E 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC667]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys offshore of New Jersey and New York

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization offshore of New Jersey and New York in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS-A 0499 and OCS-A 0549 and associated export cable route (ECR) area. The activities described in Atlantic Shores' request, the overall survey duration, the project location, and the acoustic sources proposed for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Atlantic Shores for the 2022 site characterization surveys (2022 IHA). All proposed mitigation, monitoring, and reporting requirements remain the same. While Atlantic Shores' planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (*https://seamap.env.duke.edu/models/Duke/EC/*), which NMFS has determined represents the best available scientific data. NMFS has determined it appropriate to provide a 30-day period for the public to comment on this proposed action. Pursuant to the Marine

Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE* **FEDERAL REGISTER**].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Potlock@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, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word, 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/permit/incidental-take-authorizations-under-marine-mammal-protection*-act 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: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the

references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e*., the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On August 16, 2021, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey and New York in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0499 and associated ECR area. Atlantic Shores requested authorization to take small numbers of up to 15 species of marine mammals, comprising 13 cetacean species and two pinniped species, by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on January 27, 2022 (87 FR 4200). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA on April 22, 2022 (87 FR 24103), which is effective from April 20, 2022 through April 19, 2023. A minor correction notice was published on May 5, 2022 (87 FR 26726).

Atlantic Shores conducted the required marine mammal mitigation and monitoring and did not exceed the authorized levels of take under previous IHAs issued for surveys offshore of New York and New Jersey (see 85 FR 21198, April 16, 2020 and 86 FR 21289, April 22, 2021). These previous monitoring results are available to the public on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization*.

On December 27, 2022, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore of New Jersey and New York in the areas of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Lease Area OCS-A 0499 and OCS-A 0549 and associated ECR area (Note BOEM segmented Lease Area OCS-A 0499 into Lease Areas OCS-A 0499 and 0549; thus, the physical lease area is the same as described in the 2022 IHA. More information can be found on BOEM's website (*https://www.boem.gov/renewable-energy/state-activities/new-jersey/atlantic-shores-north-ocs-0549*). Following NMFS' review of the application, Atlantic Shores submitted a revised request. The application was deemed adequate and complete on January 10, 2023 (the 2023 Request). Atlantic Shores' request is for take of 15 species of marine mammals, comprising 13 cetacean and 2 pinniped stocks, by Level B harassment only. Neither Atlantic Shores nor NMFS, expect serious injury or mortality to result from this activity, and therefore, an IHA is appropriate. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

This request is identical to the 2022 IHA. However, NMFS has determined a renewal of the 2022 IHA is not appropriate due to Duke University's Marine Geospatial Ecology Laboratory's updated marine mammal density information (June 20, 2022) for all species in the project area (*https://seamap.env.duke.edu/models/Duke/EC/*). NMFS

relies substantially herein, as appropriate, on the information previously presented in notices associated with issuance of the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022).

Description of the Proposed Activity and Anticipated Impacts

Overview

Atlantic Shores proposes to conduct geotechnical and HRG marine site characterization surveys in BOEM Lease Areas OCS-A 0499 and OCS-A-0549 and along potential submarine ECRs (ECRs North and South) to landfall locations in either New York or New Jersey. The purpose of the proposed surveys are to support the site characterization, siting, and engineering design of offshore wind project facilities, including wind turbine generators, offshore substations, and submarine cables within the Lease Areas and along the ECRs. As many as three survey vessels may operate concurrently as part of the proposed surveys. During survey effort, the vessels would operate at a maximum speed of 3.5 knots (4 miles per hour). Underwater sound resulting from Atlantic Shores' proposed activities has the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed activity is planned to begin once an IHA is issued and estimated to require up to 360 survey days across a maximum of three vessels operating concurrently over the course of the one year period of effectiveness of the proposed IHA (Table 1). A "survey day" is defined as a 24-hour activity period in which active acoustic sound sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. It is expected that each vessel would cover approximately 55 kilometers (km) of track line per day based on Atlantic Shores' data acquisition efficiency expectations.

