BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD820]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off the Coast of Delaware

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 Orsted Wind Power North America, LLC (Orsted), for an incidental harassment authorization (IHA) that is identical to an IHA previously issued to Orsted authorizing the take of marine mammals, by Level B harassment only, incidental to marine site characterization surveys conducted off the coast of Delaware 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 0482 and 0519 (Lease Areas), and the associated export cable route (ECR) area. The only changes from the previously issued IHAs involve the updated marine mammal population estimates, marine mammal density data, and take estimates, as well as the new effective dates for the IHA. Accordingly, 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 specified activities. NMFS is also requesting comments on a possible 1-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 IHA would be valid for one year from the effective date.

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.clevenstine@noaa.gov*. Electronic copies of the original application, updated 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 below.

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 or 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: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427-8401.

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. Relevant definitions of MMPA statutory terms cited above are included in the relevant sections below.

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 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 to Orsted qualifies to be categorically excluded from further NEPA review.

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

History of Request

On October 1, 2021, Orsted, a limited liability company registered in the State of Delaware, submitted a request on behalf of Garden State Offshore Energy, LLC (Garden State) and Skipjack Offshore Energy, LLC (Skipjack), both subsidiaries of Orsted and both registered in the State of Delaware, for an IHA to take marine mammals incidental to marine site characterization surveys off the coast of Delaware in OCS-A 0482 and 0519, and along potential ECRS to landfall locations in Delaware and New Jersey. NMFS published a notice of the proposed IHA in the **Federal Register** on March 21, 2022 (87 FR 15922). Subsequently, the final notice of issuance of the IHA was published in the **Federal Register** (87 FR 30182, May 18, 2022), announcing the effective dates of that IHA were from May 10, 2022, through May 9, 2023 (2022 IHA). The specified activities were expected to result in the take, by Level B harassment, of 15 species (16 stocks) of marine mammals. The work was expected to be completed within the 1-year timeframe of the IHA. However, no work was completed under the original IHA.

On February 23, 2023, Orsted submitted a request that NMFS re-issue the previously issued IHA with the only change being new effective dates. NMFS published a notice of re-issuance of that IHA, announcing effective dates of May 10, 2023, through May 9, 2024 (88 FR 30278, May 11, 2023) (2023 IHA). The specified activity, specific geographical region, the type of equipment or survey activities, amount of take requested by Orsted and later authorized by NMFS, as well as the proposed mitigation, monitoring, and requirements remained substantially unchanged from the 2022 IHA. Orsted completed a portion of the survey work that was covered by the 2023 IHA and submitted a preliminary monitoring report demonstrating that the required mitigation and monitoring requirements were satisfied, no impacts of a scale or nature not previously analyzed or authorized occurred as a result of the activities conducted, and the IHA holder did not exceed the authorized levels of take under that IHA (88 FR 30278, May 11, 2023).

On March 6, 2024, NMFS received a letter from Orsted requesting renewal of the re-issued 2023 IHA (2024 request) to conduct the same site characterization surveys within the same survey areas using the same type of survey equipment that was previously analyzed under the 2022 IHA and re-issued 2023 IHA. While Orsted's planned activity would ordinarily qualify for a renewal of the IHA, NMFS determined that a renewal of the 2023 IHA is not appropriate because Duke University Marine Geospatial Ecology Laboratory Habitat-based Marine Mammal Density Models for the U.S. Atlantic was updated (*https://seamap.env.duke.edu/models/Duke/EC/*), which NMFS determined represents the best available scientific data and serves as the basis for updating the estimated take numbers. Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2023). The updated models incorporate sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS)

surveys. After discussions with the applicant, NMFS received a revised request incorporating the new information, which was deemed adequate and complete on April 12, 2024. In evaluating the 2024 request, and where applicable, NMFS relies on the information previously presented in notices associated with issuance of the 2022 IHA (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022).

