



MARINE MAMMAL COMMISSION

23 October 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) 22 September 2023 notice (88 Fed. Reg. 65430) and the letter of authorization (LOA) application submitted by Atlantic Shores Offshore Wind, LLC (Atlantic Shores) 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 Atlantic Shores South Project and associated activities. Construction of the project would occur in two phases: Project 1 and Project 2, both of which are included in this proposed rule. The Atlantic Shores South projects are located approximately 14 km east of Atlantic City, New Jersey¹.

Background

Atlantic Shores is proposing to conduct impact pile driving to install up to 200 wind turbine generators (WTGs), up to 10 offshore substations (OSSs), and one meteorological tower (met tower). The WTGs would be installed in water depths of 19 to 37 m, and no more than one pile would be installed at a given time. Project 1 WTGs and the met tower would be installed using either 12- or 15-m diameter monopiles; Project 2 WTGs would be installed using either the same size monopiles or jacket foundations constructed of four 5-m diameter pin piles. All OSSs would be installed on a jacket foundation using either a four-, six-, or eight-legged design and 5-m diameter pin piles. Atlantic Shores would use a vibratory hammer to temporarily install and remove up to eight nearshore cofferdams to connect the offshore export cables to onshore facilities in Atlantic City and Sea Girt, New Jersey (four at each landfall location). Impact pile driving to install the WTGs and the met tower could occur on 112 days beginning in 2026, with an additional 12 days to install the OSS pin pile jacket foundations. In 2027 the remaining WTGs would be installed on 89 days, with another 12 days to install the remaining OSSs. Vibratory pile driving to install and remove the cofferdams would occur on 28 days. In addition, Atlantic Shores would conduct high-resolution geophysical site characterization surveys of the lease area and export cable corridor in water depths up to 37 m for up to 300 vessel days. Survey equipment includes shallow and medium-penetration and parametric sub-bottom profilers, multibeam echosounders, side-scan sonar, and magnetometers/gradiometers.

¹ In the Bureau of Ocean Energy Management lease area OCS-A 0499.

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 Atlantic Shores documents revealed the same or similar issues that 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 [10 July 2023](#) letter regarding Park City Wind, its [5 June 2023](#) letter regarding Dominion Energy's Coastal Virginia Offshore Wind project, its [15 May 2023](#) letter regarding Empire Offshore Wind, its [13 March 2023](#) letter regarding Sunrise Wind, its [13 January 2023 letter](#) regarding Revolution Wind, its [6 December 2022 letter](#) regarding Ocean Wind, and its [1 March 2021](#) letter regarding South Fork Wind.

Construction of the Vineyard Wind 1 and South Fork wind farms began in June 2023, and SFV measurements were conducted during impact driving of monopiles. The interim reports from those SFV measurements were referenced in the preamble to the Ocean Wind final rule (88 Fed. Reg. 62898, 13 September 2023) but have yet to be made available to the public or the Commission, even after repeated requests. The Commission was therefore unable to compare the *in situ* measurements of monopile installation for Vineyard Wind 1 and South Fork to the JASCO-modeled sound fields for those projects, nor was it able to determine whether the same assumptions used by JASCO to model sound fields for Atlantic Shores are appropriate². Without an opportunity to review the interim SFV reports from Vineyard Wind 1 and South Fork, the Commission cannot provide a detailed, informed letter regarding similar concerns it has for the Atlantic Shores proposed rule³.

Discrepancies between modeled and measured zones from the interim reports that are due to actual installation conditions⁴ or other factors need to 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 Atlantic Shores final rule. It is clear NMFS incorporated some of the lessons learned from the interim reports into the Atlantic Shores proposed rule based on its expanded requirements for (1) operating fully-functional sound attenuation systems, (2) conducting additional SFV measurements when the measured zones are still larger than the modeled zones after implementing additional sound attenuation systems or measures, and (3) drafting SFV plans and SFV interim and final reports. The extent of any such shortcomings in the previously-issued rules⁵ and the extent to which they persist in current proposed rule is unknown. Therefore, the Commission recommends that NMFS provide the interim SFV reports from South Fork and

² Including the efficacy and performance of the near-field (i.e., AdBm resonators, hydro sound dampers) and farther-field (i.e., single and double bubble curtains) sound attenuation systems.

³ Or concerns it has with NMFS's responses to previous Commission comments and recommendations in the preamble to the Ocean Wind final rule.

⁴ Such as the number of piles that have been able to be installed in a given day and whether it takes multiple days to install a given pile—both of which can affect the number of total estimated takes.

⁵ Or incidental harassment authorizations.

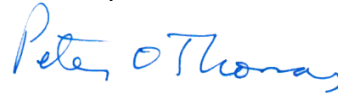
Ms. Jolie Harrison
23 October 2023
Page 3

Vineyard Wind 1 and allow for another 30-day public comment period for the Atlantic Shores proposed rule before issuing any final rule.

Given the novelty of installing very large monopiles in the Atlantic wind energy areas and the delays that can occur for a given project and across the industry when modeled zones are either underestimated or unable to be achieved during construction, it is imperative that NMFS issue final rules that are both informed and sufficient. That is, NMFS should not be requiring additional sound attenuation systems to be implemented or more protected species observers and platforms to be added after the project has begun. Such practices ultimately delay the completion of construction activities. Since these delays are predictable, cost the industry time and money, and, most importantly, unnecessarily prolong impacts on marine mammals, the Commission recommends that NMFS ensure that the mitigation, monitoring, and reporting requirements for the construction of wind energy facilities are sufficient from the start.

The Commission stands ready to discuss its comments and recommendations 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