

their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Ørsted'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.

### 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 evaluate our proposed action (*i.e.*, issuance of incidental harassment authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 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 determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act 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, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take of endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals that are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on July 1, 2020, for issuance of the initial IHA. Previously, BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial

wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion in 2013 concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued a Letter of Concurrence on September 24, 2020 concluding that the initial IHA issuance fell under the scope of the 2013 Biological Opinion and that the initial IHA issuance was not likely to adversely affect ESA-listed marine mammal species. The proposed Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of consultation with NMFS GARFO; therefore, the consultation and determinations for the initial IHA remains valid.

### Renewal

NMFS has issued a Renewal IHA to Ørsted for the take of marine mammals incidental to marine site characterization survey activities offshore from New York to Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0486/0517, OCS-A 0487, and OCS-A 0500) (Lease Areas) and along potential submarine ECRs to landfall locations from New York to Massachusetts, effective from the date of issuance through September 24, 2022.

Dated: March 7, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB879]

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries and Ecosystem Monitoring and Research Activities

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the California Department of Fish and Wildlife (CDFW), on behalf of the Interagency Ecological Program (IEP), for authorization to take marine mammals incidental to conducting fisheries and ecosystem monitoring and research activities within the San Francisco Bay-Delta Estuary, CA, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of CDFW's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on CDFW's application and request.

**DATES:** Comments and information must be received no later than April 11, 2022.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to [ITP.Laws@noaa.gov](mailto:ITP.Laws@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 received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities) 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:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

### SUPPLEMENTARY INFORMATION:

#### Availability

Electronic copies of CDFW's application and separate monitoring plan may be obtained online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities). In case of problems accessing these documents, please call the contact listed above.

## Background

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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

## Summary of Request

On February 11, 2022, NMFS received an adequate and complete application from CDFW requesting authorization for take of marine mammals incidental to IEP monitoring and research activities in the San Francisco Bay-Delta Estuary, California. The requested regulations would be valid for 5 years. The proposed action includes the use of fishing research gear (*e.g.*, nets, trawls, setlines, and fykes) that may result in

marine mammal interactions resulting in Level A harassment, serious injury or mortality. Therefore, CDFW requests authorization to incidentally take marine mammals.

## Specified Activities

The IEP consists of multiple State and Federal agencies operating in the San Francisco Bay and Sacramento-San Joaquin Delta. The IEP has been conducting cooperative ecological investigations since the 1970s. IEP agencies partner with non-governmental organizations that work together to develop a better understanding of the Bay-Delta estuary’s fish and wildlife, water quality, hydrodynamics and impacts of human activities on ecology. IEP’s key studies specifically address the effects of the State Water Project and Federal Central Valley Project water project operations on the Delta and San Francisco Estuary. Many of the surveys monitor abundance and distribution of fish so to reduce entrainment risk at the water project export facilities in the south Delta.

IEP fish monitoring studies include use of various gears including midwater, otter, and Kodiak trawls (trawls), gill and trammel nets, purse seines and Lampara nets (nets), setlines and longlines (setlines), and hoop and fyke traps (fykes) that could result in incidental take via entanglement by net mesh, entrapment by fyke, or hooking by setlines. IEP studies also use a variety of other gears, such as backpack or boat mounted electrofishers, larval fish trawl nets, zooplankton nets, water samplers and instrumentation (acoustic receivers, water quality sondes, etc.) that are not expected to result in take of marine mammals.

## Information Sought

Interested persons may submit information, suggestions, and comments concerning CDFW’s request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by CDFW, if appropriate.

Dated: March 8, 2022.

### Kimberly Damon-Randall,

Director, Office of Protected Resources,  
National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XB870]

### Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before March 28, 2022.

**ADDRESSES:** You may submit written comments by the following method:

- *Email:* [nmfs.gar.efp@noaa.gov](mailto:nmfs.gar.efp@noaa.gov).

Include in the subject line “AOLA Early Benthic-Phase Lobster Trap EFP.”

### FOR FURTHER INFORMATION CONTACT:

Laura Deighan, Fishery Management Specialist, [Laura.Deighan@noaa.gov](mailto:Laura.Deighan@noaa.gov), (978) 281-9184.

**SUPPLEMENTARY INFORMATION:** The Atlantic Offshore Lobstermen’s Association submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to pilot test a single early benthic-phase (EBP) lobster trap, which targets lobsters between 15- and 50-millimeter carapace length, to determine its feasibility for broader use in lobster surveys. This EFP would exempt the participating vessel from the Federal regulations described in Table 1.