



Vineyard Wind – NGO Agreement
January 22, 2019

This Agreement dated as of January 22, 2019, is made by and between VINEYARD WIND, LLC (“Vineyard Wind”), which has its principal place of business at Suite 510, Bank Plaza, 700 Pleasant Street, New Bedford, MA 02740, the NATIONAL WILDLIFE FEDERATION, the NATURAL RESOURCES DEFENSE COUNCIL, and the CONSERVATION LAW FOUNDATION (the “NGOs”) (collectively the “Parties”).

WHEREAS, the Parties are united in the belief that responsibly developed offshore wind power has a major role to play in America’s energy future;

WHEREAS, the Parties recognize that wind energy does not have the negative climate effects of carbon emissions from other generation sources, and wind power thus helps to ameliorate impacts like ocean acidification, loss of sea ice, sea level rise, more extreme weather, and many other climate effects;

WHEREAS, the Parties are committed to working together to ensure that the development of much-needed wind electricity generation capacity off the nation’s coasts will occur in a manner that avoids, minimizes, and mitigates adverse impacts on the health of our coastal and marine wildlife;

WHEREAS, the development of offshore wind energy provides a unique opportunity for offshore wind developers to collaborate with academic research institutions, government, environmental organizations, ocean user groups and other stakeholders to advance scientific research that enhances protections for the critically endangered North Atlantic right whale, including research on the effects, if any, of wind farm operations on right whale distribution and habitat use;

WHEREAS, Vineyard Wind is committed to developing offshore wind power projects in the U.S. with robust standards of environmental protection during pre-development, construction, and operations and maintenance activities, while making a meaningful contribution to science that can support the responsible development of America’s vast offshore wind resources;

WHEREAS, the protection of the North Atlantic right whale is a top priority, the Parties recognize and agree that protective actions set forth herein must be done in a manner that ensures human health and safety when working in the offshore environment;

January 22, 2019

WHEREAS, while this Agreement pertains to protections for the North Atlantic right whale specifically, the Parties agree that the measures set forth herein may also provide additional protections to other marine mammals and protected species;

WHEREAS, this agreement is intended to serve as a model for similar agreements pertaining to offshore wind projects along the East Coast;

WHEREAS, the Parties agree that the commitments made herein apply specifically and solely to Vineyard Wind’s first 800 MW project located in the northern portion of the lease area OCS-A-501 (the “Project Area”), and as more fully described in the Construction and Operations Plan submitted to the Bureau of Ocean Energy Management (“BOEM”) dated December 19, 2017, as supplemented thereafter (the “Project”).

NOW THEREFORE, in consideration of the foregoing the Parties agree as follows:

I. Protective Measures for North Atlantic Right Whales

Vineyard Wind agrees to implement the following measures for responsible offshore wind development in constructing and operating the Project.

A. Construction Activities

Table 1. Seasonal Restrictions on Pile Driving Activities

Timeframe	Mitigation Protocol
Red Period: January 1 – April 30	No pile driving
Yellow Period: November 1 – December 31; May 1 – 14	Enhanced mitigation protocol required
Green Period: May 15 – October 31	Comprehensive monitoring / clearance zone protocol required

1. Red Period: No Pile Driving

During this period of most likely presence of North Atlantic right whales, as specified in Table 1, no pile driving shall occur.

2. Yellow Period: Enhanced Mitigation Protocol for Pile Driving

During the times of likely presence of North Atlantic right whales, as specified in Table 1, an Enhanced Mitigation Protocol will be implemented during each day that pile driving is scheduled to take place. This will include:

- a) Pile driving shall not be initiated at night or when the clearance zone cannot be visually monitored, as determined by the lead Protected Species Observer (hereafter, “PSO”)¹ on duty. Pile driving may continue after dark only if the action began during the day and must proceed for human safety or installation feasibility² reasons;
- b) A clearance zone for North Atlantic right whales shall extend 10,000 meters in all directions from the center of the pile. Pile driving activities shall not be initiated when there is either a visual observation or acoustic detection of one or more North Atlantic right whales within the clearance zone through (i.), (ii.), or (iii.) of this section, and shall be shut-down under either of these circumstances unless it must proceed for human safety or installation feasibility reasons.
 - i. Real-time passive acoustic monitoring (“PAM”)³, assuming a detection range of 10,000 meters, shall be undertaken from a vessel other than a pile driving vessel, or from a stationary unit, to avoid the hydrophone being masked by the pile driving vessel or development-related noise and to ensure that the clearance zone is clear of North Atlantic right whales. PAM shall begin at least 60 minutes prior to commencement of pile driving and shall be conducted throughout the time of pile driving activity; and
 - ii. There shall be vessel-based PSOs stationed at the pile driving site. There shall be a minimum of four PSOs following a two-on, two-off rotation, each responsible for scanning no more than 180° per pile driving event. Observation shall begin at least 60 minutes prior to the commencement of pile driving and shall be conducted throughout the time of pile driving activity; and
 - iii. Between May 1 – 14, a track-line survey fully covering the clearance zone to detect the presence of North Atlantic right whales must be completed prior to commencement of pile driving using at least one of the following methods:

