

Sunrise Wind - Appendix A: Required Environmental Permits and Consultations

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APPENDIX A: REQUIRED ENVIRONMENTAL PERMITS AND CONSULTATIONS

A.1. Introduction

This appendix discusses required permitting and public, agency, and Tribal involvement in the preparation of the Sunrise Wind 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:

- Permitting timetable: August 30, 2021
- Purpose and need: September 3, 2021
- Alternatives carried forward for evaluation: June 8, 2022

A.2. Other Federal and State Review

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

Table A-1. Required Environmental Permits and Consultations for the Proposed Project

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultation	Status
Federal			
BOEM	Lead federal agency	Construction and Operations Plan (COP) approval	Originally filed September 1, 2020; updates submitted December 18, 2020, June 7, 2021, August 23, 2021, October 29, 2021, April 8, 2022, August 19, 2022, and September 27, 2023
Bureau of Safety and Environmental Enforcement	Cooperating agency	Facility Design Report/Fabrication and Installation Report	TBF
		Oil Spill Response Plan	Submitted with COP
		Safety Management Systems	Submitted with COP
National Oceanic and Atmospheric Administration, National Marine Fisheries Service	Cooperating agency	Letter of Authorization	Application submitted November 2021 and deemed complete May 2022; draft rule published February 8, 2023
		Endangered Species Act (ESA) Consultation	Completed September 28, 2023
		Essential Fish Habitat (EFH) Consultation	Completed September 14, 2023
U.S. Army Corps of Engineers	Cooperating agency	Clean Water Act (CWA) Section 404/ Rivers and Harbors Act of 1899 Section 10 Individual Permit	Filed August 2022
		Rivers and Harbors Act of 1899 Section 14 Individual Permit	Filed August 2022
U.S. Fish and Wildlife Service	Cooperating agency	ESA Consultation	Completed June 29, 2023
U.S. Department of Homeland Security, U.S. Coast Guard	Cooperating agency	Private Aids to Navigation authorization	TBF

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultation	Status
U.S. Environmental Protection Agency	Cooperating agency	Outer Continental Shelf Air Permit	Filed August 2022; deemed complete March 21, 2023
		National Pollutant Discharge Elimination System (NPDES) Individual Permit	Filed December 1, 2021; draft rule published May 17, 2023; issued March 4, 2024 (expected)
National Park Service	Cooperating agency	Right-of-way Permit Special Use Permits	Filed September 2021; deemed complete June 2022
Federal Aviation Administration	Participating agency	Notice of Proposed Construction or Alteration (for onshore activity as applicable)	Issued May 26, 2023; additional TBF
State (portions of the Project within state jurisdiction)*			
New York State Department of Public Service	None	Certificate of Environmental Compatibility and Public Need, pursuant to Article VII of the New York Public Service Law (16 NYCRR 85–88), Article 15 (6 NYCRR 608 and 621), and Article 25 (6 NYCRR 661)	Issued November 17, 2022
		Environmental Management and Construction Plan, pursuant to Article VII (16 NYCRR 85–88)	Phase 1 originally filed November 18, 2022 with supplements and revisions following; Phase 1 approved June 23, 2023. Phase 2 filed March 27, 2023
		Section 68 Petition (permission to exercise the grants of municipal rights), pursuant to Article VII (Section 68(1))	Filed November 2022; issued May 18, 2023
		Water Quality Certification, pursuant to Section 401 of the CWA and Implementing Regulations (6 NYCRR 701, 702, 704, 754, and 800–941)	Filed November 2022; issued August 15, 2023

