



MARINE MAMMAL COMMISSION

10 July 2023

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 8 June 2023 notice (88 Fed. Reg. 37606) and the letter of authorization (LOA) application submitted by Park City Wind, LLC (Park City Wind) seeking promulgation of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act (the MMPA). Taking of marine mammals would be incidental to the construction and operation of the New England Wind Project and associated activities. Construction of the project would occur in two phases: Park City Wind (Phase 1) and Commonwealth Wind (Phase 2), both of which are included in this proposed rule. The New England Wind Project is located approximately 32 km southwest of Martha's Vineyard, Massachusetts, and 39 km south of Nantucket, Massachusetts¹.

Background

Park City Wind is proposing to conduct impact and vibratory pile driving and drilling to install 132² foundations to support wind turbine generators (WTGs) and electrical service platforms (ESPs) in water depths of 43 to 62 m. No more than one pile would be installed at a time. Phase 1 foundation types would be either 12- or 13-m diameter monopiles and/or jackets requiring the installation of four 4-m diameter pin piles; Phase 2 foundation types would include similar size monopiles and/or jackets, or bottom-frame foundations³. Two construction schedules are proposed: (1) construction schedule A would install 89 monopile foundations and 2 jacket foundations over 52 days in the first year and 18 monopile foundations and 24 jacket foundations over 35 days in the second year and (2) construction schedule B would install 55 monopile foundations and 3 jacket foundations over 38 days in the first year, 53 jacket foundations over 53 days in the second year, and

¹ In the Bureau of Ocean Energy Management (BOEM) lease area OCS-A 0534 and potentially the unused southwest portion of lease area OCS-A 0501 (leased to Vineyard Wind 1); both are within the Massachusetts Wind Energy Area.

² Although only 132 foundations were proposed to be installed, modeling to estimate Level A and B harassment takes was based on the installation of 133 foundations, which accounts for one foundation that may have to be reinstalled at a different location.

³ Installed using suction buckets, with acoustic impacts estimated to be equal to or less than that of the jacket foundations.

22 jacket foundations over 22 days in the third year.⁴ Park City Wind also proposed to detonate up to 10 unexploded ordnances or munitions and explosives of concern (UXOs), as needed, with charges weighing up to 454 kg. No more than one UXO detonation would occur each day. In addition, Park City Wind would conduct high-resolution geophysical (HRG) site characterization surveys of the lease area and export cable corridor for up to 225 vessel days in water depths ranging from 1 m to 62 m. Survey equipment proposed for use includes medium-penetration sub-bottom profilers (including sparkers and boomers), ultra-short baseline positioning equipment, single and multibeam echosounders, side-scan sonar, synthetic aperture sonar, and marine magnetometers/gradiometers.

Mitigation measures would include seasonal restrictions, sound attenuation system usage and minimum operating requirements, visual and passive acoustic monitoring to implement clearance, delay and shut-down procedures, sound field verification (SFV) with mitigation and monitoring zone adjustments and additions to sound attenuation systems as needed, soft-start and ramp-up procedures, and various vessel strike avoidance measures.

Wind energy proposed rules in general

The Commission's review of NMFS's *Federal Register* notice and associated Park City Wind documents revealed numerous issues of concern. Many of the same or similar issues were discussed in the Commission's previous letters regarding requests for authorizations to take marine mammals incidental to wind farm construction and operations, including its [5 June 2023](#) letter regarding Dominion Energy Virginia, its [15 May 2023](#) letter regarding Empire Offshore Wind, LLC, its [13 March 2023](#) letter regarding Sunrise Wind, LLC, its [13 January 2023 letter](#) regarding Revolution Wind, LLC, its [6 December 2022 letter](#) regarding Ocean Wind, LLC, and its [1 March 2021](#) letter regarding South Fork Wind, LLC (South Fork Wind).

Since final rules have yet to be issued for the majority of these proposed actions, it is unclear whether and how NMFS will address the issues raised, and respond to the recommendations provided, by the Commission in those previous letters. In the absence of responses to previous detailed comments, the Commission does not believe it would be prudent to provide an exhaustive letter regarding similar issues for the Park City Wind proposed rule at this time. Instead, the Commission's previous letters and recommendations should be reviewed and considered in the context of the Park City Wind proposed rule. The ongoing issues as they relate to the Park City Wind rulemaking concern underestimated Level A and B harassment zones and numbers of takes, incomplete SFV measurement requirements, insufficient mitigation and monitoring measures, errors and omissions in the proposed rule and its preamble, and the general issue of quality control and quality assurance in NMFS's preparation of proposed incidental take authorizations. NMFS must also consider how the various modeled Level A and B harassment zones and the performance of the sound attenuation system(s) performance have compared to actual SFV measurements of pile-

⁴ Vibratory pile driving and drilling may be used to set some of the piles in addition to impact pile driving. Construction schedule A would use vibratory pile driving on 20 days the first year and 25 days the second year, and drilling on 33 days the first year and 15 days the second year. Construction schedule B would use vibratory pile driving on 20 days the first year, 25 days the second year, and 9 days the third year, and drilling on 20 days the first year, 19 days the second year, and 9 days the third year.

Ms. Jolie Harrison
10 July 2023
Page 3

driving activities⁵ recently initiated by Vineyard Wind 1, LLC, and South Fork Wind, and the implications for Park City Wind's activities since the same models and assumptions⁶ were used for the Park City Wind proposed rule. Any discrepancies between modeled and measured zones due to actual installation conditions⁷ or other factors must be accounted for in the estimation of the Level A and B harassment zones, authorized numbers of takes, and mitigation, monitoring, and reporting requirements for the Park City Wind final rule.

The Commission stands ready to discuss with NMFS the issues of concern on this and the previous proposed rules. Please contact me if you have any questions.

Sincerely,



Peter O. Thomas, Ph.D.,
Executive Director

cc: Dr. Amy Scholik-Schlomer, NMFS Office of Protected Resources
Mr. Nick Sisson, NMFS Greater Atlantic Regional Office

⁵ While additionally considering the highest hammer energies and number of strikes necessary to drive the piles for which measurements have been conducted.

⁶ The 10-dB sound attenuation reduction factor, as one example.

⁷ Such as the number of piles that have been able to be installed in a given day, which affects the number of total estimated takes.