

RECORD OF DECISION SUPPLEMENT

SUBJECT: NAE-2017-01206 – Vineyard Wind 1 Offshore Wind Energy Project –
Correction of Clerical Errors

1. This document constitutes the U.S. Army Corps of Engineers (“USACE”) Record of Decision Supplement (“ROD Supplement”) to the May 10, 2021 joint Record of Decision (“JROD”) signed by the Bureau of Ocean Energy Management (“BOEM”), USACE, and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (“NMFS”). This ROD Supplement was prepared pursuant to the USACE implementation procedures for the National Environmental Policy Act, 33 C.F.R. Part 325 Appendix B and 33 C.F.R. § 230.14. The purpose of this ROD Supplement is to correct several clerical errors contained in the USACE section of the JROD. This ROD Supplement addresses only the USACE section of the JROD. It has no bearing on the BOEM or NMFS decisions documented in the JROD. This ROD Supplement also has no substantive impact on the USACE decisions documented in the JROD. This ROD Supplement instead documents several clerical errors in the USACE section of the JROD, explains how the errors were identified, and corrects the description of the jurisdictional area of the impacts that USACE evaluated throughout its permitting process, that would have been included in the JROD but for a clerical error. These corrected impact figures will be reflected in the final USACE permit authorizing USACE-jurisdictional impacts associated with the Vineyard Wind 1 Offshore Wind Energy Project (“Project”).

2. On May 10, 2021, USACE, BOEM, and NMFS signed a JROD for the final Environmental Impact Statement (“FEIS”) prepared for the Project. The JROD addressed BOEM’s action to approve the Project’s Construction and Operations Plan (“COP”) under section 8(p) of the Outer Continental Shelf Lands Act, USACE’s permitting actions under Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 (“Section 10”) and Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (“Section 404”), and NMFS’ action of issuing an Incidental Harassment Authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act.

3. The USACE section of the JROD documented the USACE decision to issue a Department of the Army (“DA”) permit pursuant to Section 10 and Section 404. (JROD Section 5.2). The DA permit will authorize the construction, maintenance, and eventual decommissioning of an 800-megawatt wind energy facility, two electrical service platforms (“ESPs”), scour protection around the bases of the wind turbine generators and ESPs, connection cables between turbines and service platforms, and two export cables with scour protection.

4. Regarding the specific magnitude of export-cable-related impacts authorized by USACE pursuant to its permitting authorities, the USACE Section of the JROD described:

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- a. A 23.3-mile-long export cable corridor (JROD Page 30);
- b. Two acres of transmission-cable scour protection authorized under Section 404 within the three nautical mile limit¹ (JROD Pages 30, 34, 35, 37, and 46);
- c. 15 acres of transmission-cable scour protection authorized under Section 10 (JROD Page 30); and
- d. 39 acres of transmission cable pre-dredging impacts within the 3 nautical mile limit under Section 10 and Section 404 (JROD Page 30).

The JROD also described 45 acres of Section 10 impacts associated with turbine and service platform installation and scour protection within the lease site, and 63 acres of Section 10 impacts for installation and scour protection of inter-array cables (JROD Page 30).

5. On June 10, 2021, USACE provided Vineyard Wind LLC (the “Applicant”) with a draft permit so that the Applicant could review proposed special conditions. The jurisdictional areas of impacts reflected in the draft permit were the same as those discussed in the JROD. On June 25, 2021, the Applicant called USACE to discuss the draft permit. On the call, the Applicant informed USACE that jurisdictional area of impacts in the draft permit related to the export cables were incorrect and did not reflect the proposed impact areas submitted as part of the project application and supporting materials. The Applicant informed USACE that:

- a. The actual length of the export cable corridor to be authorized is 39.4 miles long, not 23.3 miles;
- b. 17 acres of transmission-cable scour protection would require authorization under Section 404, not 2 acres; and
- c. 35 acres of transmission-cable scour protection would require authorization under Section 10, not 15 acres

