

# Appendix A: Required Environmental Permits and Consultations

## A.1 Required Environmental Permits

Table A-1 includes a summary of federal, state, and local permits or approvals that are required for the SouthCoast Wind Project's (Project) implementation.

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

Agency/Regulatory Authority	Permit/Approval	Status
<b>Federal (Portions of the Project within Federal Jurisdiction)</b>		
Bureau of Ocean Energy Management (BOEM)	Construction and Operations Plan (COP) Approval	COP filed with BOEM February 15, 2021. Updates to the COP were submitted August 30, 2021, October 28, 2021, March 17, 2022, December 22, 2022, September 10, 2023, and July 31, 2024.
Department of Defense (DoD)	Informal Project Notification Form	Submitted May 2020.
National Marine Fisheries Service (NMFS)	Marine Mammal Protection Act Incidental Take Regulations and Letter of Authorization	Letter of Authorization Application for offshore construction and operations filed March 18, 2022, and deemed Complete by NMFS September 19, 2022.
U.S. Army Corps of Engineers (USACE)	Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Individual Permit	Submitted December 2022; application deemed complete by USACE February 2, 2023.
U.S. Coast Guard (USCG)	Private Aids to Navigation authorization	Planned.
USCG	Local Notice to Mariners per Ports and Waterways Safety Act	Planned.
U.S. Environmental Protection Agency (USEPA)	Clean Air Act Outer Continental Shelf Air Permit	Submitted November 23, 2022; application deemed complete by USEPA April 7, 2023.
USEPA	National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities	Submitted October 31, 2022; application deemed complete September 29, 2023.
USEPA	NPDES General Permit for Construction Activities (onshore at Brayton Point)	To be determined.
Federal Aviation Administration	Determination of No Hazard, if required	It is not currently anticipated that a Determination of No Hazard will be required for offshore structures in the lease area due to their location outside of 12 nautical miles (22 kilometers). Nor will this be required for the

Agency/Regulatory Authority	Permit/Approval	Status
		onshore substation or converter stations due to the maximum height of these structures. SouthCoast Wind Energy LLC continues to engage with the Federal Aviation Administration regarding whether any review and/or authorization is required for offshore equipment deployed to support horizontal directional drilling installation of the export cables.
Bureau of Safety and Environmental Enforcement	Oil Spill Response Plan	Filed with the COP February 15, 2021.
<b>State (Portions of the Project within State Jurisdiction)</b>		
Massachusetts Executive Office of Energy and Environmental Affairs (EEA)	Massachusetts Environmental Policy Act (MEPA) Environmental Notification Form (ENF) and/or Environmental Impact Report (EIR) and Certificate of Secretary of EEA	Project 1: Brayton Point ENF filed August 12, 2022. ENF certificate issued October 11, 2022. Project 1 Final EIR filed July 21, 2023. Supplemental Final EIR filed October 31, 2023. Certificate from EEA Secretary issued December 15, 2023. Project 2: ENF, Draft EIR, and Final EIR filings planned for Q1 2025.
Massachusetts Energy Facility Siting Board (MA EFSB)	Siting Petition pursuant to General Law (G.L.) c. 164, 69J and Certificate of Environmental and Public Need	Project 1: Brayton Point MA EFSB filed May 27, 2022. Decision anticipated in Quarter 1 2024. Project 2: Filing planned for Q4 2024.
Massachusetts Department of Public Utilities	Section 72 petition pursuant to G.L. c. 164, 72 and Zoning petition pursuant to G.L. c. 40A, 3	Project 1: Filed May 27, 2022, for Brayton Point. Project 2: Filing planned for Q4 2024.
Massachusetts Department of Environmental Protection	Chapter 91 Waterways License/Permit for dredge, fill, or structures in waterways or tidelands	Project 1: Filed December 20, 2023. Project 2: Filing planned for after completion of MEPA review.
	Section 401 Water Quality Certification	Project 1: Filed December 20, 2023. Project 2: Filing planned after completion of MEPA review.
Massachusetts Office of Coastal Zone Management	Coastal Zone Management Consistency Determination	Projects 1 and 2: Submitted February 15, 2021. Updates provided January 13, 2022. Consistency Determination anticipated in April 2024. Executed a third stay on November 8, 2023, extending the deadline for Coastal Zone Management's Federal Consistency Decision on or before April 10, 2024. Executed a fourth stay agreement on March 26, 2024, extending the deadline for Coastal Zone Management's Federal Consistency Decision on or before May 31, 2024. Executed a fifth stay agreement on