¹ PSO refers to an individual with current National Marine Fisheries Service (“NMFS”) certification as a Protected Species Observer.

² Installation feasibility refers to ensuring that the pile installation event results in a usable foundation for the wind turbine (*e.g.*, installed to the target penetration depth without refusal and with a horizontal foundation/tower interface flange). In the instance where pile driving is already started and a PSO recommends pile driving be halted, the lead engineer on duty will evaluate the following: 1) Use the site-specific soil data and the real-time hammer log information to judge whether a stoppage would risk causing piling refusal at re-start of piling; and 2) Check that the pile penetration is deep enough to secure pile stability in the interim situation, taking into account weather statistics for the relevant season and the current weather forecast. Determinations by the lead engineer on duty will be made for each pile as the installation progresses and not for the site as a whole. This information will be included in the reporting for the Project.

³ Throughout this agreement “PAM” refers to a real-time passive acoustic monitoring system, with equipment bandwidth sufficient to detect the presence of vocalizing North Atlantic right whales.

- An aerial survey, weather permitting (based on safe flying conditions), conducted once the lead aerial observer⁴ determines adequate visibility based on standardized environmental parameters (e.g., glare, sea state, wind speed, etc.); or
 - A vessel-based survey carried out by PSOs conducted during daylight hours.
- c) Pile driving may resume upon confirmation that all North Atlantic right whales have departed the clearance zone:
- i. May 1 – 14: after one day of monitoring using methods described in (b.i.), (b.ii.), and (b.iii.) of this section.
 - ii. November 1 – December 31: methods listed under (b.i.) and (b.ii.) of this section may be used by the lead PSO on duty to confirm that the whales have departed the 10,000 meter zone; if so, piling may commence following observance of the clearance zone monitoring protocol described in (b.i.) and (b.ii.).

3. Green Period: Comprehensive Monitoring / Clearance Zone Protocol for Pile Driving

During this period of less likely presence of North Atlantic right whales, as specified in Table 1, a Comprehensive Monitoring / Clearance Zone Protocol will be implemented during each day that pile driving is scheduled to take place. This will include:

- a) Pile driving shall not be initiated at night or when the clearance zone cannot be visually monitored, as determined by the lead PSO on duty. Pile driving may continue after dark only if the action began during the day and must proceed for human safety or installation feasibility reasons; and
- b) A clearance zone for North Atlantic right whales shall extend a minimum of 1,000 meters in all directions from the center of the pile. Pile driving activities shall not be initiated when there is either the visual observation or acoustic detection of one or more North Atlantic right whales within the clearance zone through (i.) and (ii.) of this section and shall be shut down under either of these circumstances unless it must proceed for human safety or installation feasibility reasons. If a shut-down is implemented, pile driving may resume upon confirmation that all North Atlantic right whales have departed the clearance zone after 60 minutes of monitoring through (i.) and (ii.) of this section.

⁴ The lead aerial observer shall be selected from a roster of qualified lead aerial observers who are available for duty with 12 hours' notice. This roster to be provided by either the New England Aquarium, the Center for Coastal Studies, National Oceanic and Atmospheric Administration ("NOAA"), or other organizations recommended by the organizations listed in this sentence. The Project will use only observers from this roster to the extent they are available at the time needed to perform the monitoring.

- i. Real-time PAM will be implemented at least 60 minutes prior to pile driving. PAM will be undertaken from a vessel other than the pile driving vessel, or from a stationary unit, to avoid the hydrophone being masked by the pile driving or other development-related noise; and
- ii. There shall be a minimum of four PSOs stationed at the pile driving site, following a two-on, two-off rotation, each responsible for scanning no more than 180° per pile driving event. Observation will begin at least 60 minutes prior to the commencement of pile driving and shall be conducted throughout the period of pile driving activity.

