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July 26, 2022

***Via Hand Delivery and Electronic Mail ([emma.rodvien@puc.ri.gov](mailto:emma.rodvien@puc.ri.gov))***

Emma Rodvien  
Coordinator  
Energy Facility Siting Board  
RI Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Mayflower Wind Energy LLC– Application to Construct Major Energy Facility  
Docket No. SB-2022-02

Dear Ms. Rodvien:

Enclosed herewith please find an original and nine (9) copies of Mayflower Wind Energy LLC's Objection to the Town of Middletown's Motion to Intervene for filing in the above-entitled matter.

Please feel free to contact me if you have any questions.

Respectfully,



Christian F. Capizzo

CFC:nah  
Enclosure

cc: Service List

**STATE OF RHODE ISLAND  
ENERGY FACILITY SITING BOARD**

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IN RE: MAYFLOWER WIND ENERGY )  
LLC’S APPLICATION TO CONSTRUCT )  
MAJOR ENERGY FACILITIES )

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Docket No. SB-2022-02

**MAYFLOWER WIND ENERGY LLC’S OBJECTION TO  
TOWN OF MIDDLETOWN’S MOTION TO INTERVENE**

Mayflower Wind Energy LLC (“Mayflower”), through counsel, hereby objects to the Town of Middletown’s (“Middletown” or the “Town”) Motion to Intervene pursuant Rule 1.17(c) of the Energy Facility Siting Board Rules of Practice and Procedure, 445-RICR-00-00-1.

**INTRODUCTION**

This docket relates to the proposed siting of underground and undersea export cables and related facilities intended to deliver electricity generated by a proposed offshore wind farm in federal waters. As set forth in Mayflower’s application, the offshore export cable corridor (“ECC”) will include two (2) high-voltage, direct current (“HVDC”) offshore export power cables operating at +/-320 kV, plus associated communications cabling. The ECC will run from the designated Bureau of Ocean Energy Management (“BOEM”) Renewable Energy Lease Area (“Lease Area”) in federal waters, 51 nautical miles southeast of Rhode Island, continue through Rhode Island state waters via the Sakonnet River (“Sakonnet”), making intermediate landfall in Portsmouth, Rhode Island. The underground onshore export cables will traverse Portsmouth underground and exit into Mount Hope Bay, exiting Rhode Island state waters and ultimately making landfall at the Point of Interconnection (“POI”), at Brayton Point in Somerset, Massachusetts.

No part of the proposed cables will be located in Middletown. Landfall and the

underground portion of the export cables in Portsmouth are seven miles away from Middletown. The Town seeks to intervene based solely on the fact that about 3 miles of the approximately 20 -mile long portion of the proposed ECC in Rhode Island state waters would pass by Middletown under the central part of the Sakonnet. The Town of Middletown's alleged interest in a cable located in Rhode Island state waters in the middle of the Sakonnet does not satisfy the requirements for intervention.

The Commission's Rules expressly allow intervention by "*... the city or town in which the proposed facility is to be located....*" Rule 1.10(A)(1). Middletown does not meet this express eligibility criterion for intervention. Moreover, as a general rule, only such host municipalities have any direct interest that justifies full participation in the proceeding. This case is not an exception to that general rule, which protects the Board and the applicant against needless complexity of the proceeding. Middletown is not a city or town where the proposed facility "*...is to be located...*" and its alleged public interest boils down to speculative complaints about potential temporary activities in Rhode Island state waters in the Sakonnet. Middletown has not demonstrated any substantial interest that will not be adequately protected by the other parties and agencies involved in this matter including but not limited to the Coastal Resources Management Council ("CRMC"), the Rhode Island Department of Environmental Management ("DEM"), the Rhode Island Department of Health ("DOH") and the Rhode Island Historical Preservation and Heritage Commission ("HPHC"). The motion to intervene should be denied.

### **STANDARD FOR INTERVENTION**

Any person seeking to intervene in a proceeding before the Board must demonstrate:

- “1. A right conferred by statute.
2. An interest which may be directly affected and which is not

adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding.

3. Any other interest of such nature that petitioner's participation may be in the public interest.”

Rule 1.10(B).

### **DISCUSSION**

The Town does not identify any statutory right to intervene because there is none. Instead, the Town appears to argue that it should be allowed to intervene as a “directly affected” party pursuant to Rule 1.10(B)(2). While the rules are intended to “*ensure that the interests of interested parties are met through the adversarial process,*” they do not allow persons or entities to intervene whose interests are only indirectly affected, especially where their interests are adequately represented by other parties or where there is insufficient compelling public interest to warrant intervention as a full party. *See, e.g., In Re: Island Hi Speed Form of Regulation and Review of Rates*, PUC Docket 3495 (Order issued May 9, 2003) (citing *In re Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1245-46 (questioning the wisdom of the Commission’s decision allowing intervention by parties with only indirect interests in the outcome)).

The Town’s Motion falls far short of meeting the requirements for intervention under the applicable standards.

### **The Town Is Not Directly Affected By A Proposed Underwater Export Cable In Rhode Island State Waters Under The Central Part Of The Sakonnet**

Waters below mean low water are *state* waters. *See* R.I. Gen. Laws § 42-1-1 (c) (“*The territorial waters of this state and the submerged lands thereunder enuring to this state extend seaward three (3) geographical miles (5,556 meters) from the shoreline at the mean low water mark[.]*”). The State, not Middletown, has jurisdiction over the Sakonnet. Middletown has enacted rules and regulations governing moorings and recreational use of the waters off Second

and Third Beach in the Town. Middletown Code of Regulations § 93.02 (attached as Exhibit A). However, the chart attached to the Town’s harbor regulation demonstrates that the Town’s regulation does not extend to the central part of the Sakonnet where Mayflower’s proposed ECC is sited. There are no Town “buoys, etc.” or “navigation related infrastructure” [see Motion at 3] at stake in this proceeding.

The Town’s alleged interest in this proceeding is indistinguishable from the interests of the general public. *All* Rhode Islanders who use the Sakonnet for recreational or commercial purposes, and *all* Rhode Islanders who enjoy views of Sakonnet (for example, from Sachuest National Wildlife Refuge) have the same interests in protecting views and water quality that have been advanced by Middletown in support of its motion to intervene. Middletown can demonstrate no special interest worthy of intervenor status.

Mayflower’s design, construction, operation, and decommissioning phases will only minimally occur in state waters, and not at all in Middletown. The offshore Lease Area, its wind turbines, and platforms, despite the Town’s claims that they will be visible from Middletown, will be approximately 62 miles from the Middletown shoreline in federal waters and not in the Sakonnet. The specific surveys and cable laying activities taking place in the Sakonnet are akin to fishing vessels operating or Coast Guard vessels maintaining aids to navigation, in that they will temporarily include a limited number of vessels for a short period of survey and installation. These periods are typically several days to a couple of weeks as the vessels transit up the Sakonnet, in close coordination with the Coast Guard, DEM and local Harbor Masters, without any landfalls or direct construction activities within Middletown.

