

Sunrise Wind - Appendix A: Required Environmental Permits and Consultations

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Appendix A: Required Environmental Permits and Consultations

1.1 Introduction

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

1.2 Other Federal and State Review

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

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

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval	Status
Federal			
BOEM	Lead Federal Agency	Construction and operations plan approval	Originally filed on September 1, 2020; updates submitted on June 7, 2021, October 29, 2021, April 8, 2022, and August 19, 2022
U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service	Cooperating Agency	Letter of Authorization	Application submitted May 2022
U.S. Department of Defense, 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 in August 2022
		Rivers and Harbors Act of 1899 Section 14 Individual Permit	Filed in August 2022
U.S. Department of Homeland Security, U.S. Coast Guard	Cooperating Agency	Private Aids to Navigation authorization	TBF
U.S. Department of the Interior, Bureau of Safety and Environmental Enforcement	Cooperating Agency	None	Not applicable
U.S. Environmental Protection Agency Cooperating Agency		Outer Continental Shelf Air Permit	Filed in August 2022
		National Pollutant Discharge Elimination System (NPDES) Individual Permit	Filed on December 1, 2021
National Park Service	Cooperating Agency	Right-of-way permit Special use permit	Originally filed in September 2021 and deemed complete in June 2022
Federal Aviation Administration	Participating Agency	Notice of Proposed Construction or Alteration (for onshore activity as applicable)	TBF

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval	Status
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)	Received on November 17, 2022
		Environmental Management and Construction Plan, pursuant to Article VII (16 NYCRR 85–88)	Phase 1 filed in November 2022; Post-Phase 1
		Section 68 Petition (permission to exercise the grants of municipal rights), pursuant to Article VII (Section 68(1))	Filed in November 2022
		Water Quality Certification, pursuant to Section 401 of the CWA and Implementing Regulations (6 NYCRR 701, 702, 704, 754, and 800–941)	Filed in November 2022
New York State Department of Environmental Conservation (NYSDEC)	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	TBF
New York State Department of State, Division of Coastal Resources	Cooperating Agency	Coastal Zone Management Act (16 USC 1451 et seq.) 15 CFR Part 930, and 30 CFR 585.611(b), 627(b)) State Article 42 of the Executive Law (19 NYCRR Part 600 and 6 NYCRR Part 617)	Filed September 2021

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval	Status
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 NYCRR Part 131 and 23 CFR Part 645)	Perm 32: Filed October 2022 Perm 75: Filed September 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 USC 1451 et seq., 15 CFR 930; 30 CFR 585.611(b), 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
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 §§ 585.611(b), 627(b)) and Rhode Island Coastal Resources Management Program (RI CRMP) (Section 400)	Filed September 2021

Agency/Regulatory Authority	Cooperating Agency Status	Permit/Approval	Status
Local*			
Town of Brookhaven	None	Road use agreement pursuant to PSL § 68	TBF
Suffolk County	None	Parkland Alienation and license agreements with Department of Public Works and Parks and Recreation	Received in 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 in April 2022

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

¹ An 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.

1.3 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 the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. BOEM also provided potential cooperating agencies participating in the FAST-41 process with a written summary of expectations for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope, detail of cooperating agencies’ contributions, and availability of pre-decisional information.

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

1.3.1 National Marine Fisheries Service

The National Marine Fisheries Service (NMFS) 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. 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 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’ 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 after reviewing it independently and determining 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.

1.3.2 Bureau of Safety and Environmental Enforcement

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

1.3.3 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.

1.3.4 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 (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.

1.3.5 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 Clean Water Act. 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. In addition, it is anticipated that a Section 408 permission would be required pursuant to Section 14 of the RHA of 1899 (33 U.S.C. 408) for any proposed alterations that have the potential to alter, occupy or use any USACE federally authorized Civil Works projects. Issuance of Section 10, Section 404, and Section 408 permits requires NEPA compliance, which will be met via adoption of BOEM's EIS and issuance of the ROD.

1.3.6 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.

1.3.7 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 and Onshore Transmission Cable 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 C.F.R. Part 14) and special use permit for construction (36 C.F.R. § 5.7) for the Cable. 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 to protected areas and properties. The NPS is also a consulting party under Section 106 of the National Historic Preservation Act (NHPA).

1.3.8 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).

1.4 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 2022) provide a discussion of other federal and state consultation processes being led by SRW.

1.4.1 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 2022). The states' concurrence is required before BOEM could approve, or approve with conditions, the COP per 30 CFR 585.628(f) and 15 CFR 930.130(1).

1.4.2 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 will consult on the proposed activities considered in this EIS with both NMFS and USFWS for listed species under their respective jurisdictions. Draft biological assessments were submitted to NMFS and USFWS on August 8, 2022. BOEM is consulting on the proposed activities considered in this Draft EIS with both USFWS and NMFS and has prepared biological assessments for listed species under their respective jurisdictions.

1.4.3 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 National Historic Preservation Act (NHPA) and NEPA, executive and secretarial orders, and U.S. Department of the Interior policy (BOEM 2018). BOEM implements Tribal consultation policies through formal government-to-government consultation, informal dialogue, collaboration, and engagement.

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 to aid in cultural review, who do not answer to BOEM. 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 request 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 level of scrutiny applied to NHLs under Section 110(f) and other historic properties subject to Section 106 consultation. Finally, a concern regarding timing of consultation was raised, and the tribes expressed that consultation regarding project siting should be undertaken prior to the selection of component locations.

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 potential to inform the design process (see COP Appendix A; Sunrise Wind 2022).

1.4.4 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 the prohibitions for the incidental taking of marine mammals. The incidental take of a marine mammal falls under three categories: mortality, serious injury, or harassment (i.e., injury and/or disruption of behavioral patterns). Sections 101(a)(5)(A) and (D) of the act provide the exceptions to the prohibition on take, which give NMFS the authority to authorize the incidental but not intentional take of small numbers of marine mammals, provided certain determinations are made and statutory and regulatory procedures are met. Entities seeking to obtain authorization for the incidental take of marine mammals under NMFS jurisdiction must submit such a request (in the form of an application). Incidental take authorizations (ITA) 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).

1.4.5 National Historic Preservation Act

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

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 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 area of potential effects (APE) for the Project, to identify historic properties within the APE, and to assess effects of the undertaking on identified historic properties. BOEM will hold an initial consultation meeting with consulting parties in July 2022, to discuss the APE and the identification of historic properties within the APE; additional consultation meetings will follow to discuss the potential effects on historic properties, adverse effects, and adverse effect resolution. BOEM plans to develop a 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 TCP is 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.

1.4.6 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 has developed an EFH assessment concurrent with this EIS and transmitted that EFH assessment to NMFS August 8, 2022. NMFS anticipates receipt of the complete EFH assessment from BOEM and initiation of the EFH consultation on February 16, 2023.

1.5 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.

1.5.1 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
- 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)
- September 22, 2021 at 5:30 pm (ET)

1.5.2 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.

1.5.3 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 will use comments received during the public comment period to inform its preparation of the Final EIS, as appropriate.

1.6 References

- Bureau of Ocean Energy Management (BOEM). 2018. BOEM Tribal Consultation Guidance. [accessed 2019 Jun 22]. <https://www.boem.gov/BOEM-Tribal-Consultation-Guidance/>.
- Bureau of Ocean Energy Management (BOEM). 2021a. Takes of marine mammals incidental to specified activities; taking marine mammals incidental to construction of the South Fork Offshore Wind Project. Federal Register 86(23):8490–8536.
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