

# Appendix A. Required Environmental Permits and Consultations

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## Contents

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A.1	Introduction.....	A-2
A.2	Required Environmental Permits and Authorizations .....	A-2
A.3	Consultation and Coordination .....	A-6
A.3.1	Overview .....	A-6
A.3.2	Consultations and Authorizations.....	A-7
A.3.3	Development of Draft Environmental Impact Statement .....	A-12
A.4	References Cited .....	A-16

## List of Tables

---

Table A-1.	Required environmental permits and approvals for the proposed Projects.....	A-2
Table A-2.	Invited and participating consulting parties for NHPA Section 106 Consultation.....	A-9

## A.1 Introduction

This appendix discusses required permitting and public, agency, and Tribal involvement in the preparation of the Maryland Offshore 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.

## A.2 Required Environmental Permits and Authorizations

**Table A-1** identifies the environmental permits and approvals that are required for implementation of the Maryland Offshore Wind Project and the status of each permit or approval.

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

Agency/Regulatory Authority	Permit/Approval	Status
<b>Federal</b>		
Bureau of Ocean Energy Management (BOEM)	Construction and Operations Plan (COP) Approval	COP filed with BOEM in July 2020. The latest update to the COP was submitted in July 2024.
Bureau of Safety and Environmental Enforcement (BSEE)	Oil Spill Response Plan Safety Management System (SMS) Facility Design Report (FDR) Fabrication and Installation Report (FIR) Decommissioning Application	Planned
Tribal Nations, Tribal Historic Preservation Offices (THPOs), Advisory Council on Historic Preservation (ACHP), and State Historic Preservation Offices (SHPOs)	National Historic Preservation Act (NHPA) Section 106 Consultation	Consultations initiated June 8, 2022.
Federal Aviation Administration (FAA)	Obstruction Evaluation/ Airport Airspace Analysis (OE/AAA) “Determination of No Hazard”	The FAA has issued a Determination of No Hazard to Air Navigation on May 22, 2023.

Agency/Regulatory Authority	Permit/Approval	Status
National Marine Fisheries Service (NMFS)	MMPA Section 101(a)(5) Incidental Harassment Authorization or Letter of Authorization (LOA)	US Wind submitted the initial LOA application on August 31, 2022. NMFS deemed US Wind’s MMPA Incidental Take Request deemed complete April 3, 2023. Notice of Receipt of Application published in the Federal Register on May 2, 2023. Proposed Rule published in the Federal Register on January 4, 2024.
NMFS	Section 7 Endangered Species Act (ESA) consultation	Biological Assessment was deemed sufficient to initiate consultation by NMFS on January 31, 2024.
NMFS	Essential Fish Habitat (EFH) consultation	EFH Consultation Request submitted by BOEM on June 2, 2023. EFH Assessment deemed sufficient to initiate consultation by NMFS on February 2, 2024. NMFS issued conservation recommendations to BOEM on May 2, 2024.
U.S. Army Corps of Engineers (USACE)	Clean Water Act (CWA) Section 404, Rivers and Harbors Act (RHA) Section 10 Individual Permit, and Section 408 Permission	US Wind submitted initial draft application materials in February 2023. US Wind submitted permit application materials in October 2023. The USACE issued a public notice on the application with a public comment period from October 6 to December 5, 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. Fish & Wildlife Service	Section 7 ESA consultation	Biological Assessment was deemed complete by USFWS on January 10, 2024. USFWS issued Biological Opinion on May 31, 2024.