Description of the Proposed Activity and Anticipated Impacts

Overview

Orsted proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys and geotechnical surveys, in BOEM Lease Areas OCS–A 0482 and 0519, and the associated ECRs. The purpose of the marine site characterization surveys is to collect data concerning seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of offshore wind facility development. Surveys are also conducted to support engineering design and to map unexploded ordnance (UXO). Underwater sound resulting from Orsted's proposed activities, specifically HRG surveys, has the potential to result in incidental take of 15 species (16 stocks) of marine mammals, in the form of Level B harassment only. The proposed IHA would cover the same specified activities previously described in its application for the 2022 IHA and subsequent documents. NMFS refers the public to the documents and supplemental materials related to the **Federal Register** notice of proposed IHA (87 FR 15922; March 21, 2022), the notice of issuance of the original 2022 IHA (87 FR 30182, May 18, 2022), and the notice of re-issuance of the 2023 IHA (88 FR 30278, May 11, 2023). The descriptions and analyses contained in those documents remain accurate with the exception of the minor modifications described herein.

Dates and Duration

While the exact dates have not yet been established, the proposed activities are planned to begin as soon as possible upon issuance of an IHA. The duration of the proposed activity remains unchanged from the 2022 IHA and the re-issued 2023 IHA. The proposed activity is expected to require up to 350 survey days across a maximum of three vessels operating concurrently over the course of a single year ("survey day" defined as a 24-hr activity period in which the assumed number of line km are surveyed). The number of anticipated 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 travels 4 knots (kn) (7.4 kilometers per hour (km/hr) and surveys cover, on average, 70 line km per 24-hr period.

Specific Geographic Region

The specific geographic region remains unchanged from the previously issued 2022 IHA and re-issued 2023 IHA. The proposed activities would occur within the Project Area, which includes the Lease Areas and potential ECRs to landfall locations in Delaware (figure 1). The combined Lease Areas OCS–A 0482 and 0519 are comprised of approximately 568 square kilometers (km^2) within the Wind Energy Area of BOEM's Mid-Atlantic planning area and the overall Project Area, including potential ECRs, is approximately 4,510 km^2 (see figure 1). Water depths in the Lease Areas range from approximately 15-40 meters (m). Water depths within the ECR area extend from the shoreline (0 m depth) to approximately 40 m.

