

04 December 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
[submitted via email to jolie.harrison@noaa.gov]

**Re: Request to Modify Letter of Authorization issued to Empire Offshore Wind, LLC,
for construction of the Empire Wind Project**

Empire Offshore Wind, LLC (Empire), an affiliate of Equinor and developer of the Empire Wind 1 project (the EW1 Project), respectfully submits this request for modification to the Letter of Authorization (LOA) and, as necessary, the associated Incidental Take Regulation (ITR) issued by the National Marine Fisheries Service (NMFS) for the construction of the Empire Wind Project. As described further below, the modifications requested include (1) transfer of the LOA to Empire's affiliate, Empire Leaseholder LLC, and (2) minor modifications to accommodate operational considerations in the field and to align with other recently issued Letters of Authorization for other offshore wind projects.

Background

A Notice of Receipt of Empire's application for an LOA pursuant to Section 101(a)(5) of the Marine Mammal Protection Act (MMPA) and 50 Code of Federal Regulations (CFR) Part 216 Subpart I and Part 217 Subpart DD to allow for the incidental harassment of small numbers of marine mammals resulting from survey and construction activities in the Lease area and Submarine Export Cable Routes during the construction of the Empire Wind Project was published in the Federal Register on 09 September 2022 (87 FR 55409). A Notice of Proposed Rule was published on 13 April 2023 in the Federal Register (88 FR 22696), a Notice of Final Rule (89 FR 11342) was published on 02 February 2024, and the Notice of issuance of the associated LOA (89 FR 14442) was published on 27 February 2024.

On November 1, 2024, BOEM approved an Outer Continental Shelf (OCS) Assignment of Record Title Interest in Federal OCS Renewable Energy Lease OCS-A 0512 (the Lease) from Empire Offshore Wind LLC to Empire Leaseholder LLC.¹ Both Empire and Empire Leaseholder LLC are wholly-owned by Equinor. As a result, the Lease is now held by Empire Leaseholder LLC. In addition, Empire and Empire Wind 2 LLC have been approved as the operators and local agents (designated operators (DO)) with full authority to act on Empire Leaseholder LLC's behalf to perform activities to comply with the OCS Lands Act, terms of the Lease, and all applicable regulations, for their respective portions of the Lease area. Specifically, Empire is the DO for the aliquots specific to the Empire Wind 1 Project, and

¹ The Environmental Protection Agency (EPA) Outer Continental Shelf (OCS) Air Permit was likewise transferred to Empire Leaseholder LLC effective 01 November 2024 and issued 18 November 2024.

Empire Wind 2 LLC is the DO for the aliquots specific to the Empire Wind 2 Project, as detailed in the respective Exhibit A's to the Outer Continental Shelf (OCS) Renewable Energy Lease or Grant Designation of Operator Form BOEM-0006, dated November 1, 2024. *See* Attachment A.

Request for Modification

1. Pursuant to 50 CFR § 217.287(a), Empire respectfully requests a transfer of the LOA from Empire to its affiliate Empire Leaseholder LLC, which is also wholly owned by Equinor. As explained above, Empire Leaseholder LLC currently holds the Lease, and Empire has been granted Designated Operator status for the EW1 Project. *See* Attachment A. Empire Leaseholder LLC has agreed to be bound by all terms and conditions of the LOA. Attached hereto as Attachment B, please see a letter dated December 3, 2024, countersigned by Empire Leaseholder LLC, in which it agrees to the transfer and all terms and conditions of the LOA.

2. In addition, Empire requests the following minor revisions to the LOA language to accommodate operational considerations in the field and to align the language of the issued LOA with language included in recently published Final Rules for the taking of marine mammals incidental to offshore wind project construction activities (e.g., Atlantic Shores, 89 FR 77972; US Wind, 89 FR 77972). For clarity, an LOA modification matrix (Attachment C) is included with this submission to display the current LOA language and the requested revisions. Empire is requesting minor modifications to the following conditions to streamline reporting processes and to address logistical and practicability considerations:

- *§217.284 Mitigation requirements (b)* – revise language to include a provision for deviations required to maintain safe maneuvering speed and justified when the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel.
- *§217.284 Mitigation requirements (c)(7)(v)* – revise language to align reporting timeline for bubble curtain performance and maintenance reports with the abbreviated sound field verification report submission timeline for piles on which abbreviated sound field verification is performed.
- *§217.284 Mitigation requirements (c)(14)* – revise language to indicate that the Foundation Installation Pile Driving Marine Mammal Monitoring Plan will specify the number and location of passive acoustic monitoring (PAM) operators, in addition to protected species observers (PSOs).
- *§217.285 Requirements for monitoring and reporting (c)(2)* – revise language to refer to the NMFS-approved PAM Plan for specificity regarding PAM operator protocols during foundation pile driving.