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultation	Status
New York State Department of Environmental Conservation	None	State Pollutant Discharge Elimination System (SPDES) General Permit GP-0-20-001 for Stormwater Discharges from Construction Activity, pursuant to 6 NYCRR 750–757 ¹	Acknowledged June 15, 2023
New York State Department of State, Division of Coastal Resources	Cooperating agency	Coastal Zone Management Act (16 <i>USC</i> 1451 et seq.) 15 <i>CFR</i> Part 930, and 30 <i>CFR</i> 585.627(9), 627(b)) State Article 42 of the Executive Law (19 NYCRR Part 600 and 6 NYCRR Part 617)	Filed September 2021; issued August 24, 2023 and August 30, 2023
New York State Department of Transportation – Region 10	None	Utility Work Permit – Form Perm 32, 75, pursuant to New York State Highway Law (Article 3, design 2; 17 <i>NYCRR</i> Part 131 and 23 <i>CFR</i> Part 645)	Perm 32 Filed October 2022
New York State Office of General Services	None	New York Public Lands Law, Article 2, Section 3, responsible for the granting of easements, rights-of-way, or other permissive instruments to grant permission for the use of the underwater lands.	TBF
Commonwealth of Massachusetts Office of Coastal Zone Management	Cooperating agency	Concurrence with the Coastal Zone Management Program Federal Consistency Determination pursuant to the following: Coastal Zone Management Act (16 <i>USC</i> 1451 et seq., 15 <i>CFR</i> 930; 30 <i>CFR</i> 585.627(9), 627(b)) Massachusetts General Law (21A, Subpart 4A) Massachusetts Coastal Zone Management Program Policies (310 Code of Massachusetts Regulations 20.00 and 21.00)	Filed September 2021; issued October 6, 2023

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval/Consultation	Status
Rhode Island Coastal Resources Management Council	Cooperating agency	Concurrence with the Coastal Zone Management Program Federal Consistency Determination pursuant to the following: CZMA (16 USC §§ 1451 et seq., 15 CFR § 930, and 30 CFR §§ 585.629(9), 627(b)) and Rhode Island Coastal Resources Management Program (RI CRMP) (Section 400)	Filed September 2021; issued September 7, 2023
Local*			
Town of Brookhaven	None	Road use agreement pursuant to PSL § 68	Received May 2023
Suffolk County	None	Parkland Alienation and license agreements with Department of Public Works and Parks and Recreation	Received November 2022
Pine Barrens Commission	None	Issuance of Core Preservation Area Hardship Waiver pursuant to the goals of the Pine Barrens Protection Act (Article 57)	Received April 2022

*State and local agencies are considered cooperating agencies under the National Environmental Policy Act.

¹An individual SPDES permit is not expected because construction activities over 1 acre are covered under GP-0-20-001 unless they are determined to be an ineligible activity, as listed in Part 1, Subparagraph F of GP-0-20-001.

A.3. 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 guidelines, qualified agencies and governments are those with “jurisdiction by law or special expertise” (40 *CFR* 1501.6). 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 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.

A.3.1. National Marine Fisheries Service

The National Marine Fisheries Service (NMFS) is serving as a cooperating agency pursuant to 40 *CFR* 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect marine resources under their jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to the Marine Mammal Protection Act, as amended (MMPA; 16 *USC* 1361 et seq.); the regulations governing the taking and importing of marine mammals (50 *CFR* Part 216); the Endangered Species Act (ESA; 16 *USC* 1531 et seq.); and the regulations governing the taking, importing, and exporting of threatened and endangered species (50 *CFR* Part 222–226). In accordance with 50 *CFR* Part 402, NMFS also serves as the consulting agency under Section 7 of the ESA for federal agencies proposing actions that may affect marine resources listed as threatened or endangered. NMFS has additional responsibilities to conserve and manage fishery resources of the United States, which include the authority to engage in consultations with other federal agencies pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and 50 *CFR* Part 600 when proposed actions may adversely affect essential fish habitat (EFH). MMPA is the only authorization for NMFS that requires NEPA compliance, which, after independent review, may be met via adoption of BOEM’s EIS and issuance of a record of decision (ROD).