The Town has not identified any facts demonstrating a specific interest that is different in kind or quality from the general public interests, as required to intervene. See Rule 1.10(c) (motion

to intervene must be supported by facts). The Rhode Island Supreme Court has held no matter how longstanding or qualified an organization in evaluating a problem, the mere interest in the problem is not sufficient to render the organization adversely affected. See *In Re Review of the Proposed Town of New Shoreham Project*, 19 A3d. 1226, 1227 (R.I. 2011).

**The Town's Interests Are Adequately Represented By Existing Parties**

Even if the Town has an interest that might be indirectly affected, that indirect interest is adequately represented by the parties to this proceeding and by the numerous state and federal agencies that have jurisdiction over potential environmental impacts of the project. In addition, the Town will still have the opportunity for public participation through agency proceedings and/or public comment during the Board's public comment hearings. For example, in addition to the review by the Board, the project is the subject of a federal environmental impact statement and robust review under the National Environmental Policy Act by BOEM as well as review by numerous other federal and state agencies. See Mayflower's application Section 17, Section 19 and Section 20 listing applicable federal and state approvals, attached hereto as Exhibit B.

The ECC (including subsea hazards and geohazards) has been studied and surveyed extensively by Mayflower (geophysical, geotechnical, and benthic habitat surveys completed in 2020 and 2021), in accordance with rigorous minimum survey standards determined by BOEM and Rhode Island and Massachusetts state archaeological agencies. As part of Mayflower's permitting processes, this data will be subject to review and approval by a number of federal and state regulatory agencies including BOEM and the CRMC. See Exhibit B. Furthermore, Mayflower's proposed offshore cable siting and cable installation methods consider the identified subsea hazards and will avoid, minimize and/or mitigate any identified hazards, which will also be subject to review by the aforementioned agencies.

In addition, under the Energy Facility Siting Act, relevant agencies such as DEM, DOH, HPHC, and Rhode Island State Planning, will be solicited by the Board for advisory opinions on Mayflower's application. The project is also subject to additional review and approval by CRMC under its Federal Consistency Review pursuant to the state Coastal Zone Management Act and by DEM under its rules and regulations. See Exhibit B. The Town's motion fails to address why its alleged concerns about underwater features in the central part of the Sakonnet and in water quality during export cable installation will not be adequately protected by the same state agencies that will review and advise the Board on the application.

**The Town Will Not Be Bound By This Proceeding.**

The Town's motion also fails to show that it will be "bound" by the outcome of this proceeding, as required by Rule 1.10(B). In fact, the Town will not be bound by the Board's determination in any way. See Rule 1.10(B)(2). Only the host municipality where part of the cable will be located – Portsmouth, *not* Middletown – will be "bound" by the Board's exercise of its statutory authority over energy facility siting within the meaning of Rule 1.10(B). That is why the Rules allow the host community to intervene as of right. See Rule 1.10 (A)(1). Middletown does not meet the test for intervention for this reason as well.

**The Town Does Not Have Any Other Interest That Supports Intervention.**

Rule 1.10(B)(3) provides that intervention may be permitted when the putative intervenor has an "*interest of such nature that petitioner's participation may be in the public interest.*" The Town's Motion fails to identify any such unique public interest consideration, and there is none. Middletown has not identified any specialized knowledge or expertise that might assist the Board in reviewing Mayflower's application. The mere assertion that participation is in the public interest is not sufficient. See *In re: Invenergy Thermal Development EFSB Docket SB-2015-06* (Order issued January 29, 2016) Citing *Public Service Company of New Hampshire v. Patch*,

136 F.3d 197 (1<sup>st</sup> Cir. 1998) (the court stated that a movant’s promise that it will offer a different angle on the legal questions in the lawsuits was a campaign promise, unamplified by any specifics that did not bear the weight of the claim that adequate representation was lacking). Moreover, as noted above, the alleged interests set forth in the Town’s motion are no different than the interest of the public at large and will be thoroughly protected by the responsible federal and state agencies and by the Board.

In fact, allowing the Town to intervene potentially conflicts with the public policy interest in the timely and efficient determination of a siting application for renewable energy infrastructure that is critical to responding to climate change and meeting the State’s carbon reduction goals as set forth in the *2021 Act on Climate*, the *2022 Act Relating to Public Utilities and Carriers - Renewable Energy* (to substantially increase renewable energy production and supply by requiring that 100 percent of Rhode Island’s electricity be offset by renewable production by 2023), and the *2022 Act Relating to Public Utilities and Carriers – Affordable Clean Energy Security Act* (that seeks to expand Rhode Island’s offshore wind energy resources). Allowing intervention by the Town based solely on speculative concerns over an underwater export cable passing along in Rhode Island state waters under the Sakonnet may add cost, delay and complexity to this proceeding that will prejudice the adjudication of the rights of Mayflower and burden the Board and its staff.

## **CONCLUSION**

When considering intervention, the Board must “....*balance several related factors, specifically, whether the Board ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.*” See *In Re: Joint Petition for Purchase & Sale of Assets by the Narragansett*



*Elec. Co. & the S. Union Co.*, D-06-13, 2006 WL 1487796 (May 4, 2006). Opening the door for the Town of Middletown (and possibly other shoreline communities) to intervene in this proceeding involving an offshore wind project, with such minimal justification, will set a troubling precedent for future Board proceedings involving these important renewable clean energy projects.

For all of these reasons, the Town's Motion to Intervene should be denied.

Dated: July 26, 2022

Respectfully submitted,

MAYFLOWER WIND ENERGY LLC

By its Attorneys,



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cc: Daniel Hubbard  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2022, I sent a copy of the foregoing to the service list below by electronic mail.



**SB-2022-02 Mayflower Wind Energy LLC Application for Major Energy Facility:  
Service List (as of 07/14/2022)**

Name/Address	Email	Phone/FAX
<p><b>File an original and 9 copies with EFSB:</b>                      Emma Rodvien, Coordinator                      Energy Facility Siting Board                      89 Jefferson Boulevard                      Warwick, RI 02888</p> <p>Ronald Gerwatowski, Chairperson                      Terry Gray, DEM                      Meredith Brady, Assoc. Director                      Division of Planning                      Patti Lucarelli Esq., Board Counsel                      Suzanne Amerault, Asst. to the Director                      Department of Energy Management</p>	<p><a href="mailto:Emma.Rodvien@puc.ri.gov">Emma.Rodvien@puc.ri.gov</a>;  <a href="mailto:Patricia.Lucarelli@puc.ri.gov">Patricia.Lucarelli@puc.ri.gov</a>;  <a href="mailto:Ronald.Gerwatowski@puc.ri.gov">Ronald.Gerwatowski@puc.ri.gov</a>;  <a href="mailto:Terry.Gray@dem.ri.gov">Terry.Gray@dem.ri.gov</a>;  <a href="mailto:Meredith.Brady@doa.ri.gov">Meredith.Brady@doa.ri.gov</a>;  <a href="mailto:Suzanne.Amerault@dem.ri.gov">Suzanne.Amerault@dem.ri.gov</a>  <a href="mailto:Maria.Mignanelli@doa.ri.gov">Maria.Mignanelli@doa.ri.gov</a></p>	<p>401-780-2173</p>
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**Exhibit A**

