

## 4.1.1 Best Practices for Agency Coordination

### 4.1.1.1 Introduction

This section describes best practices for agency coordination in the use of data and information under existing authorities, as described in Sections 3.1 – 3.3. For the purposes of this section, the term ‘agency coordination’ refers broadly to gathering, sharing, and using information associated with planning, leasing, regulatory, research, or other ocean management activities in the Northeast region, and addresses the interests and participation of federal and state agencies, tribes, and other stakeholders. Coordination should begin early in any process, and may include informal discussion before project or permit application review begins, initial components of review under existing authorities (such as the public scoping process under NEPA), and on-going components of review such as regulatory consultations under Magnuson-Stevens, ESA, MMPA, NHPA, and other authorities. The purpose of agency coordination is to help develop a common understanding of a proposed project, its potential impacts and alternatives, and the information that will be needed to support review and decision-making.

Best practices are flexible but consistent guidance for the acquisition and use of data and information in the agency coordination and decision-making process. Best practices enhance the value of coordination by supporting:

- The use of relevant information from the Northeast ocean data portal, the Plan, stakeholders, and other sources;
- Clear and efficient direction for the applicant;
- A thorough initial understanding of the proposed project;
- Informed stakeholder engagement in the planning, review, and/or regulatory process; and
- Coordinated federal, state, and tribal review as appropriate.

Best practices are generally applicable and should be considered for all kinds of projects and authorities, consistent with existing authorities and agency practices. For the purposes of the Plan they are intended specifically to inform coordination associated with larger projects that require, for example, a detailed Environmental Assessment (EA) or an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Existing authorities to which best practices may apply include but may not be limited to the following:

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|--------------------------------------|---|
| - NEPA                               | - Migratory Bird Treaty Act                       |
| - Rivers and Harbors Act, Section 10 | - National Historic Preservation Act, Section 106 |
| - Clean Water Act                    | - Magnuson-Stevens Act                            |
| - Outer Continental Shelf Lands Act  | - Ports and Waterways Safety Act                  |
| - Endangered Species Act             | - Marine Protection, Research and Sanctuaries Act |
| - Marine Mammal Protection Act       | - Coastal Zone Management Act                     |

- Federal Power Act
- Deepwater Ports Act
- Natural Gas Act
- Energy Policy Act

Best practices enhance the utility of the data portal and components of the Plan related to the Plan’s Effective Decision-making goal, and support each related objective, including enhanced interagency coordination (Objective #1) and a commitment to decision-making based on enhanced public input (#2), the incorporation of maps and other information (#3), improved respect for the customs and traditions of indigenous peoples (#4), and coordination with local communities (#5):<sup>1</sup>

- Inter-agency coordination – Use of common data and information across agencies enhances the effectiveness of collaborative analysis and decision-making and provides opportunities to coordinate state, federal, and tribal review processes.
- Public input – Best practices support an approach that incorporate the results of stakeholder engagement in project materials and more completely characterize potential effects; the data portal provides ready access to information that can inform public review and comment; state and federal coordination of project review, as applicable, broadens opportunities for public review and comment.
- Maps and information – Agency use of the data portal and information in this Plan such as the Baseline Assessment, guidance on use of data products, and best practices for engaging stakeholders all enhance information available to support decision-making.
- Indigenous peoples – Government-to-government tribal consultation best practices described in Section 4.1.3 support recognition of, and enhance opportunities to address, tribal interests; and
- Local communities – Regional-scale data and information in the data portal and this Plan, including the practices that address stakeholder engagement, enhance the ability of communities to more effectively inform and engage in the decision-making process.

#### 4.1.1.2 Agency coordination

Agency coordination is required or recommended in numerous forms under existing authorities and is an important element of existing agency practices. Sections 3.1 – 3.3 describe baseline components of agency coordination, including data products, a range of relevant authorities, responsible agencies, and how those agencies will use data in existing regulatory programs and practices. It also describes the overall regulatory context in which the actions of individual agencies are applied collectively to the environmental and regulatory review of specific projects. The planning process has focused in particular on NEPA review, OCSLA and EAct planning and leasing processes for wind energy development and marine mineral (sand and gravel) extraction, and USACE permitting (and associated regulatory consultations under Magnuson-

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<sup>1</sup> See *Framework for Ocean Planning in the Northeast United States*, Northeast Regional Planning Body, page 18 *et. seq.* for a complete discussion of the goal and its five associated objectives.

