

APPENDIX A

Required Environmental Permits and Consultations

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Introduction

This appendix discusses required permitting and public, agency, and tribal involvement in the preparation of the Revolution Wind Farm (RWF) and Revolution Wind Export Cable (RWEC) Project (the Project) environmental impact statement (EIS). This involvement included formal consultations, cooperating agency exchanges, and a public scoping comment period.

Authorizations and permits are listed in Table A-1, and cooperating or participating federal agencies are described below. The Bureau of Ocean Energy Management (BOEM) has completed the following interagency milestones to date for the Project:

- Finalize purpose and need: April 19, 2021
- Concurrence on permitting timetable: April 19, 2021
- Issuance of notice of intent (NOI) to prepare an EIS: April 30, 2021
- Issuance of notice of correction: June 4, 2021
- Complete public scoping period: June 11, 2021
- Finalize Draft EIS alternatives: April 19, 2022

Other Federal and State Review

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

Table A-1. Cooperating Federal and State Agencies, Required Environmental Permits, and Consultations for the Project

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultations	Status
Federal			
Advisory Council on Historic Preservation	Participating agency	None	Not applicable
BOEM	Lead federal agency	Construction and operations plan (COP) approval	Original COP filed with BOEM on October 30, 2020; COP update provided on April 29, 2021; COP update provided on December 15, 2021; COP update provided on July 21, 2022
National Park Service	Participating agency	None	Not applicable
U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service	Cooperating agency	Letter of authorization (LOA) for incidental take regulations (ITRs) Essential fish habitat consultation Endangered Species Act (ESA) consultation	Planned
U.S. Department of Defense, U.S. Army Corps of Engineers	Cooperating agency	Clean Water Act Section 404/Rivers and Harbors Act of 1899 Section 10 Individual Permit	Planned
U.S. Department of Defense	Participating agency	None	Not applicable
U.S. Department of Transportation, Federal Aviation Administration	Participating agency	Obstruction evaluation/airport airspace analysis	Planned
U.S. Department of Homeland Security, U.S. Coast Guard	Cooperating agency	Private Aids to Navigation Permit	Planned

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultations	Status
U.S. Department of the Interior, Bureau of Safety and Environmental Enforcement	Cooperating agency	None	Not applicable
U.S. Department of the Navy	Participating agency	None	Not applicable
U.S. Environmental Protection Agency	Cooperating agency	Outer Continental Shelf Air Permit	Planned
U.S. Fish and Wildlife Service	Participating agency	ESA consultation	Not applicable
State (portions of the Project within state jurisdiction)*			
State of Rhode Island Coastal Resources Management Council	Cooperating agency	Coastal Zone Management Act (CZMA) Consistency Certification Category B Assent/Submerged lands license Permit to Alter Freshwater Wetlands in the Vicinity of the Coast Application for Marine Dredging and Associated Activities	Filed on June 7, 2021 Filed on July 1, 2021 Filed on July 1, 2021 Filed on July 1, 2021
State of Rhode Island Department of Environmental Management	Cooperating agency	Section 401 and State Water Quality Certification/Rhode Island Pollutant Discharge Elimination System Construction General Permit (filed concurrently) Application for Marine Dredging and Associated Activities (see above)	Filed on August 3, 2021
Commonwealth of Massachusetts Office of Coastal Zone Management	Cooperating agency	CZMA Consistency Certification	Filed on June 7, 2021
Connecticut State Historic Preservation Office, Connecticut Department of Economic and Community Development	Not applicable	National Historic Preservation Act (NHPA) Section 106 consultation	Not applicable

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultations	Status
Rhode Island Historical Preservation & Heritage Commission	Not applicable	NHPA Section 106 consultation	Not applicable
New York State Division for Historic Preservation	Not applicable	NHPA Section 106 consultation	Not applicable
Massachusetts Historical Commission	Not applicable	NHPA Section 106 consultation	Not applicable

* State agencies may be cooperating agencies under the National Environmental Policy Act.

Cooperating Agencies

As part of the National Environmental Policy Act (NEPA) process, 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 (CEQ) guidelines, qualified agencies and governments are those with “jurisdiction by law” or “special expertise” (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 FAST-41 process with a written summary of expectations for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope, detail of cooperating agencies’ contributions, and availability of pre-decisional information.