Agency/Regulatory Authority	Permit/Approval	Status
		May 15, 2024, extending the deadline for Coastal Zone Management's Federal Consistency Decision on or before July 31, 2024.
Massachusetts Department of Transportation	State Highway Access/Easement/Right-of-Way Permits (if required)	Projects 1 and 2: Filing planned prior to construction, if needed.
Massachusetts Historical Commission	Project Notification Form/Field Investigation Permits (980 Code of Massachusetts Regulations 70.00)	Projects 1 and 2: Brayton Point Project Notification Form submitted July 26, 2021. Brayton Point Terrestrial Archaeological Resources Assessment (Phase 1A Report) filed March 14, 2022.
	Section 106 Consultation	Projects 1 and 2: Initiated October 1, 2021. Notice of Intent provided November 1, 2021.
Massachusetts Board of Underwater Archaeological Resources	Section 106 Consultation	Initiated September 29, 2021. NOI provided November 1, 2021.
Massachusetts Fisheries and Wildlife – Natural Heritage & Endangered Species Program (NHESP)	Conservation and Management Permit (if needed) or No-Take Determination	Projects 1 and 2: Massachusetts's NHESP issued letter identifying state-listed protected species in proposed Brayton Point Project Area April 28, 2022 (NHESP Tracking No. 19-38917); determined that site is not mapped as Priority or Estimated Habitat.
Rhode Island Coastal Resources Management Council (RICRMC)	Coastal Zone Management Consistency Determination	Federal Consistency Concurrence issued December 19, 2023.
RICRMC	Freshwater Wetlands Permit	Project 1: Filed February 24, 2023. Updated filing March 6, 2023. Project 2: Planned.
RICRMC	Category B Assent and Submerged Lands License	Project 1: Filed February 24, 2023. Updated filing March 6, 2023. Project 2: Planned for Q4 2024.
Rhode Island Energy Facility Siting Board (RI EFSB)	Certificate of necessity/public utility	Project 1: Filed May 31, 2022. Project 2: Planned for Q4 2024.
Rhode Island Historical Preservation and Heritage Commission (RIHPHC)	Archaeological Permit	Projects 1 and 2: Phase 1 permit issued December 17, 2021. TARA (Phase 1A/1B Report) filed March 14, 2022. Marine Archaeological Resources Assessment submitted March 16, 2022.
RIHPHC	Section 106 Consultation	Initiated November 1, 2021.
Rhode Island Department of Environment	Water Quality Certification and Dredging Permit	Project 1: Filed March 17, 2023. Application deemed complete November 15, 2023. Secured

