



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE341]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Maryland Offshore Wind Project Offshore of Maryland**

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

**ACTION:** Notice; 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 US Wind, Inc. (US Wind), for the taking of marine mammals incidental to the construction of the Maryland Offshore Wind Project (hereafter known as the “Project”).

**DATES:** The LOA is effective from January 1, 2025 through December 31, 2029.

**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:** Jessica Taylor, 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 USC 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 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 USC 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 associated LOA(s). NMFS promulgated regulations on

October 23, 2024 (89 FR 84676) for the taking of marine mammals incidental to the construction of the Maryland Offshore Wind Project offshore of Maryland. The LOA authorizes US 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 October 23, 2024, NMFS promulgated a final rule (89 FR 84674) responding to a request from US Wind for authorization to take marine mammals (19 species comprising 20 stocks) by Level B harassment (all 20 stocks) and by Level A harassment (5 stocks of the 20 stocks) incidental to construction activities occurring in Federal and State waters off of Maryland, 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 0490 (collectively, “Lease Area”) and along two export cable routes to sea-to-shore transition points (collectively referred to as the “Project Area”), over the course of 5 years (January 1, 2025 through December 31, 2029). The final rule included the following specified activities: the installation of up to 114 wind turbine generators (WTGs) on monopile foundations using impact pile driving; the installation of 4 offshore substations (OSSs) on jacket foundations consisting of post-piled pin piles using impact pile driving; the installation of one meteorological tower (Met Tower) on pin piles using impact pile driving; installation and subsequent removal of gravity cells to connect the offshore export cables to onshore facilities within Delaware Seashore State Park; high-resolution geophysical (HRG) marine site characterization surveys using active acoustic sources; fishery and ecological monitoring surveys; the placement of scour protection; the installation of the export cable routes from OSSs to shore-based converter stations and

inter-array cables between turbines by trenching, laying, and burial activities; vessel transit within the specified geographical region to transport crew, supplies, and materials; and WTG operation.

Marine mammals exposed to elevated noise levels during foundation impact pile driving may be taken by Level A harassment, and marine mammals exposed to elevated noise levels during impact pile driving and HRG site characterization surveys may be taken by Level B harassment. No mortality or serious injury of any marine mammal is anticipated or authorized. The number of takes, by species, authorized may be found in table 1 in the LOA, which is available at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*.

### **Authorization**

In accordance with the final rule (89 FR 84674, October 23, 2024; see 50 CFR 217.306), NMFS has issued a LOA to US Wind authorizing the take, by harassment, of marine mammals incidental to specified activities within the specified geographical region. As previously stated, 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 (89 FR 84674, October 23, 2024).

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 pile driving 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; (5) use of soft-start upon commencement of impact pile driving and ramp-up of acoustic sources during HRG surveys; (6) use of noise attenuation technology during foundation pile driving; (7) use of situational awareness monitoring for marine mammal presence; (8) use of sound field verification monitoring; (9) use of PAM within the vessel transit corridor for Project vessels to travel over 10 knots (11.5 miles per hour); and (10) implementation of several vessel strike avoidance measures to avoid vessel strikes, including but not limited to, vessel separation zones between marine mammals and project vessels. Additionally, NMFS may modify the LOA's mitigation, monitoring, or reporting measures, based on new information. US Wind is also required to submit reports, as specified in the final rule.

Based on the findings discussed in the preamble of the final rule, NMFS has determined that the take authorized in the LOA is of small numbers, 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: November 26, 2024.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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