Stevens, ESA, MMPA, NHPA, and others as appropriate) as key authorities that can benefit from use of the data portal and enhanced agency coordination under the Plan.

The nature and process of agency coordination will vary depending on the nature of the proposed activity, applicable authorities, available agency resources, the scope of information the agencies or proponent needs to address, and established agency practices. Coordination is typically initiated by the lead agency, such as BOEM for wind energy and sand and gravel leasing, USCG for an offshore liquefied natural gas terminal, or USACE for a beach nourishment project. For NEPA and regulatory actions, agency coordination typically occurs through pre-application consultation initiated by the federal agency with primary authority (the lead federal agency), at the request of a project proponent, or when an agency recognizes that the proposed activity may have potentially significant impacts to marine resources or human uses. For example, consistent with its mandate to provide the opportunity for pre-application review<sup>2</sup>, the USACE in the Northeast encourages pre-application consultation to support a more informed, efficient permitting process for projects that require Clean Water Act and/or Rivers and Harbors Act authorization.<sup>3</sup>

Among other things, agency coordination clarifies applicable authorities and consequent required information, initially identifies potential adverse impacts to resources and existing human activities, identifies what data is available and what is missing and needed, identifies threatened and endangered species that might be affected, identifies historic and cultural resources that might be affected, and identifies potentially affected stakeholders to be consulted as both a source of information and as parties with existing interests in the use of ocean space. Overall, this early coordination provides an opportunity to inform the proposed project prior to the submission of permit applications in response to a better understanding of existing conditions and regulatory and stakeholder concerns.

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<sup>2</sup> 33 CFR §325.1 (b) Pre-application consultation for major applications. *“...The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential applicants to contact the district engineer or the regulatory staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This process should be brief but thorough so that the potential applicant may begin to assess the viability of some of the more obvious potential alternatives in the application. \*\*\*”*

<sup>3</sup> The USACE New England District *Guide for Permit Applicants* describes a pre-application meeting as “one or more meetings between members of the Corps staff and an applicant and/or agent regarding a permit application. It also may involve representatives of federal and state resource agencies. The consultation may involve jurisdiction, discussion of practicable alternatives, environmental documents, National Environmental Policy Act procedures, mitigation and potential scope of the data for an environmental impact statement, if necessary. Such meetings often benefit the applicant by providing useful information which could prevent delays during permit evaluation. \*\*\*”



- To help provide awareness and consistency of information across agencies at multiple levels of government, lead federal and state agencies should seek to hold agency coordination meetings that include all agencies with jurisdiction or subject-matter interests that wish to attend.
- The lead agency should ensure that all agencies and federally recognized tribes with potential interests in review under NEPA and other relevant authorities receive notice of, and an opportunity to participate in, agency coordination.
- Over the course of early coordination a lead agency or project proponent should:
  - Develop project materials that are informed by data and information from the data portal, this Plan, stakeholders and other sources;
  - Provide sufficient information to allow agencies and the proponent to initially identify potential impacts of the proposed action and alternatives; identify data gaps; and
  - Understand any issues and/or requirements for additional information that agencies and/or stakeholders are likely to address in the formal environmental and regulatory review process.
- Over the course of agency coordination, participating agencies and tribes should:
  - Provide and discuss measures to avoid and minimize adverse impacts to resources and uses;
  - Identify and provide clear direction about the type, level, and potential sources of additional information that they require to formally review the project; and
  - Articulate any other issues they are likely to address in review under NEPA and other relevant authorities. This includes regulatory consultations under Magnuson-Stevens, ESA, MMPA, NHPA, and other authorities.