## CHAPTER 93: HARBOR RULES AND REGULATIONS

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### Section

#### ***General Provisions***

- 93.01 Goals of chapter
- 93.02 Intent and authority; chart
- 93.03 Definitions

#### ***Mooring Regulations***

- 93.10 Permitting
- 93.11 Permit renewal
- 93.12 New mooring permits
- 93.13 Available space
- 93.14 Waiting list
- 93.15 Permit ratios
- 93.16 Relocation of existing permitted mooring
- 93.17 Mooring associated with residential waterfront properties
- 93.18 Mooring fields
- 93.19 Mooring records
- 93.20 Numbering
- 93.21 Rafting
- 93.22 Occupation of mooring area
- 93.23 Boat sewage waste
- 93.30 Registration fees
- 93.31 Registration penalties
- 93.32 Forfeit of mooring space

#### ***Specifications of Tackle***

- 93.40 Minimum requirements
- 93.41 Transient and commercial moorings
- 93.42 Pennant and pennant lines
- 93.43 Scope of chain
- 93.44 Shackles, swivels, anchors and other hardware
- 93.45 Abandonment of tackle
- 93.46 Inspections
- 93.47 Winter mooring spars
- 93.48 Anchoring

#### ***Safety Regulations***

- 93.60 Third beach regulations
- 93.60.1 Dinghy/kayak rack rental
- 93.61 Second beach regulations

#### ***Enforcement and Liability***

- 93.70 Enforcement
- 93.71 Liability

## GENERAL PROVISIONS

### § 93.01 GOALS OF CHAPTER.

The following are the goals of this chapter:

(A) To manage the coastal waters and harbor areas of the town, as described herein and hereafter referred to as the town, by establishing regulations that balance and manage the diverse uses of the waters, harbor areas and water front off Second and Third Beach, and to minimize user conflicts.

(B) To maintain, improve and develop public access opportunities to the coastal waters of the town for the benefit of all user groups.

(C) To remain consistent with the goals and regulations of the Rhode Island Coastal Resources Management Council, the Rhode Island Department of Environmental Management, The State Guide Plan and the United States Army Corps of Engineers.

(D) To maintain compliance with the town Comprehensive Community Plan.

(E) To maintain and preserve the water quality of Type I in the coastal waters and harbor of the town.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

### § 93.02 INTENT AND AUTHORITY; CHART.

(A) Pursuant to R.I. Gen. Laws 46-4-6.12, as amended, it is the intent of these rules and regulations to implement and establish regulations for the recreational use of the waters off Second and Third Beach in the town, and to establish thereby, in the interests of the public health, safety and welfare, regulations related to the mooring and anchoring of boats and to boating safety.

(B) A chart, entitled "Third Beach Harbor Recreational Chart," dated July 1986 (the "chart"), which is hereby duly adopted by the Town Council, delineating boundaries of the harbor in the waters off Third Beach, is annexed hereto and is made a part hereof. The chart also delineates the boundaries of mooring areas, swimming areas, access lanes to the launching ramp at Third Beach and general traffic patterns to be maintained within the harbor. Copies of the chart and regulations shall be made available to interested parties by the Harbormaster.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

### § 93.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOAT.** Ship, vessel, or any other type of water craft.

**COMMERCIAL MOORING.** Any mooring which does not meet the definition of a private mooring.

**HARBOR.** The area shown as the Third Beach Harbor on the chart adopted simultaneously herewith and attached as an appendix to this chapter.

**HARBORMASTER.** The harbormaster appointed by the Town Administrator.

**MOORING AREA.** Those portions of town waters which shall be designated as such by the Town Council and shown on the chart.

**MOORING ASSIGNMENT COMMITTEE.** The Harbormaster and two other people to be appointed by the Town Council.

**NONRESIDENT.** Any individual, business, or corporation which does not meet the definition of a **RESIDENT**.

**PERSON.** Individuals, corporations, societies, associations and partnerships.

**PERSONAL WATERCRAFT.** A motorized recreational water vehicle normally ridden by straddling a seat, although it may be operated from a sitting, standing or kneeling position, and powered by a water jet pump.

**PRIVATE MOORING.** Any mooring owned by and registered to an individual and used exclusively for his/her own recreational purposes.

**QUALIFIED INSPECTOR.** Any person approved as an inspector of tackle by the Harbormaster.

**REGISTERED MOORING OWNER.** The holder of licensed mooring space assigned to him/her by the Harbormaster.

**RESIDENT.** Any permanent, full-time inhabitant of the town.

**TOWN.** Those water-delineated portions of the town as shown on the chart.

**TOWN BEACH RECREATION FACILITIES.** Second and Third Beaches and the waters immediately adjacent thereto.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94; Am. Ord. passed 8-19-02)

## MOORING REGULATIONS

### § 93.10 PERMITTING.

(A) The Town Council shall set by resolution of the Council the maximum number of moorings, both private and commercial, to be allowed within the harbor area.

(B) No mooring shall be located in the coastal waters and harbor areas of the town until a permit has been issued for the use of such mooring by the Harbormaster. No mooring shall be located nor shall be maintained unless the mooring owner has received a valid mooring permit issued by the Harbormaster for the mooring and that the mooring conforms to the specifications and standards set forth in this chapter and permit.

(C) No person or firm shall in any case be entitled to more than one mooring in the harbor during any one season, unless granted at the discretion of the Mooring Assignment Committee.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.11 PERMIT RENEWAL.

(A) Applications for renewal of a valid mooring permit shall be submitted to the Harbormaster on the application forms provided by the Harbormaster by April first of each year. All applications shall be accompanied by the appropriate fee and shall be received by April first by U.S. mail and addressed to the Harbormaster, c/o Finance Department, Middletown Town Hall, 350 East Main Road, Middletown, Rhode Island 02842. Failure to submit a complete and accurate application by April first shall result in the loss of the mooring space.

(B) The Finance Department shall mail the application forms in the month of February of each year to those persons who held valid mooring permits at the end of the previous calendar year, to the address listed on their last mooring permit. It shall be the responsibility of the mooring permit holder to notify the Finance Department of any changes in address.

