

New York State Offshore Wind Master Plan

Table of Permits and Approvals



NYSERDA

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NYSERDA provides resources, expertise, and objective information so New Yorkers can make confident, informed energy decisions.

Mission Statement:

Advance innovative energy solutions in ways that improve New York's economy and environment.

Vision Statement:

Serve as a catalyst – advancing energy innovation, technology, and investment; transforming New York's economy; and empowering people to choose clean and efficient energy as part of their everyday lives.

Table of Permits and Approvals

Table A-1. Key federal statutes and agencies involved in offshore wind permitting. Sources: BRI and “A National Offshore Wind Strategy: Creating an Offshore Wind Energy Industry in the United States, U.S. DOE and U.S DOI, February 2011.”

Statute	Key Agencies	Description
National Environmental Policy Act of 1969	All federal agencies	Requires federal agencies to consider the potential environmental impacts of proposed federal actions. For any major federal action that is likely to result in significant environmental impacts, agencies must prepare an EIS.
Endangered Species Act of 1973	FWS; NOAA NMFS	Requires federal agencies to consult with the FWS and NOAA NMFS to ensure that proposed federal actions are not likely to jeopardize the continued existence of any species listed at the federal level as endangered or threatened, or result in the destruction or adverse modification of critical habitat.
Marine Mammal Protection Act of 1972	FWS; NOAA NMFS	Prohibits, with certain exceptions, the take of marine mammals in U.S. waters by U.S. citizens on the high seas, and importation of marine mammals and marine mammal products into the U.S.
Magnuson-Stevens Fishery Conservation and Management Act	NOAA NMFS	Requires federal agencies to consult with the NMFS on proposed federal actions that may adversely affect EFH necessary for spawning, breeding, feeding, or growth to maturity of federally managed fisheries.
Marine Protection, Research, and Sanctuaries Act of 1972	EPA; USACE; NOAA	Prohibits the dumping of certain materials without a permit from the EPA. For ocean dumping of dredged material, the USACE is given permitting authority.
National Marine Sanctuaries Act	NOAA	Prohibits the destruction, loss of, or injury to any sanctuary resource managed under the law or permit.
Coastal Zone Management Act of 1972	NOAA Office of Ocean and Coastal Resource Management (OCRM)	Specifies that coastal states with federally-approved coastal management programs may, depending on the circumstances, have the opportunity to review federal actions to determine if they are consistent with the enforceable policies of a state’s coastal management program.
National Historic Preservation Act of 1966	NPS; Advisory Council on Historic Preservation; State or Tribal Historic Preservation Officer	Requires each federal agency to consult with the Advisory Council on Historic Preservation and NYS or Tribal Historic Preservation Officer before allowing a federally licensed activity to proceed in an area where cultural or historic resources might be located. (Note: Consultation may also be required under the Archaeological Resources Protection Act, Archaeology and Historic Preservation Act, Abandoned Shipwreck Act, and Native American Grave and Repatriation Act.)
Federal Aviation Act of 1958	FAA	Requires that, when construction, alteration, establishment, or expansion of a structure is proposed, adequate public notice be given to the FAA as necessary to promote safety in air commerce and the efficient use and preservation of the navigable airspace.
Federal Power Act	FERC; BOEM	Establishes BOEM as the lead authority to regulate offshore wind in federal waters. (Note that under the Federal Power Act, per an memorandum of understanding between DOI and FERC, FERC has the lead role in regulating offshore kinetic energy, such as wave energy devices.)

Statute	Key Agencies	Description
Ports and Waterways Safety Act	USCG	Authorizes the United States Coast Guard to implement measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment.
Rivers and Harbors Act of 1899	USACE	Delegates to the U.S. Army Corps of Engineers the authority to review and regulate certain structures and work that are located in or that affect navigable waters of the United States, including submarine cable systems.
Outer Continental Lands Act of 1953	DOI	Granted the DOI with the authority to lease submerged lands on the Outer Continental Shelf. The Energy Policy Act of 2005 amended this act to give DOI the authority to lease renewable energy, including offshore wind, on the outer continental shelf.
Clean Water Act	EPA, USCG	Prohibits the discharge of oil or hazardous substances into waters or adjoining shorelines, which may affect natural resources belonging to the United States.
Clean Air Act	EPA, BOEMRE	Prohibits federal agencies from providing financial assistance or issuing approval for activities that do not conform to approved plans for achieving National Ambient Air Quality Standards. Requires the EPA (or authorized state agencies) to issue a permit before the construction of, or major modification to, any major stationary source of air pollution.
The Fish and Wildlife Coordination Act	FWS, NOAA NMFS	The FWCA provides that when a water body is proposed to be controlled or modified by a federal agency or by any "public or private agency" under a federal permit or license, the action agency is required first to consult with FWS and/or NOAA NMFS "with a view to the conservation of fish and wildlife resources in connection with that project." The FWCA authorizes preparation of reports and recommendations by the Secretary of the Interior (and/or Commerce ³) and the head of the NYS agency responsible for the administration of fish and wildlife resources to be submitted to the action agency.