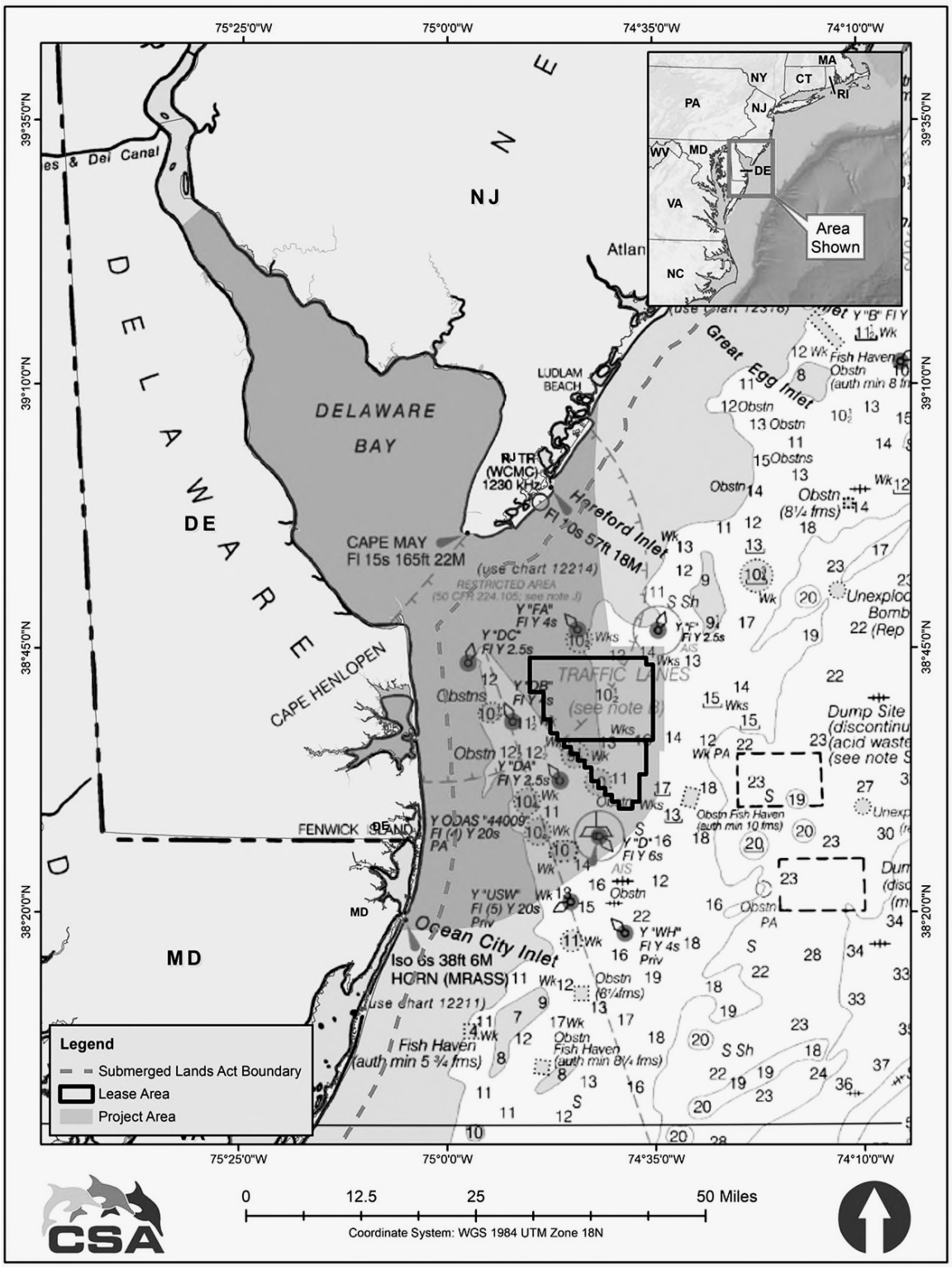

Figure 1 – Map of Proposed Project Area

Detailed Description of the Action

A detailed description of the proposed specified activities can be found in the previous **Federal Register** notices (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022) and related-supplemental documents. The nature of the specified activities, including the types of HRG equipment planned for use (CHIRPs, boomers, and sparkers), daily trackline distances (70 line km per 24-hr period), and number of survey vessels (up to three operating concurrently), are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the specified activities can be found in the previous documents and notices for the 2022 IHA (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022), which remains applicable to this proposed IHA. NMFS reviewed the most recent SARs (found on NMFS' website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), including the 2023 draft SARs, 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 the new information does not change our original analysis of impacts under the 2022 IHA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2024). All values presented in table 1 are the most recent available at the time of publication, including, as applicable, from the draft 2023 SARs. NMFS notes that since the issuance of the 2022 IHA, new SARs are available for

all species with the exception of humpback whale (Gulf of Maine stock), bottlenose dolphin (Northern Migratory Coastal stock), and harbor seal (Western North Atlantic stock). All new information is provided in table 1 and updated density data (Roberts *et al.*, 2023) are incorporated into take estimations (see Sections 3 and 6 of the updated application). Additionally, the new SARs data do not change our analysis of impacts, as described under the 2022 IHA.

Additionally, on August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale (NARW) vessel speed regulations (87 FR 46921, August 1, 2022) 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 UME. Should a final vessel speed rule be issued and become effective during the effective period of this authorization (or any other MMPA incidental take authorization), the authorization holder will be required to comply with any and all applicable requirements contained within the final vessel speed 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 will be required to comply with the requirements of the vessel speed 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 will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule.