4. Installation of Jacket Foundations

No more than two jacket foundations will be installed.

B. Geophysical Surveys During Construction and Post-Construction

This section does not refer to any geophysical surveys carried out as part of site assessment and characterization (“SAC”) stage of offshore wind development. The Parties believe further discussion is necessary to agree upon feasible protocols for SAC surveys that would allow Vineyard Wind to meet BOEM geophysical survey requirements.

Table 2. Seasonal Restrictions on Geophysical Surveys During Construction and Post-Construction

Timeframe	Mitigation Protocol
Red Period: January 1 – May 14	No geophysical surveys with RMS sound pressure levels > 180 dB re 1 uPa at 1 meter for equipment that operates between 7 Hz and 35 kHz unless with Enhanced Mitigation Protocol
Green Period: May 15 – December 31	Comprehensive monitoring / clearance zone protocol required

1. Red Period: No Surveys or Surveys with Enhanced Mitigation Protocol

During this period, as specified in Table 2, no surveys with RMS sound pressure levels > 180 dB re 1 uPa at 1 meter for equipment that operates between 7 Hz and 35 kHz shall occur. An exception can be made for infrequent geophysical surveys that are essential during the construction and micro-siting of the Project to ensure proper installation or maintenance of the Project post-construction. In these instances, the following enhanced mitigation protocol shall be implemented:

- a) A clearance zone for North Atlantic right whales shall extend 1,000 meters in all directions from the survey vessel;

- b) Surveys shall not be initiated at night or when there is either a visual observation or an acoustic detection (confirmed by visual observation) of one or more North Atlantic right whales within the clearance zone and shall be shut down under either of these circumstances. After daylight hours, surveys shall be shut down following an acoustic detection only. Observation and PAM shall begin at least 60 minutes prior to commencement of the survey and shall be conducted throughout the period of the survey activity. Surveying may resume upon confirmation that all North Atlantic right whales have departed the clearance zone after 60 minutes of both visual and acoustic monitoring; and
 - i. Real-time PAM shall be undertaken in a manner that avoids masking of the North Atlantic right whale vocalizations by vessel noise, including use of a system that is independent from the survey vessel if necessary; and
 - ii. There shall be a minimum of four PSOs following a two-on, two-off rotation, each responsible for scanning no more than 180°.
- c) Survey equipment will commence following a ramp-up procedure and will be operated at the lowest source level feasible to meet survey requirements.

2. Green Period: Comprehensive Monitoring / Clearance Zone Protocol for Surveys

During this period, as specified in Table 2, a Comprehensive Monitoring/ Clearance Zone Protocol will be implemented during all surveys with RMS sound pressure levels > 180 dB re 1 uPa at 1 meter for equipment that operates between 7 Hz and 35 kHz. This will include:

- a) A clearance zone for North Atlantic right whales shall extend 500 meters in all directions from the survey vessel and, to the extent feasible, shall be extended to 1,000 meters;
- b) Surveys shall not be initiated when there is either a visual observation or an acoustic detection of one or more North Atlantic right whales within the clearance zone and shall be shut down under either of these circumstances. After daylight hours, surveys shall be shut down following an acoustic detection only. Visual and acoustic surveys shall begin at least 30 minutes prior to commencement of survey activity and shall be conducted throughout the period of the activity. Surveying may resume upon confirmation that all North Atlantic right whales have departed the clearance zone after 30 minutes of visual or acoustic monitoring; and
 - i. Real-time PAM shall be undertaken in a manner that avoids masking of the North Atlantic right whale vocalizations by vessel noise, including use of a system that is independent from the survey vessel if necessary; and

- ii. The clearance zone shall be monitored by at least one PSO and at least two PSOs if feasible.
- c) Survey equipment will commence following a ramp-up procedure and will be operated at the lowest source level feasible to meet survey requirements.

