

Introduction

This fact sheet is intended to provide a brief review of federal wildlife and environmental laws that apply to offshore wind energy development in relation to living resources (i.e. construction permits are not covered here), as well as a brief summary of the responsibilities of the offshore wind developers and the US Federal Government lease supervisors under those laws. Note that not every law cited here will apply to every project.

- **National Environmental Policy Act (NEPA) of 1969:** The federal government, the Bureau of Ocean Energy Management (BOEM) in the case of federal waters of the Outer Continental Shelf (OCS) or the Army Corps of Engineers in the case of federally-regulated waters in the Great Lakes, is required to conduct a full analysis of potential impacts on the environment for any major commitment of federal resources. For offshore wind, leasing areas on the OCS is thought to represent such a commitment, and approving construction of projects in the Great Lakes would signify a similar action. Government agencies generally meet this review requirement by conducting an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). An EA is a less detailed analysis for those actions that can be found to have no significant impact. Actions that may result in significant impact, even if the impacts are found later to not be significant, usually go through an 18-24 month EIS. Offshore wind projects on the OCS will generally require the completion of at least one EIS and a Record of Decision regarding the Construction and Operation Plan. Earlier development phases, such as meteorological towers and site characterization surveys, may require an EA. Projects in the Great Lakes may require similar NEPA documents at similar stages.
- **Endangered Species Act of 1973 (50 CFR 17):** Federal agencies must consult with the US Fish and Wildlife Service (USFWS) and NOAA National Marine Fisheries Service (NMFS) when reviewing any activity that may result in a “take” of any species listed as threatened or endangered or when proposed activities may impact their critical habitats. If a take is anticipated, a project proponent must receive an Incidental Take Permit and submit a Habitat Conservation Plan along with the permit application. Marine mammals will be treated separately under the Marine Mammal Protection Act (see below).
- **Marine Mammal Protection Act of 1972 (50 CFR 18):** The “take” of marine mammals in U.S. waters by U.S. citizens would be a violation of the Marine Mammal Protection Act. Offshore wind developers would apply for a Letter of Authorization or Incidental Harassment Authorization and detail the potential species affected, mitigation measures, and monitoring and reporting requirements.



- **Coastal Zone Management Act of 1972:** Federal activities, or federally-permitted activities, affecting resources in a coastal zone must be consistent with a federally-approved state coastal zone management plan. The designated state authority must determine that state and federal regulations are consistent with regard to the proposed activity, such as an offshore wind project or transmission cable.
- **Magnuson-Stevens Fishery Convention and Management Act:** The Act requires the protection of important habitats of federally managed fish species (Essential Fish Habitat or “EFH”). Federal agencies are required to consult with NMFS regarding the potential effects of their actions on EFH, and respond in writing to NMFS’ recommendations. The project proponent generally prepares an EFH assessment and submits it to the agency for the required consultation with NMFS.
- **Migratory Bird Treaty Act of 1918:** The Act implements conventions signed between Canada, the U.S., and Mexico to protect species of migrating birds, which covers all birds except exotic, introduced species. Incidental take permits are not available to project proponents. Impacts to migratory birds are avoided, minimized, and mitigated where practicable.
- **Bald and Golden Eagle Protection Act:** The Bald and Golden Eagle Protection Act protects Bald and Golden Eagles specifically.
- **National Marine Sanctuaries Act (15 CFR 922):** The Secretary of Commerce establishes marine sanctuaries to protect marine resources. Offshore wind projects may not be built in any designated marine sanctuaries, and the potential effects to any nearby marine sanctuaries must be reviewed.
- **Clean Water Act:** Under Section 404, the Clean Water Act requires a permit from the U.S. Army Corps of Engineers for the discharge of dredged or fill materials into U.S. waters. A dredge and fill permit may be required for the construction of offshore wind turbines and for any buried transmission lines, onshore or offshore.
- **Rivers and Harbors Act of 1899:** Section 10 requires that regulated activities conducted below the Ordinary High Water elevation of navigable waters of the US be approved/permitted by the Army Corps of Engineers. Regulated activities include the placement and removal of structures, work involving dredging, disposal of dredged material, filling, excavation, or any other disturbance of soils/sediments or modification of a navigable waterway. Navigable waters of the US are those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark or are presently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. Developers can use the Clean Water Act permitting process described above for compliance as there is a combined Section 404/Section 10 permit application.
- **Clean Air Act:** While the power generated by offshore wind turbines may not be associated with any air emissions, emergency generators at the site or vessels used during construction may require an air permit from the Environmental Protection Agency.
- **Estuary Protection Act:** The Act requires Federal agencies, in planning for the use or development of water and related land resources, to give consideration to estuaries and their natural resources. Federal agencies, including the Army Corps, must include a discussion of the effects to estuaries for any planned projects in reports to Congress.
- **State and local laws:** Due to the complex and varying nature of state and local laws and authorizations there are additional permits, consultations or approvals that may apply to offshore wind projects or related activities. These are likely to be triggered by projects located in state waters or as a result of cables that may be interconnected to shore (passing through state waters) from projects located in federal waters.