NMFS has multiple roles in the NEPA process and EIS for this major federal action. First, NMFS has a responsibility to serve as a cooperating agency based on its technical expertise and legal jurisdiction over multiple trust resources. NMFS’s role is to provide expert advice regarding the action’s impact with respect to essential fish habitats, 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 authorization decision, if after reviewing it independently NMFS determines it to be sufficient. NMFS is required to review applications for Incidental Take Authorizations (ITAs) under the MMPA, as amended (16 *USC* 1361 et seq.), and issue an ITA if appropriate. Sunrise Wind LLC (SRW) has submitted an application (May 2022) to NMFS for an ITA 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 ITA under the MMPA is considered a major federal action requiring NEPA review. Therefore, NMFS has an independent responsibility to comply with NEPA. Consistent with the regulations published by the Council on Environmental Quality (40 *CFR* 1501.7(g)), NMFS intends to rely on the information and analyses in BOEM's EIS to fulfill its NEPA obligations for ITA issuance, if applicable. NMFS intends to adopt the Final EIS for this purpose.

A.3.2. Bureau of Safety and Environmental Enforcement

The Bureau of Safety and Environmental Enforcement is serving as a cooperating agency pursuant to 40 *CFR* 1501.6 because the scope of the Proposed Action and alternatives involves activities that could affect marine resources under their jurisdiction by law and special expertise.

A.3.3. U.S. Coast Guard

The U.S. Coast Guard is serving as a cooperating agency pursuant to 40 *CFR* 1501.6 because the scope of the Proposed Action and alternatives involves activities that could affect navigation and safety issues that fall under their jurisdiction by law and special expertise.

A.3.4. U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is serving as a cooperating agency pursuant to 40 *CFR* 1501.6 because the scope of the Proposed Action and alternatives involves activities that could affect resources under their 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. Additionally, EPA regulates point sources that discharge pollutants to waters of the United States pursuant to the Clean Water Act (CWA; Section 316(b), 40 *CFR* §122, 125, 33 *USC* §1251). New York State has partially delegated authority within state jurisdiction, and the EPA retains authority over point sources on the OCS. The proposed OCS-DC would require a National Pollutant Discharge Elimination System (NPDES) individual permit from EPA.

A.3.5. U.S. Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE) is serving as a cooperating agency pursuant to 40 *CFR* 1501.6 because the scope of the Proposed Action and alternatives involves activities that could affect resources under their jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Section 10 and Section 14 of the Rivers and Harbors Act of 1899 and Section 404 of the

CWA. Jurisdictional Project activities may include side-casting of material during installation of the SRWEC–NYS, temporary excavation of material associated with construction activities at the landfall, placement of concrete matting associated with cable protection along the SRWEC–NYS, and any temporary or permanent fill associated with the Onshore Facilities, as well as placement of foundations on the OCS and installation of the SRWEC–OCS and SRWEC–NYS under the seafloor. Issuance of Section 10 and Section 404 permits require NEPA compliance, which will be met via adoption of BOEM’s EIS and issuance of the ROD.

A.3.6. U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) is serving as a cooperating 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.

A.3.7. National Park Service

The National Park Service (NPS) is serving as a cooperating agency pursuant to 40 *CFR* 1501.6 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. While Smith Point County Park is not owned by the federal government, it is within the boundaries of Fire Island National Seashore. Portions of the SRWEC–NYS may be located under the seafloor within Fire Island National Seashore, in an area where the United States holds an easement for the use and occupation of lands for the purposes of Fire Island National Seashore. The cable may be so located only if the NPS grants a right-of-way (54 *USC* §100902; 36 *CFR* Part 14) and special use permit for construction (36 *CFR* §5.7) for the cable. Construction work within NPS-administered waters in the intracoastal waterway between Fire Island and Long Island also requires a special use permit. The NPS intends to adopt the EIS in support of its permitting decisions if it determines that the EIS is sufficient for such purposes. The NPS will also provide expertise regarding potential effects from the proposed Project on National Park System resources, including visual impacts on protected areas and properties. The NPS is also a consulting party under Section 106 of the National Historic Preservation Act (NHPA).