Data and information

Data and information in the data portal and the Plan will be used in pre-application review to broadly support or supplement an initial characterization of conditions relevant to a specific project. As described in Sections 3.2 and 3.3, spatial data and associated textual and graphical information address the following interests:

**Natural and Cultural Resources**

- Marine mammals and sea turtles
- Birds
- Fish
- Habitat
- Restoration
- Historic and cultural resources

**Human Activities**

- Marine transportation system
- National Security
- Commercial fishing
- Recreational fishing
- Recreation
- Energy and infrastructure

- Aquaculture
- Sand and gravel extraction/use

The Plan provides additional associated textual and graphical information about these features in Sections 3.2 and 3.3, and in technical reports such as the baseline assessment, which describes the regional environmental, economic, social, and cultural context to which these features contribute.

Note that a key purpose of agency coordination is to identify, based on an initial assessment supported by data and information in the data portal and the Plan, what additional project- and site-specific information will be required to support review under NEPA and other relevant authorities. This includes regulatory consultations under Magnuson-Stevens, ESA, MMPA, NHPA, and other authorities. The relevance of these data and information to the detailed analyses required to address specific permitting standards will depend on the circumstances of specific projects. However, they are neither intended nor expected to be an exclusive or sole source of information. Rather, regulatory agencies will make their decisions based on the details of individual proposed activities that will most likely require finer scale, site specific information to support regulatory review, analysis, and decision-making under existing authorities.

- To the extent applicable, data from the data portal and information from the Plan should be used by agencies and project proponents as baseline information that supports a systematic, interdisciplinary approach to NEPA and regulatory review that integrates use of data and information related to natural and cultural resources and human activities. Specifically, project proponents and agencies should use the data portal and associated textual and graphical information contained in the Plan as a primary initial source of baseline information to inform agency coordination and project review under authorities described in Chapter 3.1.
- Project proponents should coordinate with federal and state agencies for guidance about potential additional data sources that may exist and/or should be incorporated in project planning and/or review materials. Other sources of information include, but may not be limited to:
  - Existing regulatory guidance that addresses data and information and agency review process
  - State ocean plans
  - State and federal data portals and atlases
  - State agencies
  - Federal agencies
  - Tribes
  - Stakeholders

### Coordination with stakeholders

- In the context of the proposed project, agencies and the proponent should discuss how stakeholder interests are addressed by applicable authorities, and agencies with subject-matter jurisdiction should specifically identify management provisions that require characterization of stakeholder interests. Agencies should discuss with the project proponent, and the lead agency for NEPA review should address in the scoping process, the development of a systematic process by which to identify and engage stakeholders who may be affected by the proposed project in a manner relevant to consideration under existing authorities. Elements of such approach should include, but may not be limited to, the following components:
  - Using best professional knowledge, agencies should informally discuss with the project proponent known stakeholders who may be affected. (Such information does not relieve the project applicant of its exclusive responsibility to identify potentially affected stakeholders to the extent required or anticipated under the core authorities.)
  - Project proponents should identify and seek to engage stakeholders whose activities may be affected and incorporate data and information provided by stakeholders in project materials as appropriate. Interests that should be considered include, but may not be limited to, commercial, charter, and recreational fishing; commercial and recreational navigation; general recreation; marine infrastructure (cables and pipelines; other structures); military uses; cultural and historic interests; energy facilities; sand and gravel extraction; and any other interests specified under existing authorities.
  - To address the potential cumulative effects of a project on stakeholders when those effects may have a community-level impact, project proponents should identify and seek to engage coastal communities that have a particular relationship with a specific location and incorporate relevant data and information in project materials as appropriate.
  - Project proponents should seek to identify, engage, and incorporate information from stakeholders before filing a permit application or otherwise formally initiating the environmental review and permitting process to ensure that stakeholder information helps inform both the project application and subsequent public, stakeholder, and agency review.

### Coordination with states

As a primary vehicle for coordination, typically applicable to all federal agency actions, NEPA's implementing regulations call for, and provide numerous mechanisms by which to achieve, active coordination between state and federal agencies throughout the review process.<sup>4</sup>

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<sup>4</sup> Note that each federal agency has developed administrative and /or regulatory guidance that describes how it engages in NEPA review. See *A Citizen's Guide to the NEPA*, Council on Environmental Quality, December 2007. See

- For actions that may require a detailed EA or an EIS under NEPA, federal agencies serving as a lead agency should discuss with a state(s) that has jurisdiction over the proposed project whether a coordinated approach to NEPA and regulatory review should be considered. On a project-specific basis, such discussion will be influenced by a range of existing statutory, regulatory, administrative, and/or practical measures. Opportunities for coordination include, but may not be limited to:
  - Pre-application consultation, to determine, based on project conceptions, what environmental studies could be required, what avoidance, minimization, and mitigation requirements may be considered, what state and federal approvals will be necessary, and how the review requirements of those approvals may align;
  - Scoping, to identify key stakeholders, issues, information needs, potential alternatives, and other consultations that need to occur; and
  - Joint or coordinated planning processes, environmental research and studies, public hearings, and environmental assessments.

Two states in the Northeast region, Maine and Rhode Island, require major projects (as defined by regulation) to participate in pre-application review. In Maine, the Department of Environmental Protection (DEP) conducts pre-application coordination of the Natural Resources Protection Act (NRPA) permitting process for specific categories of activities using pre-application and pre-submission meetings to identify administrative, informational and procedural requirements associated with review of the proposed activity.<sup>5</sup> DEP guidance states that “pre-application meetings: (1) encourage information exchange about the proposed project in the planning stage; and (2) help the applicant understand the permitting process, his or her responsibilities in that process, and the environmental issues posed by the project at hand.”<sup>6</sup>

Rhode Island requires pre-application review of “large-scale” marine projects to address potential fishery-related impacts as part of the Coastal Resource Management Council (CRMC) review process for coastal and marine projects.<sup>7</sup> To directly inform the review and approval process with fisheries expertise, Rhode Island created a Fishermen’s Advisory Board charged with “providing advice on the potential adverse impacts of other uses on commercial and recreational fishermen and fisheries activities, and on issues including, but not limited to, the evaluation and planning of project locations, arrangements, and alternatives; micro-siting of individual structures; access limitations; and measures to mitigate the potential impacts of such

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also: *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations* (46 F.R. 18026, March 23, 1981).

<sup>5</sup> 06 096 Me. Code R. 2 § 10(A)(1)

<sup>6</sup> See Maine Department of Environmental Protection webpage, <http://www.maine.gov/dep/land/nrpa/fs-nrpre.htm>, accessed 8/28/15.

<sup>7</sup> Rhode Island Ocean Special Area Management Plan, Chapter 11 §1160.1.1; See [http://www.crmc.ri.gov/samp\\_ocean/finalapproved/1100\\_NewPolicies.pdf](http://www.crmc.ri.gov/samp_ocean/finalapproved/1100_NewPolicies.pdf).



projects on the fishery.”<sup>8</sup> Participants in pre-application review include CRMC staff, the project proponent, and the Fishermen’s Advisory Board (FAB).

In addition, all states in the Northeast region have an interest in, and provide opportunities for, voluntary early coordination through state planning, management and regulatory programs. The nature and formality of such consultation varies according to the authorities and interests involved, size and scope of the proposed project, potential impacts, and other factors. Best practices may be applicable to coordination under these existing mechanisms.

- Federal agencies engaged in any planning, management, or regulatory actions should engage in early coordination with the Northeast states as a general practice. This includes but may not be limited to lead federal agencies for a government action and federal agencies serving as a lead or participating and/or cooperating agency in review of a private (non-government) project.
- In cases where federal agencies are not subject to state pre-application requirements, such as those in Maine and Rhode Island, they should seek to address the states’ substantive objectives for pre-application review through voluntary consultation, consistent with existing authorities, agency practice, and project-specific considerations.

#### Coordination with federally recognized tribes

Best practices for coordination with federally recognized tribes are described in the NE RPB document *DRAFT Tribal Consultation Best Practice Guidelines*.

#### 4.1.1.4 Index/resources Under discussion

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<sup>8</sup> Rhode Island Ocean Special Area Management Plan, Chapter 11 §1160.6