Agency/Regulatory Authority	Permit/Approval	Status
		401 Water Quality Certificate and Marine Dredge Permit March 14, 2024. Project 2: Planned.
Rhode Island Department of Environment	Rhode Island Pollution Discharge Elimination System General Permit for Stormwater Discharge Associated with Construction Activity	Projects 1 and 2: Planned.
Rhode Island Department of Transportation	Utility Permit/Physical Alteration Permit	Projects 1 and 2: Planned.
<b>Local (Portions of the Project within Local Jurisdiction)</b>		
Cape Cod Commission	Development of Regional Impact Review (if needed)	Planned (if needed).
Martha's Vineyard Commission	Development of Regional Impact Review (if needed)	Planned (if needed).
Falmouth, Somerset Planning and Zoning Boards	Local Planning/Zoning Approvals (if needed)	Falmouth Zoning Board: MA EFSB Zoning exemption petition filed November 17, 2021. Planned (if needed). Somerset Planning and Zoning Board: MA EFSB Zoning exemption petition filed May 27, 2022. Decision anticipated in Quarter 4 2024.
Somerset Conservation Commissions	Notice of Intent and Order of Conditions (Massachusetts Wetland Protection Act and municipal wetland non-zoning bylaws) (if needed)	Project 1: Filings planned for Quarter 1 2024. Project 2: Planned.
Swansea Conservation Commission	Notice of Intent and Order of Conditions (Massachusetts Wetlands Protection Act)	Notice of Intent filed on March 8, 2024.
Portsmouth Planning and Zoning Board(s)	Local Planning/Zoning Approval(s) (if needed)	Planned (if needed).
Falmouth, Edgartown, Oak Bluffs, Tisbury, and Nantucket Conservation Commissions	Notice of Intent and Order of Conditions (Massachusetts Wetlands Protection Act and municipal wetland non-zoning bylaws) (if needed)	Planned (if needed).
Falmouth, Portsmouth, and Somerset Department of Public Works, Board of Selectmen, and/or Town Council	Street Opening Permits/Grants of Location	Planned.

## A.2 Consultation and Coordination

### A.2.1 Introduction

This section discusses public, Tribal, and agency involvement leading up to the preparation and publication of the Final Environmental Impact Statement (EIS), including formal consultations, cooperating agency exchanges, the public scoping comment period, the Draft EIS public comment period, and correspondence. Interagency consultation, coordination, and correspondence throughout the development of this Final 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.2.5.2, *Cooperating Agencies*.

### A.2.2 Consultations and Authorizations

The following section provides a summary and status of each consultation. The Bureau of Safety and Environmental Enforcement (BSEE), U.S. Army Corps of Engineers (USACE), and U.S. Environmental Protection Agency (USEPA) are co-action agencies for the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSA), and National Historic Preservation Act (NHPA) consultations.

#### A.2.2.1 Coastal Zone Management Act

The Coastal Zone Management Act requires 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 components, is within Massachusetts's and Rhode Island's designated coastal zone and will require a federal consistency review under the Coastal Zone Management Act. SouthCoast Wind Energy LLC's (SouthCoast Wind's) Construction and Operations Plan (COP) (SouthCoast Wind 2024) provided the necessary data and information under 15 Code of Federal Regulations (CFR) 930.58. The state's concurrence is required before BOEM may approve or approve with conditions the SouthCoast Wind COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

#### A.2.2.2 Endangered Species Act

Section 7(a)(2) of the ESA of 1973, as amended (16 United States Code [USC] 1531 et seq.), requires that each federal agency ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of those species. When the action of a federal agency may affect a protected species or its critical habitat, that agency is required to consult with either the National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS), depending upon the jurisdiction. Pursuant to 50 CFR 402.07, BOEM has accepted designation as the lead federal agency for the purposes of fulfilling interagency consultation under Section 7 of the ESA for

listed species under the jurisdiction of NMFS and USFWS. BOEM consulted on the proposed activities considered in this Final EIS with both NMFS and USFWS and prepared Biological Assessments for listed species under their respective jurisdictions. Consultation with USFWS and NMFS pursuant to Section 7 of the ESA concluded with the issuance of Biological Opinions from each agency in September 2023 and November 2024, respectively.

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

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with Tribal Nations when federal actions have Tribal implications, and Secretarial Order No. 3317 requires U.S. Department of the Interior agencies to develop and participate in meaningful consultation with federally recognized Tribal Nations where a Tribal implication may arise. A June 29, 2018, memorandum outlines BOEM's current Tribal consultation policy (BOEM 2018). This memorandum states that "consultation is a deliberative process that aims to create effective collaboration and informed federal decision-making" and is in keeping with the spirit and intent of the NHPA and National Environmental Policy Act (NEPA), Executive and Secretarial Orders, and U.S. Department of the Interior Policy (BOEM 2018). BOEM implements Tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and other engagement.