A.3.8. Federal Aviation Administration

The Federal Aviation Administration (FAA) is serving as a participating agency for the Project. The FAA has jurisdiction to review and certify that structures greater than 199 ft (61 m) above ground level do not have adverse effects on the safety or efficient utilization of navigable airspace within 13.8 mi (12 nm; 22 km) of the shoreline (49 *USC* §44718 and 14 *CFR* Part 77). Beyond this distance, BOEM assumes responsibility for review. Under 14 *CFR* Part 77.9, a Notice of Proposed Construction or Alternative is required to be filed with the FAA for the construction or alteration of structures that exceed the criteria set forth in 14 *CFR* Part 77.9, or if otherwise requested by the FAA, including construction cranes, to ensure activities will not impact air navigation or airport operations.

During final design and construction, Sunrise Wind will apply the Part 77.9 criteria to the OnCS–DC and, if required, will submit notice to the FAA to determine if the proposed structures and construction activities will impact air navigation. If the FAA requires, the final design and construction of the new structures will incorporate appropriate mitigation measures (e.g., lighting and/or marking).

A.4. 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 1.5, Appendix A, and Appendix B of the COP (Sunrise Wind 2023) provide a discussion of other federal and state consultation processes being led by SRW.

A.4.1. Coastal Zone Management Act

The Coastal Zone Management Act 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. SRW plans to submit a federal consistency certification with the New York State Department of State – Division of Coastal Resources, Commonwealth of Massachusetts Office of Coastal Zone Management, and the State of Rhode Island Coastal Resources Management Council per 15 *CFR* 930.76 Subpart E.

The COP provides the necessary data and information under 15 *CFR* 930.58 (Sunrise Wind 2023). 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).

A.4.2. Endangered Species Act

Section 7(a)(2) of the ESA of 1973, as amended (16 *USC* 1531 et seq.), requires that each federal agency ensures 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 the NMFS or the USFWS, depending upon the jurisdiction of the services. 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 draft biological assessments for listed species under their respective jurisdictions. USFWS issued a concurrence letter and biological opinion on June 29, 2023. NMFS issued its biological opinion on September 28, 2023.

A.4.3. Government-to-Government Consultation with Federally Recognized Indian Tribes

Executive Order (EO) 13175 commits federal agencies to engage in government-to-government consultation with Tribes, and Secretarial Order No. 3317 requires U.S. Department of the Interior agencies to develop and participate in meaningful consultation with federally recognized Tribes where a tribal implication may arise. 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 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.

On October 15, 2021, BOEM held a government-to-government meeting on the Sunrise Wind Project with the Mashantucket Pequot Tribal Nation, the Mashpee Wampanoag Tribe, the Delaware Nation, the Shinnecock Nation, and the Wampanoag Tribe of Gay Head (Aquinnah). The meeting presented a Project overview, which discussed site characteristic studies, required field surveys, socioeconomic resources, visual and cultural resources, and visual assessments. During discussion, the Tribes expressed a concern that there has been difficulty in effective project review by the Tribes due to the aggressive leasing schedule and overwhelming project load. They pointed out that in addition to other responsibilities that are not offshore wind related, the overwhelming project review workload could be alleviated by using independent contractors (who do not answer to BOEM) to aid in the cultural review. Additional tribal concerns included a request for follow-up photography in different seasons, specifics on the chemicals used during horizontal directional drilling, specific limitations and design aspects of horizontal directional drilling and the implications of this drilling method on clean drinking water, environmental impacts of ocean warming due to Project components if such warming should occur, total planned depth of monopole construction and survey methodology related to foundation placement, the decommissioning plan for the Project, plans for catastrophic weather events, and cumulative visual impacts of all Ørsted projects. Finally, due to these discussion points, the Tribes expressed an inability to facilitate a FAST-41 schedule, in general, due to the complexity and number of the projects being implemented simultaneously under their review. They pointed out that there could be ways to facilitate reimbursement for Tribes' involvement in reviewing the necessary documents, that consultation should happen automatically without delay, and requested that tribal agencies should be designated as participating agencies, or agencies with elevated participation, by the lead agency.