Cooperating agency status is provided in Table A-1. More specific details regarding federal agency roles and expertise are described below.

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 its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to the Marine Mammal Protection Act, as amended (MMPA) (16 USC 1361 et seq.); the regulations governing the taking and importing of marine mammals (50 CFR 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 222–226). In accordance with 50 CFR 402, NMFS also serves as the consulting agency under Section 7 of the ESA for federal agencies proposing 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 600 when proposed actions may adversely affect essential fish habitat (EFH). The MMPA is the only authorization for NMFS that requires NEPA compliance. NMFS intends to adopt BOEM’s Final EIS if, after independent review and analysis, NMFS determines the Final EIS to be sufficient to support the authorization.

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’s 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 under the MMPA, as amended (16 USC 1361 et seq.) and issue an ITA in the form of a Letter of Authorization

(LOA) for Incidental Take Regulations (ITRs) if appropriate. Revolution Wind, LLC (Revolution Wind) has submitted an application to NMFS for an ITR in conjunction with the construction and operations plan (COP) for *take*, as defined by the MMPA, of marine mammals incidental to Project construction and associated activities. The decision to issue an ITR 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 CEQ (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.

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.

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 that fall under its jurisdiction by law and special expertise. Upon lessee application, the USCG will issue a Private Aids to Navigation (PATON) permit for the marking and lighting of the wind turbine generators (WTGs), offshore substations (OSSs), and measurement buoys to alert mariners to potential hazards to navigation. A request for a Local Notice to Mariners (LNMs) publication will also be submitted to the USCG prior to vessel mobilization for construction activities to enable the USCG to issue the LNM.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) 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. The EPA is responsible for issuing an Outer Continental Shelf (OCS) permit for the Project under the Clean Air Act.

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 its 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.

Section 10 of the Rivers and Harbors Act, approved on March 3, 1899 (33 USC 403), prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States; the excavating from or depositing of material in such waters; or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the

United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the OCS, by Section 4(f) of the Outer Continental Shelf Lands Act of 1953, as amended (43 USC 1333(e)).

Section 404 of the Clean Water Act (33 USC 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites (see 33 CFR 323.) The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the EPA in conjunction with the Secretary of the Army and published in 40 CFR 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation and anchorage of such a prohibition in reaching their decision. Furthermore, the Administrator can deny, prohibit, restrict, or withdraw the use of any defined area as a disposal site whenever they determine, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas (see 40 CFR 230).

The Section 10 activities associated with the Project may consist of the installation of WTGs, the installation of inter-array cables, the installation of export cables, and scour protection associated with the structures. Section 10 activities are regulated by the USACE between the mean high water mark and the limits of the OCS. The Section 404 fill activities associated with the Project may consist of the discharge of dredged material associated with the horizontal directional drilling installation at the landfall site, the placement of cable scour protection, the installation of temporary cofferdams, and temporary discharges of dredged or fill material associated with the installation of the export cable. Section 404 activities are regulated by the USACE between the high tide line and the 3-nautical-mile mark.

Issuance of Section 10 or Section 404 permits requires NEPA compliance, which will be met via adoption of BOEM's EIS and issuance of the record of decision.

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) is serving as a participating agency for the 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 the ESA section below for a summary of the ESA consultation to date with the USFWS.

National Park Service

The National Park Service (NPS) is serving as a participating agency because there are multiple important NPS resources within the Project vicinity, including the Block Island Southeast Light, Marble House, Ocean Drive Historic District, Bellevue Avenue Historic District, and The Breakers National Historic Landmarks (NHLs). There may also be Land and Water Conservation Fund State and Local Assistance Program sites impacted if more export cable locations are set. However, at this point in time the proposed cable landing at Quonset Business Park in North Kingstown, Rhode Island, is not expected to interact with any NPS units or program lands. Should any potential impacts to NPS units or program lands be identified and an NPS permit is required, the NPS will request a change to cooperating agency status under "jurisdiction by law" pursuant to 40 CFR 1501.8.

Consultations

The following section provides a summary and status of BOEM consultations as part of the Project (ongoing, complete, and the opinion or finding of each consultation). Section 1.4 of the COP provides a discussion of other federal and state consultation processes being led by Revolution Wind (vhb 2022).

