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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC889]

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

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 Ocean Wind II, LLC (Ocean Wind II) for authorization to take marine mammals incidental to marine site characterization surveys offshore of New Jersey 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 0532 and associated export cable routes (ECRs) to landfall locations in New Jersey.

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.Esch@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. Office of Protected Resources. 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: Carter Esch, 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 activities described in Ocean Wind II's 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 Ocean Wind II for 2022 site characterization surveys (2022 IHA) (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). All proposed mitigation, monitoring, and reporting requirements remain the same. While Ocean Wind II's 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 allow Ocean Wind II 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.

The activities described in Ocean Wind II's 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 Incidental Harassment Authorization (IHA issued by NMFS to Ocean Wind II for 2022 site characterization surveys (2022 IHA) (87 FR 14823, March 16, 2022). All proposed mitigation, monitoring, and reporting requirements remain the same. While Ocean Wind II's 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.

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 authorizations and agency responses will be summarized in the final notice of our decision.

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.

Summary of Request

On February 14, 2022, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore of New Jersey in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0532 (Lease Area) and associated ECR area. Following NMFS' review of the application, Ocean Wind II submitted a revised request on April 28, 2023. The application (the 2023 request) was deemed adequate and complete on April 28, 2023. Ocean Wind II's request is for take of 16 species (comprising 17 stocks) of marine mammals, including 14 cetacean and two pinniped (seal) species, by Level B harassment only. Neither Ocean Wind II nor NMFS expects 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.

On October 1, 2021, NMFS received a request from Ocean Wind II for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore of New Jersey in the area of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Lease Area OCS-A 0532 (Lease Area) and associated ECR area. Ocean Wind II requested authorization to take small numbers of 16 species (comprising 17 stocks) of marine mammals by Level B harassment only. NMFS

published a notice of the proposed IHA in the **Federal Register** on March 16, 2022 (87 FR 14823). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the IHA on May 19, 2022 (87 FR 30453), which is effective from May 10, 2022 through May 9, 2023.

Ocean Wind II completed the survey work under the 2022 IHA and submitted a final monitoring report, which demonstrates that they conducted the required marine mammal mitigation and monitoring, and did not exceed the authorized levels of take under the previous IHA issued for surveys offshore of New Jersey (see 87 FR 30452, May 19, 2022). These monitoring results are available to the public on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-ii-llc-marine-site-characterization-surveys-new*.

The 2023 IHA request is identical to the 2022 IHA request. However, NMFS has determined a renewal of the 2022 IHA is not appropriate because Duke University's Marine Geospatial Ecology Laboratory released updated marine mammal density information (June 20, 2022) for all species in the project area (*https://seamap.env.duke.edu/models/Duke/EC/*) after issuance of the 2022 IHA. In evaluating the 2023 request, which incorporates the updated density information, and to the extent deemed appropriate, NMFS relies on the information presented in notices associated with issuance of the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022).

Description of the Proposed Activity and Anticipated Impacts

Overview

Ocean Wind II proposes to conduct HRG marine site characterization surveys in the BOEM Lease Area OCS-A 0532 and along potential submarine ECRs to landfall locations in New Jersey. The purpose of the proposed surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological

conditions within the footprint of a planned offshore wind facility development area. Surveys are also conducted to support engineering design and to map unexploded ordnance. Survey equipment would be deployed from multiple vessels or remotely operated vehicles (ROVs) during site characterization activities in the project area; however, only one vessel would operate at a time in the lease area and ECR area (two vessels total). During survey effort, the vessel would operate at a maximum speed of 4 knots (4.6 miles or 7.4 km per hour). Underwater sound resulting from Ocean Wind II's 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 estimated to require 275 survey days, and is expected to be carried out over the course of the one-year period of effectiveness beginning from the date of issuance of this IHA. A "survey day" is defined as a 24-hour (hr) activity period in which active HRG acoustic sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. The number of survey days was calculated as the number of days needed to reach the overall level of effort required to meet survey objectives assuming any single vessel covers, on average, 70 km (129.6 miles) of survey trackline per 24 hours of operations.

Specific Geographic Region

Ocean Wind II's proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters offshore of New Jersey in BOEM Lease Area OCS-A 0532 and associated ECR area to landfall locations in New Jersey (Figure 1). As compared to the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), Ocean Wind II revised their project area map (Figure 1) to be more representative of the actual area in which HRG surveys would occur. The revised project area description is based on updated information received from the Ocean Wind II site investigation team.

