



DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2021-0038]

Notice of Intent to Prepare an Environmental Impact Statement for Empire Offshore Wind, LLC's Proposed Wind Energy Facilities Offshore New York

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), the Bureau of Ocean Energy Management (BOEM) announces its intent to prepare an environmental impact statement (EIS) for the review of a construction and operations plan (COP) submitted by Empire Offshore Wind, LLC (Empire). The COP proposes the construction and operation of two wind energy facilities offshore New York with two export cable routes and up to three export cable landfalls in New York. This notice of intent (NOI) announces the EIS scoping process for the Empire Wind COP. Additionally, this NOI seeks public comment and input under section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed wind energy facilities, including the COP, can be found on BOEM's website at: <https://www.boem.gov/Empire-Wind/>.

DATES: Comments should be submitted no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

BOEM will hold virtual public scoping meetings for the Empire Wind EIS at the following dates and times (Eastern):

- Wednesday, June 30, 2021, 5:00 p.m.;
- Thursday, July 8, 2021, 5:00 p.m.; and
- Tuesday, July 13, 2021, 1:00 p.m.

Registration for the virtual public meetings may be completed here:

<https://www.boem.gov/Empire-Wind-Scoping-Virtual-Meetings> or by calling (703) 787-1015.

ADDRESSES: Comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled “Empire Wind COP EIS,” and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166, or
- Through the regulations.gov web portal: Navigate to <http://www.regulations.gov> and search for Docket No. BOEM-2021-0038. Click on the “Comment” button. Enter your information and comment, then click “Submit Comment.”

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787-1722 or michelle.morin@boem.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

In Executive Order 14008, President Biden stated that it is the policy of the United States “to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.”

Through a competitive leasing process under 30 CFR 585.211, Empire was awarded Renewable Energy Lease OCS-A 0512 covering an area offshore New York (the Lease Area). Empire has the exclusive right to submit a COP for activities within the Lease Area, and it has submitted a COP to BOEM proposing the construction and installation, operations and

maintenance, and conceptual decommissioning of two separate offshore wind energy facilities in the Lease Area (the Projects).

The goal of Empire is to develop two commercial-scale, offshore wind energy facilities in the Lease Area (Empire Wind 1 and Empire Wind 2). The individual projects within the Lease Area will be electrically isolated and constructed independently from each other. Each project will connect to the grid via separate offshore substations to separate points of interconnection at onshore locations by way of separate export cable routes and onshore substations. The Projects would contribute to New York's goal of 9 gigawatts of offshore wind energy generation by 2035, as outlined in the Climate Leadership and Community Project Act, signed on July 18, 2019. Furthermore, Empire's goal to construct and operate commercial-scale, offshore wind energy facilities in the Lease Area is intended to fulfill the New York State Energy Research and Development Authority (NYSERDA) July 18, 2019, solicitation award for the 816-megawatt (MW) Empire Wind 1 Project and the January 13, 2021, solicitation award for the 1,260-MW Empire Wind 2 Project.

Based on the goals of the applicant and BOEM's authority, the purpose of BOEM's action is to respond to Empire's COP proposal and determine whether to approve, approve with modifications, or disapprove Empire's COP to construct and install, operate and maintain, and decommission two commercial-scale, offshore wind energy facilities within the Lease Area (the Proposed Action). BOEM's action is needed to further the United States policy to make Outer Continental Shelf energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)), including consideration of natural resources, safety of navigation, and existing ocean uses.

In addition, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) anticipates receipt of one or more requests for authorization to take marine mammals incidental to activities related to the Project pursuant to the Marine Mammal Protection Act (MMPA). NMFS's issuance of an MMPA incidental take authorization

is a major Federal action and, in relation to BOEM's action, is considered a connected action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of the proponent's request for authorization to take marine mammals incidental to specified activities associated with the Project (e.g., pile driving)—is to evaluate the applicant's request pursuant to specific requirements of the MMPA and its implementing regulations administered by NMFS, considering impacts of the applicant's activities on relevant resources, and if appropriate, issue the permit or authorization. NMFS needs to render a decision regarding the request for authorization due to NMFS' responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(A and D)) and its implementing regulations. If NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt this EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers (USACE) Philadelphia District anticipates a permit action to be undertaken through authority delegated to the District Engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The USACE considers issuance of a permit under these two delegated authorities a major Federal action connected to BOEM's proposed action (40 CFR 1501.9(e)(1)). The purpose and need for the project as provided by the applicant in the COP and reviewed by USACE for NEPA purposes: The purpose of the Project is to generate renewable electricity from an offshore wind farm located in the Lease Area. The Project addresses the need identified by New York for renewable energy and will help the State of New York Public Service Commission achieve its renewable energy goals.

