

# **Permits and Approvals for Construction of Offshore Wind Facilities**

## **March 2021**

The following permits and approvals may be required for the construction of an offshore wind facility located waterward of the mean high water line, depending on the specifics of the project. This document lists the permits and approvals that are most likely to be required from the New Jersey Department of Environmental Protection and similar permits and approvals required from federal agencies. An offshore wind facility may be proposed in both state and federal waters; for example the turbines may be proposed in federal waters with electrical cables bringing electricity to shore through state waters. In addition, permits and approvals may be required for onshore facilities. Accordingly, each section below may apply to a specific project or portion of a project.

### **Construction of wind turbines and associated cables and transmission lines within State Waters (Within 3 geographic or approximately 3.5 statute miles of shore)**

#### **State**

- Waterfront Development permit (N.J.S.A. 12:5-3)
- Tidelands Conveyance (N.J.S.A. 12:3-1)
- Consistency determination pursuant to the Federal Coastal Zone Management Act (16 USC § 1465)
- Water Quality Certificate under Section 401 of the Clean Water Act for any discharge
- Environmental review provisions of NJ Executive Order No. 215 of 1989 (EO #215) may be triggered if a department, agency, or authority of the State is granting at least 20% financial assistance and an Environmental Impact Statement under NEPA is not required

#### **Federal**

- Section 10 of the Rivers and Harbors Act from the U.S. Army Corps of Engineers
- Section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers for any discharge of dredged or fill material

### **Construction of wind turbines and associated cables and transmission lines within Federal Waters (More than 3 geographic or approximately 3.5 statute miles from shore)**

#### **State**

- Consistency determination pursuant to the Federal Coastal Zone Management Act (16 USC § 1465)
- Environmental review provisions of NJ Executive Order No. 215 of 1989 (EO #215) may be triggered if a department, agency, or authority of the State is granting at least 20% financial assistance and an Environmental Impact Statement under NEPA is not required

### **Federal**

- A lease, license, or right-of-way on the Outer Continental Shelf (OCS) from the Bureau of Ocean Energy Management pursuant to the Energy Policy Act of 2005 and the Renewable Energy Program Regulations (30 CRF 585)
- Section 10 permit under the Rivers and Harbors Act from the U.S. Army Corps of Engineers
- Section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers for any discharge of dredged or fill material
- The Bureau of Ocean Energy Management is the lead Federal agency for turbine farms on the Outer Continental Shelf

### **Construction of Associated Onshore Facilities such as Electrical Substations, Cables and Transmission Lines Located Landward of the Mean High Water Line**

### **State**

- CAFRA permit (N.J.S.A. 13:19-1 et seq.)
- Upland Waterfront Development permit (N.J.S.A. 12:5-3)
- Freshwater Wetlands permit (N.J.S.A. 13:9B-1 et seq.)
- Coastal Wetlands permit (N.J.S.A. 13:9A-1 et seq.)
- Flood Hazard Area Control Act permit (N.J.S.A. 58:16A-1 et seq.)
- Water Quality Certificate under Section 401 of the Clean Water Act for any discharge of dredged or fill material
- Tidelands Conveyance (N.J.S.A. 12:3-1) may be required where any part of the project, including utility lines, occupies or bisects an area that is currently or was previously flowed by the tide.
- Environmental review provisions of NJ Executive Order No. 215 of 1989 (EO #215) may be triggered if a department, agency, or authority of the State is granting at least 20% financial assistance and an Environmental Impact Statement under NEPA is not required

### **Federal**

- Section 10 of the Rivers and Harbors Act from the U. S. Army Corps of Engineers
- Section 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers for any discharge of dredged or fill material

### **Federal Review**

Each project proposed is anticipated to be subject to federal environmental reviews under the National Environmental Policy Act (NEPA). This applies to projects within both Federal and State waters.

The lead federal agency listed above will be required to consult with various state and federal agencies, including the National Marine Fisheries Service (NMFS) and the U.S. Fish and

Wildlife Service (USFWS) regarding the application under its review. For example, consultation with the USFWS is required pursuant to Section 7 of the Endangered Species Act regarding threatened and endangered species and their habitats and the Migratory Bird Treaty Act regarding migratory birds. Consultation with NMFS is required under the Marine Mammal Protection Act (MMPA) regarding marine mammals; Section 7 of the Endangered Species Act regarding threatened and endangered species and their habitats; and the Magnuson-Stevens Fishery Conservation and Management Act regarding essential fish habitat. Under the MMPA, permit applicants must apply to NMFS Office of Protected Resources directly for Incidental Take Authorizations, not the lead federal action agency. Consultation with the State Historic Preservation Office is required under Section 106 of the National Historic Preservation Act. To facilitate this, early coordination with NMFS and USFWS is encouraged to determine the extent of issues to be addressed

**Note:**

This is not an exhaustive list of required permits and approvals. For a comprehensive guide to all potential DEP permits, consult the Permit Readiness Checklist at <http://www.nj.gov/dep/pcer/introchecklist.htm>. Other state approvals such as stormwater management, potable and sewer connections, air permits, etc. may be required. In addition, other federal approvals may be required from agencies such as the Federal Aviation Administration and the U.S. Environmental Protection Agency.

With passage of the Electric Discount and Energy Competition Act of 1999, the Board of Public Utilities no longer regulates electric power generation companies. The electric distribution company to whose network the off-shore electric power generation facility will be connected would be required to file a petition with the Board for approval of such connection. The electric distribution company should file the petition having all agreements in place and with most permit applications in process. The petition lead time is recommended to be at least 6 months prior to the anticipated date of service operation, with more lead time better.