Table 1—Number of Survey Days that Atlantic Shores Plans to Perform the Described HRG Survey Activities.

Survey Area	Number of Active Survey Days Expected[1]

Lease Areas	OCS-A-0499	50	120 days total
	OCS-A-0549	70	
Export Cable Route North (ECR North)		180	
Export Cable Route South (ECR South)		60	

1 - Surveys in each area may temporally overlap; therefore, actual number of days of activity in a given year may be less than 360.

Specific Geographic Region

Atlantic Shores' proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters offshore of New York and New Jersey in BOEM Lease Area OCS-A 0499 and OCS-A 0549 and associated ECR area to landfall locations in New York or New Jersey (see Figure 1). Overall, the survey area is approximately 1,450,006 acres (5,868 square kilometers (km^2)) and extends approximately 24 nautical miles (44 km) offshore. Water depths in the Lease Areas and surrounding ECRs are estimated to be approximately 5 to 40 meters (m; 16 to 131 feet (ft)).

NMFS notes that while this proposed IHA would occur on two Lease Areas (0499 and 0549) and the 2022 IHA occurred on only one Lease Area (0499), this is the result of the BOEM's segregation of 0499 into two lease areas (*i.e.*, 0499 and 0549). However, the planned survey activity would occur in the same location as the 2022 IHA (see Figure 1). Furthermore, the survey area is the same size as the survey area under the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). More information can be found on BOEM's website (*https://www.boem.gov/renewable-energy/state-activities/new-jersey/atlantic-shores-north-ocs-0549*).