Agency/Regulatory Authority	Permit/Approval	Status
<b>State of Maryland</b>		
Maryland Department of Environment (MDE) (delegated authority from U.S. Environmental Protection Agency)	Outer Continental Shelf (OCS) Clean Air Act Permit	US Wind submitted an OCS Air Permit Application on August 17, 2023. Alternative Model Requested approved by MDE on September 11, 2023. OCS Air Permit Application deemed administratively complete on January 4, 2024.
Maryland Department of Natural Resources (MD DNR)	Maryland Coastal Zone Management (CZM) Consistency (per federal Coastal Zone Management Act)	MD DNR and US Wind executed a stay agreement on July 8, 2022, with amendment to the stay agreement executed August 1, 2023. MD DNR restarted consistency review February 9, 2024. Maryland CZMP's consistency decision is due on July 9, 2024.
MDE	Tidal Wetlands License	US Wind submitted a Joint Permit Application (JPA) on August 30, 2023. JPA deemed complete; public notice published February 9, 2024. Public information hearing held on March 25, 2024. The comment period was extended for 30 days on May 7, 2024, concluding on June 7, 2024.
MDE	Water Quality Certification	Water quality certification request included with February 9, 2024, public notice.

Agency/Regulatory Authority	Permit/Approval	Status
<b>State of Delaware</b>		
Delaware Department of Natural Resources and Environmental Control (DNREC) – Division of Water	Wetlands and Subaqueous Lands Permit and Section 401 Water Quality Certification	<p>Pre-filing meeting held August 18, 2023.</p> <p>US Wind submitted application February 15, 2024.</p> <p>The Wetlands and Subaqueous Lands Permit application was revised and re-submitted on March 29, 2024, and deemed administratively complete on April 11, 2024.</p> <p>The Water Quality Certification Request was revised and re-submitted on April 15, 2024, and deemed administratively complete on April 22, 2024.</p> <p>Public notice published April 28, 2024.</p> <p>Public information session held June 5, 2024.</p>
DNREC – Division of Water	Subaqueous Lands Lease (renewable on 10-year term)	<p>US Wind submitted a Subaqueous Lands Lease application on February 15, 2024.</p> <p>The Subaqueous Lands Lease application was revised and re-submitted on March 29, 2024, and deemed administratively complete on April 11, 2024.</p> <p>Public notice published April 28, 2024.</p> <p>Public information session held June 5, 2024.</p>
Delaware Historical and Cultural Affairs Office/State Historic Preservation Office	Delaware Antiquities Act permit (state-owned land)	Planned
Delaware Coastal Management Program	Delaware CZM Consistency Certification (per federal CZMA)	<p>US Wind executed a stay agreement for Subpart E (federal consistency with the COP) on July 19, 2022 that became effective on July 23, 2022.</p> <p>A second stay agreement for Subpart E was executed by US Wind and DNREC on August 1, 2023.</p> <p>US Wind executed a stay agreement for Subpart D (federal consistency with USACE application) on November 8, 2023 that became effective on November 11, 2023.</p> <p>DNREC issued a Public Notice on April 21, 2024.</p>

Agency/Regulatory Authority	Permit/Approval	Status
DNREC – Division of Fish and Wildlife	Environmental Review for Species of Special Concern	US Wind submitted a request for an Environmental Review to DNREC September 11, 2023. DNREC provided Environmental Review letter December 21, 2023.
DNREC – Division of Watershed Stewardship	Sediment and Stormwater Management Plan	Planned
DNREC – Division of Parks and Recreation	Special Use Permit/Land Use Agreement Public Lands, Parks and Memorials – State Park	Planned
DNREC – Division of Watershed Stewardship	Permit or Letter of Approval – Beach Preservation Act	Pre-application submitted to DNREC June 16, 2023. US Wind submitted application on February 15, 2024, and re-submitted the application on February 27, 2024. Application was deemed complete February 27, 2024. Public notice published April 28, 2024. Public information session held June 5, 2024.
Delaware State Fire Marshall’s Office	Office Site Plan Approval	Planned
Delaware Department of Transportation	Entrance permit	Planned
Delaware Department of Transportation	Use and Occupancy Agreement	Planned

### A.3 Consultation and Coordination

#### A.3.1 Overview

This section discusses public and agency involvement leading up to the preparation and publication of the Final EIS, including formal consultations, cooperating agency exchanges, public comments, 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.3.3.2, *Cooperating Agencies*.

