

subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Decision Memorandum

- I. Summary
  - II. Background
  - III. Scope of the Investigation
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  - V. Analysis of Programs
  - VI. Analysis of Comments
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- [FR Doc. 2022-18052 Filed 8-19-22; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC234]

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction of the New England Wind Offshore Wind Farm, Offshore Massachusetts

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

**ACTION:** Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a petition from Park City Wind LLC (Park City Wind), a wholly owned subsidiary of Avangrid Renewables, LLC, requesting authorization to take small numbers of marine mammals incidental to construction activities associated with the New England Wind Offshore Wind Farm in a designated lease area on the Outer Continental Shelf (OSC-A 0534) offshore Massachusetts over the course of 5 years beginning in 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Park City Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Park City Wind's application and request.

**DATES:** Comments and information must be received no later than September 21, 2022.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to [ITP.Daly@noaa.gov](mailto:ITP.Daly@noaa.gov).

**Instructions:** NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Park City Wind's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please email the contact listed above.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 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 and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. For requests under section 101(A)(5)(A) of the MMPA, NMFS is also required to begin the public review process by publishing a notice of receipt of a request for the implementation of regulations

governing the incidental taking (50 CFR 216.104(b)(1)(ii)).

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) 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 (Level B harassment).

#### Summary of Request

On December 1, 2021, NMFS received an application from Park City Wind requesting authorization to take, by Level A harassment and Level B harassment, 39 species of marine mammals incidental to construction and operation activities associated with the development of the New England Wind Offshore Wind Farm offshore of Massachusetts in Commercial Lease (OCS-A-0534). In response to our comments, and following extensive information exchange with NMFS, Park City Wind submitted a final, revised application on July 13, 2022, that we determined was adequate and complete on July 20, 2022. Park City Wind requested the regulations and subsequent LOA be valid for 5 years beginning in 2025.

Park City Wind is proposing to develop the New England Wind project in two Phases with a maximum of 130 wind turbine generators (WTGs) and electrical service platform (ESP) positions. Two positions may potentially have co-located ESPs (*i.e.*, two foundations installed at one grid position), resulting in 132 foundations.

Phase 1 would include 41 to 62 WTGs and one or two ESPs while Phase 2 would include 64 to 88 WTG/ESP positions (up to three of those positions will be occupied by ESPs). Four or five offshore export cables will transmit electricity generated by the WTGs to onshore transmission systems in the Town of Barnstable, Massachusetts.

New England Wind's offshore renewable wind energy facilities are located immediately southwest of Vineyard Wind 1, which is located in Lease Area OCS-A 0501. New England Wind will occupy all of Lease Area OCS-A 0534 and potentially a portion of Lease Area OCS-A 0501 in the event that Vineyard Wind 1 does not develop "spare" or extra positions included in Lease Area OCS-A 0501 and Vineyard Wind 1 assigns those positions to Lease Area OCS-A 0534. For the purposes of the LOA, the Southern Wind Development Area (SWDA) is defined as all of Lease Area OCS-A 0534 and the southwest portion of Lease Area OCS-A 0501.

Park City Wind considered the following activities associated with wind farm construction and operation in its application: installation of WTG and ESP foundations using impact and vibratory pile driving and drilling; high-order detonation of unexploded ordnances (UXOs); high-resolution geophysical (HRG) site characterization surveys; fisheries monitoring surveys; and export cable and inter-array cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials within the Project area to support construction and operation. Park City Wind has determined that a subset of these activities (*i.e.*, WTG and ESP foundation installation, HRG surveys, and UXO detonation) may result in the taking, by Level A harassment and Level B harassment, of marine mammals. Therefore, Park City Wind requests authorization to incidentally take marine mammals.

#### Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization,

and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, Park City Wind was awarded Commercial Lease OCS-A 0534 offshore of Massachusetts and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Park City Wind has submitted a COP to the Bureau of Ocean Energy Management (BOEM) proposing the construction, operation, maintenance, and conceptual decommissioning of the New England Wind project within Lease Area OCS-A 0487 and consisting of up to 130 WTGs, 2 ESPs,

Park City Wind has provided a complete description of the specified activities and their proposed mitigation, monitoring and reporting measures in their application. They have also included a description of estimated take methods and results. Park City Wind anticipates the following activities may potentially result in harassment of marine mammals:

- installing up to 130 WTG foundations comprised of either monopile or jacket foundations. Monopiles would not exceed 12-meters (m) in diameter for Phase 1 and 13-m for Phase 2 and would be installed using a 5,000 kilojoule (kJ) or 6,000 kJ impact hammer while each jacket foundation would consist of four 4-m pin piles installed with a 3500 kJ hammer. A vibratory hammer and drill may also be used to install the piles, as necessary. All pile driving and drilling would occur from May through December over the course of 2–3 years;
- installing up to five ESP jacket foundations (four 4-m pin piles) by impact and/or vibratory pile driving and potentially drilling from May through December over the course of 2–3 years; and
- using HRG equipment to survey approximately 10,000 kilometers (km) over 5 years (80 km/day × 25 days/year × 5 years); and
- the potential high-order detonation of up to 10 UXOs over the course of 10 days (1 UXO detonation per day, as necessary).

Park City Wind has provided two construction schedules (Construction Schedule A and B) but has requested take assuming that all foundations would be jacket foundations. A final decision on foundation types (and hence construction schedule) will be identified during the environmental review permitting process. Park City Wind has also indicated that these are the most accurate estimates for the durations of each planned activity, but that the schedule may shift over the

course of the Project due to weather, mechanical, or other related delays.

#### Information Solicited

Interested persons may submit information, suggestions, and comments concerning Park City Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Park City Wind, if appropriate.

Dated: August 17, 2022.

**Kimberly Damon-Randall**,

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[RTID 0648–XC221]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sand Island Pile Dikes Repairs in the Columbia River

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

**ACTION:** Notice; issuance of an incidental harassment authorization (IHA).

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive IHAs to the U.S. Army Corps of Engineers (Corps) to incidentally harass marine mammals during in-water construction activities associated with the Sand Island Pile Dikes Repairs Project in the Columbia River. There are no changes from the proposed authorizations in these final authorizations.

**DATES:** These authorizations are effective from August 1, 2023 through July 31, 2024 and August 1, 2024 through July 31, 2025.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction->