



# MARINE MAMMAL COMMISSION

25 January 2024

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) 4 January 2024 notice (89 Fed. Reg. 504) and the letter of authorization (LOA) application submitted by US Wind, LLC (US 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 Maryland Offshore Wind Project (Project) and associated activities, located approximately 18.5 km east of Maryland's eastern shore<sup>1</sup>.

## Background

US Wind is proposing to conduct impact pile driving to install 114 wind turbine generators (WTGs), up to four offshore substations (OSSs), and one meteorological tower (met tower). The WTGs would be installed in water depths of 13 to 41.5 m. Construction would occur over three years with 22 days of activities in the first year, 58 days in the second year, and 39 days in the third year. The WTGs would be installed on 11-m monopiles, the OSSs would be installed on a jacket foundation using either a three-, four-, or six-legged design and 3-m pin piles, and the met tower would be installed using a single 1.8-m steel pile, supported by two 1.5-m pin piles. All piles would be installed using an impact hammer.

In addition, US Wind would install an export cable connecting to two landfall locations using horizontal directional drilling and a jet plow. US Wind would also conduct high-resolution geophysical site characterization surveys of the lease area and export cable corridor for up to 14 vessel days in Years Two and Three. Survey equipment includes shallow and medium-penetration and parametric sub-bottom profilers, multibeam echosounders, side-scan sonar, and magnetometers/gradiometers.

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<sup>1</sup> In the Bureau of Ocean Energy Management lease area OCS-A 0490.

Mitigation measures would include pile driving during daylight hours only<sup>2</sup> with no more than one pile installed at a given time, seasonal restrictions on pile driving<sup>3</sup>, use of at least two sound attenuation systems and minimum operating requirements, visual and passive acoustic monitoring (PAM) 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 US Wind 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<sup>4</sup>.

SFV measurements were conducted during impact driving of monopiles at the Vineyard Wind 1 and South Fork wind farms in summer 2023. 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). However, the reports were not referenced in the US Wind proposed rule nor have they been made available to the public or the Commission, even after repeated requests<sup>5</sup>. Without an opportunity to review the SFV reports from Vineyard Wind 1 and South Fork, the Commission cannot provide a detailed, informed letter regarding similar concerns<sup>6</sup> it has for the US Wind proposed rule<sup>7</sup>.

Discrepancies between modeled and measured Level A and B harassment zones from the SFV reports that are due to actual installation conditions<sup>8</sup> or other factors need to be accounted for in the estimation of the harassment zones, authorized numbers of takes, and mitigation, monitoring, and reporting requirements for the US Wind final rule. It is clear NMFS incorporated some of the lessons learned from the SFV reports into the US Wind 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, (3) ceasing operations and conducting further evaluations if modeled sound levels cannot be attained, and (4) drafting SFV plans and SFV interim and final reports. However, the extent of other shortcomings in the previously-issued final rules<sup>9</sup> and the extent to which they persist in the current proposed rule is

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<sup>2</sup> Unless US Wind submits, and NMFS approves, an Alternative Monitoring Plan that demonstrates the efficacy of night-vision devices.

<sup>3</sup> Pile driving would be prohibited from 1 December through 30 April.

<sup>4</sup> Including the Commission's [23 October 2023](#) letter regarding Atlantic Shores South, 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.

<sup>5</sup> The final report for South Fork was to be submitted in mid-November 2023 but has not been made available.

<sup>6</sup> Including substantiation of JASCO's source model and 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.

<sup>7</sup> Or concerns it has with NMFS's responses to previous Commission comments and recommendations.

<sup>8</sup> Such as the number of piles that have proven possible to install on 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.

<sup>9</sup> Or incidental harassment authorizations.

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unknown. Therefore, the Commission recommends that NMFS provide the interim and/or final SFV reports for South Fork and Vineyard Wind 1 and allow for another 30-day public comment period for the US Wind 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 have to require that additional sound attenuation systems be implemented or more protected species observers and platforms be added after the project has begun. This practice ultimately delays the completion of construction activities. Since these delays are avoidable, 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.

More importantly, many of the mitigation and monitoring requirements were not specified in the proposed rule. Instead, US Wind would be required to submit separate plans to NMFS for approval outlining its plans for conducting SFV measurements, for marine mammal monitoring during foundation pile driving, and for PAM operations. This also is the first time that NMFS has not included in a proposed rule regarding wind farm construction the number of platforms (the activity platform, vessels, aircraft, unmanned aerial systems, etc.) that would be required to monitor for marine mammals during foundation installation<sup>10</sup>. Not requiring US Wind to have fleshed-out mitigation and monitoring plans for these activities as part of the proposed rule (1) makes it impossible for NMFS to assess whether the company would be able to successfully implement adequate mitigation measures and would be effecting the least practicable adverse impact on the species and (2) compromises the transparency of the public review process. The Commission recommends that NMFS require US Wind to submit its SFV plan, foundation pile driving marine mammal monitoring plan, and PAM plan and allow for public comment on those plans prior to issuing any final rule.

The Commission continues to stand 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

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<sup>10</sup> NMFS has included this basic information in the majority, if not all, of the final rules (e.g., 88 Fed. Reg. 62981) and incidental harassment authorizations (e.g., [https://media.fisheries.noaa.gov/2021-12/SFW\\_IHA\\_issued\\_OPR1.pdf](https://media.fisheries.noaa.gov/2021-12/SFW_IHA_issued_OPR1.pdf)) it has issued, including those not associated with wind energy or construction activities (e.g., 88 Fed. Reg. 692).