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) requires that federal actions within and outside the coastal zone that have reasonably foreseeable effects on any coastal use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program (CMP). On June 7, 2021, Revolution Wind submitted a federal consistency certification with the Commonwealth of Massachusetts Office of Coastal Zone Management (MA-CZM) and the Rhode Island Coastal Resources Management Council (RI CRMC) per 15 CFR 930.76. The CZMA federal consistency regulations at 15 CFR 930.60(b) allow for a stay of the required review period, if mutually agreed upon by both the applicant and the state agency. On July 2, 2021, MA-CZM requested additional information deemed necessary to determine consistency with the enforceable policies of its approved CMP and entered into a mutual agreement with Revolution Wind to stay the review for 8 months, beginning on July 7, 2021, with MA-CZM's review restarting on March 7, 2022. On March 7, 2022, both parties agreed to a second stay ending May 7, 2022.

On October 21, 2021, RI CRMC also requested additional information deemed necessary to make a consistency determination. On October 28, 2021, RI CRMC and Revolution Wind entered into an agreement to stay the CRMC's CZMA review until September 17, 2022.

At this time, Revolution Wind and these state agencies have mutually agreed to the following consistency decision dates:

- Massachusetts: October 7, 2022
- Rhode Island: December 21, 2022

The COP provides the necessary data and information under 15 CFR 930.58 (vhb 2022). The states' concurrence is required before BOEM could approve, or approve with conditions, the COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

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 could affect a protected species or its critical habitat, that agency is required to consult with either NMFS or the USFWS, depending upon the jurisdiction of the agencies. 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 the USFWS. BOEM is consulting on the proposed activities considered in this EIS with both NMFS and the USFWS for listed

species under their respective jurisdictions. Draft biological assessments have been prepared for submission to USFWS and NMFS. ESA consultations are expected to be completed by March 31, 2023.

Government-to-Government Consultation with Federally Recognized Indian Tribes

Executive Order (EO) 13175 commits federal agencies to engage in government-to-government consultation with tribal nations, and Secretarial Order No. 3317 requires U.S. Department of the Interior agencies to develop and participate in meaningful consultation with federally recognized tribal nations where a tribal implication may arise. A June 29, 2018, memorandum outlines BOEM's current tribal consultation policy (BOEM 2018). This memorandum states that "consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making" and is in keeping with the spirit and intent of the National Historic Preservation Act (NHPA) and 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 engagement.

BOEM conducted government-to-government consultations with the Narragansett Indian Tribe, the Mashantucket Pequot Tribal Nation, and the Mohegan Tribe of Indians of Connecticut in an overview of planned offshore wind development projects off southern New England in August 2018.

Between January 15 and 17, 2020, BOEM met again with the Mohegan Tribe of Indians of Connecticut, the Mashantucket Pequot Tribal Nation, and the Narragansett Indian Tribe to discuss multiple BOEM actions in the Rhode Island/Massachusetts Wind Energy Area. Concerns expressed by representatives from the tribes present included possible effects on marine mammals, other marine life, and the Nantucket Sound Traditional Cultural Property (TCP). One tribe emphasized the importance of open sea views to the east during sunrise, as well as the night sky, while others emphasized their long historical association with the sea and islands off southern New England and the critical role of fishing and shellfish gathering. All of the tribes emphasized the importance of understanding the interconnected nature of the human world, the sea, and the living things in both worlds.

On July 21, 2020, BOEM and the BSEE conducted three separate meetings with the Mashantucket Pequot Tribal Nation, the Wampanoag Tribe of Gay Head (Aquinnah), and the Mashpee Wampanoag Tribe. These meetings generally focused on developing mitigation measures for offshore wind project impacts, funding, and best practices. Concerns expressed by representatives from the tribes present included project effects and layout, a desire to redefine the Nantucket Sound TCP boundaries, recommendations for mitigation measures, aboriginal rights and titles, communication with developers, and cumulative effects of the present and future offshore wind projects in the area.