## **A.3.2 Consultations and Authorizations**

### **A.3.2.1 Coastal Zone Management Act**

The Coastal Zone Management Act requires that federal actions within the coastal zone or within the geographic location descriptions (i.e., areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects) affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. Because the Lease Area is geographically off the coast of Maryland and Delaware and certain Project elements would occur within Maryland and Delaware State waters, consistency certifications with the Maryland Department of Natural Resources (MD DNR) and the Delaware Coastal Management Program were submitted. The states' concurrence is required before BOEM may approve or approve with conditions the COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

### **A.3.2.2 Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 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 the U.S. Fish and Wildlife Service (USFWS), depending upon the jurisdiction of the agencies. Pursuant to 50 CFR 402.07, BOEM has accepted designation as the lead federal agency for the purposes of fulfilling interagency consultation under Section 7 of the ESA for listed species under the jurisdiction of NMFS and USFWS. BOEM is consulting on the proposed activities considered in this Draft EIS with both NMFS and USFWS and prepared BAs for listed species under their respective jurisdictions. ESA consultations concluded with the issuance of Biological Opinions by USFWS and NMFS, on May 31 and June 18, 2024, respectively.

### **A.3.2.3 Government-to-Government Tribal Consultation**

Executive Order 13175 commits federal agencies to engage in government-to-government consultation with Tribes when federal actions have Tribal implications, and Secretarial Order No. 3317 requires U.S. Department of the Interior (DOI) 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 National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), Executive and Secretarial Orders, and DOI Policy (BOEM 2018). BOEM implements Tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and other engagement.

On June 7, 2022, BOEM initiated formal consultation with 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. This letter also served to notify the Tribes 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 July 8, 2022. BOEM then sent an email to Tribal leaders on August 4, 2022 and September 14, 2022 offering a government-to-government consultation meeting to discuss the public scoping information for the Projects. BOEM held a government-to-government meeting with the Tribal nations on September 30, 2022.

#### A.3.2.4 National Historic Preservation Act

Section 106 of the NHPA (54 U.S.C. 306108) and its implementing regulations (36 CFR Part 800) require federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. BOEM has determined that the proposed Projects is an undertaking subject to Section 106 review. The construction of wind turbine generators (WTGs) and offshore substations (OSSs), installation of inter-array 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 NRHP, the Projects 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 J of this Draft EIS contains BOEM's Finding of Adverse Effect, which includes a description and summary of BOEM's consultation to date. BOEM will continue consulting with the Maryland State Historic Preservation Officer (SHPO), Delaware SHPO, Virginia SHPO, New Jersey SHPO, ACHP, federally recognized Tribes, and the consulting parties regarding the Finding of Adverse Effect and the resolution of adverse effects. BOEM has been and will be conducting Section 106 consultation meeting(s) on the Finding of Adverse Effect and the resolution of adverse effects, and the agency will be requesting that the consulting parties review and comment on the Finding of Adverse Effect and proposed resolution measures. BOEM fulfilled public involvement requirements for Section 106 of the NHPA through the NEPA public scoping and public meetings process, pursuant to 36 CFR 800.2(d)(3). The Scoping Summary Report (BOEM 2022), available on BOEM's Project-specific website, summarizes comments on historic preservation issues.

On June 8, 2022, BOEM initiated consultation with the following federally recognized Tribes: Absentee-Shawnee Tribe of Indians of Oklahoma, Chickahominy Indian Tribe, Chickahominy Indian Tribe-Eastern Division, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Mashantucket (Western) Pequot Tribal Nation, Mashpee Wampanoag Tribe, Monacan Indian Nation, Nansemond Indian Nation, Narragansett Indian Tribe, Pamunkey Indian Tribe, Rappahannock Indian Tribe, Seneca-Cayuga Nation, Shawnee Tribe, Shinnecock Indian Nation, Stockbridge-Munsee Community Band of Mohican Indians, Tuscarora Nation, Upper Mattaponi Indian Tribe, and Wampanoag Tribe of Gay Head (Aquinnah). BOEM requested information on sites of religious and cultural



significance to the Tribes that the proposed Projects could affect and BOEM offered its assistance in providing additional details and information on the proposed Projects to the Tribes.