Table 1 – Species and Stocks Likely Impacted by the Specified Activities [1]

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[2]	Stock abundance (CV, Nmin, most recent abundance survey)[3]	PBR	Annual M/SI[4]
Order Artiodactyla – Cetacea – Mysticeti (baleen whales)						
Family Balaenidae						
North Atlantic Right Whale[5]	*Eubalaena glacialis*	Western Atlantic	E, D, Y	340 (0, 337, 2021); 356 (346-363, 2022)	0.7	27.2
Family Balaenopteridae (rorquals)						
Fin Whale	*Balaenoptera physalus*	Western N Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Humpback Whale	*Megaptera novaeangliae*	Gulf of Maine	-, -, N	1,396 (0, 1380, 2016)	22	12.15
Minke Whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-, -, N	21,968 (0.31, 17,002, 2021)	170	9.4
Sei Whale	*Balaenoptera borealis*	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2021)	6.2	0.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Sperm Whale	*Physeter macrocephalus*	N Atlantic	E, D, Y	5,895 (0.29, 4,639, 2021)	9.28	0.2
Family Delphinidae						
Long-Finned Pilot Whale	*Globicephala melas*	Western N Atlantic	-, -, N	39,215 (0.30, 30,627, 2021)	306	5.7
Short-Finned Pilot Whale	*Globicephala macrorhynchus*	Western N Atlantic	-, -, Y	18,726 (0.33, 14,292, 2021)	143	218

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[2]	Stock abundance (CV, Nmin, most recent abundance survey)[3]	PBR	Annual M/SI[4]
Atlantic Spotted Dolphin	*Stenella frontalis*	Western N Atlantic	-, -, N	31,506 (0.28, 25,042, 2021)	250	0
Atlantic White-Sided Dolphin	*Lagenorhynchus acutus*	Western N Atlantic	-, -, N	93,233 (0.71, 54,443, 2021)	544	28
Bottlenose Dolphin	*Tursiops truncatus*	Northern Migratory Coastal	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2- 21.5
Bottlenose Dolphin	*Tursiops truncatus*	Western N Atlantic Offshore	-, -, N	64,587 (0.24, 52,801, 2021)	507	28
Risso's Dolphin	*Grampus griseus*	Western N Atlantic	-, -, N	44,067 (0.19, 30,662, 2021)	307	18
Common Dolphin	*Delphinus delphis*	Western N Atlantic	-, -, N	93,100 (0.56, 59,897, 2021)	1,452	414
Family Phocoenidae (porpoises)						
Harbor Porpoise	*Phocoena phocoena*	Gulf of Maine/ Bay of Fundy	-, -, N	85,765 (0.53, 56,420, 2021)	649	145
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Gray Seal[6]	*Halichoerus grypus*	Western N Atlantic	-, -, N	27,911 (0.20, 23,624, 2021)	1,512	4,570
Harbor Seal	*Phoca vitulina*	Western N Atlantic	-, -, N	61,336 (0.08, 57,637, 2018)	1,729	339

1 - Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).
2 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds

potential biological removal (PBR) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

3 - NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

4 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, vessel strike). Annual mortality or serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

5 - Linden (2023) estimated the population size in 2022 as 356 individuals, with a 95 percent credible interval ranging from 346 to 363. NMFS acknowledges this most recent estimation in addition to the 2023 draft SAR stock abundance estimate.

6 - NMFS's stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI given is for the total stock.

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 15922, March 21, 2022; 87 FR 30182, May 18, 2022). At present, there is no new information on potential effects that would change 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 15922, March 21, 2022; 87 FR 30182, May 18, 2022). The methods of estimating take are identical to those used in the 2022 IHA. We have updated the marine mammal densities based on new information (Roberts *et al.*, 2023), available online at: *https://seamap.env.duke.edu/models/Duke/EC/*. We refer the reader to table 3 in the 2024 IHA request from Orsted for specific density values used in the analysis. The 2024 IHA request is available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*.