From September 29 to November 1, 2021, BOEM initiated formal consultation with eight Tribal nations under the NHPA and invited them to be NHPA Section 106 consulting parties to the Project through individual letters mailed and emailed to Tribal leaders with the Delaware Tribe of Indians, Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, Mohegan Tribe of Connecticut, The Delaware Nation, The Narragansett Indian Tribe, The Shinnecock Indian Nation, and Wampanoag Tribe of Gay Head (Aquinnah). Five Tribal nations responded that they would like to participate as consulting parties to the Project: Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, The Narragansett Indian Tribe, The Shinnecock Indian Nation, and Wampanoag Tribe of Gay Head (Aquinnah). The Delaware Tribe of Indians and Mohegan Tribe of Connecticut did not respond to BOEM's initiation of consultation; however, BOEM has included these Tribal Nations in all consulting party communications and considers them consulting parties.

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

On November 2, 2021, BOEM sent another set of letters and emails to Tribal leaders notifying them that the Notice of Intent (NOI) to prepare an EIS for the Project was issued that day and noted that the scoping comment period was open until December 2, 2021. The letter also offered a government-to-government consultation meeting to discuss the public scoping information for the Project and to request input regarding alternatives for consideration, the identification of historic properties, potential

effects to historic properties, and potential measures to avoid, minimize and/or mitigate impacts on environmental and cultural resources to be analyzed in the EIS. BOEM held a government-to-government meeting with the Tribal Nations that responded—Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, and Wampanoag Tribe of Gay Head (Aquinnah)—on November 19, 2021. The Tribal Nations expressed interest in continuing consultation for offshore wind and emphasized the importance of early consultation in Project development.

On May 2, 2022, BOEM held a government-to-government meeting specifically with the Chairwoman, Tribal Historic Preservation Officer, and council members of the Wampanoag Tribe of Gay Head (Aquinnah). In the meeting, BOEM introduced and 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, 2022 meeting to continue the collective conversation on various topics and Tribal concerns related to offshore wind development off the New England coast.

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

On September 1, 2022, BOEM held a government-to-government meeting with members of the Mashpee Wampanoag Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), and the Mashantucket Pequot Tribal Nation. The meeting provided an overview of the SouthCoast Wind Project, including benthic habitat impacts, and overall concerns related to offshore wind permitting.

On January 17, 2024, BOEM held a government-to-government meeting with the Chairwoman of the Wampanoag Tribe of Gay Head (Aquinnah). This meeting was held in response to a letter sent on January 12, 2024, articulating concerns about offshore renewable energy. The meeting covered multiple offshore wind projects located off the New England coast. On February 7, 2024, BOEM held a government-to-government meeting with the Tribal Historic Preservation Officer from the Mashpee Wampanoag Tribe to discuss mitigation measures in the Section 106 Memorandum of Agreement.

On October 25, 2024, BOEM staff met with the Tribal Historic Preservation Officers from the Mashantucket Pequot Tribal Nation and the Wampanoag Tribe of Gay Head (Aquinnah) to discuss the SouthCoast Wind Section 106 Memorandum of Agreement. On November 1, 2024, BOEM staff met with the Tribal Historic Preservation Officers of the Mashantucket Pequot Tribal Nation, the Wampanoag

Tribe of Gay Head (Aquinnah), and the Mashpee Wampanoag Tribe to continue discussion about the SouthCoast Wind Section 106 Memorandum of Agreement.

#### A.2.2.4 National Historic Preservation Act

Section 106 of the NHPA (54 USC 306108) and its implementing regulations (36 CFR 800) require federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. BOEM has determined that the proposed Project is an undertaking subject to Section 106 review. The construction of wind turbine generators (WTGs) and offshore substation platforms (OSPs), installation of interarray cables, and development of staging areas are ground- or seabed-disturbing activities that may adversely affect archaeological resources. The presence of WTGs may also introduce visual elements out of character with the historic setting of historic structures or landscapes; in cases where historic setting is a contributing element of historic properties' eligibility for the National Register of Historic Places, the Project may adversely affect those historic properties.