On June 8, 2022, BOEM contacted representatives of local governments, state and local historical societies, and other federal agencies to solicit information on historic properties and determine their interest in participating as consulting parties. Participants invited to consult for the NHPA Section 106 Consultation are listed in **Table A-2**.

**Table A-2. Invited and participating consulting parties for NHPA Section 106 Consultation**

Participants in the Section 106 Process	Participating Consulting Parties
State Historic Preservation Officers (SHPOs) and state agencies	Delaware Department of Natural Resources Delaware Division of Parks and Recreation Delaware Historical & Cultural Affairs Maryland Department of Natural Resources Maryland Environmental Trust Maryland Historical Trust New Jersey Historic Preservation Office New Jersey State Park Service - Cape May State Park Virginia Department of Historic Resources
Federal agencies	Advisory Council on Historic Preservation Bureau of Safety and Environmental Enforcement Department of Defense (Joint Expeditionary Base Little Creek - Fort Story Wallops Island, Virginia) Department of Defense (National Guard Training Site Bethany Beach Training Site) Department of Defense (Office of the Deputy Assistant Secretary of Defense (Environment), Environmental Compliance and Planning) Environmental Protection Agency Federal Aviation Administration National Aeronautics and Space Administration (NASA) Wallops Flight Facility National Park Service Natural Resources Conservation Service (Delaware) U.S. Army Corps of Engineers U.S. Fish and Wildlife Service U.S. Coast Guard

Participants in the Section 106 Process	Participating Consulting Parties
Federally and state recognized Tribes	Absentee Shawnee Tribe of Indians of Oklahoma Chickahominy Indian Tribe Chickahominy Indian Tribe – Eastern Division Delaware Nation Delaware Tribe of Indians Eastern Shawnee Tribe of Oklahoma Lenape Tribe of Delaware Mashantucket (Western) Pequot Tribal Nation Mashpee Wampanoag Tribe Monacan Indian Nation Nansemond Indian Nation Nanticoke Indian Association Narragansett Indian Tribe Pamunkey Indian Tribe Rappahannock Tribe Seneca-Cayuga Nation Shawnee Tribe Shinnecock Indian Nation Stockbridge-Munsee Community Band of Mohican Indians Tuscarora Nation Upper Mattaponi Indian Tribe Wampanoag Tribe of Gay Head (Aquinnah)
Local governments	Accomack County, Virginia Borough of Stone Harbor, New Jersey Cape May County Division of Culture and Heritage Cape May County, New Jersey City of Cape May, New Jersey City of North Wildwood, New Jersey City of Rehoboth, Delaware Lower Township, New Jersey Sussex County, Delaware Sussex County Historic Preservation Town of Bethany Beach, Delaware Town of Chincoteague, Virginia Town of Dewey Beach, Delaware Town of Fenwick Island, Delaware Town of Millville, Delaware Town of Ocean City, Maryland Town of Selbyville, Delaware Town of South Bethany, Delaware Town of Wildwood, New Jersey Wildwood Crest Borough, New Jersey Worcester County, Maryland

Participants in the Section 106 Process	Participating Consulting Parties
Nongovernmental organizations or groups	Beach to Bay Heritage Area Cape May County Historical Society Cape May County National Association for the Advancement of Colored People (NAACP) Delaware Historical Society Greater Cape May Historical Society Historical Society of the Eastern Shore of Virginia Lower Shore Land Trust Lower Sussex NAACP Chapter Maryland Environmental Trust Navy Lakehurst Historical Society Preservation Maryland Preservation New Jersey Wildwood Crest Historical Society Wildwood Historical Society Worcester County Historical Society Worcester County NAACP Branch