Due to limited data availability and difficulties identifying individuals to species level during visual surveys, individual densities are not able to be provided for all species and they are instead grouped into "guilds" (Roberts *et al.,* 2023). These guilds include pilot whales and seals. Long- and short-finned pilot whales are difficult to distinguish during shipboard surveys so individual habitat models were not able to be developed and thus, densities are assumed to apply to both species. Similarly, Roberts *et al.* (2023) produced density models for all seals but did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the proposed survey areas, it was assumed that the mean annual density could refer to either of the represented species and was, therefore, divided equally between the two species.

Sperm whales – No takes were calculated for this species, but based on NOAA's AMAPPS survey data and their distribution in the U.S. Atlantic, there is potential they will occur in the survey area. Therefore, Orsted is requesting authorization of a total of 2 takes for this species based on the average group size of 1.68 rounded to the nearest whole number from AMAPPS survey data.

Pilot whales – Only one take each was calculated for the pilot whale species guild based on the Roberts *et al.* (2023) densities, but only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and association with colder water when compared to short-finned pilot whales (Garrison and Rosel, 2017). Orsted is requesting authorization of 8 takes, rounded from the average group size of 8.2 for long-finned pilot whales presented in AMAPPS survey data.

Common dolphin – A total of 98 takes were calculated for common dolphins; however, based on available protected species observer (PSO) data from preliminary monitoring in the survey area, and an average group size of 30.2 based on AMAPPS survey data, it is likely that more individuals could be encountered during the proposed survey activities. Therefore, the requested takes have been increased using the total number of encounters from past PSO reports for this area. The total number of encounters for 2021, 2022, and 2023 were 18, 7, and 5 for common dolphins or unidentified dolphins, respectively, which equates to an average of 10 encounters (Gardline, 2021, Gardline, 2022, AIS, 2024). Orsted has requested authorization of 302 takes for this species, based on an assumption that 10 groups with an average size of 30.2 will be encountered.

Atlantic spotted dolphins – Only 6 takes were calculated for this species, but based on AMAPPS survey data the average group size is 24.2, which equates to a total of 24 takes Orsted is requesting be authorized for this species.

Risso's dolphins – Only 1 take was calculated for this species, but based on AMAPPS survey data the average group size is 7.28, which equates to a total of 7 takes Orsted is requesting be authorized for this species.

Bottlenose dolphins – There are two bottlenose dolphin stocks that could occur in the Project Area: The Western North Atlantic (WNA) Offshore stock and WNA Northern Migratory Coastal stock. For bottlenose dolphin densities, Roberts *et al.* (2023) does not differentiate by individual stock. The WNA Offshore stock is assumed to be located in depths exceeding the 20 m isobath, while the WNA Northern Migratory Coastal stock is assumed to be found in shallower depths than the 20 m isobath north of Cape Hatteras (Reeves *et al.,* 2002, Waring *et al.,* 2016). The maximum potential Level B harassment takes calculated for each stock of bottlenose dolphins are based on the full survey duration occurring inside or outside the 20 m isobath; however only a portion of the survey will occur in each area. At this time, Orsted does not know the exact number of survey days that may occur within each area, and could not differentiate the maximum number of calculated instances of take (4,118 calculated) between the two stocks of bottlenose dolphins potentially present during the proposed survey activities. Orsted therefore requested, and NMFS proposes to authorize, 4,118 instances of take of bottlenose dolphins, regardless of stock. Given the uncertainty regarding the number of days Orsted's survey may be within the 20 m isobath, the authorization of 4,118 instances of take by Level B harassment is not allocated to a specific stock but rather could be of either stock.

The take NMFS proposes for authorization can be found in table 2, below. Table 2 presents the results of Orsted's updated density-based calculations for the Project Area. For comparative purposes, we have provided the 2022 IHA authorized take (87 FR 30182, May 18, 2022). No take by Level A harassment is anticipated. Therefore, NMFS

has not proposed to authorized any take by Level A harassment. Mortality or serious injury (M/SI) is neither anticipated nor proposed to be authorized.

