



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

July 21, 2023

Karen Baker
Chief, Office of Renewable Energy Programs
U.S. Department of the Interior
Bureau of Ocean Energy Management
Washington, D.C. 20240-0001

Re: Endangered Species Act Section 7 Consultation for the Revolution Wind Project

Dear Ms. Baker:

Enclosed is our Biological Opinion, issued under section 7(a)(2) of the Endangered Species Act (ESA), for Revolution Wind's Offshore Energy Project. The Bureau of Ocean Energy Management is acting as the lead federal agency for purposes of section 7 consultation; the other action agencies include the Bureau of Safety and Environmental Enforcement, the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency, the U.S. Coast Guard, and NOAA's National Marine Fisheries Service (NMFS) Office of Protected Resources.

In the Opinion, we use the best available scientific and commercial data to analyze effects of the proposed action on ESA-listed species and designated critical habitat. We conclude that the proposed action may adversely affect but is not likely to jeopardize the continued existence of blue, fin, sei, sperm, and North Atlantic right whales, the Northwest Atlantic distinct population segment (DPS) of loggerhead sea turtles, North Atlantic DPS of green sea turtles, Kemp's ridley, and leatherback sea turtles, shortnose sturgeon, and the five distinct population segments (DPS) of Atlantic sturgeon. We conclude that the proposed action is not likely to adversely affect giant manta rays, hawksbill sea turtles, Rice's whale, or critical habitat designated for the New York Bight DPS of Atlantic sturgeon. We have determined that the project will have no effect on any species of ESA-listed corals, the Gulf of Maine DPS of Atlantic salmon, Gulf sturgeon, Nassau Grouper, the Northeast Atlantic DPS of loggerhead sea turtles, Oceanic whitetip shark, smalltooth sawfish, or critical habitat designated for the North Atlantic right whale, or the Northwest Atlantic DPS of loggerhead sea turtles.

Some Revolution Wind project vessels will transit to/from the Paulsboro Marine Terminal in Paulsboro, NJ. As explained in our Opinion, NMFS has completed a separate ESA consultation with the USACE on the construction and operations of this port facility. The Paulsboro consultation resulted in the issuance of a Biological Opinion on July 19, 2022, that includes Incidental Take Statements exempting the incidental take of shortnose sturgeon and Atlantic sturgeon resulting from vessel operations. In the Revolution Wind Opinion, we have identified the portion of take of Atlantic and shortnose sturgeon attributable to operations of Revolution Wind vessels using the Paulsboro Marine Terminal. As explained in our Opinion, the approach we have adopted avoids "double counting" take of Atlantic and shortnose sturgeon resulting from vessel traffic in the Delaware River, yet also ensures that all effects of the Revolution Wind



Project are appropriately evaluated and that incidental take attributable to the proposed action for Revolution Wind is considered in the Opinion's final determination.

As required by section 7(b)(4) of the ESA, an incidental take statement (ITS) is provided with the enclosed Opinion. The ITS exempts an identified amount of incidental take of ESA-listed whales, sea turtles, shortnose sturgeon, and Atlantic sturgeon from the ESA section 9 prohibitions on take. The ITS specifies Reasonable and Prudent Measures (RPMs) and implementing Terms and Conditions necessary and appropriate to minimize, monitor and report the take of ESA-listed whales, sea turtles, and Atlantic sturgeon. In order to be exempt from the prohibitions on take, BOEM and the other relevant action agencies must comply (and must ensure that Ørsted/Revolution Wind complies) with the RPMs and their implementing terms and conditions. Failure to implement the Terms and Conditions through enforceable measures may result in a lapse of the protective coverage of section 7(o)(2) of the ESA. All mitigation measures listed and described in section 3 of the Opinion as part of the proposed action are designed to avoid or minimize adverse effects to listed species and were evaluated and relied on in our effects and our jeopardy analyses; failure to implement those measures as described could require reinitiation of consultation and/or invalidate this Opinion, including the take exemptions provided by the ITS.

When an action will result in incidental take of ESA-listed marine mammals, ESA section 7(b)(4) requires that such taking be authorized under the MMPA section 101(a)(5) before the Secretary can issue an Incidental Take Statement (ITS) for ESA-listed marine mammals. As such, the terms of this ITS and the exemption from section 9 of the ESA become effective for ESA-listed marine mammals only upon the issuance of the final MMPA authorization to take the marine mammals identified in the ITS. Absent such authorization, the ITS, including its exemption from prohibited take, is inoperative for ESA-listed marine mammals. NMFS Office of Protected Resource issued a Notice of Proposed Rulemaking in response to Revolution Wind's application for an MMPA ITA in December 2022; a final decision on the authorization is scheduled for fall 2023.

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or designated critical habitat, to help implement recovery plans, or to develop information. In the Opinion, we provide a number of conservation recommendations for the consideration of the action agencies.

Issuance of this Opinion concludes consultation for the proposed actions. As described in 50 CFR 402.15, action agencies have several responsibilities following issuance of a Biological Opinion. As such, each action agency identified in this Opinion is obligated to: (a) Determine whether and in what manner to proceed with its action(s) in light of its section 7 obligations and our Biological Opinion; and (b) notify us of your final decision on the action. We look forward to hearing from you and each of the other action agencies on these matters.

Reinitiation of consultation is required and shall be requested by BOEM, on its own behalf or on behalf of other action agencies, by the other action agencies, or by NMFS where discretionary

Federal involvement or control over the action has been retained or is authorized by law and: (1) The amount or extent of taking specified in the ITS is exceeded; (2) new information reveals effects of the action that may not have been previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species; or, (4) a new species is listed or critical habitat designated that may be affected by the identified action.

We appreciate the cooperation of your staff throughout the consultation process, and I look forward to continuing to work with you as this project moves forward. Any questions regarding the Biological Opinion can be directed to Julie Crocker in our Protected Resources Division at (978) 282-8480 or by e-mail (Julie.Crocker@noaa.gov).

Sincerely,



Michael Pentony
Regional Administrator

cc: Anderson, Crocker, Morris, Tuxbury – F/GAR
Esch, Daly, Harrison, Laws – F/OPR
Farley – F/GCNE
Baker, Hooker, Landers, Segarra – BOEM
Broussard, Hunter, Tuttle – BSEE
Bird, Timmermann – EPA
Brien, Handell, Jacek – USACE
Detweiler – USCG