The basic project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of a commercial-scale offshore wind energy project for renewable energy generation and distribution

to the New York energy grid. USACE intends to adopt BOEM's EIS to support its decision on any permits requested under section 10 of the RHA or section 404 of the CWA.

Preliminary Proposed Action and Alternatives

The Proposed Action is the construction and operation of two wind energy facilities, as described in the COP submitted by Empire on the area covered by Lease OCS-A 0512. In its COP, Empire is proposing to develop the Lease Area as two individual projects, known as Empire Wind 1 and Empire Wind 2. Empire Wind 1 and Empire Wind 2 would be electrically isolated and independent from each other and would connect to the New York electrical grid via offshore substations to separate onshore locations by way of separate export cable routes and onshore substations.

Together, the Projects would involve the construction and operation of up to 174 wind turbine generators, two offshore substations, inter-array cables, up to three submarine export cable routes, up to three export cable landfalls that connect to onshore export cable systems, and two onshore substations providing connection to the existing electrical grid in New York. The wind turbine generator foundations may be monopiles, gravity base structures with associated support and access structures, or some combination of the two. The wind turbine generators, offshore substations, foundations, and inter-array cables would be located within the Lease Area on the Outer Continental Shelf, approximately 14 statute miles (12 nautical miles) south of Long Island, New York, and 19.5 statute miles (16.9 nautical miles) east of Long Branch, New Jersey. The offshore export cables would be buried below the seabed. The onshore export cables would connect to two onshore substations in Brooklyn, New York, and Oceanside, New York.

In addition to the Proposed Action and the no action alternative (i.e., disapproval of the COP), potential alternatives that the draft EIS could analyze include approving the COP with some no-surface occupancy areas within the Lease Area, navigation corridors or buffers within the Lease Area, time of year restrictions for construction, and other possible reasonable

alternatives. Reasonable alternatives identified during the scoping period will be evaluated in the draft EIS.

Once BOEM completes the EIS and associated consultations, BOEM will decide whether to approve, approve with modification, or disapprove Empire's COP. If BOEM approves the COP and the Projects are constructed, the lessee must submit a plan to decommission the facilities before the end of the lease term.

Summary of Potential Impacts

The draft EIS will identify and describe the potential effects of the Proposed Action on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action. This includes such potential effects that occur at the same time and place as the Proposed Action or alternatives and such potential effects that are later in time or occur in a different place. Potential impacts include, but are not limited to, impacts (both beneficial and adverse) to air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. The effects of these potential impacts will be analyzed in the draft and final EIS.

Based on a preliminary evaluation of these resources, BOEM expects potential impacts to sea turtles and marine mammals from underwater noise caused by construction and from collisions with Projects-related vessel traffic. Structures that Empire would install could permanently change benthic habitat and other fish habitat. Commercial fisheries and for-hire recreational fishing may be impacted. Project structures above the water may affect the visual character that defines historic properties and recreation and tourism areas. Project structures would pose an allision and height hazard to vessels passing close by, and vessels would in turn

pose a hazard to the structures. Additionally, the Projects may adversely impact military use, air traffic, land-based radar services, cables and pipelines, scientific surveys, and any future mineral extraction. Beneficial impacts are also expected by facilitating achievement of State renewable energy goals, increased job opportunities, improving air quality, and reduced carbon emissions. The EIS will analyze measures that would avoid, minimize, or otherwise mitigate potential environmental effects.

Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Projects. In addition to those previously discussed (i.e., NEPA, NHPA, MMPA, RHA, and CWA), other applicable Federal laws include the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and Coastal Zone Management Act. BOEM will also conduct government-to-government consultations with federally recognized Tribes (Tribes). For a full listing of regulatory requirements applicable to the Projects, please see the COP, volume I available at <https://www.boem.gov/Empire-Wind/>.