Table 2 – Estimated Take Numbers and Total Take Proposed for Authorization

Common name	Stock	Estimated Abundance	Take authorized under previous 2023 IHA	Total calculated take	Total estimated take proposed for authorization	Estimated take as a percentage of population
North Atlantic Right Whale	Western Atlantic	340	11	4	4	1.18
Fin Whale	Western N Atlantic	6,802	7	6	6	<1
Humpback Whale	Gulf of Maine	1,396	4	5	5	<1
Minke Whale	Canadian Eastern Coastal	21,968	2	10	10	<1
Sei Whale	Nova Scotia	6,292	1	1	1	<1
Sperm Whale	N Atlantic	5,895	3	0	2 [a]	<1
Long-Finned Pilot Whale	Western N Atlantic	39,215	20	1	8 [a]	<1
Atlantic Spotted Dolphin	Western N Atlantic	31,506	15	6	24 [a]	<1
Atlantic White-Sided Dolphin	Western N Atlantic	93,233	50	16	16	<1
Bottlenose Dolphin [b]	Northern Migratory Coastal	6,639	2,752	4,118	4,118 [c]	62.0
Bottlenose Dolphin [b]	Western N Atlantic Offshore	64,587	2,752	4,118	… [c]	<7
Risso's Dolphin	Western N Atlantic	44,067	20	1	7 [a]	<1
Common Dolphin	Western N Atlantic	93,100	400	98	302 [a]	<1
Harbor Porpoise	Gulf of Maine/ Bay of Fundy	85,765	82	79	79	<1
Gray Seal	Western N Atlantic	27,911	4	13	13 [d]	<1
Harbor Seal	Western N Atlantic	61,336	4	13	13 [d]	<1

[a] Adjustments to the requested take numbers for the marked species are based on the average group size from AMAPPS survey data (NEFSC, 2023) and recommended values represent averages of all AMAPPS sightings, for species for which the calculated take was lower than the estimated group size, except common dolphins. For common dolphins, the AMAPPS group size was used in conjunction with the number of encounters of common dolphin groups in past PSO reports.

[b] Take estimate is based on the maximum number of calculated instances of take for either stock and is assumed to apply to all bottlenose dolphins potentially present in the survey area. Therefore, takes could consist of individuals from either the WNA Offshore or the WNA Northern Migratory Coastal stock.
[c] Although unlikely, for purposes of calculating maximum percentage of population, we assume all takes could be allocated to either stock (*i.e.,* total estimated take for "bottlenose dolphins" is 4,118) and that multiple repeated takes of the same individuals from each stock may occur. Please see **Preliminary Determinations** for additional information.
[d] Roberts *et al.* (2023) 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 13.

Description of Proposed Mitigation, Monitoring, and Reporting Measures

The proposed mitigation measures, and proposed monitoring and reporting requirements are identical to those included in the **Federal Register** notice announcing the final 2022 IHA (87 FR 30182, May 18, 2022), and the discussion of the least practicable adverse impact included in that document remains accurate. The measures proposed for inclusion in this authorization are found below.

Proposed Mitigation

The following mitigation measures will be implemented during Orsted's marine site characterization surveys. Pursuant to section 7 of the ESA, Orsted will also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (see 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*).

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal exclusion zones (EZs) will be established around the HRG survey equipment and monitored by NMFS-approved PSOs:

- 500 m EZ for NARWs during operation of specified acoustic sources (*e.g.,* sparkers, boomers); and
- 100 m EZ for all other marine mammals, with certain exceptions (see *Shutdown Procedures*), during operation of specified acoustic sources (*e.g.,* sparkers, boomers).

If a marine mammal is detected approaching or entering the EZs 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. The Level B harassment zones for each sound source are listed in table 3 and remain the same as the initial IHA (see table 4 of the **Federal Register** notice of the final authorization (87 FR 30182, May 18, 2022)).