The Section 106 regulations at 36 CFR 800.8 provide for use of the NEPA substitution process to fulfill a federal agency's NHPA Section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. This process is commonly known as "NEPA substitution for Section 106" and BOEM is using this process and documentation required for the preparation of this EIS and the Record of Decision (ROD) to comply with Section 106. Appendix I of this Final EIS contains BOEM's Determination of Effect for NHPA Section 106 Consultation, which includes a description and summary of BOEM's NHPA Section 106 consultations. BOEM will continue consulting with the Massachusetts Historical Commission (the Massachusetts State Historic Preservation Officer [SHPO]), the Rhode Island Historical Preservation and Heritage Commission (RIHPHC), the Rhode Island SHPO, the Massachusetts Board of Underwater Archaeological Resources (BUAR), ACHP, federally recognized Tribal Nations, and other consulting parties regarding the Finding of Adverse Effect and the resolution of adverse effects.

BOEM has conducted five Section 106 consultation meeting(s) regarding the identification of historic properties, BOEM's Finding of Adverse Effect, and resolution of adverse effects on July 7, 2022; March 16, 2023; January 24, 2024; July 15, 2024; and October 8, 2024. BOEM fulfilled public involvement requirements for Section 106 of the NHPA through the NEPA public scoping and public meetings process, pursuant to 36 CFR 800.2(d)(3). The Scoping Summary Report (BOEM 2022), available on BOEM's Project-specific website, summarizes comments on historic preservation issues.

On September 29, 2021, BOEM initiated consultation with eight federally recognized Tribal nations: Delaware Tribe of Indians, Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, Mohegan Tribe of Connecticut, The Delaware Nation, The Narragansett Indian Tribe, The Shinnecock Indian Nation, and Wampanoag Tribe of Gay Head (Aquinnah) (Section A.2.2.3, *Government-to-Government Tribal Consultation*). The following five Tribal Nations notified BOEM of their interest in participating as a consulting party: the Mashantucket (Western) Pequot Tribal Nation on October 19, 2021; Mashpee Wampanoag Tribe on October 6, 2021; The Narragansett Indian Tribe on November 1, 2021; The Shinnecock Indian Nation on February 4, 2022; and Wampanoag Tribe of Gay Head



(Aquinnah) on November 1, 2021. The Delaware Tribe of Indians and Mohegan Tribe of Connecticut did not respond to BOEM’s initiation of consultation; however, BOEM has included these Tribal nations in all consulting party communications and considers them consulting parties. One Tribe, The Delaware Nation, declined the invitation to be a consulting party on October 13, 2021. BOEM requested information from Tribal consulting parties on sites of religious and cultural significance to the Tribal nations that the proposed Project could affect, and BOEM offered its assistance in providing additional details and information on the proposed Project to the Tribal Nations.

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

**Table A-2. NHPA Section 106 consulting parties**

Government or Organization Type	Participating Government or Organization Name
Federal agencies or facilities	ACHP BSEE National Park Service Naval Facilities Engineering Systems Command (NAVFAC) HQ USACE US Navy, Naval History and Heritage Command
Federally recognized Tribal Nations	Delaware Tribe of Indians Mashantucket (Western) Pequot Tribal Nation Mashpee Wampanoag Tribe Mohegan Tribe of Connecticut The Narragansett Indian Tribe The Shinnecock Indian Nation Wampanoag Tribe of Gay Head (Aquinnah)
SHPOs and state agencies	BUAR Massachusetts Historical Commission RIHPHC
Non-federally recognized tribes	Chappaquiddick Tribe of Wampanoag Nation
Local governments	Cape Cod Commission City of East Providence, Rhode Island City of New Bedford and New Bedford Port Authority, Massachusetts Martha's Vineyard Commission

