

U.S. National Oceanic and Atmospheric Administration (NOAA) Fisheries
Letter of Authorization (LOA) and Proposed Rulemaking

Empire Offshore Wind, LLC (Empire) has applied to NOAA Fisheries for a Letter of Authorization (LOA) under the Marine Mammal Protection Act (MMPA) for the Empire Wind 1 and Empire Wind 2 projects. The LOA is a 5-year permit which would authorize the “take” of marine mammals that may result from the construction of Empire Wind 1 and Empire Wind 2. The LOA process requires that NOAA Fisheries publish a notice of proposed rulemaking; The notice of proposed rulemaking for Empire Wind was published on April 12 in the Federal Register.

Marine Mammal Protection Act (MMPA)

- All marine mammals are protected under the MMPA.
- The “take” of marine mammals is generally prohibited by the MMPA, but applicants may request authorization from NOAA for incidental (accidental but not unanticipated) take of marine mammals that may occur from an activity¹.

“Takes”: Level A vs. Level B

- It is important to note that the only form of “take” anticipated from Empire Wind’s activities, and requested in the LOA application, is “harassment” – no death or serious injury of marine mammals is expected from Empire Wind’s activities, nor proposed for authorization by NOAA Fisheries.
- The vast majority of “takes” that have been requested by Empire Wind, and that NOAA Fisheries proposes to authorize in the proposed rulemaking, are by “Level B harassment” – this is behavioral harassment, which can include an animal diverting course to avoid a sound that it finds disturbing.
- A very small number of takes by Level A harassment (8 total over 5 years) are requested in the application, and proposed for authorization by NOAA fisheries. Level A harassment is defined as having the potential to injure a marine mammal. In the case of Empire Wind’s activities, the only potential type of Level A harassment would be auditory injury (i.e., potential loss of hearing at certain frequencies; no deafness would result).
- It’s important to note that the takes by Level A harassment requested by Empire Wind are the result of very conservative (i.e. protective based on an abundance of caution) modeling which is a requirement of the application process, and Empire Wind expects that the proposed avoidance, minimization and mitigation measures will prevent any potential instances of Level A harassment from occurring (i.e., no loss of hearing at certain frequencies).

¹ The MMPA defines “take” as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal”.

- NOAA Fisheries has determined activities associated with the construction of Empire Wind that may result in “take” of marine mammals are all related to underwater noise. These include wind turbine generator foundation installation (pile driving), nearshore cable landfall and marina construction activities and/or geophysical surveys.
- In the LOA application, Empire Wind analyzed the potential impacts of these activities on marine mammals in the project area, estimated the number of “takes” that may occur for each species over the 5-year permit based on the conservative modeling, and proposed mitigation and monitoring measures to avoid and minimize the potential for take.

Mitigation and Monitoring Measures

- Mitigation and monitoring measures proposed by Empire Wind are protective of marine mammals and reflect the commitment of Empire Wind to protecting the marine environment.
- These measures include a voluntary seasonal pile driving closure that would restrict pile driving for the months of January through April to protect North Atlantic right whales, activity exclusion zones to help prevent marine mammals from entering the area before pile driving begins, independent and NOAA-approved protected species observers (PSO) to monitor and document presence of marine mammals, and real-time passive acoustic monitoring to detect marine mammals before they enter zones where they may otherwise be disturbed by noise.

NOAA Fisheries Rulemaking

- NOAA’s proposed rule thoroughly analyzes Empire Wind’s proposed activities and the potential impacts of those activities on marine mammals, provides the “take” numbers that would be authorized via the final rulemaking and LOA, and proposes the mitigation and monitoring measures that NOAA Fisheries has determined are necessary to minimize and avoid the project’s potential impacts on marine mammals.
- The proposed rule is open for public comment for 30 days (through May 15).
- The public can access the LOA application and the proposed rule online at: [Incidental Take Authorization: Empire Offshore Wind, LLC Construction of the Empire Wind Project \(EW1 and EW2\) off of New York | NOAA Fisheries](#).

Responsible project development has been the priority of Empire Wind from the beginning. We are committed to protecting the marine environment in which we operate.

For additional questions please contact:

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