Table 3 – Level B Harassment Zones

Equipment	Distance to Level B harassment threshold (m)
ET 216 CHIRP	9
ET 424 CHIRP	4
ET 512i CHIRP	6
GeoPulse 5430	21
TB CHIRP III	48
Pangeo SBI	22
AA Triple plate S-Boom (700/1,000 J)	34
AA, Dura-spark UHD Sparkers	141
GeoMarine Sparkers	141

Note: AA = Applied Acoustics; CHIRP = compressed high-intensity radiated pulses; ET = edgetech; J = joule; SBI = sub-bottom imager; TB = Teledyne benthos; UHD = ultra-high definition.

Pre-Start Clearance

Marine mammal clearance zones will be established around the HRG survey equipment and monitored by PSOs:

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

Orsted will implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective EZ 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).

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure will be used at the beginning of HRG survey activities 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. Operators should ramp-up sources to half power for 5 minutes and then proceed to full power.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective EZ. Ramp-up will resume if the animal has been observed exiting its respective EZ 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).

Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment (*i.e.*, sparkers, boomers) will be required if a marine mammal is sighted entering or is within its respective EZ. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective EZ 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 species for which authorization has not been granted, or, a species for which authorization has been granted but the authorization number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown must occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective EZs. If the acoustic source is shut down for a period longer than 30 minutes, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* 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. Furthermore, 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. Additionally, shutdown is required if a delphinid or pinniped is detected in the EZ and belongs to a genus other than those specified.

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

Vessel Strike Avoidance

Orsted must adhere to the following measures except in the case where compliance will 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:

- Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel. 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 protected species from other phenomena, and (2) broadly 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 mammal;
- All survey vessels, regardless of size, must observe a 10 kn (18.5 km/hr) speed restriction in specified areas designated by NMFS for the protection of NARWs from vessel strikes. These specified areas include all seasonal management areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales* for specific detail regarding these areas;
- All vessels must reduce speed to 10 kn (18.5 km/hr) 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 from right whales and other ESA-listed large whales;
    - If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-kn (18.5 km/hr) 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 from non-ESA-listed baleen whales;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel); and
- When marine mammals 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).
    - If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Project-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.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered to by NMFS, NMFS has preliminarily determined that the mitigation measures provide the means of effective the least practicable impact on marine

mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Orsted will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) 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 mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, trained crew members may be approved by NMFS for limited, specified duties in support of approved, independent PSOs on smaller vessels with limited crew operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including EZs, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established EZs during survey activities. It will be the responsibility of the Lead PSO 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.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of 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). Two PSOs will be on watch during nighttime operations. The PSO(s)

will ensure 360 degree visual coverage around the vessel from the most appropriate observation posts and will 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 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observations per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will 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 EZs. 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 will be used. Position data will 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 will 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 will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will 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, behaviors); and details of any observed marine mammal behavior that occurs (*e.g.,* notes behavioral disturbances).

Orsted must 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 Lease Areas during the survey, the vessels will abide by speed restrictions in the DMA

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft comprehensive report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. A final report must be submitted within 30 days following 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.clevenstine@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port names;
- Dates and times (Greenwich Mean Time (GMT)) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, BSS, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, *etc.*).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- 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;

- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, e*tc.*);
- 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);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Orsted must report the sighting information to the NMFS NARW Sighting Advisory System (866-755–6622) within 2 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 Orsted personnel discover an injured or dead marine mammal, Orsted will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report will include the following information:

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

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

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- 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;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding

and following the strike;

- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- 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
- To the extent practicable, photographs or video footage of the animal(s).