The Lease Area is approximately 343.8 square kilometers (km^2) and is within the New Jersey Wind Energy Area (WEA) of BOEM's Mid-Atlantic planning area. The total survey area depicted in Figure 1 (including the Lease Area and potential ECRs) encompasses 3,801 km^2. Water depths in the Lease Area range from 14 meters (m) (45.9 feet (ft)) to 38 m (124.6 ft), and the potential ECRs extend from the shoreline to approximately 30 m (98.4 ft) depth.

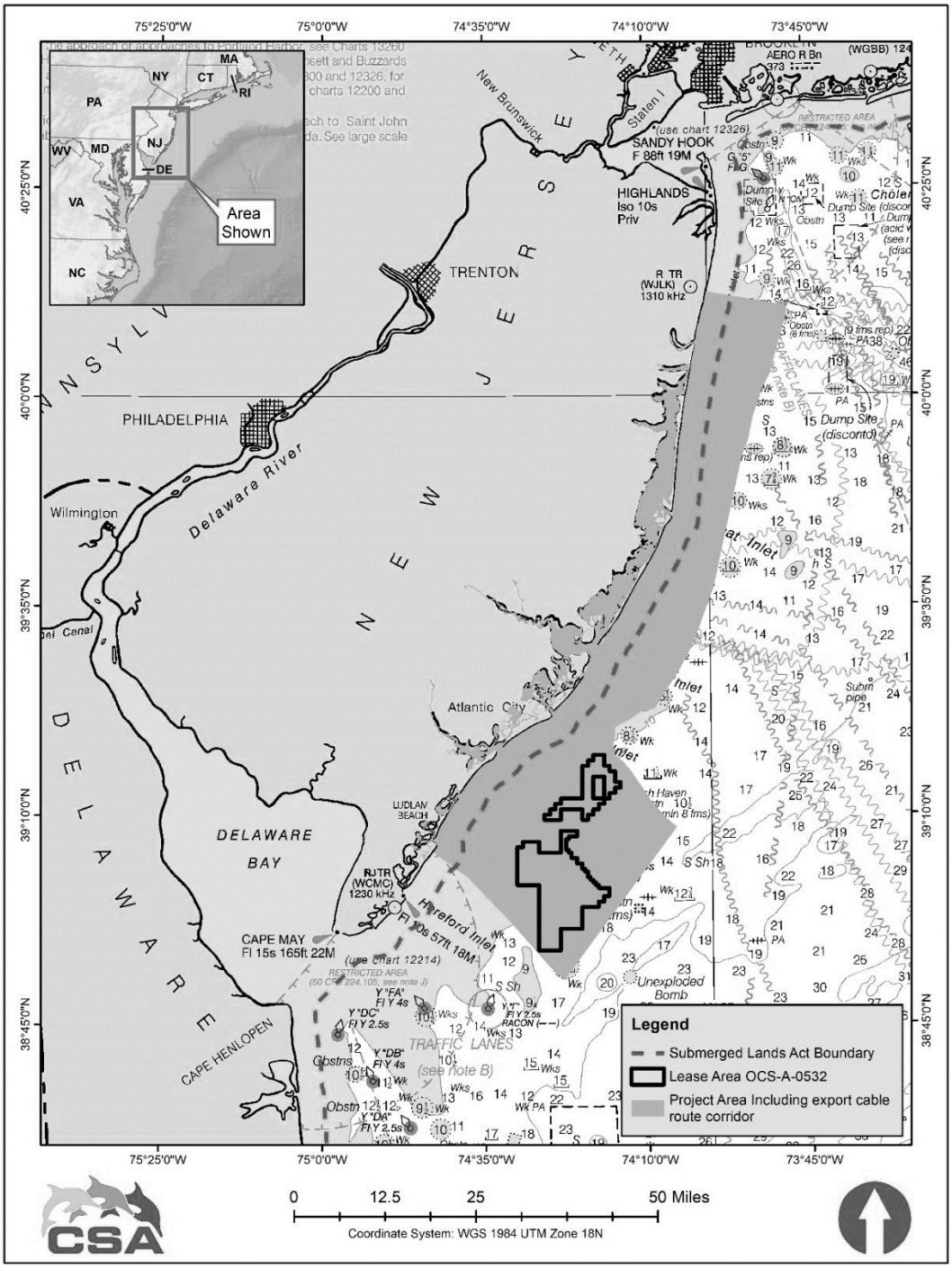

Figure 1 -- Map of the Proposed Survey Area

Detailed Description of the Action

A detailed description of the proposed survey activities can be found in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022) and supplementary documents, available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-ii-llc-*

marine-site-characterization-surveys-new. The specific geographic region (except for the abovementioned slight revisions made based on information received from the Ocean Wind II site investigation team); duration (275 total survey days); and nature of the activities, including the types of HRG equipment planned for use (boomers, sparkers, and non-parametric sub-bottom profilers); daily trackline distances (70 km per day); and number of survey vessels (one vessel operating at a time in the Lease Area and ECR Area, for a total of two vessels) are identical or nearly identical to those described in those previous notices.