C. Vessel Speed Restrictions

All Project-associated vessels shall adhere to the following speed restrictions:

1. A mandatory speed restriction of 10 knots shall be observed within Dynamic Management Areas (“DMAs”) established by National Oceanic and Atmospheric Administration (“NOAA”) Fisheries, with the exception of crew transfer vessels.⁵
2. A mandatory speed restriction of 10 knots shall be observed within DMAs established by NOAA Fisheries by crew transfer vessels, unless the following procedures result in confirmation that the North Atlantic right whales are clear of the transit route and Project Area for two consecutive days:
 - (a) Vessel based surveys carried out by PSOs conducted during daylight hours and real-time PAM shall be undertaken, in a manner that avoids masking of the North Atlantic right whale vocalizations by vessel noise; or
 - (b) An aerial survey, weather permitting (based on safe flying conditions), conducted once the lead aerial observer⁶ determines adequate visibility based on standardized environmental parameters (*e.g.*, glare, sea state, wind speed, etc.) and real-time PAM shall be undertaken, when feasible, in a manner that avoids masking of the North Atlantic right whale vocalizations by vessel noise.

⁵ A crew transfer vessel is a vessel whose principle purpose is to transfer technicians who work offshore, and the supplies and small-scale components used by these technicians, to and from a port facility and their offshore work location.

⁶ The lead aerial observer shall be selected from a roster of qualified lead aerial observers who are available for duty with 12 hours’ notice. This roster to be provided by either the New England Aquarium, the Center for Coastal Studies, NOAA, or other organizations recommended by the organizations listed in this sentence. The Project will use only observers from this roster to the extent they are available at the time needed to perform the monitoring.

- (c) Following clearance from C. 2. (a.) and (b.), vessel transits conducted within a DMA will employ at least two observers⁷ aboard the vessel to visually monitor for North Atlantic right whales. If a North Atlantic right whale is spotted within or approaching the transit route, vessels shall operate at less than 10 knots until the procedures in C. 2. (a.) and (b.) result in clearance of the transit route for two consecutive days.

3. From November 1 through May 14:

- (a) A 10-knot speed restriction shall be observed by all vessels, with the exception of crew transfer vessels operating within and transiting to/from the lease area and vessels operating in Nantucket Sound (which has not been demonstrated by best available science to provide consistent habitat for North Atlantic right whales).
- (b) A 10-knot speed restriction shall be observed by crew transfer vessels operating within and transiting to/from the Project Area (except while in Nantucket Sound, which has not been demonstrated by best available science to provide consistent habitat for North Atlantic right whales) unless the following measures are in place:
 - i. At least one observer,⁸ and two when personnel are available, aboard the vessel to visually monitor for North Atlantic right whales; and
 - ii. Real-time PAM shall be undertaken in a manner that avoids masking of the North Atlantic right whale vocalizations by vessel noise.
 - iii. If a North Atlantic right whale is detected as a result of the monitoring measures identified in (i.) and/or (ii.) of this section, a 10-knot speed restriction shall be in effect for the remainder of the day.
- (c) To the extent that a DMA occurs between November 1-May 14 the provisions in C. 1. and 2. apply.

D. Reporting

Vineyard Wind commits to report all visual observations and acoustic detections of vocalizing North Atlantic right whales to the National Marine Fisheries Service (“NMFS”) or the Coast Guard within two hours of occurrence when feasible and no later than the end of their shift.

⁷ During construction the observers shall be NMFS certified PSOs. During Project operations and maintenance, the observers shall have North Atlantic right whale observer training provided by a company utilized by NMFS for PSO training or recommended by the organizations listed in footnote 6. Two individuals shall be designated during each vessel trip to conduct monitoring.

⁸ See footnote 7.

E. Underwater Noise Reduction

Vineyard Wind is committed to employing technically and commercially feasible noise reduction and attenuation measures that minimizes impacts to North Atlantic right whales and other high-priority species. Vineyard Wind will implement attenuation mitigation to reduce sound levels by a target of 12 dB. A noise attenuation technology will be implemented (*e.g.*, Noise Mitigation System [NMS], Hydro-sound Damper [HSD], Noise Abatement System [AdBm], bubble curtain, or similar), and a second back-up attenuation technology (*e.g.*, bubble curtain or similar) will be on-hand, to be used if needed given results of field verification. For the Project, Vineyard Wind will not request Level A takes of a North Atlantic Right Whale. Vineyard Wind will inform and receive input from the other Parties as it identifies noise attenuation measures and technologies to be used for the Project.

F. Additional Mitigation Strategies

In addition to the above measures designed to avoid and minimize impacts to North Atlantic right whales, Vineyard Wind commits to considering other mitigation approaches aimed at overall species protection.