(C) Renewal applications for private mooring spaces without identification of the boat to be moored will be accepted for two consecutive renewals only. Renewal rate shall be at the prevailing rate of the previous registration. Additional renewals shall be with the approval of the Mooring Advisory Committee for reasons of good cause only. Such applications shall be accompanied by the appropriate fee.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

### § 93.12 NEW MOORING PERMITS.

(A) To be eligible for a new mooring permit, an applicant must own a boat for which a mooring permit is being sought or be a commercial mooring operator. Requests for new mooring permits shall be submitted to the Harbormaster on the application forms provided by April first of each year. Applications and the appropriate fee shall be received by U.S. mail by the Harbormaster c/o Finance Department, Town Hall, 350 East Main Road, Middletown, Rhode Island 02842.

(B) A complete and accurate mooring permit application must be provided before the Harbormaster can act to approve or deny such application. All such applications shall contain the following information and no incomplete applications shall be accepted:

- (1) Name, address and telephone number (work and home) of applicant;
- (2) Size and type of boat;
- (3) Overall length of boat;
- (4) Breadth of boat;
- (5) Draft of boat;
- (6) Name of boat with copies of title documents or state registration, if applicable; and
- (7) Appropriate application fee.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

#### **Cross-reference:**

*Application fee, see § 93.30*

### § 93.13 AVAILABLE SPACE.

As of April first of each year, the Harbormaster shall determine the number of mooring spaces available for mooring placement as the sum of all authorized mooring spaces less those for which acceptable applications for renewal were not received.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

#### **§ 93.14 WAITING LIST.**

The Harbormaster shall maintain a waiting list of all applications for private and commercial mooring permit requests when no mooring space is available within the coastal waters and harbor areas of the town. There shall be paid annually a \$10 fee for each applicant on the waiting list. The fee shall be paid to the Harbormaster on or before April 1 of every year.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94; Am. Ord. passed 3-19-07)

#### **§ 93.15 PERMIT RATIOS.**

Mooring space for commercial moorings may be granted by the Harbormaster in a ratio of one commercial mooring for every three private moorings. Unassigned mooring shall be granted in a ratio of three town residents to each nonresident.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

#### **§ 93.16 RELOCATION OF EXISTING PERMITTED MOORING.**

A registered owner during the immediately preceding year, who shall need or desire a new location, shall file an application containing the information set forth in § 93.12, along with the existing mooring space registration number, size and type of new boat. All such applications shall be deemed mooring relocation applications and shall be entitled to such priority as the Mooring Assignment Committee may grant in accordance with the standards herein provided.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

#### **§ 93.17 MOORING ASSOCIATED WITH RESIDENTIAL WATERFRONT PROPERTIES.**

Moorings owned by persons who own residential waterfront property are allowed to be placed in the coastal waters and harbor areas of the town in those waters immediately adjacent to the upland residential waterfront property. The mooring owner must comply with all mooring permit application requirements and receive a mooring permit from the town as described herein. The mooring must meet all mooring tackle standards and inspections as described hereinafter, before placement by residential waterfront property owner.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.18 MOORING FIELDS.**

(A) No mooring shall be located or placed within the coastal waters and harbor areas of the town without a valid mooring permit issued by the Harbormaster and without having the mooring inspected as detailed herein and approved by the Harbormaster. The Harbormaster must direct the placement of the mooring.

(B) No vessel so moored or anchored shall extend beyond the designated mooring areas as detailed herein.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.19 MOORING RECORDS.**

(A) The Harbormaster shall keep a detailed record of all moorings, both private and commercial, including:

- (1) Location of mooring;
- (2) Owner's name;
- (3) Telephone number of owner (business and home);
- (4) Date mooring was set; and
- (5) Name, length and type of boat.

(B) Registration numbers will also be required, if applicable.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

#### **§ 93.20 NUMBERING.**

(A) Each mooring located in the coastal waters and harbor areas of the town, once permitted, shall be assigned a number by the Harbormaster. The number will be displayed in contrasting color in two places on each mooring buoy or pickup buoy in block letters at least four inches height.

(B) All assignments of mooring space shall be made by permit issued by the Harbormaster. Moorings shall be assigned in chronological order of receipt of completed applications.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.21 RAFTING.**

Vessels may raft on a single mooring when such activity does not interfere with the proper functioning of adjacent single mooring or vessel anchorages. Vessels at raft shall be manned at all times.



(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

**§ 93.22 OCCUPATION OF MOORING AREA.**

No vessel shall occupy a mooring other than the one for which it is registered. The Harbormaster shall have authority to move any vessel violating the provisions of this section and such movement shall be at the owner's expense and risk.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

**§ 93.23 BOAT SEWAGE WASTE.**

(A) The disposal of untreated boat sewage wastes by any means into coastal waters of the town is prohibited.

(B) Owners are required to have clean sewage tanks prior to entering the Third Beach Mooring Area.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

**REGISTRATION FEES AND PENALTIES**

**§ 93.30 REGISTRATION FEES.**

(A) All applications for mooring permits shall be accompanied by the appropriate fee. All such fees shall be nonrefundable. The Harbormaster shall collect from the applicant a mooring permit fee to be paid by the applicant on or before April 1 of every year. The mooring permit fees are as follows:

<b>Registered Boat Length (feet)</b>	<b>Resident</b>	<b>Nonresident</b>	<b>Commercial</b>
<b>Registered Boat Length (feet)</b>	<b>Resident</b>	<b>Nonresident</b>	<b>Commercial</b>
Under 16	\$200	\$350	\$550
16-19	\$200	\$350	\$550
20-22	\$200	\$350	\$550
23-25	\$200	\$350	\$550
26-30	\$230	\$410	\$650
31-35	\$290	\$530	\$850
36-40	\$350	\$650	\$1050
41-50	\$410	\$770	\$1350
51-65	\$500	\$950	\$1550

(B) Daily mooring fee: \$20.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94; Am. Ord. passed 2-17-04; Am. Ord. passed 3-19-07; Am. Ord. 09-09, passed 6-1-09; Am. Ord. passed 6-21-10)

**§ 93.31 REGISTRATION PENALTIES.**

If the fee and application are not received by April first, the mooring tackle may be pulled by the Harbormaster and the registered owner shall lose all right to his/her former mooring space. No mooring permit shall be transferable except within the immediate family. Immediate family shall include brother, sister, children, mother, father and spouse. No person shall cause any boat to be attached to any private mooring unless said boat is described in the application, provided, however, that the Harbormaster may permit the temporary use of the mooring by another boat upon application by the registered owner.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

**§ 93.32 FORFEIT OF MOORING SPACE.**

Any registered owner shall be deemed to have forfeited his registered mooring space by reason of the following:

(A) Removal of tackle and no notification to the Harbormaster that the space is available;

(B) Failure to re-register for such space by April first of any season or failure to replace any piece of mooring tackle not complying with the mooring tackle standards hereinafter set forth;

(C) Failure to resurface or replace mooring within 60 days after being advised by the Harbormaster that the mooring is down; or

(D) Failure to comply with any of the requirements of this chapter.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

## SPECIFICATIONS OF TACKLE

### § 93.40 MINIMUM REQUIREMENTS.

Mooring tackle shall meet the following minimum requirements as shown on the table below:

SPECIFICATIONS OF TACKLE					
REGISTERED BOAT LENGTH (FEET)	MUSHROOM ANCHOR (POUNDS)	BOTTOM CHAIN (INCHES)	TOP CHAIN (INCHES)	PENNANTS (INCHES)	
				NYLON DACRON	STAINLESS STEEL
Under 16	75	3/8	5/16	1/2	1/4
16-19	150	3/8	5/16	1/2	1/4
20-22	200	1/2	5/16	5/8	1/4
23-25	250	1/2	5/16	3/4	1/4
26-30	300	5/8	3/8	3/4	1/4
31-35	400	5/8	3/8	3/4	3/8
36-40	500	3/4	1/2	7/8	3/8
41-50	600	3/4	1/2	1	1/2
51-65	750	1	1/2	1-1/4	1/2

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.41 TRANSIENT AND COMMERCIAL MOORINGS.