Government or Organization Type	Participating Government or Organization Name
	Nantucket Historic District Commission Nantucket Historical Commission Nantucket Planning & Economic Development Commission (represented by Cultural Heritage Partners [CHP]) Town of Aquinnah, Massachusetts Town of Barnstable, Historical Commission, Massachusetts Town of Bristol, Rhode Island Town of Falmouth, Massachusetts Town of Jamestown, Rhode Island Town of Middletown, Rhode Island Town of Nantucket, Massachusetts (represented by CHP) Town of Somerset, Massachusetts, Historical Commission Town of South Kingstown, Rhode Island Town of Swansea, Massachusetts Town of Warren, Rhode Island Town of Westport, Massachusetts
Nongovernmental organizations or groups	Alliance to Protect Nantucket Sound Gay Head Lighthouse Advisory Board Nantucket Preservation Trust Oak Grove Cemetery Association of Falmouth, Inc. The Maria Mitchell Association
Lessee	SouthCoast Wind Energy LLC

#### 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 Essential Fish Habitat (EFH). NMFS regulations implementing the EFH provisions of the MSA can be found at 50 CFR 600. As provided for in 50 CFR 600.920(b), BOEM has accepted designation as the lead agency for the purposes of fulfilling EFH consultation obligations under Section 305(b) of the MSA. Certain Outer Continental Shelf (OCS) activities authorized by BOEM may result in adverse effects on EFH and, therefore, require consultation with NMFS. BOEM prepared and submitted an EFH Assessment to NMFS, which was deemed complete for EFH consultation to initiate on June 24, 2024. NMFS issued EFH conservation recommendations on September 23, 2024. BOEM will respond to NMFS regarding how it will proceed with the action, and relevant terms and conditions will be incorporated into the ROD.

#### A.2.2.6 Marine Mammal Protection Act

Section 101(a) of the Marine Mammal Protection Act (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 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.

SouthCoast Wind submitted an application for incidental take regulations and a Letter of Authorization to NMFS on March 18, 2022. The application was reviewed and considered complete on September 19, 2022. NMFS published a Notice of Receipt in the *Federal Register* on October 17, 2022. NMFS published the proposed Incidental Take Regulations in the *Federal Register* on June 25, 2024.

### **A.2.3 Clean Water Act and Rivers and Harbors Act**

Under Section 404 of the Clean Water Act (CWA), USACE regulates the discharge of dredged or fill material into the waters of the United States, including wetlands. A permit from USACE is required regardless of whether a discharge of dredged or fill material is temporary or permanent. Under Section 10 of the Rivers and Harbors Act (RHA), USACE regulates construction of any structures and work that are located in or that affect navigable waters of the United States and prohibits obstructions to the navigable capacity of these waters. USACE's authority to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seafloor, 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; 33 CFR 320.2). A permit from USACE is required for structures that would be located on the seafloor of the OCS, as well as for structures or work that would affect the course, location, or condition of a navigable water of the United States. SouthCoast Wind submitted a Department of the Army permit application to USACE under Section 404 of the CWA and Section 10 of the RHA on February 2, 2023.

## A.2.4 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 Clean Air Act Section 328. SouthCoast Wind submitted an OCS Air Permit application to USEPA on November 23, 2022. USEPA deemed the application complete on April 7, 2023.

## A.2.5 Development of Final Environmental Impact Statement

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

### A.2.5.1 Scoping

On November 1, 2021, BOEM issued an NOI to prepare an EIS consistent with NEPA regulations (42 USC 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives (86 Federal Register 60270). The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the EIS. The formal scoping period was from November 1 through December 1, 2021. Three virtual scoping meetings were held on November 10, 15, and 18, 2021. During this timeframe, federal agencies, state and local governments, and the general public had the opportunity to help BOEM identify potential significant resources and issues, impact-producing factors, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to analyze in the EIS, as well as provide additional information. BOEM also used the NEPA scoping process to initiate the Section 106 consultation process under the NHPA (54 USC 300101 et seq.), as permitted by 36 CFR 800.2(d)(3), which requires federal agencies to assess the effects of projects on historic properties. Additionally, BOEM informed its Section 106 consultation by seeking public comment and input through the NOI regarding the identification of historic properties or potential effects on historic properties from activities associated with approval of the COP. The NOI requested comments from the public in written form, delivered by mail, or through the regulations.gov web portal. The public could also submit oral comments at the three virtual scoping meetings hosted by BOEM.