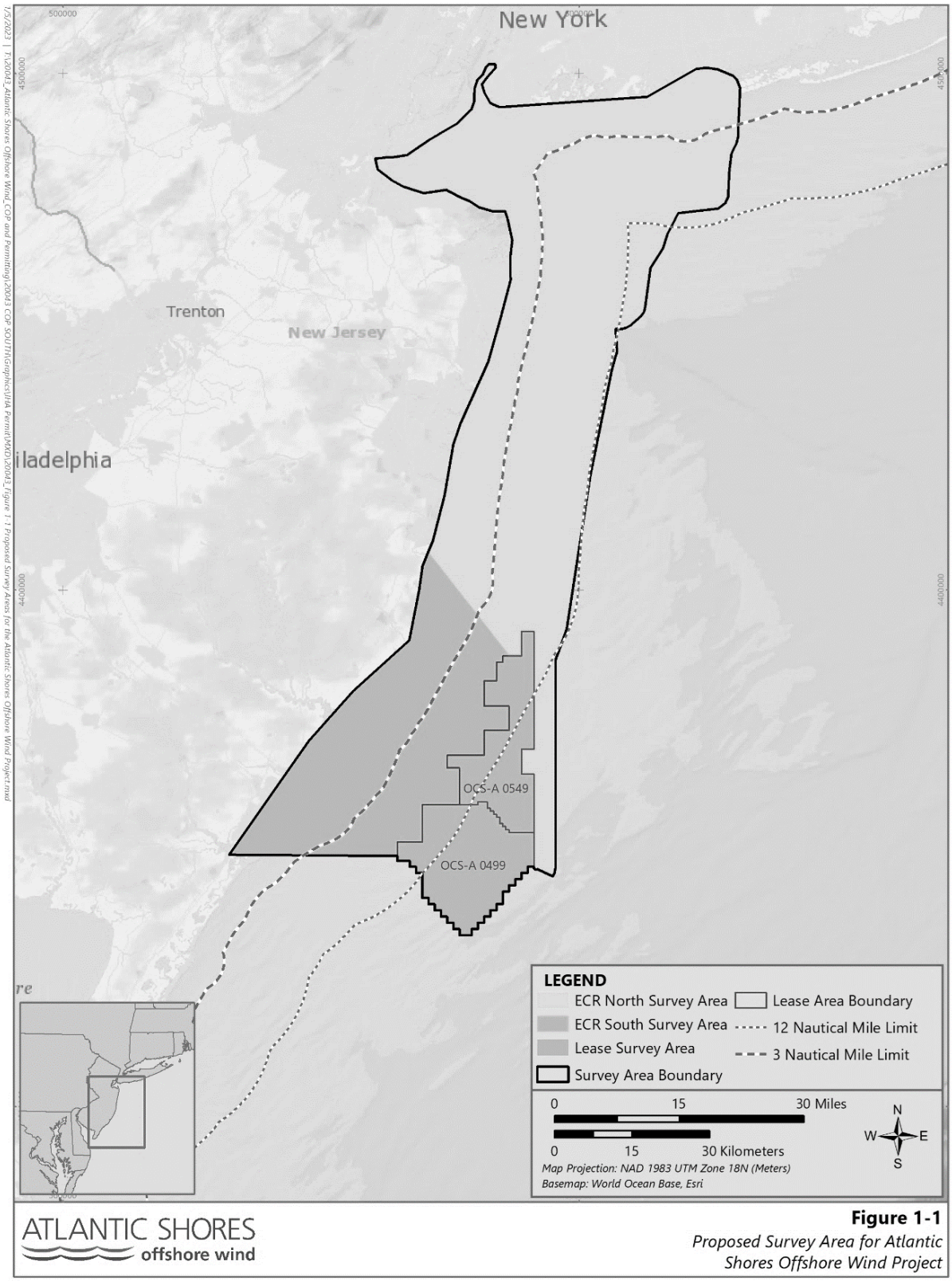

Figure 1—Map of the Proposed Survey Area.

Detailed Description of the Action

A detailed description of the proposed specified activities can be found in the previous **Federal Register** notices (87 FR 4200, January 27, 2022; 87 FR 24103, April

22, 2022) and supplementary documents. The specific geographic region; duration (360 total survey days); and nature of the specified activities, including the types of HRG equipment planned for use (sparkers and CHIRPs), daily trackline distances (55 km per day), and number of survey vessels (up to three operating concurrently), are identical to those described in the previous notices.

Atlantic Shores plans to conduct geotechnical surveys, which consists of identical activities (*i.e.*, drilling of sample boreholes, deep cone penetration tests (CPTs), and shallow CPTs) previously described in its application for the 2022 IHA (87 FR 4200, January 27, 2022 and 87 FR 24103, April 22, 2022);. Consistent with NMFS' previous analysis of these activities, no take of marine mammals is expected to occur as a result of geotechnical survey activities. As a result, these activities will not be discussed further herein.

Description of Marine Mammals

A description of the marine mammals in the area of the activities can be found in the previous documents and notices for the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022), which remains applicable to this proposed IHA. NMFS reviewed the most recent draft Stock Assessment Reports (SARs, found on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), up-to-date information on relevant Unusual Mortality Events (UMEs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events*), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA.

NMFS notes that, since issuance of the 2022 IHA, a new SAR is available for the North Atlantic right whale (NARW). Estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described

under the 2022 IHA. Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Atlantic Shores if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022). At present, there is no new information on potential effects that would impact our analysis.

Estimated Take

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 4200,

January 27, 2022; 87 FR 24103, April 22, 2022). The methods of estimating take are identical to those used in the 2022 IHA. We updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts and Halpin, 2022), available online at: *https://seamap.env.duke.edu/models/Duke/EC/*. We refer the reader to Table 4 in the ITA Request from Atlantic Shores for specific density values used in the analysis. The ITA request is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*.

The take that NMFS proposes for authorization can be found in Table 2 below. Table 2 presents the results of Atlantic Shores' density-based calculations for the combined Lease Area (0499 and 0549) and the two ECRs (North and South). For comparative purposes, we have provided the 2022 IHA authorized take (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). NMFS notes that take by Level A harassment was not requested nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor proposed for authorization.