#### A.3.2.5 Magnuson-Stevens Fishery Conservation and Management Act

Pursuant to Section 305(b) of the Magnuson-Stevens Act (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 Part 600. As provided for in 50 CFR 600.920(b), BOEM has accepted designation as the lead agency for the purposes of fulfilling EFH consultation obligations under Section 305(b) of the MSA. Certain OCS activities authorized by BOEM may result in adverse effects on EFH and, therefore, require consultation with NMFS. BOEM developed an EFH Assessment concurrent with the Draft EIS and transmitted the EFH Assessment to NMFS on June 2, 2023. NMFS received the revised EFH Assessment, deemed it complete, and initiated the EFH consultation on February 2, 2024. NMFS issued EFH conservation recommendations on May 2, 2024. BOEM will respond to NMFS regarding how it will proceed with the action, and relevant terms and conditions from the conservation recommendations will be incorporated into the ROD.

#### A.3.2.6 Marine Mammal Protection Act

Section 101(a) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 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 U.S.C. 1372(a)(1), (a)(2)). Section 101(a) of the act provides the prohibitions for the incidental taking of marine mammals. The incidental take of a marine mammal falls under three categories: mortality, serious injury, or harassment (i.e., injury and/or disruption of behavioral patterns). Sections 101(a)(5)(A) and (D) of the MMPA provide the exceptions to the prohibition on take, which give NMFS the authority to authorize the incidental but not intentional take of small numbers of marine mammals, provided certain determinations are made and statutory and regulatory procedures are met. Entities seeking to obtain authorization for the

incidental take of marine mammals under NMFS jurisdiction must submit such a request (in the form of an application). Incidental Take Authorizations (ITA) may be issued as either (1) regulations and associated letters of authorization (LOA), or (2) an incidental harassment authorization (IHA), depending on which is appropriate for the proposed activity. An IHA may be authorized 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.

LOAs may be issued for up to a maximum period of 5 years, and IHAs 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 ITA. 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.

US Wind submitted an application for LOA to NMFS on August 31, 2022. The application was reviewed, revised and considered complete April 3, 2023, and NMFS published a Notice of Receipt in the Federal Register on May 2, 2023. NMFS published the proposed ITA regulations on January 4, 2024 (89 *Federal Register* 504).

### **A.3.3 Development of Draft Environmental Impact Statement**

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

#### **A.3.3.1 Scoping**

On June 8, 2022, BOEM issued an NOI to prepare an EIS consistent with NEPA regulations (42 U.S.C. 4321 et seq.) to assess the potential impacts of the Proposed Action and alternatives (87 *Federal Register* 34901). The NOI commenced a public scoping process for identifying issues and potential alternatives for consideration in the EIS. The formal scoping period was from June 8 through July 8, 2022. BOEM held three virtual public scoping meetings to solicit feedback and to identify issues and potential alternatives for consideration in the EIS. Throughout this timeframe, federal agencies, state and local governments, and the general public had the opportunity to help BOEM identify potential significant resources and issues, impact producing factors (IPFs), reasonable alternatives (e.g., 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 U.S.C. 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 hand or by mail, or through the [Government regulations](#) web portal.

BOEM held three virtual scoping meetings on June 21, 23, and 27, 2022. BOEM reviewed and considered all scoping comments in the development of the Draft EIS and used the comments to identify alternatives for analysis. A Scoping Summary Report (BOEM 2022) summarizing the submissions received and the methods for analyzing them is available on BOEM’s website at [US Wind Construction and Operations Plan Scoping Summary Report](#). A Scoping Summary Report (BOEM 2022) summarizing the submissions received and the methods for analyzing them is available on BOEM’s website at [US Wind Construction and Operations Plan Scoping Summary Report](#). In addition, all public scoping submissions received can be viewed online at [Government regulations](#) by typing “BOEM-2022-0025” in the search field. As detailed in the Scoping Summary Report, the resource areas or NEPA topics most referenced in the scoping comments include commercial fisheries and for-hire recreational fishing; mitigation and monitoring; alternatives; birds; NEPA/Public Involvement Process; cumulative effects; climate change; marine mammals; and others.

#### A.3.3.2 Cooperating Agencies

BOEM invited other federal agencies and state, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the Draft 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 May 5, 2022; August 24, 2022; and October 25, 2022, to discuss the environmental review process, schedule, responsibilities, consultation, and potential EIS alternatives.

