



# MARINE MAMMAL COMMISSION

26 February 2024

Dr. Jill Lewandowski, Chief  
Division of Environmental Assessment  
Office of Environmental Programs  
Bureau of Ocean Energy Management  
45600 Woodland Road  
Sterling, Virginia 20166

Dear Dr. Lewandowski:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Bureau of Ocean Energy Management’s (BOEM) 12 January 2024 notice (89 Fed. Reg. 22490) and draft programmatic environmental impact statement (draft PEIS) that analyzed the potential impacts of wind energy development in six lease areas of the New York Bight. The following comments pertain to the proposed avoidance, minimization, mitigation, and monitoring (AMMM) measures outlined in Appendix G of the draft PEIS.

The Commission would first like to commend BOEM on the thoroughness and succinctness of the draft AMMM measures for marine mammals. The proposed incorporation of the AMMM measures into the required terms and conditions for approval of future wind energy development projects in the New York Bight lease areas will help to ensure consistency in implementation as these projects move forward. They also will serve as a basis to harmonize with mitigation, monitoring, and reporting measures that would be required by the National Marine Fisheries Service (NMFS) in its authorizations governing the taking of marine mammals incidental to conducting wind energy construction, operation, and decommissioning activities in the New York Bight, as required under the Marine Mammal Protection Act.

The Commission offers the following comments regarding specific AMMM measures—

- Alternative Monitoring Plan (MMST-1)—The measure states that the alternative monitoring plan shall have two parts, one for foundation pile driving during low-visibility conditions and one for nighttime, and that each part must demonstrate the effective use of technologies that the Lessee is proposing to use. The specific requirements for the “Nighttime Pile-Driving Monitoring” part of the plan include demonstrating “the capability of the proposed monitoring methodology to detect marine mammals and sea turtles within the full extent of the established clearance and shutdown zones with the same effectiveness as daytime visual monitoring” and discussing “the efficacy (range and accuracy) of each device proposed for nighttime monitoring as demonstrated by field trials”. However, similar requirements are missing from the “Low-Visibility Pile-Driving Monitoring” part of the plan. The final PEIS should require lessees to demonstrate the efficacy of monitoring methods for both low-visibility and nighttime pile driving.

- Foundation pile-driving measures (MMST-4)—The measure states that monitoring must be conducted from 30 minutes immediately prior to initiation of foundation pile-driving activities through 30 minutes post-completion of foundation pile-driving activities. However, a 60-minute pre-installation clearance time for both visual observations and passive acoustic monitoring (PAM) has been included in recent final rules issued by NMFS for the taking of marine mammals incidental to other wind turbine construction projects in the Atlantic<sup>1</sup> and should be included in the final PEIS. In addition, the measure should require that PAM be conducted for at least 24 hours prior to pile driving and PAM data from the previous 24 hours be reviewed prior to initiation of foundation pile driving, consistent with NMFS's requirements for the same final rules.
- Metrics for Received Sound Level Limit (RSL<sub>L</sub><sup>2</sup>; MUL-22)—The measure states that “sound fields generated during impact pile driving must not exceed NMFS’s Level A permanent threshold shift limits for low-frequency cetaceans (LFC)” and that “every attempt must be made to reach the RSL<sub>L</sub> at 100 percent of foundations.” However, the measure does not indicate what metric RSL<sub>L</sub> would be based on—peak or cumulative sound exposure level (SEL<sub>cum</sub>). The measure should stipulate that the RSL<sub>L</sub> should be based on the SEL<sub>cum</sub> threshold for LFC during installation of each foundation pile in the final PEIS.
- Abbreviated Sound Field Verification (SFV) Checks (MUL-29)—The measure states that an Abbreviated SFV Check must be conducted for every pile at 750 m (1) to verify that the RSL<sub>L</sub> has been met and (2) to document that the measured sound levels do not exceed the injury and behavior thresholds. However, the measure does not indicate what metric the Abbreviated SFV Check should be based on—a single-strike SEL (SEL<sub>s-s</sub>)<sup>3</sup> or SEL<sub>cum</sub>—nor does it specify what method should be used to extrapolate that metric to distances of 1,000 and 1,500 m to confirm the RSL<sub>L</sub> has been met from 1 May 2026 to 30 April 2030 and various other distances for the Level A and B harassment zones. If BOEM intends to use the Abbreviated SFV Check to verify that the RSL<sub>L</sub> has been met, then the SFV Check should be based on the SEL<sub>cum</sub> metric and a second hydrophone should be placed (1) 1,500 m from the foundation from 1 May 2026 to 30 April 2028 and (2) 1,000 m from the foundation from 1 May 2028 to 30 April 2030. The measure also must stipulate how the operators should extrapolate the measured sound levels to the various Level A and B harassment zones<sup>4</sup> when conducting Abbreviated SFV Checks in the final PEIS.

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<sup>1</sup> e.g., Dominion Energy Virginia (89 Fed. Reg. 4370; 23 January 2024) and Empire Wind (89 Fed. Reg. 11342; 14 February 2024).

<sup>2</sup> The RSL<sub>L</sub> cannot be exceeded beyond (a) 1,500 m from the foundation as of 1 May 2026, (b) 1,000 m from the foundation as of 1 May 2028, and (c) 750 m from the foundation as of 1 May 2030.

<sup>3</sup> In Europe, the threshold is based on a SEL<sub>s-s</sub> sound level at 750 m. If SEL<sub>s-s</sub> is the intended metric, BOEM must specify whether the mean or maximum SEL<sub>s-s</sub> should be used for each pile.

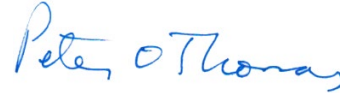
<sup>4</sup> e.g., by using the measured sound propagation loss from the most recent and/or applicable Thorough SFV Monitoring, by comparing to the maximum measured sound level at 750 m from the most recent and/or applicable Thorough SFV and assuming sound propagation conditions are similar, by comparing to the modeled sound level at 750 m, etc.

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The Commission recommends that BOEM incorporate all aforementioned changes into the final PEIS for New York Bight wind energy construction, operation, and decommissioning activities.

The Commission is available to discuss any of its comments. Please contact me if you have questions.

Sincerely,



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

cc: Ms. Jolie Harrison, NMFS Office of Protected Resources  
Dr. Erica Staaterman, BOEM Office of Environmental Programs