



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD374]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Ocean Wind 1 Project Offshore of New Jersey**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to Ocean Wind, LLC (Ocean Wind), a subsidiary wholly owned by Orsted Wind Power North America, LLC (Orsted), for the taking of marine mammals incidental to the construction of the Ocean Wind 1 Project.

**DATES:** The LOA is effective from October 13, 2023 through October 12, 2028.

**ADDRESSES:** The LOA and supporting documentation are available online at:

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small

numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking; “other means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines “take” to mean harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.103). Level A harassment is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3). Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3). Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I authorize NMFS to propose and, if appropriate, promulgate regulations and issue an associated LOA(s). NMFS promulgated regulations on September 13, 2023 (88 FR 62898) for the taking of marine mammals incidental to the construction of the Ocean Wind 1 Project offshore of New Jersey. The LOA authorizes Ocean Wind and those persons it authorizes or funds to conduct activities on its behalf to take

marine mammals incidental to specified activities during the construction of the Project and requires them to implement mitigation, monitoring, and reporting requirements.

### **Summary of Request**

On September 13, 2023, NMFS promulgated a final rule (88 FR 62898) responding to a request from Ocean Wind for authorization to take marine mammals (17 species comprising 18 stocks) by Level B harassment (all 18 stocks) and by Level A harassment (10 stocks) incidental to construction activities occurring in Federal and State waters off of New Jersey, specifically within and around the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS-A 0498 (Lease Area) and along 2 export cable routes to sea-to-shore transition points (collectively referred to as the “Project Area”), over the course of 5 years (October 13, 2023 through October 12, 2028). The activities covered under the final rule include: the installation of 98 wind turbine generators (WTGs) and 3 offshore substations (OSSs) on monopile foundations by impact pile driving; the installation and subsequent removal of nearshore temporary cofferdams and goal posts by vibratory pile driving at the cable landfall sites in Ocean County, New Jersey and Cape May County, New Jersey; high-resolution geophysical (HRG) marine site characterization surveys using active acoustic sources; the detonation of up to 10 unexploded ordnance or munitions and explosives of concern (UXOs/MECs) of different charge weights; fishery and ecological monitoring surveys; the placement of scour protection; the installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines by trenching, laying, and burial activities; vessel transits within the specified geographical region to transport crew, supplies, and materials to support construction and operation.

Marine mammals exposed to elevated noise levels during impact driving, or UXO/MEC detonations may be taken by Level A harassment, and marine mammals exposed to elevated noise levels during impact and vibratory pile driving, site characterization surveys, or

UXO/MEC detonations may be taken by Level B harassment. No Level A harassment of North Atlantic right whales, blue whales, sperm whales, Atlantic spotted dolphins, Atlantic white-sided dolphins, common dolphins, long-finned or short-finned pilot whales, or Risso's dolphins is anticipated or authorized. No mortality or serious injury of any marine mammal is anticipated or authorized.

### **Authorization**

In accordance with the final rule (88 FR 62898, September 13, 2023, *see* 50 CFR 217.266), we have issued a LOA to Ocean Wind authorizing the take, by harassment, of marine mammals incidental to specified construction activities within the specified geographical region. No mortality or serious injury of any marine mammal species is anticipated or authorized. The incidental takes authorized herein are the same as those analyzed and authorized in the final rule (88 FR 62898, September 13, 2023). Takes of marine mammals will be minimized through the following planned mitigation and monitoring measures, as applicable for each specified activity: (1) implementation of seasonal/time of day work restrictions; (2) use of multiple NMFS-approved Protected Species Observers (PSOs) to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown, as applicable); (3) use of NMFS-approved passive acoustic monitoring (PAM) operators to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering a delay or shutdown, as applicable); (4) implementation of clearance and shutdown zones; (6) use of soft-start prior to the start of impact pile driving; (7) use of noise attenuation technology during impact pile driving and UXO/MEC detonations; (8) use of situational awareness monitoring for marine mammal presence; (9) use of sound field verification monitoring; (10) use of soft-start impact pile driving and ramp-up acoustic sources during HRG surveys; (11) implementation of vessel separation zones between marine mammals and project vessels; (12) use of PAM within the vessel transit corridor for Project vessels to travel over 10 knots (11.5 miles per hour); and (13) implementation of additional Vessel Strike

Avoidance measures to reduce the risk of a vessel collision with a marine mammal. Additionally, NMFS may modify the LOA's mitigation, monitoring, or reporting measures, based on new information, when appropriate (*see also* 50 CFR 217.267(c)). Ocean Wind is also required to submit reports, as specified in the final rule.

Based on the findings and information discussed in the preamble of the final rule, the take authorized in the LOA will have a negligible impact on marine mammal stocks, will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses, and the mitigation measures provide a means of affecting the least practicable adverse impact on the affected stocks and their habitat.

**Dated:** October 16, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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