Description of Marine Mammals

A description of the marine mammals in the proposed survey area can be found in the previous documents and notices for the 2022 IHA (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 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 Ocean Wind II 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 can be found in the documents supporting the 2022 IHA (87 87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). At present, there is no new information on potential effects that would influence 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 14823, March 16, 2022; 87 FR 30453, May 19, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Ocean Wind II 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 2 in Ocean Wind II's 2023 IHA request for the specific density values used in the analysis. The IHA 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 to authorize can be found in Table 2, which presents the results of Ocean Wind II's density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized Level B harassment take (87 FR 30453, May 19, 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 -- Summary of Take Numbers Proposed for Authorization

Species	Scientific Name	Stock	Abundance	2022 IHA Authorized Take[1]	2023 Proposed IHA	
					Take Proposed for Authorization[1]	Max Percent Population
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	338	11	2	< 1
Fin whale	*Balaenoptera physalus*	Western North Atlantic	6,802	4	4	< 1
Sei whale	*Balaenoptera borealis*	Nova Scotia	6,292	0 (1)	1	< 1
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	21,968	1	8	< 1
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	1,396	2	4	< 1
Sperm whale	*Physeter macrocephalus*	North Atlantic	4,349	0 (3)	0 (3)	< 1
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	93,233	6 (50)	12 (50)	< 1
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	39,921	2 (15)	1 (15)	< 1
Common bottlenose dolphin[2]	*Tursiops truncatus*	Western North Atlantic, Offshore	62,851	1,842	2,221	2.3
		Western North Atlantic, Northern Migratory Coastal	6,639			21.4
Long-finned pilot whale[3]	*Globicephala melas*	Western North Atlantic	39,215	1 (20)	1 (20)	< 1
Risso's dolphin	*Grampu griseus*	Western North Atlantic	35,215	0 (30)	1 (30)	< 1
Common dolphin	*Delphinu delphis*	Western North Atlantic	172,974	54 (400)	67 (400)	< 1
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	95,543	90	72	< 1

Seals[4]	Gray seal	*Halichoerus grypus*	Western North Atlantic	27,300[5]	25	13	< 1
	Harbor seal	*Phoca vitulina*	Western North Atlantic	61,336	25	13	< 1

1 - Parentheses denote proposed take authorization where different from calculated take estimates. Increases from calculated values are based on average group size for the following species: sei whale and pilot whales, Kenney and Vigness-Raposa, 2010; sperm whale and Risso's dolphin, Barkaszi and Kelly, 2018; Atlantic white-sided dolphins, NMFS 2022a; and Atlantic spotted dolphins, NMFS 2022b.The amount of proposed common dolphin take is based on the number of individuals observed in previous HRG surveys in the area, and is identical to the amount of take authorized in the 2022 IHA.
2 - At this time, Ocean Wind II is not able to identify how much work would occur inshore and offshore of the 20 m isobaths, a common delineation between offshore and coastal bottlenose dolphin stocks. Because Roberts *et al.* does not provide density estimates for individual stocks of common bottlenose dolphins, the take presented here is the total estimated take for both stocks. Although unlikely, for our analysis, we assume all takes could be allocated to either stock.
3 - Roberts (2018) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.
4 - Roberts (2018) only provides density estimates for seals without differentiating by species. Harbor seals and gray seals are assumed to occur equally in the survey area; therefore, density values were split evenly between the two species, *i.e.*, total estimated take for "seals" is 24.
5 - 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.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the final 2022 IHA and the discussion of the least practicable adverse impact included in that document remains accurate. As described in the previous **Federal Register** notices (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022), NMFS determined that issuance of the 2022 IHA to Ocean Wind II was within the scope of the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation 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*). NMFS similarly concludes that the currently proposed survey activities are within scope of the consultation, and thus will require adherence to the relevant Project Design Criteria (PDC) (specifically PDCs 4, 5, and 7).

Establishment of Shutdown Zones (SZ)—Marine mammal SZs must be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSO) during HRG surveys as follows:

- 500-m SZ for North Atlantic right whales during use of specified acoustic sources (impulsive: sparkers and boomers; non-impulsive: non-parametric sub-bottom profilers); and,
- 100-m SZ for all other marine mammals (excluding North Atlantic right whales) during operation of the sparker and boomer. The only exception for this is for pinnipeds (seals) and small delphinids (*i.e.*, those from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*).