Transient rental moorings, if any, shall consist of a 500 pound mushroom anchor and 3/4 inch bottom chain and 3/8 inch top chain. The weight of the anchor shall be clearly painted on the mooring ball. All commercial moorings shall have specially designated mooring hours.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.42 PENNANT AND PENNANT LINES.

(A) The maximum length of the pennant shall be 2½ times the distance from the bow chock to the water plus the distance from the bow chock to the mooring clear or post.

(B) All pennant lines running through a chock or any other object where chafing may occur shall have adequate chafe guards. A second pennant shall be fastened to moorings made of cable or chain and used in heavy weather.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.43 SCOPE OF CHAIN.

The total scope of the chain shall be 2½ times the depth of the water at high tide. This scope will be considered as a total of 50 feet in the Third Beach harbor. The bottom and top chain shall each consist of approximately 50% of the scope.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.44 SHACKLES, SWIVELS, ANCHORS AND OTHER HARDWARE.

(A) All shackles, swivels and other hardware used in the mooring hookup shall be proportionate in size to the chain used.

(B) All shackles shall be properly seized.

(C) It is recommended that the pennant be spliced or shackled into the bitter end of the top chain below the buoy so the strain is not carried by the buoy.

(D) Only mushroom anchors will be acceptable on permanent moorings.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### § 93.45 ABANDONMENT OF TACKLE.

(A) Any registered owner who owns his/her tackle and is abandoning a mooring space, may offer to sell the tackle occupying such space to the next person assigned the same. If such tackle is not sold or rented, it shall be removed by such registered owner. Failure of the registered owner to remove such tackle shall constitute the abandonment thereof, and such tackle may be removed by the Harbormaster at the expense of such registered owner thereof.

(B) The moving of any tackle to assigned space shall be at the applicant's expense, and tackle may not be moved from any registered mooring space without the prior written approval of the Mooring Assignment Committee. Any registered owner desiring to move any tackle shall make application to the Mooring Assignment Committee, which shall determine whether such application shall be approved or rejected.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.46 INSPECTIONS.**

(A) All new moorings in the coastal waters and harbor areas of the town must have the chain, tackle and anchor inspected by the Harbormaster or his designee prior to setting the mooring.

(B) Every permit holder shall be required to maintain their mooring in a safe condition. Any chain, shackle, swivel or other tackle which is warped or worn by its normal diameter shall be replaced. Failure to maintain a safe mooring shall be cause for revocation of the mooring permit and shall be deemed a violation of this chapter. The Harbormaster or his designee may inspect any mooring at any time to determine compliance with this section.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.47 WINTER MOORING SPARS.**

Winter mooring spars shall be readily visible in a vertical position above the water at all times and shall be removed no later than June first of the succeeding year. Winter spars shall not be set until on or after the first day of October of each calendar year.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

#### **§ 93.48 ANCHORING.**

(A) All anchoring shall be in a mooring area and shall be under the direction of the Harbormaster.

(B) No vessel shall be allowed to anchor in the harbor utilizing her own ground tackle and be left unattended. The owner or operator and party may go ashore but shall not leave the area and shall be available to tend to the vessel in the event of heavy weather.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

### **SAFETY REGULATIONS**

#### **§ 93.60 THIRD BEACH REGULATIONS.**

(A) Third Beach is operated as a Town Recreation Area for swimming, boating and boardsailing. Uses within the Third Beach harbor area shall be as specified on the chart attached as an appendix to this chapter.

(B) *Swimming Areas.*

No. 1 - Main Beach

No. 2 - Private Beach

These areas, which are set forth on the chart, are marked by floating buoys and are restricted for swimmers only. No boating of any kind is allowed in these areas.

(C) *Boardsailing and sailboat area.* The launching area is the southeast side of the beach and/or boat ramp. Sailboats and boardsailing are permitted in all restricted areas on the chart except for areas designated as "Swimming Areas." No person shall set up, launch, land or ride kite boards within 1,000 feet of the shoreline at Third Beach.

(D) *Boat ramp.* Power boats may be launched from the boat ramp but are restricted to the Power Boat Access Channel, which is, unless otherwise designated by marker buoys, 20 feet on either side of the speed limit sign floats indicated on the chart. Speed limit in the Power Boat Access Channel is five miles per hour until the outer limits of the Third Beach Restricted Area is reached.

(E) *Water skiing / jet skiing.* Water skiing and jet skiing or use of any personal watercraft are prohibited throughout the Third Beach Restricted Area, provided that jet skis and other personal watercraft may use the power boat access channel, at a speed of no more than five miles per hour to access the open water beyond the Restricted Area.

(F) *Boat holding area.* The boat holding area is to only be used for temporary anchoring pending use of the boat ramp.

(G) *Commercial rental.* Commercial rental of boardsailors, jet skis and any other water craft at Third Beach, either directly or indirectly, is prohibited unless specifically authorized in writing by the Town Council.

(H) *Fishing.* All vessels shall use care and courtesy when passing by boats where people are fishing.

(I) *Reporting accidents.* All accidents in town waters shall be reported to the Coast Guard and Department of Boating Safety.

(J) *Littering.* The littering ordinance for the town also applies to the harbor.

(K) *Vandalism and theft.* Vandalism and theft shall be reported to the Harbormaster.

(L) *Seaplanes.* Water areas and harbors of the town shall be off limits for the landing and taking off of seaplanes.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94; Am. Ord. passed 8-19-02; Am. Ord. passed 5-16-05) Penalty, see §93.99

**Cross-reference:**

*Depositing waste in public places prohibited, see §50.02*

**§ 93.60.1 DINGHY/KAYAK RACK RENTAL.**

(A) *Availability.* On or before April first of each year, the Harbormaster shall determine the number of dinghy/kayak rental rack slots available.