Table A-2. Key statutes and State agencies involved in offshore wind permitting. (Note: state laws do not extend into federal waters for review of offshore wind projects, so the state review is limited to the transmission line for projects in federal waters).¹

Statute	Key Agency	Description
Coastal Zone Management Act (CZMA) (16 U.S.C 1451 et seq.)	New York Department of State (DOS), Division of Coastal Resources	Federal consistency is the CZMA provision that federal actions that affect any use or resource of a state's coastal zone be consistent with the enforceable policies of the state's federally approved coastal management program. In NYS, the enforceable coastal policies are those in the CMP, local waterfront revitalization programs, and the Long Island Sound Coastal Management Program.
16 USC 661-666c (The Fish and Wildlife Coordination Act)	DEC	The FWCA provides that when a water body is proposed to be controlled or modified by a Federal agency or by any "public or private agency" under a federal permit or license, the action agency is required first to consult with wildlife agencies "with a view to the conservation of fish and wildlife resources in connection with that project." The FWCA authorizes preparation of reports and recommendations by the Secretary of the Interior (and/or Commerce) and the head of NYS agency responsible for the administration of fish and wildlife resources, to be submitted to the action agency. (Note: may not apply to all wildlife resources—is generally applied more often to resources in state waters and resources not otherwise protected under other laws, such as the MFCMA. Need to check with NYSDEC on where/when law is applicable and whether it can apply to resources outside state waters).
State Executive Law Article 42, 19 NYCRR Part 600	DOS, Division of Coastal Resources	NYS requires consistency review for state actions, including issuance of permits. State agencies conduct their respective state agency consistency reviews pursuant to the substantive and procedural requirements of 19 NYCRR Part 600. <i>Note: All State regulations and statutes below this point have jurisdiction to three miles out from the shoreline. Unless a wind farm is going to be from 0-3 miles offshore, the remaining listed information would pertain to only the transmission line and other infrastructure located in state waters or on land.</i>
New York State Public Service Law, Article VII	NYS Department of Public Service, Public Service Commission	Siting of major utility transmission facilities in NYS is under the jurisdiction of the Public Service Commission. Major facilities are defined to include electric transmission lines with a design capacity between 100kV and 125 kV and extending ten or more miles in length or 125kV and over and extending a distance of one mile or more. The wind farm interconnection for 350 to 700 MW capacity will require a cable exceeding 125kV and thus will be subject to Article VII jurisdiction. The Article VII process provides a single forum for approval of the project, and the certificate issued by the Public Service Commission. However, the applicant must demonstrate compliance with the substantive requirements of all applicable State and local approvals. The transmission line will also require a federal consistency concurrence from DOS.

¹ Original Source: <http://www.nyserda.ny.gov/-/media/Files/EIBD/Research/NYS-Offshore-Wind-Regulations.pdf>.