Table 2—Total Estimated Take, By Level B Harassment Only, Relative To Population Size For The 2023 Proposed HRG Surveys.

Marine Mammal Species	Scientific Name	Stock	Estimated Population	Location-specific Calculated Take			Total Calculated Take	AMAPPS Group Size Adjustments	Take Authorized Under Previous 2022 IHA	Proposed 2023 IHA	
				Lease Area	ECR North	ECR South				Take Proposed for Authorization	Percentage of Population Proposed to be Taken
Mysticetes											
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	338	1.1	1.3	0.7	3.1	2	17	3	0.89
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	1,396	1.8	2.8	0.8	5.4	2	8	5	0.36
Fin whale	*Balaenoptera physalus*	Western North Atlantic	6,802	2.8	2.5	0.7	6	1	5	6	0.09
Sei whale	*Balaenoptera borealis*	Nova Scotia	6,292	0.9	0.8	0.2	1.9	1	2	2	0.03
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	21,968	10.4	11.5	2.0	23.9	1	2	24	0.11
Odontocetes											
Sperm whale	*Physeter macrocephalus*	North Atlantic	4,349	0.1	0.1	0.0	0.2	2	1	2	0.05
Long-finned pilot whale[b]	*Globicephala melas*	Western North Atlantic	39,215	0.3	0.1	0.0	0.4	8[f]	20	20	0.05
Bottlenose dolphin[c]	*Tursiops truncatus*	Western North Atlantic, Northern Migratory Coastal	6,639	154.2	359.5	714.2	1,227.9	10	385	1,228	18.5
		Western North Atlantic, Offshore	62,851	15.2	359.5	714.2	1,088.9		1,175	1,089	1.73
Common dolphin	*Delphinus delphis*	Western North Atlantic	172,974	48.1	46.4	5.2	99.7	30	560	100	0.06
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	93,233	9.0	6.8	0.8	16.6	12	17	17	0.02

Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	39,921	1.0	1.0	0.2	2.2	24	100	50	0.06
Risso's dolphin	*Grampus griseus*	Western North Atlantic	35,215	0.6	0.4	0.0	1.0	7	30	30	0.09
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	95,543	67.3	61.2	13.7	142.2	3	282	142	0.15
Phocid pinniped											
Gray seal	*Halichoerus grypus*	Western North Atlantic	27,300[e]	277.2	333.9	124.7	735.8	n/a[d]	426	736	0.16
Harbor seal	*Phoca vitulina*	Western North Atlantic	61,336	277.2	333.9	124.7	735.8	n/a[d]	426	736	1.2

a - Although the calculated take rounds to zero, to be conservative in the event a lone sperm whale is observed in the area, NMFS has proposed take assuming a group size of 2 animals.
b - All pilot whales that may be encountered are assumed to be long finned. Roberts and Halpin (2022) density information does not distinguish between species. However, pilot whales encountered off of New Jersey and points north are likely to be long finned, as the species has a more northerly distribution.
c – Takes of bottlenose dolphins were attributed to stock based on the 20-m isobath. All animals shoreward of the 20-m isobath were assumed to belong to the coastal stock and all bottlenose dolphins seaward of the 20-m isobath were assumed to be from the offshore stock.
d - No AMAPPS data was available for seals.
e – NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. This value was used in the percentage of stock abundance estimated to be taken by the proposed project.
f – A group size adjustments for long-finned pilot whales (n=20) used sighting data collected by Atlantic Shores during past surveys (Atlantic Shores Offshore Wind, 2021). This value was used instead of the AMAPPS data.

Proposed Mitigation

The proposed mitigation measures are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022) and the discussion of the least practicable adverse impact included in that document remains accurate. The measures proposed for inclusion in this IHA are found below.