II. Commitment to Collaborative Science

Vineyard Wind has made a \$3 million commitment to develop and deploy technologies that ensure heightened protections for North Atlantic right whales and other marine mammals as the U.S. offshore wind industry continues to grow. Vineyard Wind commits to implement the following principles when undertaking marine science and science-based conservation efforts:

- A.** Plan and conduct science and science-based conservation efforts in a collaborative and transparent manner, utilizing recognized marine experts, engaging relevant stakeholders, and making results publicly available;
- B.** Contribute to the field of marine science and make efforts to address the priorities defined by regional and state ocean planning efforts; and
- C.** Advance understanding of the effects of offshore wind development on marine and coastal resources, the effectiveness of mitigation measures (*e.g.*, noise attenuation, thermal detection), and strategies to reduce other stressors facing affected species (*e.g.*, incidental fishing gear entanglement reduction), such as the North Atlantic right whale.

III. Inclusion of Protective Measures in Agency Submittals

Where Vineyard Wind seeks state and federal authorizations to conduct Project activities that may potentially affect the North Atlantic right whale, Vineyard Wind agrees to propose mitigation strategies

consistent with the protective measures set forth herein as they relate to the activity for which authorization is sought. Vineyard Wind will also inform the relevant state and federal agencies of Vineyard Wind's voluntary commitments under this Agreement. To the extent that a state or federal agency declines to adopt, for regulatory purposes, a protective measure specified herein, Vineyard Wind will nevertheless implement the measure provided it does not conflict with regulatory requirements.

IV. Modeling and Adaptive Management

The intent of this agreement is to minimize disruption of normal feeding, breeding and migratory behaviors and prevent injury to right whales. The mitigation measures of this Agreement aim to lower risk from injury to a level approaching zero and to reduce other effects caused by marine noise significantly below that estimated in BOEM's December 2018 Draft Environmental Impact Statement ("DEIS") for Vineyard Wind. The Parties' expectation is that the mitigation measures included in this agreement will meet these goals. To confirm this before construction, Vineyard Wind agrees to re-run and share with the Parties its piling noise exposure model to incorporate the execution of mitigation measures in this Agreement and the Project parameters (*e.g.*, number of monopiles, number of jackets) planned to actually be built (as opposed to the permitting envelope analyzed in the DEIS). Should the revised modeling not demonstrate that impacts from construction are reduced to the levels described in this paragraph, the Parties will consider additional mitigation measures.

While this Agreement applies only to Vineyard Wind's 800 MW project located in the northern portion of the lease area OCS-A-501, the Parties recognize that Vineyard Wind intends to propose future projects. In a good faith effort to continue to work collaboratively and evaluate lessons learned from the Project subject to this Agreement, every two years, or if one of the Parties so requests, the Parties agree to review the scientific data on the occurrence, abundance, habitat use, and conservation status of North Atlantic right whales, particularly in the vicinity of the Project Area, along with any other relevant data, including information on new noise attenuation and monitoring technologies or practices that have become available. This review will inform future projects and agreements between the Parties. To the extent that new protective measures are identified relevant to this Project, Vineyard Wind agrees to evaluate their technical and commercial feasibility and implement them if appropriate.

V. Dispute Resolution

In the event of a dispute among the Parties concerning implementation of or compliance with any aspect of this Agreement, the initiating Party or Parties shall provide the other Party or Parties with a written notice outlining the nature of the dispute and the remedy that is sought. The Parties shall meet and confer, either in person or over the telephone, to work in good faith to attempt to resolve the dispute, including by modification of the agreement if all Parties agree. If agreement on the appropriate resolution of the dispute cannot be reached, the Parties reserve their right to withdraw from the agreement as a last resort.

VI. Term of Agreement

The Parties agree that the protective measures set forth herein will remain in place for five years unless extended or modified by mutual agreement of the Parties.

[SIGNATURE PAGE TO FOLLOW]

Vineyard Wind, LLC

By: 

Name: Erich Stephens
Chief Development Officer

Date: January 22, 2019

Natural Resources Defense Council

By: 

Name: Katherine Kennedy
Senior Director, Climate & Clean Energy
Program

Date: January 22, 2019

National Wildlife Federation

By: 

Name: Collin O'Mara
President & Chief Executive Officer

Date: January 22, 2019
NWF ID: 1901-041

Conservation Law Foundation

By: 

Name: Priscilla Brooks, Ph.D.
Vice President and Director of Ocean
Conservation

Date: January 22, 2019