On August 20, 2020, BOEM consulted with the Delaware Tribe of Indians, Mashantucket Pequot Tribal Nation, Mashpee Wampanoag Tribe, and Wampanoag Tribe of Gay Head (Aquinnah) to discuss the impacts of offshore wind developments on marine mammals. This included an overview of the consultation process and environmental review, the BOEM Environmental Studies Program and process, existing and upcoming studies related to North Atlantic right whales, and the marine mammal analysis and findings noted in the Vineyard Wind 1 supplemental EIS. The meeting concluded with some action items for BOEM, including to provide the above-referenced consulting parties with additional reports and

to research funding options to provide tuition assistance for tribal members interested in participating in the Protected Species Observer training certificate program.

On March 12, 2021, BOEM consulted with the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) to discuss the proposed nomination of a TCP district to the National Register of Historic Places (NRHP) off the coast of Massachusetts. The TCP district proposed by the two Wampanoag tribes would encompass the lands and waters associated with the Wampanoag culture hero Moshup, including the Nantucket Sound TCP and the Vineyard Sound and Moshup's Bridge TCP identified during consultations for the Vineyard Wind 1 Project. The representatives from the tribes informed BOEM that the proposed TCP district was best described as a cultural landscape: a geographic area, including both cultural and natural resources and the wildlife therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values. The representatives from the tribes stated that, in their opinion, any nomination should not be limited to the activities and lands associated with Moshup but also include detailed documentation of Wampanoag history in the area, such as their participation in the whaling industry, detailing the role the Wampanoag peoples have played in the history of the region. In a subsequent meeting on April 15, 2021, BOEM informed the representative from the Wampanoag Tribe of Gay Head (Aquinnah) that BOEM's Environmental Studies Program had developed a proposal for a collaborative ethnographic and historic research project with the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe to collect, document, and report information that could be used by the tribes to complete an NRHP nomination for the proposed TCP district.

On April 9, 2021, BOEM held a government-to-government consultation meeting with representatives from the Delaware Tribe of Indians, Mashantucket Pequot Tribal Nation, Mashpee Wampanoag Tribe, and Wampanoag Tribe of Gay Head (Aquinnah). Most of the meeting focused on topics and issues applicable to all proposed offshore wind projects off the coast of New England, including the Project. During the meeting, representatives from the tribes voiced concerns about potential Project-based and cumulative impacts to water quality; marine mammals; coastal habitats; benthic communities; culturally, economically, and historically significant fisheries and shellfish populations; chemical pollutants; the financial and time burden on tribes of participating in multiple, simultaneous offshore wind project reviews; visual impacts on TCPs; and preserving the marine and terrestrial environments for future generations, particularly the current and future ability of tribal youth to perform sacred ceremonies and have safe havens for traditional cultural practices in the future. In addition to discussing these concerns, representatives from the tribes also recommended that BOEM consider creating a single offshore export cable corridor for all projects off the coasts of Rhode Island and Massachusetts and requested that BOEM consult with federally recognized tribes on all proposed offshore wind projects as a single federal action rather than on a project-by-project basis.

In April 2021, BOEM invited by individual letter and email the Mashpee Wampanoag Tribe, Shinnecock Indian Nation, Mashantucket Pequot Tribal Nation, Wampanoag Tribe of Gay Head (Aquinnah), Mohegan Tribe of Indians of Connecticut, Narragansett Indian Tribe, Delaware Tribe of Indians, and Delaware Nation to join the EIS process as cooperating agencies, to participate in scoping, to meet government-to-government on the Project, and to consult under NHPA Section 106. The invitations and the NOI for the Project notified tribes that BOEM would be using the NEPA substitution process for completing the steps of NHPA Section 106 pursuant to 36 CFR 800.8. (See National Historic

Preservation Act section below.) BOEM had earlier, in December 2020, notified the consulting tribes of its intent to apply this NEPA substitution process on its future offshore wind development reviews and held a workshop on this process open to tribes in January 2021.