Atlantic Shores must also abide by all the marine mammal relevant conditions in the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*), pursuant to Section 7 of the Endangered Species Act.

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones will be established around the HRG survey equipment and monitored by PSOs. These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500 m Exclusion Zone for NARWs during use of specified acoustic sources (impulsive: sparkers; non-impulsive: non-parametric sub-bottom profilers).

- A 100 m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below).

All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up of sources will begin with the powering up of the smallest acoustic HRG equipment at half power for five minutes and then proceed to full power. The ramp-up procedure will be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power will then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals; 30 minutes for all other species).

Atlantic Shores will implement a 30-minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a

designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up. This will allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30-minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and pinnipeds; 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

The pre-clearance zones will be:

- 500 m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100 m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the 30-minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30-minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delpinidae*: *Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone, shutdown will occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.*, such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived, PSOs must use their best professional judgement in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.*, to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.*, parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.*, CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Seasonal Operating Requirements

As described in the in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022), a section of the survey area partially overlaps with a portion of a North Atlantic right whale seasonal management

area (SMA) off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' NARW reporting systems for the presence of NARWs throughout survey operations. Members of the monitoring team would also monitor the NMFS NARW reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 3).

Table 3—North Atlantic Right Whale Dynamic Management Area (DMA) and Seasonal Management Area (SMA) Restrictions Within the Survey Areas

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (*Eubalaena glacialis*)	If established by NMFS, all of Atlantic Shores' vessels will abide by the described restrictions		N/A
ECR North				November 1 through July 31 (Raritan Bay)
ECR South				N/A

Note: More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey activities would occur in an area that has been identified as a biologically important area for migration for NARWs. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of NARWs, thus

mitigation to address the survey's occurrence in NARW migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessels, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to 1) distinguish marine mammal from other phenomena, and 2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine

mammals. All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

- All vessels must reduce their speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500 m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m (328 ft) from non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m (164 ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.*, for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers*.

Atlantic Shores shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Survey-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all survey vessels for identification of listed species.

The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all survey vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Proposed Monitoring and Reporting

The proposed monitoring and reporting requirements are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022). The measures proposed for inclusion in this IHA are found below.

Monitoring Measures

Atlantic Shores must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not

current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, would coordinate duty schedules and roles for the PSO team, and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3)

previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.*, 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);

- Digital cameras with a telephoto lens that is at least 300 millimeter (mm) or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-part PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.*, daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Atlantic Shores plans to utilize six PSOs across each vessel to account for shift changes, with a total of 18 during these surveys (six PSOs per vessel x three vessels). At

a minimum, during all HRG survey operations (*e.g.*, any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.*, species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.*, noted behavioral disturbances).

Reporting Measures

Atlantic Shores shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.*, when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov*.

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;

2. Dates of departures and returns to port with port name;

3. The lease number;

4. PSO names and affiliations;

5. Date and participants of PSO briefings;

6. Visual monitoring equipment used;

7. PSO location on vessel and height of observation location above water surface;

8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;

9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;

10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval

11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;

12. Water depth (if obtainable from data collection software);

13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.*, vessel traffic, equipment malfunctions); and

15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.*, pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

2. Vessel/survey activity at time of sighting (*e.g.*, deploying, recovering, testing, shooting, data acquisition, other);

3. PSO who sighted the animal;

4. Time of sighting;

5. Initial detection method;

6. Sightings cue;

7. Vessel location at time of sighting (decimal degrees);

8. Direction of vessel's travel (compass direction);

9. Speed of the vessel(s) from which the observation was made;

10. Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

11. Species reliability (an indicator of confidence in identification);

12. Estimated distance to the animal and method of estimating distance;

13. Estimated number of animals (high/low/best);

14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

16. Detailed behavior observations (*e.g.*, number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.*, delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;

18. Equipment operating during sighting;

19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

20. Description of any actions implemented in response to the sighting (*e.g.*, delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any survey vessels, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866-