BOEM has chosen to utilize the NEPA substitution process to fulfill its obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, the regulations implementing NHPA allow the use of NEPA review to substitute for various aspects of NHPA's section 106 (54 U.S.C. 306108) review to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project may have on the human environment. As provided in 36 CFR 800.8(c), the NEPA process and documentation required for preparation of an EIS and record of decision (ROD) can be used to fulfill a lead Federal agency's NHPA section 106 review obligations in lieu of the procedures set forth in 36 CFR 800.3 through 800.6. During preparation of the EIS, BOEM will ensure that the

NEPA substitution process will meet its NHPA obligations in a manner that fully implements this alternative process.

Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM expects to issue the NOA in August 2022. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM expects to make the final EIS available to the public in April 2023. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

Scoping Process: This NOI begins the public scoping process for identifying issues and potential alternatives for consideration in the Empire Wind EIS. The scoping process is intended to provide all those interested, including Federal agencies, Tribes, State and local governments, industry, non-governmental organizations, and the general public, with an opportunity to provide information they consider appropriate for BOEM to consider. BOEM is very interested in information that will help it determine 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.

In the interests of efficiency, completeness, and facilitating public involvement, BOEM will use the NEPA process to fulfill NHPA's public involvement requirements under 36 CFR 800.2(d). BOEM will consider all written requests from individuals or organizations to participate as consulting parties under NHPA and, as discussed below, will determine who among those parties will be a consulting party in accordance with NHPA regulations.

BOEM will hold virtual public scoping meetings for the Empire Wind EIS at the following dates and times (eastern):

- Wednesday, June 30, 2021, 5:00 p.m.;
- Thursday, July 8, 2021, 5:00 p.m.; and

- Tuesday, July 13, 2021, 1:00 p.m.

Registration for the virtual public meetings may be completed here:

<https://www.boem.gov/Empire-Wind-Scoping-Virtual-Meetings> or by calling (703) 787-1015.

NEPA Cooperating Agencies: BOEM invites other Federal agencies, Tribes, and State and local governments to consider becoming cooperating agencies in the preparation of this EIS.

The Council on Environmental Quality's (CEQ) NEPA regulations specify that qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should 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.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including time schedules, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency.

Agencies also should consider the factors for determining cooperating agency status in CEQ's memorandum entitled "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act," dated January 30, 2002. This document is available at: http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if a governmental entity is not a cooperating agency, it will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties: Certain individuals and organizations with a demonstrated interest in the Projects may request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5)

based on their legal or economic stake in historic properties affected by the Projects.

Additionally, the same provision allows those with concerns about the Projects' effect on historic properties to request to be consulting parties.

Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them in writing to become consulting parties. To become a consulting party, those invited must respond in writing, preferably by the requested response date.

Interested individuals or organizations that did not receive an invitation may request to be consulting parties by writing to the appropriate staff at ICF, which is supporting BOEM in its administration of this review. ICF's contact for this review is January Tavel at EmpireWindSection106@icf.com or (415) 677-7107. BOEM will determine which interested parties should be consulting parties.

Comments: Federal agencies, Tribes, State and local governments, and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the "Addresses" section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals may request that BOEM withhold their names, addresses, and other personally identifiable information from the public record; however, BOEM cannot guarantee that it will be able to do so. For BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. All submissions from organizations or businesses and from individuals identifying

themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests information on the Proposed Action, including data, comments, views, information, analysis, alternatives, or suggestions from Federal agencies, Tribes, State and local governments, the scientific community, industry, interested parties, and members of the public.

Specifically:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.
2. Potential effects that the Proposed Action could have on physical resources such as air or water (including wetlands), particularly air and water quality.
3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.
4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.
5. As part of its compliance with NHPA section 106 and its implementing regulations (36 CFR part 800), BOEM seeks public comment and input from consulting parties regarding the identification of historic properties within the Proposed Action's area of potential effects and the potential effects to those historic properties from the activities proposed under the COP. BOEM also solicits proposed measures to avoid, minimize, or otherwise

mitigate any adverse effects on historic properties. Consistent with confidentiality requirements, BOEM will present available information regarding known historic properties during the public scoping period. BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities in or near the Proposed Action and possible impacts on the Projects or the Projects' impacts on those activities.
7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully participate and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the Proposed Action as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted by federal agencies, Tribes, State and local governments, and other public entities during the scoping process for consideration by BOEM and the cooperating agencies.

AUTHORITY: This NOI is published in accordance with NEPA, 42 U.S.C. 4321 et seq. and 40 CFR 1501.9.

William Yancey Brown,

Chief Environmental Officer,

Bureau of Ocean Energy Management.