Officials with the Mashpee Wampanoag Tribe, Mashantucket Pequot Tribal Nation, and Wampanoag Tribe of Gay Head (Aquinnah) have attended cooperating agency meetings to date. BOEM received comments from the tribes during June 2021 cooperating agency meetings in the scoping of alternatives and weighed these in the identification of alternatives to consider in detailed EIS analyses. The Mashantucket Pequot Tribal Nation and the Wampanoag Tribe of Gay Head (Aquinnah) also provided written comments for scoping. Comments received from tribes on alternatives included a co-located export cable corridor to be shared with other offshore projects and RWF setbacks and different configurations of WTG layouts to protect the environment (water, wildlife, and other natural and heritage resources) as well as to set back WTGs from land to address visual and cultural impact concerns. A setback option that would restrict/maximize the distance of WTGs from Massachusetts islands was carried forward by BOEM to detailed analyses (i.e., Alternative E). A marine habitat alternative (Alternative C) was also carried forward to detailed analysis based on the comments of many consulting parties, including participating tribes. A draft scoping report was provided for cooperating agency review in June 2021, including to participating tribes.

On August 2, 2021, BOEM held a government-to-government meeting with the Wampanoag Tribe of Gay Head (Aquinnah) to discuss visual effects from the South Fork Wind Farm (SFWF) and RWF. The Wampanoag Tribe of Gay Head (Aquinnah) provided comments, and BOEM responses on the agency's tribal consultation practices to date on offshore wind development and the tribe's expressed concerns with the proximity of the SFWF and RWF lease areas and the consideration of alternatives.

On August 13, 2021, BOEM held a government-to-government meeting on RWF and Vineyard Wind South with the Mashpee Wampanoag Tribe, Mashantucket Pequot Tribal Nation, Wampanoag Tribe of Gay Head (Aquinnah), Delaware Tribe of Indians, and Delaware Nation. The meeting discussed BOEM's decision to use the NEPA substitution process for NHPA Section 106 compliance; cooperating agency status for tribes during NEPA EIS development; tribal land considerations on the OCS; power purchase agreements; BOEM's use of project design envelopes for project reviews; export cables; vessel traffic corridors; horizontal directional drilling at landfall sites; terrestrial archaeology; cumulative visual impacts; traditional cultural practices; potential impact to marine mammals; and project schedules and FAST-41.

On February 3, 2022, BOEM held a government-to-government meeting on RWF with the Mashpee Wampanoag Tribe, Mashantucket Pequot Tribal Nation, and Wampanoag Tribe of Gay Head (Aquinnah). The meeting discussed tribal land considerations on the OCS, export cables, terrestrial archaeology, marine archaeology, alternatives, cumulative visual impacts, Project schedule, and FAST-41.

On May 2, 2022, BOEM held a government-to-government meeting specifically with the chairwoman, tribal historic preservation office, and council members of the Wampanoag Tribe of Gay Head (Aquinnah). In the meeting, BOEM introduced and discussed the overall renewable energy program and process and summarized details and status of projects off the coast of New England. Topics identified for future discussion included cumulative visual simulations and resource impacts, the transmission process

that is part of a lease, decommissioning process and oversight, proposed mitigation plans and agreements, and the tribal capacity building initiatives.

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

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

BOEM continues to consult with these and other tribes on developments in offshore wind. Additional government-to-government consultations are planned for the future.

As part of COP development, Revolution Wind also conducted prior coordination with engaged tribes, State Historic Preservation Officers, and other stakeholders identified as having potential to inform the design process (see COP Appendix A).

Marine Mammal Protection Act

The MMPA was enacted to protect and conserve marine mammals and established a general moratorium on the taking and importation of marine mammals, with certain enumerated exceptions. Unless an exception applies, the act 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)). Section 101(a) of the act provides the prohibitions for the incidental taking of marine mammals. 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). Sections 101(a)(5)(A) and (D) of the act provide the 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 determinations 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 (ITAs) may be issued as either 1) regulations and associated letters of authorization or 2) incidental harassment authorizations when a proposed action will not result in a potential for serious injury and/or mortality or where any such potential can be negated through required mitigation measures. NMFS also promulgated regulations to implement the provisions of the MMPA governing the taking and importing of marine mammals (50 CFR 216) and produced Office of Management and Budget (OMB)-approved application instructions (OMB Number 0648-0151) that prescribe the procedures necessary to apply for permits. All applicants 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” 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.

NMFS received an application for an ITR from Revolution Wind, which was deemed complete on February 28, 2022, and published in the *Federal Register* on March 21, 2022 (National Oceanic and Atmospheric Administration 2022). As outlined above, NMFS reviews applications to determine whether to issue an authorization for the activities described in the application.

