained a USACE approval (NAP-2021-00573-95) and a NJDEP Dredge Permit (No. 0102.20.0001.1 LUP 210001) to perform 10-year maintenance dredging of 13 city waterways, inclusive of the area associated with the proposed O&M facility. Atlantic City's maintenance dredging program targets substantial shoaling that has built up over the last century.

#### A.2.2.8 Clean Air Act

The OCS Air Regulations (40 CFR Part 55) establish the applicable air pollution control requirements, including provisions related to permitting, monitoring, reporting, fees, compliance, and enforcement, for facilities subject to the CAA Section 328. Atlantic Shores submitted an OCS Air Permit application to USEPA Region 2 on September 1, 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 September 30, 2021, BOEM issued an NOI to prepare an EIS consistent with NEPA regulations (42 USC 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives (86 *Federal Register* 54231). The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the EIS. The formal scoping period was from September 30 through November 1, 2021. BOEM held three virtual public scoping meetings to solicit feedback and to identify issues and potential alternatives for consideration in the EIS. Throughout this timeframe, federal agencies, state and local governments, and the general public had the opportunity to help BOEM identify potential significant resources and issues, IPFs, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to analyze in the EIS, as well as provide additional information. BOEM also used the NEPA scoping process to initiate the Section 106 consultation process under the NHPA (54 USC 300101 et seq.), as permitted by 36 CFR 800.2(d)(3), which requires federal agencies to assess the effects of projects on historic properties. Additionally, BOEM informed its Section 106 consultation by seeking public comment and input through the NOI regarding the identification of historic properties or

potential effects on historic properties from activities associated with approval of the COP (Atlantic Shores 2023). The NOI requested comments from the public in written form, delivered by hand or by mail, or through the regulations.gov web portal.

BOEM held three virtual scoping meetings on October 19, 21, and 25, 2021. BOEM reviewed and considered all scoping comments in the development of the Draft EIS and used the comments to identify alternatives for analysis. A Scoping Summary Report (BOEM 2022) summarizing the submissions received and the methods for analyzing them is available on BOEM's website at <https://www.boem.gov/atlantic-shores>. In addition, all public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing "BOEM-2021-0057" 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, Marine Mammals, and Planned Activities Scenario/Cumulative Impacts, among others.

#### A.2.3.2 Cooperating Agencies

BOEM invited federal agencies and tribal, state, and local governments to become cooperating agencies in the preparation of the Draft EIS. According to CEQ guidelines, qualified agencies and governments are those with "jurisdiction by law or special expertise" (CEQ 1981). BOEM asked potential cooperating agencies to consider their authority and capacity to assume the responsibilities of a cooperating agency, and to be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. BOEM also asked agencies to consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies (CEQ 2002). BOEM held interagency meetings on August 9, 2021, October 28, 2021, November 29, 2021, January 27, 2022, and October 18, 2022, to discuss the environmental review process, schedule, responsibilities, consultation, and potential EIS alternatives. In addition to meetings, BOEM shared with the cooperating agencies the Draft EIS alternatives on July 14, 2022, and the Preliminary Draft EIS on August 2, 2022,

In response to BOEM's invitation to be a cooperating agency, NPS and ACHP requested to support the environmental review as a participating agency instead. The following federal agencies and tribal, state, and local governments have supported preparation of the Draft EIS as cooperating agencies:

- BSEE
- NOAA (NMFS)
- USACE
- USCG
- USEPA
- USFWS

- BPU
- NJDEP
- New York State Department of State (NYSDOS)

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 (e.g., air quality compliance). Pursuant to a December 2020 MOA between BOEM and BSEE, BSEE conducts activities, consults, and advises BOEM on safety and environmental enforcement for renewable energy projects.

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 Part 216); the 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 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 Part 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 regulatory decision.

USACE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action, connected action, and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Sections 10 and 14 of the RHA, Section 404 of the CWA, and Section 103 of the MPRSA. As an offshore wind energy project, the Project needs to be situated offshore in the water. Consequently, the fill activities associated with the Project, which consist of the interarray cables, armoring at the base of the WTG foundations, protective cable armoring for the export cables, and temporary cofferdams, are water dependent. Issuance of Section 10 or Section 404 permits requires NEPA compliance, which will be met via adoption of BOEM’s EIS and issuance of the ROD.

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.

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. USEPA will also be providing authorization for an OCS air permit and using the analysis of the EIS as information in the permit process.

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

BPU is serving as a cooperating agency pursuant to 40 CFR 1501.8 because BPU has the authority under New Jersey's Offshore Wind Economic Development Act to approve an application from an entity seeking to construct an offshore wind project as a Qualified Offshore Wind Project, as authorized by New Jersey Statutes 48:3-87.1, *Application to construct offshore wind project*. BPU has special expertise with respect to potential impacts that may occur as a result of the Proposed Action and connected action.

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

NYSDOS is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the agency has 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/atlantic-shores-south>. 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 this 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 hand or mail, enclosed in an envelope labeled "Atlantic Shores South 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-2023-0030." Click the "Comment" button, enter your information and comment, then click "Submit Comment."
- By attending one of the public hearings at the locations and 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

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