755-6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Atlantic Shores must report the incident to NMFS as soon as feasible by phone (866-755-6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores must report the incident to NMFS by phone (866-755-6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

12. To the extent practicable, photographs or video footage of the animal(s).

Preliminary Determinations

When issuing the 2022 IHA (87 FR 24103, April 22, 2022), NMFS found Atlantic Shores' proposed HRG survey would have a negligible impact to species or stocks annual rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stocks (less than 6 percent). Atlantic Shores' proposed HRG survey activities are identical to those analyzed in support of the 2022 IHA. Additionally, the potential effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, are identical to those evaluated in support of the 2022 IHA. There is a minor increase in estimated take numbers for six marine mammal species and/or stocks (see Table 2). However, the total amount of takes proposed for authorization are small relative to the best available population size of each species or stock (less than 1 percent for 13 stocks; less than 2 percent for 2 stocks; and less than 19 percent for the remaining stock (Western North Atlantic Migratory Coastal

Stock of Bottlenose dolphins)). Additionally, only Level B harassment is proposed for authorization, which NMFS expects would be of a lower severity, predominately in the form of avoidance of the sound sources that may cause a temporary abandonment of the location during active source use that may result in a temporary interruption of foraging activities for some species. NMFS does not expect that the proposed activity will have long-term or permanent impacts as the acoustic source would be mobile and would leave the area within a specific amount of time for which the animals could return to the area. Even considering the increased estimated take for some species, the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted, and therefore, no impacts on the annual rates of recruitment or survival are expected to result.

As previously discussed in the 2022 IHA (87 FR 24103, April 22, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores' acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect these activities to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Atlantic Shores' survey activities. Three major haul-out sites exist for harbor seals within ECR North along New Jersey, including at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals would be out of the water, no in-water effects are expected.

Atlantic Shores’ project would occur in a small fraction of the migratory corridor for the North Atlantic right whale and impacts are expected to be limited to low levels of

behavioral harassment, resulting in temporary and minor behavioral changes during any brief period of exposure. As noted for the 2022 IHA (87 FR 24103, April 22, 2022), the size of the survey area (5,868 km^2) in comparison with the entire migratory habitat for the North Atlantic right whale (BIA of 269,448 km^2) is small, representing 2.11 percent of the entire migratory corridor. Given the transitory nature of North Atlantic right whales in this area and due to the lack of year-round "core" North Atlantic right whale foraging habitat (Oleson *et al.,* 2020) (such habitat is located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence (Oleson *et al.,* 2020)), it is unlikely for any exposure to cause chronic effects as any exposure would be short and intermittent. Furthermore, given the small size of the Level B harassment zones (141 m) and the robust suite of mitigation and monitoring measures proposed by NMFS, with specific note on the mitigation zones for North Atlantic right whales (exclusion zone; 500 m), NMFS does not expect adverse impacts on this species. Lastly, NMFS notes the reduction in requested take from the 2022 IHA (87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022) due to the revised Duke University density data (Roberts and Halpin, 2022). Under the 2022 IHA, NMFS authorized 17 instances of take for North Atlantic right whales. Here, NMFS is proposing only three takes by Level B harassment representing less than 1 percent of the overall species abundance. Given the updates to the density for this species in particular during the periods where project activities are expected to be ongoing, NMFS expects low-level impacts (*e.g.*, temporary avoidance of the area) from this proposed project on North Atlantic right whales.

We also note that our findings for other species with active UMEs or species where biologically important areas or haul-outs have been previously described in the 2022 IHA remain applicable to this project. In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Atlantic Shores' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores for conducting HRG marine site characterization surveys off New Jersey and New York for a period of one year, provided the previously mentioned

mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA (ITA application; issued IHA; and **Federal Register** notices including 87 FR 4200, January 27, 2022; 87 FR 24103, April 22, 2022; 87 FR 26726, May 5, 2022)), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed HRG marine site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 24, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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