Statute	Key Agency	Description
New York Public Lands Law, Article 2, Section 3	New York Office of General Services	The title to the bed of numerous bodies of water is held in trust for the people of NYS. The Office of General Services is the trustee of State lands and is responsible for the granting of easements, rights-of-way or other permissive instruments to grant permission for the use of the underwater lands. Structures, including fill, located in, on, or above State-owned lands underwater require a license, grant, or easement from the Office of General Services. Pipelines, cables, docks, wharves, moorings and permanent structures, including transmission cables, require an easement. The Office of General Services typically issues easements for a term of 25 years.
Environmental Conservation Act (ECL) Article 11 Section 535	DEC	The potential impacts of the proposed project's construction, operation and decommissioning with respect to endangered, threatened and species of concern listed in NYS are examined as part of this consultation.
ECL Article 13, Title 1	DEC	Marine fisheries conservation and management, including protection and conservation of fish habitats, restoration of degraded habitats, and maintenance of water quality for marine resources.
ECL Article 15, Title 5 (U.S. Clean Water Act Section 401, 16 USC 1451)	DEC	Installation of transmission cables within State waters will require Article 15 permits under the New York Protection of Waters Regulatory Program for the excavation or placement of fill in navigable waters of NYS and its adjacent and contiguous wetlands and disturbance of the bed or banks of a protected stream or other watercourse. Major excavation/fill projects are defined as projects that fill greater than 100 cubic yards, excavation of an area greater than 5,000 square feet, and all other activities that are not considered minor, including an underwater cable and onshore interconnections. Before granting the permit, DEC must ascertain the probable effect on the natural resources of NYS ("including soil, forests, water, fish and aquatic resources therein"), and may deny the permit application or request conditions to safeguard these natural resources. State water quality certification is required for projects applying for federal permits that may affect state waters, such as the U.S. Army Corps of Engineers Section 10/404 permit. NYS administers its water quality certification under the Protection of Waters Regulatory Program. Water quality certification has been conditionally granted for U.S. Army Corps of Engineers nationwide permits. An individual water quality certification would be required if the project requires an individual U.S. Army Corps of Engineers permit.
ECL Article 15, Title 27	DEC	Restricts certain activities, including certain types of development, in designated "wild, scenic and recreational river" areas. Onshore interconnections will likely need to be sited to avoid such areas.
ECL Article 17 Title 8 (U.S. Clean Water Act Section 402)	DEC	An individual permit maybe required for construction and installation of onshore transmission cables and expansion of any substation. Construction activities > 1 acre of land or, if < 1 acre but within areas identified in the permit are eligible for general permits. No State Pollutant Discharge Elimination Discharge System permit is required for a facility whose total discharges to the ground water are less than 1,000 gallons per day of sewage-wastewater containing no industrial or other non-sewage wastes.

Statute	Key Agency	Description
ECL Article 24	DEC	Freshwater wetlands permits will apply to onshore transmission line components in the vicinity of freshwater wetland resources.
Tidal Wetlands Act ECL Article 25	DEC	NYSDEC requires a permit for almost any activity that will alter tidal wetlands or the adjacent areas. Tidal wetlands consist of all the salt marshes, nonvegetated as well as vegetated flats and shorelines subject to tides. The adjacent areas extend up to 300 feet inland from the wetland boundary.
ECL Article 70	SDEC	The construction or placement of a structure, or any action or use of land that materially alters the condition of land, including grading, excavating, dumping, mining, dredging, filling or any disturbance of soil is a regulated activity requiring a coastal erosion management permit.
16 USC 470 (National Historic Preservation Act)	NYS Office of Parks, Recreation, and Historic Preservation, State Historic Preservation Office	<p>The State Historic Preservation Office will require an architectural study to identify Office of Parks, Recreation, and Historic Preservation sites, state register sites, and other sensitive historical, cultural, and traditional sites within an area of potential effect from the project. NYS Historic Preservation Office Archaeologist will also require archaeological studies to identify potentially significant sites.</p> <p>NYS Historic Preservation Office will comment on the project through the NEPA review. State Historic Preservation Office recommendations will be implemented as necessary by the NEPA lead agency. See http://nysparks.state.ny.us/shpo/. (Note: It is unclear whether this review would extend into federal waters if archaeological sites in federal waters pertain to NYS; need to check with Office of Parks, Recreation, and Historic Preservation).</p>
State Historic Preservation Act, Article 14		Requires state agencies to consult with NYS Historic Preservation Office if projects may cause any change, beneficial or adverse, in the quality of archeological or cultural property that is listed on the National or State Registers of Historic Places (or that is determined to be eligible for listing on NYS Register). State agencies must try to avoid or mitigate adverse impacts to such properties.
NYS Education Law, Section 233		A permit must be obtained from the New York State Museum prior to disturbing archeological resources (including most shipwrecks and underwater archeological sites) on public lands.
NYS Highway Law, Article 3	DOT	The DOT reviews all permit applications for conducting various activities within the right of way, including utility installations.
Vehicle and Traffic Law, Article 49	NYS Department of Motor Vehicles	Motor-driven vessels operated on State public waterways must be registered with the Department of Motor Vehicles. The registration requirement will apply to construction and service vessels related to the project.

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