On July 13, 2022, BOEM held a Section 106 kick-off meeting which included the Mashpee Wampanoag, Shinnecock Indian Nation, and Mashantucket Pequot Tribal Nation Tribes. The meeting presented a Project overview including maritime and terrestrial components, a review of NEPA/NHPA Section 106 substitution consultation and schedule procedures, and a description of Section 110(f) and its application to National Historic Landmarks (NHLs) regarding the Project. During discussion, the Tribes inquired about the definition of the potential area of project effects (PAPE) and the difference between an area of potential effects (APE) and PAPE, expressed concern that data received to date concerning

the Project is inadequate for review of the Project in a meaningful fashion, solicited clarification about the siting procedure and consultation regarding maritime cable corridors and their effect on ancient submerged landforms, inquired as to whether ancient submerged landforms would be considered for inclusion as NHLs, inquired as to what avoidance considerations were being applied to maritime cable corridors, expressed concern about lighting impacts during construction and operation, and inquired about the difference in the level of scrutiny applied to NHLs under Section 110(f) and other historic properties subject to Section 106 consultation. Finally, a concern regarding timing was raised, and the Tribes expressed that consultation regarding Project siting should be undertaken prior to the selection of component locations.

In April 2023, the Bureau of Ocean Energy Management's (BOEM) Director, Liz Klein, and other BOEM leaders met with leaders from federally recognized Tribal Nations at the Tribal Leaders Summit at Mohegan Sun in Montville, CT. The following federally recognized Tribes' leaders and representatives participated in this two-day meeting (listed in alphabetical order): Houlton Band of Maliseet Indians; Mashantucket (Western) Pequot Tribal Nation; Mashpee Wampanoag Tribe; Narragansett Indian Tribe; Passamaquoddy Tribe, Indian Township; Passamaquoddy Tribe, Pleasant Point; Penobscot Indian Nation; Shinnecock Indian Nation; and Wampanoag Tribe of Gay Head (Aquinnah). The discussions centered on BOEM's renewable energy program and concerns about offshore wind development on the east coast, including the call from Tribal Nations for a moratorium on offshore wind energy development. BOEM shared with the Tribal Nations its continued commitment to upholding its Tribal trust responsibilities and fostering working relationships based on trust and meaningful consultation. BOEM confirmed that the agency is working to improve the consultation process to engage Tribes in a respectful way and to help Tribal Nations expand capacity to engage in environmental reviews and Section 106 consultations. During this meeting, BOEM reiterated its commitment to engage with Tribal Nations at all phases of offshore wind energy development and to ensure that the identification of historic properties and resolution of adverse effects incorporate Indigenous knowledge and Tribal perspectives through the Section 106 consultation.

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, SRW also conducted prior coordination with engaged Tribes, State Historic Preservation Officers, and other stakeholders identified as having the potential to inform the design process (see COP Appendix A; Sunrise Wind 2023).

A.4.4. 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 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). 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 ITA from SRW in May 2022. The application was deemed complete, and the Notice of Receipt of Application was published in the Federal Register on June 2, 2022 (87 *FR* 33470).

A.4.5. National Historic Preservation Act

The NHPA (54 *USC* 306108 et seq.) requires federal agencies to plan and act to minimize harm to NHLs and afford the American 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 wind turbine generators (WTGs), installation of electrical support cables, and development of staging areas are ground- or seabed-disturbing activities that could directly affect archaeological resources. The presence of WTGs could also introduce visual elements out of character with the setting of historic structures or landscapes; in cases where the historical setting is a contributing element of historic properties’ eligibility for the National Register of Historic Places (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.

BOEM is using the public scoping process to fulfill the public involvement requirements under NEPA as well as to seek public involvement in its Section 106 review, pursuant to 36 *CFR* 800.2(d)(3).

BOEM initiated a review under Section 106 of the NHPA on August 31 and September 3, 2021, with letters sent to identify consulting parties for this undertaking. Consultation is ongoing to define the APE for the Project, to identify historic properties within the APE, to assess the effects of the undertaking on identified historic properties, and adverse effects resolution. BOEM held an initial consultation meeting with consulting parties in July 2022 to discuss the APE and the identification of historic properties within the APE. BOEM held an additional consultation meeting in January 2023 to discuss the potential effects on historic properties, adverse effects, and proposed adverse effects resolution. BOEM will hold additional consultations, including November 2023, to further discuss adverse effects and proposed adverse effects resolution. BOEM has developed a draft memorandum of agreement with consulting parties to resolve adverse effects to NRHP-listed or NRHP-eligible properties resulting from the Project, including applying special requirements (36 *CFR* 800.10) for protecting NHLs as necessary.