(B) *Season.* The rental season shall commence on May 1<sup>st</sup> and terminate on November 1<sup>st</sup> of each calendar year. Any dinghy or kayak not removed by November 1<sup>st</sup> will be considered abandoned and removed at the discretion of the town without notice. The renter shall be responsible for all costs and expenses of the removal, storage, if any and possible disposal. Future rental may be denied at the sole discretion of the town. Any property not disposed of will be released to owner only upon reimbursement to the town of all costs and expenses of removal and storage.

(C) *Waiting list.* The Harbormaster shall maintain a waiting list of all applications for a dinghy/kayak rack rental slot when no rental slot is available. Available rentals shall be assigned in the following order based upon the date of receipt of the application:

- (1) Residents, if there are no resident applications; then
- (2) Non-resident mooring owners; if there are no non-resident mooring owners; then
- (3) Non-residents.

(D) *Commercial use.* Commercial use of the dinghy rack is strictly prohibited. Dinghy rack rental slots may not be assigned, rented or sublet to third parties.

(E) *Transferability.* No dinghy slot shall be transferred, with the exception of a surviving spouse.

(F) *Rules and regulations.* The Mooring Committee shall adopt, update and publish rules and regulations governing the use of the town dinghy rack, subject to the approval of the Town Council.

(G) *Forfeit of dinghy/kayak rack space.*

- (1) Failure to remove boat from dinghy/kayak rack in the prior season.
- (2) Failure to re-register for a slot by April first of any season.
- (3) Failure to follow the rules and regulations that apply to Third Beach Harbor or the dinghy/kayak rack.
- (4) Failure to use a dinghy/kayak rack slot for a season as determined by the Harbormaster.

(Ord. 2012-2, passed 5-7-12) Penalty, see §93.99

**§ 93.61 SECOND BEACH REGULATIONS.**

Second Beach is operated as a Town Recreation Area for swimming. Surfing is restricted use and is authorized only in designated areas, pursuant to § 94.33 of the Town Code. Boardsailing and other similar regattas may be permitted as specifically authorized by the Town Council.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94) Penalty, see §93.99

**ENFORCEMENT AND LIABILITY**

**§ 93.70 ENFORCEMENT.**

Unless otherwise specifically provided herein, these rules and regulation shall be enforced by the Harbormaster or any member of the Police Department. Any violation of these rules and regulations shall be deemed "traffic violations" or "traffic infractions" pursuant to R.I. Gen. Laws § 31-43-1, as amended. A ticket system is in effect.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

**§ 93.71 LIABILITY.**

Persons using the coastal waters and harbor areas of the town shall assume all risk of personal injury and damage or loss to their property. The town assumes no risk on account of accident, fire, theft, vandalism or acts of God.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94)

**§ 93.99 PENALTY.**

(A) Except as otherwise provided in this section, any person violating the provision of these rules and regulations may be subject to a fine not in excess of \$100 for any one offense. All such fines are to be recovered to the use of the town.

(B) Any person, firm or corporation whether as principal, agent, employee or otherwise, who violates any of the provisions of §§ 93.60 - 93.61 shall be subject to the following penalty:

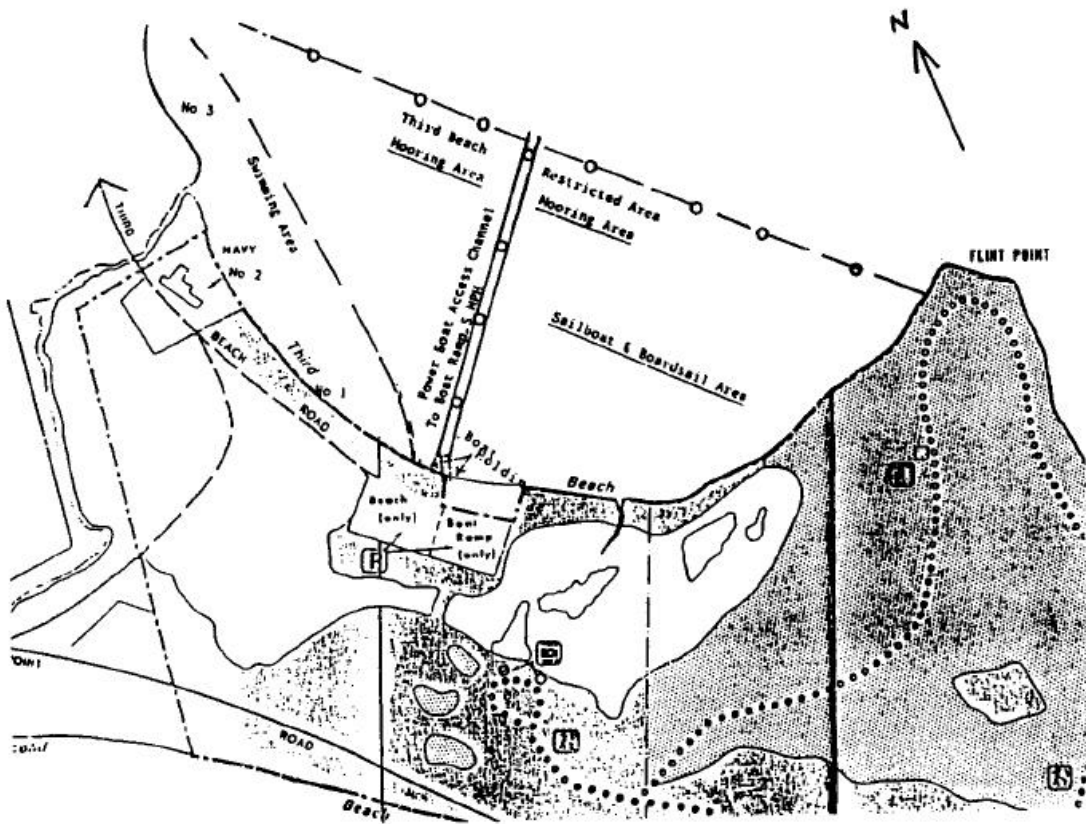
(1) For a first offense within a 12 month period, \$50. The person charged with a violation of any provision of §§93.60 - 93.61 shall, for a first offense, be given the opportunity to pay the fine assessed by mail, which shall be indicated on the summons issued by the charging officer. Should the alleged violator elect not to pay the fine assessed by mail, said person shall be entitled to a hearing before the Municipal Court.

(2) For any second or subsequent violation of §§93.60 - 93.61 within a 12 month period, a hearing before the Municipal Court is required, and the alleged violators shall be subject to the penalties as outlined in § 10.99.

(3) Any person violating any provision of this chapter for which there is not otherwise a penalty shall be subject to the penalty of § 10.99.