National Historic Preservation Act

The NHPA (54 USC 306108 *et seq.*) requires federal agencies to consider the effects of their undertakings on historic properties, to the maximum extent possible plan and act to minimize harm to NHLs, and afford the Advisory Council on Historic Preservation an opportunity to comment. BOEM has determined that approving a COP constitutes an undertaking subject to Section 106 of the NHPA and is implementing the Section 106 process (36 CFR 800). The construction of WTGs, installation of electrical support cables, and development of staging areas are ground- or seafloor-disturbing activities that could directly affect archaeological resources. The presence of WTGs could also introduce visual elements out of character with the historic setting of historic structures or landscapes; in cases where historic setting is a contributing element of historic properties’ eligibility for the NRHP, the Project could affect those historic properties, including NHLs. NHLs that may be affected by the undertaking will be addressed according to Section 110(f) of the NHPA pursuant to 36 CFR 800.10.

The regulations at 36 CFR 800.8 provide for use of the NEPA process to fulfill a federal agency’s NHPA Section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3–800.6. This process is known as “NEPA substitution for Section 106,” and BOEM is using this process and documentation prepared under NEPA to also comply with Section 106. Under NEPA substitution for Section 106 (NEPA Substitution), BOEM is using the public involvement requirements under NEPA to also seek public involvement in its Section 106 review, pursuant to 36 CFR 800.2(d)(3). EIS Appendix J includes BOEM’s draft finding of adverse effect, which includes a description and summary of BOEM’s consultation to date. BOEM will continue consulting with the Connecticut, Rhode Island, Massachusetts, and New York SHPOs; ACHP; federally recognized tribal nations, and the consulting parties regarding the finding of adverse effect and the resolution of adverse effects. BOEM has and will be conducting Section 106 consultation meeting(s) on the finding of adverse effect and the resolution of adverse effects, and the agency will be requesting the consulting parties to review and comment on the finding of adverse effect and proposed resolution measures. Through NEPA Substitution, resolution of adverse effects will be documented in a memorandum of agreement (MOA) with the consulting parties, concluded prior to the issuance of the record of decision.

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 (SWCA Environmental Consultants n.d. [2021]), available on BOEM’s Project-specific website, summarizes comments on historic preservation issues. BOEM initiated review under NEPA Substitution on April 2, 2021, with letters sent to identify consulting parties for this undertaking sent between April 2 and 20, 2021. Letters were then sent between May 11 and 12, 2021, to initiate consultation with those parties previously identified for the undertaking. A list of the consulting parties to date for the RWF

project is provided in EIS Appendix J. BOEM held an initial consultation meeting with consulting parties on December 17, 2021, to discuss the area of potential effects (APE) and the identification of historic properties within the APE. A second consultation meeting with consulting parties was held April 8, 2022, to discuss the identification of historic properties and potential effects on historic properties; and a third consultation meeting is anticipated in August or September 2022 to discuss adverse effects and their resolution. BOEM's final EIS will include treatment measures for resolving adverse effects to historic properties. An executed MOA among BOEM, the ACHP, SHPO(s), and the consulting parties will detail final resolution measures to resolve adverse effects, including avoidance, minimization, and mitigation measures.

EO 13007, Indian Sacred Sites, directs federal land management agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. BOEM management actions within the OCS may not directly affect Indian sacred sites; however, BOEM recognizes its undertakings could affect the physical integrity or ceremonial use of Indian sacred sites located on submerged federal lands on the OCS. As stated previously in the Government-to-Government Consultation with Federally Recognized Indian Tribes section, BOEM is also consulting with Indian tribes on these matters in accordance with EO 13175.

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 act can be found at 50 CFR 600. As provided for in 50 CFR 600.920(b), BOEM has accepted designation as the lead agency for the purposes of fulfilling EFH consultation obligations under Section 305(b) of the act. Certain OCS activities authorized by BOEM may result in adverse effects on EFH and therefore require consultation with NMFS. BOEM is developing a draft EFH assessment concurrent with this EIS. NMFS anticipates receipt of the complete EFH assessment from BOEM and initiation of the EFH consultation on November 1, 2022.