The following federal agencies and state, Tribal, and local governments have supported preparation of the Draft EIS as cooperating or participating agencies, or cooperating Tribal nations:

#### **Federal Cooperating Agencies**

- BSEE
- NMFS
- National Park Service (NPS)
- USACE
- USCG

- U.S. Environmental Protection Agency (USEPA)

#### **State Cooperating Agencies**

- MD DNR
- Delaware Department of Natural Resources and Environmental Control (DNREC)

#### **Federal Participating Agencies**

- ACHP
- Department of Navy
- Department of Defense (DOD)
- USFWS

#### **Cooperating Tribal Nations**

- The Delaware Nation
- The Delaware Tribe of Indians
- The Shinnecock Indian Nation

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 U.S.C. 1361 et seq.); the regulations governing the taking and importing of marine mammals (50 CFR Part 216); the ESA (16 U.S.C. 1531 et seq.); and the regulations governing the taking, importing, and exporting of threatened and endangered species (50 CFR Parts 222–226). In accordance with 50 CFR Part 402, NMFS also serves as the Consulting Agency under Section 7 of the ESA for federal agencies proposing action that may affect marine resources listed as threatened or endangered. NMFS has additional responsibilities to conserve and manage fishery resources of the United States, which includes the authority to engage in consultations with other federal agencies pursuant to the MSA and 50 CFR Part 600 when proposed actions may adversely affect EFH. The MMPA is the only authorization for NMFS that requires NEPA compliance. NMFS intends to adopt BOEM’s Final EIS if, after independent review and analysis, NMFS determines the Final EIS to be sufficient to support the authorization.

USACE is serving as a cooperating agency pursuant to 40 CFR 1501.8 because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. As applicable, permits and authorizations are issued pursuant to Sections 10 and 14 of the Rivers and Harbors Act (RHA) and Section 404 of the Clean Water Act (CWA). Issuance of Section 10 or Section 404 permits requires NEPA compliance, which will be met via adoption of BOEM’s EIS and issuance of the ROD.

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.

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.

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.

The NPS 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 NPS resources under its jurisdiction by law and special expertise. The NPS, as a bureau within the DOI and cooperating agency for the preparation of this EIS, has special expertise regarding the regulation of uses on NPS units and management of park system resources that includes compliance with the Park System Resource Protection Act (Public Law 113–287, December 2014). The NPS also is participating in the consultation under Section 106 of the NHPA.

ACHP is serving as a participating agency because the scope of the Proposed Action and alternatives involves activities that could affect historic properties under its jurisdiction by law and special expertise. ACHP also is participating in the consultation under Section 106 of the NHPA.

USFWS is serving as a participating agency because the scope of the Proposed Action and alternatives involves activities that could affect resources under its jurisdiction by law and special expertise. USFWS also serves as the consulting agency under Section 7 of the ESA for federal agencies proposing actions that may affect terrestrial resources listed as threatened or endangered. In addition the USFWS administers the Fish and Wildlife Coordination Act (FWCA) that directs the Service to investigate and report on proposed Federal actions that affect any stream or other body of water and to provide recommendations to minimize impacts on fish and wildlife resources.

DOD and Department of the Navy are serving as participating agencies because they have special expertise with respect to potential impacts that may occur as a result of the Proposed Action, including regarding potential impacts on special use airspace and radar used for air defense.

MD DNR and DNREC are serving as cooperating state 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.3.3.3 Distribution of the Final Environmental Impact Statement

The Final EIS is available in electronic format for public viewing at [Maryland Offshore Wind Project Overview](#). Hard copies and/or digital copies of the Final EIS can be requested by contacting the Program Manager, Office of Renewable Energy, in Sterling, Virginia.

Publication of the Final EIS initiates a minimum 30-day 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 and installation, operation, and eventual decommissioning of the Project. Notification will be provided as indicated in Appendix N, *Distribution List*, of the Final EIS.

## A.4 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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