6. Following this call, USACE reviewed the JROD and administrative record to evaluate whether the impact areas in the JROD were in fact incorrect, the cause of any error, and, if erroneous, to determine the correct figures. The USACE review was as follows:

¹ USACE’s regulatory jurisdiction under Section 404 is limited to the discharge of dredged or fill material into waters of the United States. 33 U.S.C. § 1344; 33 C.F.R. § 323.1. In coastal waters, USACE only exercises Section 404 jurisdiction over the “territorial seas.” 33 C.F.R. §§ 328.2 & 328.3(a). The limit of Section 404 jurisdiction in the territorial seas extends three nautical miles in a seaward direction from the territorial sea baseline, which is generally the coast. 33 C.F.R. §§ 328.4(a) & 329.12(a)(1). USACE jurisdiction under Section 10 is also generally limited to three nautical miles from the territorial sea baseline. 33 C.F.R. § 329.12(a). However, Section 10 permits are also required for certain activities on the seabed to the seaward limit of the outer continental shelf. 33 C.F.R. §§ 320.2(b), 322.3(b) & 329.12(a).

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a. The Applicant’s initial USACE permit application package, dated November 27, 2018 (the “Application”), proposed an offshore export cable transmission system connecting the ESPs to a landfall site at either Covell’s Beach in Barnstable or New Hampshire Avenue in Yarmouth. (Application ENG Form 4345, Block 18; Application App’x A, Page 1-1).

b. As proposed by the Application, the length of the offshore export cables within state waters/the three-mile limit² would be up to approximately 37.4km/23.3 miles per cable, depending on the landfall site. (Application ENG FORM 4345, Block 18). The Application repeatedly and consistently proposed a 37.4km/23.3- mile-long offshore export cable corridor within state waters/the three-mile limit. (Application App’x A, Pages 1-1, 2-47)³. The portions of the offshore export cable corridor within the three-mile limit require USACE authorization under both Section 10 and Section 404.

c. The Application also consistently proposed 17 acres of transmission-cable scour protection within state waters/the three-mile limit. (Application App’x A, Pages 2-41, 2-47, 2-54). These 17 acres of scour protection require USACE authorization under both Section 10 and Section 404.

d. The Application form did not specifically request authorization for the jurisdictional impacts of the offshore export cable corridor outside of state waters / the three-mile limit. (Application ENG FORM 4345, Block 18). However, the placement of the offshore export cable and associated scour protection outside of the three-mile limit requires authorization from USCAE under Section 10. Accordingly, USACE evaluated these impacts as part of its permit review.

e. The Applicant incorporated Volumes I and III of the COP, which fully described the project, into its application as appendices. (Application App’x C and App’x D). To determine the jurisdictional impacts of the entire project, including jurisdictional impacts related to the offshore export cable beyond the three-mile limit, USACE evaluated the entire project as described in the COP.

f. According to the most recent version of the COP, dated September 30, 2020, which was approved by BOEM on July 15, 2021, the maximum length of offshore export cables,

² The Application treats state waters, or the seaward boundary of the state, as extending to the same three nautical mile limit that applies to USACE’s Section 404 jurisdiction and the full extent of USACE’s Section 10 jurisdiction. (Application App’x A, Pages 1-2, 1-3, 2-2, 2-20, and 4-4). This is consistent with how the seaward boundary of Massachusetts is treated under the Submerged Lands Act, 43 U.S.C. § 1312.

³ Table 2.2-8 on Application App’x A, Page 2-47, describes 74.8km/46.5 miles of cables in state waters, but this figure includes the total length of both export cables. Since the two cables will run in the same corridor, dividing the total cable length by two will show the length of the cable corridor. Half of 74.8km is 37.4km, which is the corridor length proposed elsewhere in the application.