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.

Scoping

On April 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 (BOEM 2021a). The NOI initiated a public scoping period from April 30 through June 1, 2021. During this time, input from federal agencies, tribes, state and local governments, and the general public was gathered regarding the potential of significant resources and issues, impact-producing factors, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS as well as provide additional information.

A correction to the NOI was issued by BOEM on June 4, 2021, which reopened the public scoping period (BOEM 2021b), allowing for comments to be received by June 11, 2021. The correction addressed and

clarified two statements in the NOI regarding the energy capacity of the proposed wind farm and its distance from shore.¹

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

- Electronic submissions received via www.regulations.gov on docket number BOEM-2021-0029
- Hard copy comment letters submitted to BOEM via traditional mail
- Emails submitted to BOEM
- Hard copy comment cards and/or letters received during each of the public scoping meetings
- Comments submitted verbally during the listening sessions of each of the three virtual public scoping meetings

BOEM held three virtual public scoping meetings on May 13, May 18, and May 20, 2021. Each virtual public scoping meeting included a presentation, listening session, and a question and answer session, all available on BOEM's website at <https://www.boem.gov/Revolution-Wind-Scoping-Virtual-Meetings>.

Summary of Scoping Comments

BOEM reviewed and considered, as appropriate, all scoping comments in the development of the Draft EIS and used the comments to identify alternatives for analysis. The scoping summary report (SWCA Environmental Consultants n.d. [2021]) summarizing the 42 submissions received and the methods for analyzing them is available on BOEM's website at <https://www.boem.gov/Revolution-Wind>. In addition, all public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing "BOEM-2021-0029" 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, effects analysis, socioeconomics, commercial fishing, mitigation, wildlife (general), bats, essential fish habitat and finfish, cumulative impacts, and sea turtles.

¹ Replaced the sentence "The project will deliver 704 MW of power to the New England energy grid." with "The project would have the capacity to deliver up to 880 MW of power to the New England energy grid, satisfying the current PPA total of 704 MW." Also replaced the sentence "The wind turbine generators, offshore substations, array cables, and substation interconnector cables would be located on the [Outer Continental Shelf] approximately 17.4 nautical miles (20 statute miles) south of the coast of Rhode Island." with "The wind turbine generators, offshore substations, array cables, and substation interconnector cables would be located on the Outer Continental Shelf (OCS) approximately 15 nautical miles (18 statute miles) southeast of Point Judith, Rhode Island, approximately 13 nautical miles (15 statute miles) east of Block Island, Rhode Island, approximately 7.5 nautical miles (8.5 statute miles) south of Nomans Land Island National Wildlife Refuge (uninhabited island), and between approximately 10 to 12.5 nautical miles (12 to 14 statute miles) south/southwest of varying points of the Rhode Island and Massachusetts coastlines."

Literature Cited

- Bureau of Ocean Energy Management (BOEM). 2018. *Bureau of Ocean Energy Management Tribal Consultation Guidance*. Washington, D.C.: U.S. Department of the Interior, Bureau of Ocean Energy Management.
- . 2021a. Notice of Intent To Prepare an Environmental Impact Statement for Revolution Wind LLC’s Proposed Wind Energy Facility Offshore Rhode Island. *Federal Register* 86(82):22972–22975.
- . 2021b. Notice of Intent To Prepare an Environmental Impact Statement for Revolution Wind LLC’s Proposed Wind Energy Facility Offshore Rhode Island; Reopening of Comment Period and Corrections. *Federal Register* 86(106):30068–30069.
- National Oceanic and Atmospheric Administration. 2022. Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Revolution Wind Offshore Wind Farm Offshore of Rhode Island. *Federal Register* 87(54):15942–15944.
- SWCA Environmental Consultants. n.d. [2021]. *Revolution Wind Farm and Revolution Wind Export Cable Project Environmental Impact Statement Scoping Summary Report*. Available at: <https://www.boem.gov/Revolution-Wind>. In preparation.
- vhb. 2022. *Revolution Wind Farm Construction and Operations Plan*. Revision 6: July. Submitted to Bureau of Ocean Energy Management. Available at: <https://www.boem.gov/Revolution-Wind>.