A Scoping Summary Report (BOEM 2022) summarizing the submissions received and the methods for analyzing them is available on BOEM's website at <https://www.boem.gov/southcoast-wind>. In addition, all public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing "BOEM-2021-0062" in the search field. As detailed in the Scoping Summary Report, the resource areas or NEPA topics most referenced in the scoping comments include NEPA/Public Involvement Process; recreation and tourism; mitigation and monitoring; commercial fisheries and for-hire recreational fishing; birds; demographics, employment and economics; and others.

### A.2.5.2 Cooperating Agencies

BOEM invited other federal agencies and state, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the Final EIS. According to Council on Environmental Quality

(CEQ) guidelines, qualified agencies and governments are those with “jurisdiction by law or special expertise” (CEQ 1981). BOEM asked potential cooperating agencies to consider their authority and capacity to assume the responsibilities of a cooperating agency, and to be aware that an agency’s role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. BOEM also asked agencies to consider the “Factors for Determining Cooperating Agency Status” in Attachment 1 to CEQ’s January 30, 2002, Memorandum for the Heads of Federal Agencies (CEQ 2002). BOEM held interagency meetings on August 6, 2021, September 23, 2021, January 5, 2022, March 8, 2022, October 28, 2022, and July 24, 2024, to discuss the environmental review process, schedule, responsibilities, consultation, and alternatives.

The following federal agencies and state governments have supported preparation of the Final EIS as cooperating agencies.

- NMFS
- USACE
- BSEE
- USEPA
- U.S. Coast Guard (USCG)
- Massachusetts Office of Coastal Zone Management
- Rhode Island Coastal Resources Management Council (RICRMC)
- New York State Department of State

NMFS is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involve activities that have the potential to affect marine resources under its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to the MMPA, as amended (16 USC 1361 et seq.); the regulations governing the taking and importing of marine mammals (50 CFR 216); the ESA (16 USC 1531 et seq.); and the regulations governing the taking, importing, and exporting of threatened and endangered species (50 CFR 222–226). In accordance with 50 CFR 402, NMFS also serves as the Consulting Agency under Section 7 of the ESA for federal agencies proposing action that may affect marine resources listed as threatened or endangered. NMFS has additional responsibilities to conserve and manage fishery resources of the United States, which include the authority to engage in consultations with other federal agencies pursuant to the MSA and 50 CFR 600 when proposed actions may adversely affect EFH. The MMPA is the only authorization for NMFS that requires NEPA compliance. NMFS intends to adopt BOEM’s Final EIS if, after independent review and analysis, NMFS determines the Final EIS to be sufficient to support the regulatory decision.

USACE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under USACE’s jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Section 404 of the CWA and Sections 10 and 14 of the RHA of 1899. Under Section 404 of the CWA, USACE regulates

the discharge of dredged or fill material into waters of the United States. The landward limit of jurisdiction in tidal waters (33 CFR § 328.4) extends to the high tide line, whereas the seaward limit is 3.5 miles (3 nautical miles [nm]), as measured from the baseline of the territorial seas. The baseline from which the 3.5-mile (3-nm) limit of the territorial seas is measured is generally the line on the shore reached by the ordinary low tides but may also lie across the mouth of bays or elsewhere when the coast is not in direct contact with the open sea. The limit of Section 404 jurisdiction in non-tidal waters (33 CFR 328.4(c)) is as follows: (1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or (2) when adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands. When the water of the United States consists only of wetlands, the jurisdiction extends to the limit of the wetland. Under Section 10 of the RHA, USACE regulates construction of any structures and work that are located in or that affect “navigable waters of the U.S.” In tidal waters, the shoreward limit of navigable waters extends to the mean high water mark while the seaward limit coincides with the limit of the territorial seas. USACE’s authority to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seafloor, 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; 33 CFR 320.2).