The NEPA and NHPA process will be coordinated by BOEM as the evaluation of the COP proceeds, with a summary included in the ROD for the Final EIS. In accordance with the regulations for the NEPA and NHPA Section 106 processes, these will further be coordinated with the requirements of other statutes. Specifically, the Vineyard Sound and Moshup's Bridge Traditional Cultural Properties are not limited to NHPA review and would be considered further by BOEM under EO 13007 and the American Indian Religious Freedom Act. EO 13007, "Indian Sacred Sites" (61 *FR* 26771-26772), 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.

A.4.6. 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 developed an EFH assessment concurrent with this EIS and transmitted that EFH assessment to NMFS on August 8, 2022. NMFS determined the EFH assessment was complete and initiated consultation on June 16, 2023. Consultation concluded on September 14, 2023, when NMFS provided BOEM with its conservation recommendations.

A.5. Development of Environmental Impact Statement

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

A.5.1. Scoping

On August 31, 2021 (correction published September 3, 2021), BOEM issued a notice of intent (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 (83 *Federal Register* 53104). The NOI began the public scoping process for identifying issues and potential alternatives for consideration in the EIS. BOEM held three virtual public scoping meetings to solicit feedback and identify issues and potential alternatives for consideration in the EIS. Throughout the scoping process, federal agencies; state, local, and Tribal governments; and the general public had the opportunity to help BOEM identify potential significant resources and issues, impact-producing factors, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as provide additional information. The formal scoping period lasted from August 31 through October 4, 2021.

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

- Electronic submissions received via www.regulations.gov on docket number BOEM-2021-0052;
- Electronic submissions received via email to a BOEM representative;
- Hard copy comment letters submitted to BOEM via traditional mail; or
- Comments submitted verbally or in writing via the chat at each of the public scoping meetings.

BOEM held three virtual public scoping meetings on the following dates via Zoom:

- September 16, 2021, at 5:30 pm (ET);
- September 20, 2021, at 1:00 pm (ET); and
- September 22, 2021, at 5:30 pm (ET).

A.5.2. 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. All public scoping submissions received can be viewed online at <http://www.regulations.gov> by typing “BOEM-2021-0052” in the search field. The resource areas or NEPA topics most referenced in the scoping comments included climate change, NEPA/public involvement process, mitigation and monitoring, commercial fisheries and for-hire recreational fishing, and general support or opposition.

A.5.3. Distribution of the Draft Environmental Impact Statement for Review and Comment

On December 16, 2022, BOEM published a notice of availability for the Draft EIS consistent with the regulations implementing NEPA to assess the potential impacts of the Proposed Action and alternatives. The Draft EIS was made available in electronic form for public viewing at <https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities>, and hard copies and/or compact discs were delivered to entities as requested. The notice of availability commenced the public review and comment period of the Draft EIS. BOEM held three virtual public hearings to solicit feedback and identify issues for consideration in preparing the Final EIS. Throughout the public review and comment period, federal agencies; state, local, and Tribal governments; and the general public had the opportunity to provide comments on the Draft EIS in various ways, including the following:

- In hard copy form, delivered by hand or by mail, enclosed in an envelope labeled “Sunrise 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 web portal by navigating to <http://www.regulations.gov> and searching for docket number “BOEM-2022-0071.” Click the “Comment Now!” button to the right of the document link. Enter your information and comment, then click “Submit.”
- By attending one of the virtual EIS public meetings at the locations and dates listed in the notice of availability and providing written or verbal comments.

BOEM used comments received during the public comment period to inform its preparation of the Final EIS, as appropriate.

A.6. References

See EIS Appendix K for list of references.