Preliminary Determinations

Orsted's HRG survey activities are unchanged from those analyzed in support of the 2022 IHA. When issuing the 2022 IHA (87 FR 30182, May 18, 2022) and 2023 reissuance of that IHA, NMFS found Orsted's proposed HRG surveys 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. Additionally, the potential effects of the activities, taking into consideration the proposed mitigation and related monitoring measures, are identical to those calculated in support of the 2022 IHA. NMFS expects that all potential takes would be short-term Level B behavioral harassment, predominantly in the form of avoidance of the sound sources that may cause a temporary abandonment of the location during active use of acoustic sources that may result in a temporary interruption of foraging activities for some species (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). NMFS does not expect that the proposed activity will have long-term or permanent impacts as the acoustic sources would be mobile and would leave the area within a specific amount of time for which the animals could return to the area.

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.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m from use of sparkers. 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 acoustic sources with reduced acoustic harassment zones (see tables 1 and 4 in the previous **Federal Register** notices (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022)), producing expected effects of particularly low severity. The ensonified area surrounding each vessel is extremely small compared to the overall distribution of the animals in the area and the available habitat.

As previously discussed in the 2022 IHA (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods when Orsted's acoustic sources are active. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area. The survey area lies significantly south (over 250 miles (402 km)) of where Biologically Important Areas are

defined for fin and humpback whales. There is no designated critical habitat for any marine mammals listed under the Endangered Species Act (ESA) in the survey area.

There is a slight increase in estimated take for 5 species (humpback whale, minke whale, Atlantic spotted dolphin, gray seal, harbor seal) relative to those authorized under the 2022 IHA but the total amount of takes proposed for authorization are small (less than 1 percent) relative to estimated population size of each species or stock. Additionally, due to updated information in the draft 2023 SAR on the stock abundance of the WNA stock of common dolphins, there is a minor increase in the estimated take as a percentage of that stock, however, that also results in estimated take of less than 1 percent of the population. Even considering the increased estimated take for 5 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. Overall, the total amount of takes proposed for authorization are small (less than 1 percent) relative to estimated population size of each species or stock (less than 1 percent for 13 species; less than 2 percent for NARW; less than 7 percent for the WNA Offshore stock of bottlenose dolphin) except for the WNA Migratory Coastal stock of bottlenose dolphin (62 percent). The values presented in table 2 are likely conservative estimates as they assume all takes are of different individual animals which is likely not to be the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified. This is the particularly the case for bottlenose dolphins. Given the uncertainty regarding the number of days Orsted's survey may be within the 20 m isobath, the authorization of 4,118 instances of take by Level B harassment is not allocated to a specific stock but rather could be of either stock. However, based on the expansive ranges of both bottlenose dolphin stocks and the stocks' respective occurrence in the area, it is unlikely that large segments of either stock would consistently remain in

the survey area. Considering this and various factors as described in the previous **Federal Register** notices (87 FR 15922, March 21, 2022; 87 FR 30182, May 18, 2022), we have determined that the number of individuals taken will comprise of less than one-third of the best available population abundance estimate of either stock.

Orsted's proposed activities would occur in a small fraction of the migratory corridor for NARW 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. The size of the Project Area (approximately 4,510 km^2) in comparison with the entire migratory habitat for the NARW (Biologically Important Area of 269,448 km^2) is small, representing 1.67 percent of the entire migratory corridor. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Given the transitory nature of NARW in this area and due to the lack of year-round "core" NARW foraging habitat (Oleson *et al.,* 2020) (such habitat is located further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of NARW 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 NARW (EZ; 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 15922, March 21, 2022; 87 FR 30182, May 18, 2022) due to the revised density data (Roberts *et al.*, 2023). Under the 2022 IHA, NMFS authorized 11 instances of take for NARW. Here, NMFS is proposing only 4 takes by Level B harassment representing less than 2 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 NARW.

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 **Federal Register** notices associated with issuance of 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) Orsted'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

Section 7(a)(2) of the ESA of 1973 (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 preliminarily 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 Orsted for conducting marine site characterization surveys off the coast of Delaware for a period of 1 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), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed 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, 1-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 1 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).
  (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.
- 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: May 21, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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