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers, boomers, and non-parametric sub-bottom profilers; *i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

- *Visual Monitoring*—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 14823, March 16, 2022; 87 FR 30453, May 19, 2022). Ocean Wind II must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 30453, May 19, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Pre-Start Clearance — Marine mammal clearance zones (CZs) must be established around the HRG survey equipment and monitored by NMFS-approved

protected species observers (PSO) prior to use of boomers, sparkers, and non-parametric sib-bottom profilers as follow:

- 500-m CZ for all ESA-listed species; and,
- 100-m CZ for all other marine mammals.

Prior to initiating HRG survey activities, Ocean Wind II must implement a 30-minute pre-start clearance period. 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 to allow the PSOs to monitor the CZs for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Ocean Wind II must receive confirmation from the PSO that the CZs are clear prior to preceding. 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.

During this 30-minute period, the entire CZ must be visible. The exception to this would be in situations where ramp-up must 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 must only occur at night where operational planning cannot reasonably avoid such circumstances.

If a marine mammal is observed within the relevant CZs during the pre-start clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective CZ, or, until an additional period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals; 30 minutes for all other species). The pre-start clearance requirement includes small delphinids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

- *Ramp-Up of Survey Equipment*—When technically feasible, a ramp-up

procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant SZs has been cleared by the PSOs, as described above. HRG equipment operators must ramp up acoustic sources to half power for 5 minutes and then proceed to full power. If any marine mammals are detected within the SZs prior to or during ramp-up, the HRG equipment must be shut down (as described below).

- *Shutdown Procedures*—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must 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. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes (*i.e.*, harbor porpoise) and 30 minutes for all other species with no further observation of the marine

mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for pinnipeds (seals) and certain genera of small delphinids (*i.e.*, *Delphinus, Lagenorhynchus, Stenella,* or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the SZ, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

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 area encompassing the Level B harassment isopleth (141 m), shutdown must occur.

- *Vessel Strike Avoidance*—Ocean Wind II must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 30453, May 19, 2022). This includes speed restrictions (10 knots or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.*, avoid excessive speed, remain parallel to animal's course, etc.); and monitoring of the NMFS North Atlantic Right Whale reporting system and

WhaleAlert daily.

- *Seasonal Operating Requirements*—Ocean Wind II will conduct HRG survey activities in the vicinity of a North Atlantic right whale Mid-Atlantic seasonal management area (SMA). Activities must comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Ocean Wind II must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the surrounding area, including the project area or export cable routes being surveyed, Ocean Wind II is required to abide by the 10-knot speed restriction.

- *Training*—Project-specific training is required for all vessel crew prior to the start of survey activities.

- *Reporting*—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 30453, May 19, 2022). Within 90 days after completion of survey activities, Ocean Wind II must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Ocean Wind II must report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notice of the issuance of the initial IHA (87 FR 30453, May 19, 2022).

Preliminary Determinations

Ocean Wind II's HRG survey activities are unchanged from those analyzed in support of the 2022 IHA. The effects of the activity, taking into consideration the

proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2022 IHA, regardless of the minor increases in estimated take numbers for some marine mammal species and/or stocks. NMFS expects that all potential takes would be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007). In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers proposed for authorization, in reality, much of the survey activity would involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of up to 48 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and the available habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. 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 would result.

As previously discussed in the 2022 IHA (87 FR 30453, May 19, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods when Ocean Wind II's acoustic sources are active. There are no rookeries, mating or calving grounds, or any feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

As noted for the 2022 IHA (87 FR 30453, May 19, 2022), the survey area overlaps a migratory corridor biologically important area (BIA) for NARWs. Because the survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km^2), NMFS does not expect NARW migration to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Ocean Wind II's planned activities. Additionally, Ocean Wind II requested and NMFS proposes to authorize only two takes by Level B harassment of NARWs. This amount is reduced from the 11 Level B harassment takes authorized in the 2022 IHA due to the revised Duke University density data (Roberts and Halpin, 2022). HRG survey operations are required to maintain a 500-m SZ, and shutdown if a NARW is sighted at or within the SZ. The 500-m SZ for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.*, sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. NMFS does not anticipate NARWs takes that would result from Ocean Wind II's

activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA remain applicable to this project. Therefore, 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) Ocean Wind II's 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 OPR 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, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities

analyzed in NMFS GARFO'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 Ocean Wind II for conducting high-resolution geophysical site characterization surveys offshore of New Jersey 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 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, 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: June 7, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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