BSEE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect marine resources under its jurisdiction by law and special expertise; and safety, compliance, and enforcement issues. Pursuant to a December 2020 Memorandum of Agreement between BOEM and BSEE, BSEE conducts activities, consults, and advises BOEM on safety and environmental enforcement for renewable energy projects.

USEPA is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise, including air quality and water quality. USEPA will also be providing authorization for an OCS air permit, an NPDES permit, and using the analysis of the EIS as information in the permit process.

USCG is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect navigation and safety issues that fall under its jurisdiction by law and special expertise. USCG is the Federal On Scene Coordinator for spills in the Lease Area. USCG encourages coordination with all stakeholders to ensure information regarding worst case discharges and response strategies are incorporated into the Area Contingency Plan.

Massachusetts Office of Coastal Zone Management, RICRMC, and New York State Department of State are serving as cooperating agencies pursuant to 40 CFR 1501.8 because they have special expertise with respect to potential impacts that may occur as a result of the Proposed Action.

### A.2.5.3 Distribution of the Draft Environmental Impact Statement for Review and Comment

On February 17, 2023, BOEM published a Notice of Availability for the Draft EIS. The Draft EIS was made available in electronic format for public viewing at <https://www.boem.gov/southcoast-wind>. Hard copies and digital copies of the Draft EIS were delivered to entities as requested. The Notice of Availability commenced a 45-day public review and comment period of the Draft EIS. On April 4, 2023, BOEM announced a 15-day extension to the comment period, which concluded on April 18, 2023. BOEM held three virtual public hearings to solicit feedback and identify issues for consideration in preparing the Final EIS. Throughout the public review and comment period, government agencies, members of the public, and interested stakeholders had the opportunity to provide comments on the Draft EIS in various ways, including the following:

- In hard copy form, delivered by mail, enclosed in an envelope labeled “Mayflower Wind COP EIS” and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166.
- Through the [regulations.gov](https://www.regulations.gov) web portal by navigating to <https://www.regulations.gov/>, searching for docket number “BOEM-2023-0011,” and submitting a comment.
- By attending one of the public meetings on the dates listed in the notice of availability and providing written or verbal comments.

BOEM reviewed and considered all comment submissions in the development of the Final EIS. BOEM’s evaluation of public submissions focused on those comments within the submissions that were identified as substantive. EIS Appendix N, *Responses to Comments on the Draft Environmental Impact Statement*, describes the public comment processing methodology and includes comment responses. All public comment submissions received on the Draft EIS can be viewed online at <https://www.regulations.gov> by typing “BOEM-2023-0011” in the search field.

### A.2.5.4 Distribution of the Final Environmental Impact Statement

The EIS is available in electronic form for public viewing at <https://www.boem.gov/southcoast-wind>. Hard copies and digital copies of the Final EIS can be requested by contacting the Program Manager, Office of Renewable Energy Programs in Sterling, Virginia. Publication of the Final EIS initiates a minimum 30-day mandatory waiting period, during which BOEM is required to pause before issuing a ROD. The ROD will state clearly whether BOEM intends to approve, approve with conditions, or disapprove the COP for construction, operation, and eventual decommissioning of the Project. Notification will be provided as indicated in Appendix M, *Distribution List*, of the Final EIS.

## A.3 References Cited

Bureau of Ocean Energy Management (BOEM). 2018. *Tribal Consultation Guidance*. June 29, 2018. Available: <https://www.boem.gov/sites/default/files/about-boem/Public-Engagement/Tribal-Communities/BOEM-Tribal-Consultation-Guidance-with-Memo.pdf>.

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Council on Environmental Quality (CEQ). 1981. *Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulation*. Amended 1986. Available: <https://www.energy.gov/sites/prod/files/2018/06/f53/G-CEQ-40Questions.pdf>. Accessed: August 2021.

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