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for two export cables, was 158km/98 miles. (COP Vol. 1, Pages 3-2, 3-25; COP Vol. 3, Pages 6-117, 6-143). This results in a total maximum proposed offshore export cable corridor of approximately 79km or 49 miles, consistent with the 70-80km offshore export cable length cited elsewhere in the COP. (COP Vol. 1, Pages 4-6, 4-14). The COP also proposed a total area of up to 35 acres of scour protection for the entire offshore export cable corridor. (COP Vol. 1, Page 3-30; COP Vol. 3, Pages 6-108, 6-109, 6-117, 6-143, 6-151). These total export-cable figures include the entire offshore export cable corridor, both within and beyond the three-mile limit.

g. The FEIS, which USACE adopted, also evaluated the environmental effects of the entire export cable corridor. The FEIS evaluated a maximum of 158km/98 miles of export cable, assuming two cables, resulting in a maximum of 79km/49 miles of export cable corridor. (FEIS, Page ES-5). The FEIS also evaluated up to 35 acres of offshore export cable corridor protection. (FEIS, Pages 3-12, 3-14, 3-31, 3-59, A-80, A-88, B-14, B-108). These total export-cable figures include the entire offshore export cable corridor, both within and beyond the three-mile limit.

7. As reflected in the above-described review, USACE evaluated the following jurisdictional impacts when conducting its permit review:

- a. An offshore export cable route up to 49 miles long;
- b. 17 acres of offshore-export-cable scour protection within the three-mile limit requiring authorization under both Section 10 and Section 404.
- c. 35 acres of offshore-export-cable scour protection requiring authorization under Section 10, inclusive of the 17 acres under concurrent Section 10/404 jurisdiction;

8. As a result of this review, USACE has determined that the JROD contained the following clerical errors:

- a. Five incorrect references to a 23.3-mile-long transmission cable corridor on page 30 of the JROD;
- b. Six incorrect references to 2 acres of Section 404-jurisdictional transmission-cable scour protection on pages 30, 34, 35, 37, and 46 of the JROD;
- c. One incorrect reference to 15 acres of Section 10-jurisdictional transmission-cable scour protection on page 30 of the JROD.

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9. Although USACE had consistently evaluated the impacts of an offshore export cable corridor up to 49 miles long, on June 25, 2021, the Applicant provided new information that the corridor to be constructed would be only 39.4 miles long. USACE had fully evaluated the effects of this lesser impact as part of its review of the proposed greater 49-mile-long offshore export cable corridor. Authorizing this lesser impact does not substantively affect the USACE's permitting analysis in the JROD. This ROD Supplement accordingly corrects the JROD to reflect the actual USACE authorization, even though USACE evaluated a greater impact.

10. With this ROD Supplement, USACE corrects the clerical errors in the JROD as follows:

a. Regarding the offshore transmission cable corridor length:

- (1) On JROD page 30, line 8, replace "23.3" with "39.4"
- (2) On JROD page 30, line 12, replace "23.3" with "39.4"
- (3) On JROD page 30, line 13, replace "23.3" with "39.4"
- (4) On JROD page 30, line 20, replace "23.3" with "39.4"
- (5) On JROD Page 30, line 44, replace "23.3" with "39.4"

b. Regarding the acreage of transmission-cable scour protection authorized under both Section 10 and Section 404:

- (1) On JROD page 30, line 21, replace "2" with "17"
- (2) On JROD page 34, line 18, replace "2" with "17"
- (3) On JROD page 35, line 33, replace "2" with "17"
- (4) On JROD page 37, line 37, replace "2" with "17"
- (5) On JROD page 46, line 12, replace "2" with "17"
- (6) On JROD page 46, line 13, replace "2" with "17"

c. Regarding the total acreage of transmission-cable scour protection authorized under Section 10:

- (1) On JROD page 30, line 23, replace "15" with "35"

11. This ROD Supplement only makes the above administrative changes to the JROD, correcting clerical errors to reflect what was actually evaluated by USACE throughout the permitting process.

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