The foregoing modifications do not result in any material changes to the construction schedule, inputs assessed in the estimated takes of marine mammals, nor any other alterations to the activities already analyzed in the initial LOA application. Submission of this request does not affect the existing LOA, nor the scope of activities as currently permitted. While this request remains pending with NMFS, the Project will continue to operate in compliance with the existing LOA.

Empire respectfully requests that NMFS expedite approval of the requested transfer of the LOA to Empire Leaseholder LLC and the proposed minor language modifications of the LOA outlined above.

Empire continues to appreciate NMFS collaboration and coordination on the Project. If you have any questions, please contact Jordan Carduner (jcard@equinor.com).

Sincerely,



Joshua Verleun
Permitting Director – Empire Wind

cc: Jaclyn Daly, Jessica Taylor, Kyle Baker, Melissa Pauley

Enclosed:

Attachment A: 1 November 2024 Email from G. Best, BOEM

Attachment B: 3 December 2024 Letter from D. McSweeney to T. Muhlfelder

Attachment C: Requested Modification Matrix



Attachment C: Requested Modification Matrix

Letter of Authorization Section	Current LOA Language	Requested Revision
<p>§ 217.284 Mitigation requirements</p>	<p>(b) <i>Vessel strike avoidance measures</i>. LOA Holder must comply with the following vessel strike avoidance measures, unless an emergency situation presents a threat to the health, safety, or life of a person or when a vessel, actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, requires speeds in excess of 10 knots (kn) (18.5 kilometers per hour (km/hr)) to fulfill those responsibilities, while in the specified geographical region. An emergency is defined as a serious event that occurs without warning and requires immediate action to avert, control, or remedy harm. All vessel speeds are referenced to speed over ground:</p>	<p>(b) <i>Vessel strike avoidance measures</i>. LOA Holder must comply with the following vessel strike avoidance measures while in the specified geographical region, unless a deviation is necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel; an emergency situation presents a threat to the health, safety, or life of a person; or when a vessel is actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response. An emergency is defined as a serious event that occurs without warning and requires immediate action to avert, control, or remedy harm. Speed over ground will be used to measure all vessel speed restrictions.</p>
<p>§ 217.284 Mitigation requirements (c) <i>WTG and OSS foundation installation</i></p>	<p>(7)(v) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each pile using a bubble curtain is installed. Additionally, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed; and</p>	<p>(v) Construction contractors must train personnel in the proper balancing of airflow to the bubble curtain ring. LOA Holder must provide NMFS Office of Protected Resources with a bubble curtain performance test and maintenance report to review within 72 hours after each pile using a bubble curtain is installed. For piles for which thorough SFV is carried out, this report must be submitted as soon as it is available, but no later than when the interim SFV report is submitted for the respective pile. Performance reports for piles monitored with abbreviated SFV must be submitted with the weekly pile driving reports. Additionally, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed; and</p>
<p>§ 217.284 Mitigation requirements (c) <i>WTG and OSS foundation installation</i></p>	<p>(14) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of pile driving and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include a description of all monitoring equipment and PAM and PSO protocols (including number and location of PSOs) for all pile driving. No foundation pile installation can occur without NMFS' approval of the Plan; and</p>	<p>(14) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 days prior to planned start of pile driving and abide by the Plan if approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include a description of all monitoring equipment and PAM and PSO protocols (including number and location of PSOs and PAM operators) for all pile driving. No foundation pile installation can occur without NMFS' approval of the Plan; and</p>
<p>§ 217.285 Requirements for monitoring and reporting (c) <i>PSO and PAM operator requirements during WTG and OSS foundation installation</i></p>	<p>(2) At least three on-duty PSOs must be stationed on each vessel-based observer platform. If an aerial platform is used (per § 217.284(e)(7)), at least two on-duty PSOs must be actively searching for marine mammals. Concurrently, at least one PAM operator per acoustic data stream (i.e., equivalent to the number of acoustic buoys) must be actively monitoring for marine mammals 60 minutes before and during, and 30 minutes after impact pile driving in accordance with a NMFS-approved PAM Plan; and</p>	<p>(2) At least three on-duty PSOs must be stationed on each vessel-based observer platform. If an aerial platform is used (per § 217.284(e)(7)), at least two on-duty PSOs must be actively searching for marine mammals. Concurrently, at least one PAM operator(s) per acoustic data stream (i.e., equivalent to the number of acoustic buoys) must be actively monitoring for marine mammals 60 minutes before and during, and 30 minutes after impact pile driving in accordance with a NMFS-approved PAM Plan; and</p>