(Ord. passed 8-6-86; Am. Ord. passed 10-3-94; Am. Ord. passed 8-21-00; Am. Ord. 2020-3, passed 2-3-20)

**APPENDIX: THIRD BEACH HARBOR RECREATIONAL CHART, DATED JULY 1986.**



## **Exhibit B**

**17. Identification of Federal agencies which may exercise licensing authority over any aspect of the facility.**

As outlined in § 10 of the Siting Report, the federal agencies that have, or may have, licensing authority over the Project include:

- BOEM
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- U.S. Coast Guard
- Federal Aviation Administration
- National Oceanic and Atmospheric Administration, National Marine Fisheries Service
- U.S. Fish and Wildlife Service

Please also see the response to item 20, below.

**18. Identification of state and local governmental agencies which may exercise licensing authority over any aspect of the facility or which could exercise licensing authority over any aspect of the facility absent the Act.**

As outlined in § 10 of the Siting Report, the state and local agencies that have, or may have, licensing authority over the Project include:

- Energy Facility Siting Board
- Rhode Island Coastal Resources Management Council
- Rhode Island Department of Environmental Management
- Rhode Island Historical Preservation and Heritage Commission
- Rhode Island Department of Transportation
- Town of Portsmouth Planning and Zoning
- Portsmouth Town Council

The portion of the Project in Massachusetts is subject to the authority of the Massachusetts Energy Facilities Siting Board and the Department of Public Utilities.

Please also see the response to item 20, below.

**19. Identification of foreign governmental agencies which must issue licenses that may affect any aspect of the facility.**

There are no foreign licenses required for the Project.

**20. All pertinent information regarding filings for licenses made with federal, state, local and foreign governmental agencies including the nature of the license sought, copies of the applicable statutes or regulations and copies of all documents filed in compliance with the National Environmental Policy Act, the date of filing and the expected date of decision.**



Mayflower Wind has prepared and submitted a Construction and Operations Plan (COP) to BOEM for review.<sup>12</sup> The COP sets forth the detailed descriptions for the construction and operation of all proposed offshore and onshore facilities and the detailed analyses of potential environmental and socio-economic impacts that will support BOEM’s review of the Project under the National Environmental Policy Act (NEPA). The applicable statutes and regulations, and the COP, are voluminous and will be provided to the EFSB upon request.<sup>13</sup>

Additionally, Mayflower Wind will make the following applications for licensing and permitting for the Project, as described in § 10 of the Siting Report, each of which Mayflower Wind expects to file in the timeframes indicated below.

Agency	Permit/Approval	Status
<b>Rhode Island State Permits and Approvals</b>		
Rhode Island Coastal Resources Management Council (CRMC)	Consistency Determination under the Federal Coastal Zone Management Act (16 United States Code [U.S.C.] §§ 1451-1464) and in accordance with the Rhode Island Coastal Resources Management Program and Special Area Management Plans.	Filed March 15, 2022.
	Category B Assent and Submerged Lands License pursuant to R.I.G.L. § 46-23 and 650-RICR-20-00-1 and 650-RICR-20-00-2.	Filing planned for Q3 2022.
	Letters of Authorization (LOA)/Survey Permit, if	Approved July 7, 2021 for Summer 2021 benthic surveys;

<sup>12</sup> Mayflower Wind made its initial submission to BOEM in February, 2021.

<sup>13</sup> BOEM’s review of the Project’s COP is currently in progress and is available for review by the public and other agencies at the following links: <https://www.boem.gov/renewable-energy/state-activities/mayflower-wind>; <https://mayflowerwind.com/documents/>. On or about November 1, 2021, BOEM issued its Notice of Intent to prepare an Environmental Impact Statement (EIS and review the Project under NEPA (NOI) See: <https://www.boem.gov/sites/default/files/documents/about-boem/regulations-guidance/86-FR-60270.pdf>. The publication in the Federal Register opened a 30-day comment period during which the public was allowed to identify information that the Environmental Impact Statement should consider. This comment period concluded on December 1, 2021; Mayflower Wind is awaiting BOEM’s draft EIS. Once completed, BOEM will publish a Notice of Availability and request public comments on the Draft EIS. BOEM currently expects to issue the NOA in January 2023. Mayflower Wind will update the EFSB once it receives further information from BOEM.



Agency	Permit/Approval	Status
	<p>needed, in accordance with the R.I.G.L. § 46-23 and 650-RICR-20-00-1.</p> <p>Freshwater Wetlands Permit pursuant to the Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (650-RICR-20-00-2.1 <i>et seq.</i>) (R.I.G.L. § 46-23-6).</p>	<p>Approved February 4, 2022 for Spring 2022 benthic surveys; Filing planned for Q3 2022.</p>
<p>Rhode Island Historical Preservation and Heritage Commission (RIHPHC)</p>	<p>Permission to conduct archaeological field investigations (pursuant to the Antiquities Act of Rhode Island, G.L. § 42-45 and the Rhode Island Procedures for Registration and Protection of Historic Properties).</p>	<p>Marine Survey approved on July 2, 2021.</p> <p>Phase 1 Permit (No. 21-32) issued on December 17, 2021; Terrestrial Archaeological Resources Assessment (Phase 1 Report) filed March 14, 2022.</p>
<p>Rhode Island Department of Environmental Management (RIDEM)</p>	<p>Consultation with the Rhode Island Natural Heritage Program and Division of Fish &amp; Wildlife.</p> <p>Water Quality Certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. §§ 1251 <i>et seq.</i> and R.I.G.L. § 46-12-3 and Dredging Permit pursuant to the Marine Infrastructure Maintenance Act of 1996 and RI Rules and Regulations for Dredging and the Management of Dredged Materials (R.I.G.L. §§ 46-6-6.1 <i>et seq.</i>) and Rhode Island Water Quality Regulations (R.I.G.L. §§ 46.12 <i>et seq.</i>).</p>	<p>Information provided by RIDEM on June 24, 2021; Updated information provided by RIDEM on April 11, 2022.</p> <p>Filing planned for Q3 2022.</p>

Agency	Permit/Approval	Status
	Rhode Island Pollution Discharge Elimination System General Permit for Stormwater Discharge Associated with Construction Activity pursuant to R.I.G.L. § 42-12.	Filing planned for Q3 2022.
RIDEM Division of Fish & Wildlife	Letter of Authorization and/or Scientific Collector's Permit (for surveys and pre-lay grapnel run) if needed.	TBD based on consultations with RIDEM Division of Fish & Wildlife.
Rhode Island Department of Transportation (RIDOT)	Utility Permit/Physical Alteration Permit pursuant to R.I.G.L. § 24-8.	Filing planned for Q4 2023 (if applicable).
Town of Portsmouth	Zoning review, Planning review, Building permits, Street opening permits, Easements.	TBD
<b>Federal Permits, Approvals and Consultations</b>		
BOEM	<p>Site Assessment Plan (SAP).</p> <p>Certified Verification Agent (CVA) Nomination.</p> <p>COP Approval/Record of Decision (ROD).</p> <p>Departure request for early fabrication of Mayflower Wind's OSP and inter-array cables.</p>	<p>Approved by BOEM May 26, 2020.</p> <p>Approved by BOEM November 4, 2020.</p> <p>Filed February 15, 2021; BOEM published Notice of Intent to Prepare Environmental Impact Statement for review of the COP on November 1, 2021; Draft EIS projected for January 2023.</p> <p>Approved by BOEM December 1, 2020.</p>

