



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD900]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Energy Project Offshore of Rhode Island

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

ACTION: Notice; modification of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Construction of the Revolution Wind Project Offshore of Rhode Island, notification is hereby given that upon request from Revolution Wind, LLC (Revolution Wind), NMFS has modified a Letter of Authorization (LOA) issued to Revolution Wind for the take of marine mammals incidental to activities associated with construction of the Revolution Wind Offshore Wind Energy Project (hereafter known as the "Project") in Federal and State waters offshore Rhode Island. Specifically, NMFS has removed the requirement that each real-time passive acoustic monitoring (PAM) data stream must be monitored by separate PAM operators. NMFS has determined that this modification to the aforementioned monitoring requirement does not change the findings made for the regulations and does not result in any change in the total estimated number of takes of marine mammals.

DATES: The modified LOA is valid through November 19, 2028.

ADDRESSES: The issued modified LOA may be obtained online at

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-revolution-wind-llc-construction-revolution-wind-energy>.

FOR FURTHER INFORMATION CONTACT: Carter Esch, 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 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.

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 and 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 such species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of such takings.

NMFS promulgated a final rule in the **Federal Register** on October 20, 2023 (88 FR 72562), which governs the incidental take of marine mammals incidental to Revolution Wind’s construction of the Project in Federal and State waters offshore Rhode Island, specifically within 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–0486 and along two export cable

routes to sea-to-shore transition points. The rule became effective on November 20, 2023, and is valid through November 19, 2028. The regulations allow NMFS to approve requests for modification to the LOA's specified activity or the mitigation, monitoring, or reporting measures if NMFS determines the requested change does not change the findings made for promulgation of the regulations and does not result in more than a minor change in the total estimated number of takes (see 50 CFR 217.277(b)).

NMFS issued a LOA to Revolution Wind on November 20, 2023, and published a notice of issuance in the **Federal Register** on November 27, 2023 (88 FR 82834). The LOA authorized Revolution Wind to take, by harassment, marine mammals incidental to specified construction activities, specifically impact pile driving of wind turbine generator and offshore substation monopile foundations, UXO/MEC detonations, vibratory pile driving of cofferdams and goal posts, pneumatic hammering of casing pipes, and high-resolution geophysical vessel-based site characterization surveys, within the specified geographical region.

Summary of Request and Analysis

On March 7, 2024, NMFS received a request from Revolution Wind to remove the "per acoustic data stream" requirement from LOA measure 4(c)(2) ("Concurrently, at least one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be actively monitoring for marine mammals..."). Revolution Wind requested other LOA modifications in their March letter; however, NMFS is not making these modifications at this time because solutions to the challenges have been identified. In support of its acoustic data stream request, Revolution Wind cited challenges that had not adequately been considered prior to promulgation of the regulations. Specifically, Revolution Wind cited limited vessel space, the financial burden of employing multiple PAM operators, and the limited pool of qualified candidates as concerns associated with the need to maintain a rotation of four on-duty PAM operators. The regulations and LOA

allow for PAM operators to monitor from a shoreside location; however, the PAM system Revolution Wind is using is configured such that PAM operators must be located on the foundation installation vessel. Moreover, Revolution Wind highlighted that some functionalities of the PAM software planned for use (*e.g.*, the ability to localize on the position of an acoustic detection) are optimized when a single PAM operator evaluates the software data products for all acoustic buoy data streams rather than having multiple PAM operators view separate data streams. NMFS' evaluation indicated that the requested modification would alleviate concerns that were not fully considered by Revolution Wind previously while also allowing for potential improvement in localization efficacy. NMFS expects PAM operators to acoustically detect marine mammals within the applicable zones with the same level of efficacy and in accordance with a NMFS-approved PAM Plan. Furthermore, NMFS did not incorporate mitigation and monitoring measures, other than 10-decibel sound attenuation and seasonal restrictions, into the estimated take analysis. Therefore, NMFS has determined that the requested modification of measure 4(c)(2) does not change the findings made for the regulations and does not result in changes in the total estimated take numbers.

NMFS has removed the language requiring that each acoustic data stream must be monitored by a separate PAM operator from the modified LOA. The modified LOA specifies that at least one on-duty PAM operator must monitor acoustic data streams prior to, during, and following foundation installations.

Authorization

NMFS has issued a modified LOA to Revolution Wind authorizing the take, by harassment, of small numbers of marine mammals incidental to specified construction activities associated with the Project, which includes the modified monitoring measure discussed herein.

Dated: May 6, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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