Agency	Permit/Approval	Status
	<p>Departure request for deferral of Lease Area geotechnical data.</p> <p>National Environmental Policy Act (NEPA) Review.</p> <p>Facilities Design Report and Fabrication &amp; Installation Report.</p>	<p>Approved by BOEM October 5, 2021.</p> <p>Initiated by BOEM November 1, 2021.</p> <p>Filing planned for Q1 2024.</p>
U.S. Department of Defense Clearing House	Informal Project Notification Report.	Submitted May 11, 2020.
United States Coast Guard	<p>Private Aids to Navigation Permit.</p> <p>Local Notice to Mariners.</p>	<p>To be filed 3-6 months prior to offshore construction.</p> <p>To be filed prior to offshore construction.</p>
United States Environmental Protection Agency	<p>National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Activities.</p> <p>Outer Continental Shelf (OCS) Permit Clean Air Act.</p>	<p>Filing planned for Q2/Q3 2022.</p> <p>Filing planned for Q4 2022.</p>
United States Army Corps of Engineers	Individual Clean Water Act (CWA) Section 404 Permit Rivers and Harbors Act of 1899 Section 10 Permit.	Filing planned for Q4 2022.
US Fish and Wildlife Service	<p>Endangered Species Act (ESA) Section 7 consultation.</p> <p>Bald and Golden Eagle Act and Migratory Bird Treaty Act compliance.</p>	<p>No take authorization is expected to be requested and coordination with USFWS has been initiated and will continue.</p> <p>Basic site evaluation and characterization studies completed and detailed studies ongoing.</p>

Agency	Permit/Approval	Status
Federal Aviation Administration	Determination of No Hazard to AirNavigation.	<p>It is not currently anticipated that a Determination of No Hazard will be required for offshore structures in the Lease Area due to their location outside of 12 nm (22 km); nor will this be required for the onshore substation or converter station due to the maximum height of these structures.</p> <p>Mayflower Wind continues to engage with the Federal Aviation Administration with regards to whether any review and/or authorization is required for offshore equipment deployed to support HDD installation of the export cables.</p>
National Oceanic and Atmospheric Administration U.S. National Marine Fisheries Service	Marine Mammal Protection Act Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA).	<p>Pre-construction: concurrence for 2019 Geophysical and Geotechnical (G&amp;G) surveys was issued on July 26, 2019.</p> <p>IHA for 2020 G&amp;G surveys issued on July 23, 2020.</p> <p>IHA for 2021 G&amp;G surveys issued on July 1, 2021.</p> <p>LOA Application for offshore construction and operation filed March 18, 2022.</p>
<b>Massachusetts State Permits and Approvals</b>		
Massachusetts Executive Office of Energy and Environmental Affairs (EEA)	Massachusetts Environmental Policy Act (MEPA) Environmental Notification Form (ENF) and Environmental Impact Report (EIR) Certificate of EEA Secretary.	<p>ENF filed anticipated to be filed in or about July, 2022.</p> <p>Brayton Point Draft EIR in Q4 2022 and Final EIR in Q2 2023.</p>

Agency	Permit/Approval	Status
Massachusetts Energy Facilities Siting Board	Approval to construct the proposed Project, pursuant to G.L. c. 164, § 69J (Siting Petition).	Petition filed May 27, 2022.
Massachusetts Department of Public Utilities	<p>Approval to construct and use proposed Project pursuant to G.L. c. 164 § 72 (Section 72 Petition) (consolidated with MA EFSB proceeding).</p> <p>Individual and comprehensive zoning exemptions from the zoning bylaws of Somerset for the proposed Project pursuant to G.L. c. 40A § 3 (Zoning Petition) (consolidated with MA EFSB proceeding).</p>	Filed concurrently with MA EFSB Petition and Analysis.
Massachusetts Department of Environmental Protection	<p>Chapter 91 Waterways License/Permit for dredge, fill, or structures in waterways or tidelands.</p> <p>Section 401 Water Quality Certification.</p>	Joint application filing planned for Q2 2023.
Massachusetts Office of Coastal Zone Management (CZM)	CZM Consistency Determination.	Filed with COP on February 15, 2021; Revised version filed January 13, 2022; Executed one-year stay with CZM beginning on December 30, 2021, with CZM's review re-starting on December 30, 2022 and anticipated completion by May 31, 2023.
Massachusetts Department of Transportation	State Highways Access Permit(s) (if required).	Filing planned for Q3 2023, if required.
Massachusetts Board of Underwater Archaeological Resources (MA BUAR)	Special Use Permit (SUP).	Provisional SUP issued on June 25, 2021; Filed MA BUAR SUP application on August 26, 2021. SUP approved on September 30, 2021; Renewal in Q3 2022.

Agency	Permit/Approval	Status
Massachusetts Historical Commission	Project Notification Form/Field Investigation Permits (980 C.M.R. § 70.00).  Section 106 consultation.	Project Notification Form submitted July 26, 2021; Terrestrial Archaeological Resources Assessment (Brayton Point Phase 1A Report) filed on March 15, 2022.
Massachusetts Fisheries and Wildlife – Natural Heritage and Endangered Species Program (NHESP)	MA Endangered Species Act Checklist.  Conservation and Management Permit (if needed) or No-Take Determination.	Submitted Information Request for state-listed rare species on June 17, 2021. NHESP issued a letter identifying state-listed protected species on July 23, 2021. Request for updated list filed with NHESP on March 31, 2022; NHESP responded on April 28, 2022 – no mapped rare species habitat for MA-jurisdictional project area.  Endangered Species Act Checklist filing planned for Q3 2022 (upon Final Environmental Impact Report certificate).
Massachusetts Division of Marine Fisheries (DMF)	Letter of Authorization and/or Scientific Permit (for surveys and pre-lay grapnel run).	To be determined based on consultations with DMF.

For the state filings, the CRMC submissions, the RIDOT and RIDEM authorizations, as well as the street opening permits and easements to be obtained from the Town of Portsmouth are outside EFSB jurisdiction and will be obtained separately. The other Town of Portsmouth permissions are pre-empted by the EFSB and subsumed by the EFSB’s licensing authority. The applicable statutes or regulations for each of these agencies are voluminous. At the request of the EFSB, Mayflower Wind will provide copies of any particular statutes and regulations.

**CONCLUSION**

Mayflower Wind’s application and the Siting Report, filed herewith and incorporated herein, demonstrate that the Project meets the requirements set forth in the EFSB, R.I.G.L. § 42-98-11(b) for approval of its proposal to construct major energy facilities. Specifically, the construction of the Project: