

Form Number(s): None.

Type of Review: Regular submission. Reinstatement with revisions.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,700.

Estimated Time per Response: 28.7 minutes.

Estimated Total Annual Burden Hours: 1,770 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE016]

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; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Orsted Wind Power North America, LLC (Orsted) to incidentally harass marine mammals during 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 Areas OCS-A 0482 and 0519 (Lease Areas), and the associated export cable route (ECR) area.

DATES: This authorization is effective from August 1, 2024, through July 31, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed below.

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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 effective dates of that IHA 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 planned mitigation, monitoring, and requirements remained 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 due to availability of substantially updated marine mammal density data for all species since issuance of the 2022 IHA (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS determined represents the best available scientific data and which serves as the basis for updating the estimated take numbers. Marine mammal density estimates in the survey area (animals/km²) 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). There are no changes from the proposed IHA to the final IHA.

Description of the Activity and Anticipated Impacts

Overview

Orsted will 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 planned 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 IHA covers the same specified activities previously described in Orsted's application for the 2022 IHA and subsequent documents. NMFS refers the public to the documents and supplemental materials related to the 2022 **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), the notice of re-issuance of that IHA (88 FR 30278, May 11, 2023), and 2024 notice of proposed IHA (89 FR 46073, May 28, 2024). The descriptions and analyses contained in those documents remain accurate with the exception of the minor modifications described herein.

Dates and Duration

The specified activities are planned to begin August 1, 2024. The duration of the planned activity remains unchanged from the 2022 IHA and the re-issued 2023 IHA and 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 planned activities will occur within the Project Area, which includes the Lease Areas and potential ECRs to landfill locations in Delaware. The combined Lease Areas OCS-A 0482 and 0519 comprise approximately 568 square kilometers (km²) within the

Wind Energy Area of BOEM's Mid-Atlantic Planning Area and the overall Project Area, including potential ECRs, is approximately 4,510 km². 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.

Detailed Description of the Specified Activity

A detailed description of the planned 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 (*e.g.*, 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.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Orsted was published in the **Federal Register** on May 28, 2024 (89 FR 46073). That notice described, in detail, Orsted's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals while referencing the previous notices (87 FR 15922; March 21, 2022; 87 FR 30182, May 18, 2022; 88 FR 30278, May 11, 2023). In the May 28, 2024, notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

In total, NMFS received three comments from two private citizens and from an organization (Clean Ocean Action (COA)). Some of these comments were out-of-scope or not applicable to the project (*e.g.*, general opposition to offshore wind projects, concerns for other species outside NMFS' jurisdiction) and are not described herein or discussed further. We do not specifically address comments expressing general opposition to activities related to wind energy development or respond to comments that are out of scope of the proposed IHA (89 FR 46073, May 28, 2024), such as comments on other Federal agency processes and activities not planned under this IHA.

All comments received during the public comment period which

contained relevant points were considered by NMFS and are described and responded to below. All relevant comment letters are available on NMFS' website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-orsted-wind-power-north-america-llcs-site-characterization>).

Comment 1: COA disagrees with NMFS' initial conclusion that National Environmental Policy Act (NEPA) Categorical Exclusion B4 is applicable to this action due to (1) uncertainty regarding the environmental impacts of the action, (2) a lack of justification regarding how this action does not cumulatively have the potential for significant impacts on the quality of the environment, and (3) a lack of justification as to why no extraordinary circumstances apply to this action.

Response: NMFS does not agree with the commenters. A categorical exclusion (CE) is a category of actions that an agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment and is appropriately applied for such categories of actions so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis is required because they are circumstances in which a normally excluded action may have significant effects. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Potential extraordinary circumstances relevant to this action include (1) adverse effects on species or habitats protected by the MMPA that are not negligible; (2) highly controversial environmental effects; (3) environmental effects that are uncertain, unique, or unknown; and (4) the potential for significant cumulative impacts when the proposed action is combined with other past, present, and reasonably foreseeable future actions.

The relevant NOAA CE associated with issuance of incidental take authorizations is CE B4, issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified

activities and for which no serious injury or mortality is anticipated. This action falls within CE B4. In determining whether a CE is appropriate for a given incidental take authorization, NMFS considers the applicant's specified activity and the potential extent and magnitude of takes of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NOAA Administrative Order (NAO) 216-6A and summarized above.

The issuance of this IHA will not result in highly controversial environmental effects or result in environmental effects that are uncertain, unique, or unknown because numerous entities have been engaged in site characterization surveys that result in Level B harassment of marine mammals in the United States. This type of activity is well documented; prior authorizations and analysis demonstrate issuance of an IHA for this type of action only affects the marine mammals that are the subject of the specific authorization and, thus, no potential for significant cumulative impacts are expected, regardless of past, present, or reasonably foreseeable actions, even though the impacts of the action may not be significant by itself. Based on this evaluation, we concluded that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

The evaluation of whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of the incidental take authorization. While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous EAs analyzing the environmental impacts of the categories of activities encompassed by CE B4, which resulted in Findings of No Significant Impacts (FONSI) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the

issuance of incidental harassment authorization for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of Orsted's IHA, which included consideration of extraordinary circumstances. As part of that analysis, NMFS considered whether this IHA issuance would result in cumulative impacts that could be significant. In particular, the issuance of an IHA to Orsted is expected to result in minor, short-term behavioral effects on marine mammal species due to exposure to underwater sound from site characterization survey activities. Behavioral disturbance is expected to occur intermittently in the vicinity of Orsted's survey area during the 1-year timeframe. Level B harassment will be reduced through use of mitigation measures described herein. Additionally, as discussed elsewhere, NMFS has determined that Orsted's activities fall within the scope of activities analyzed in the Greater Atlantic Regional Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the 3 Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021), which concluded surveys such as those planned by Orsted are not likely to adversely affect ESA-listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216-6A) adverse effects on species protected by the ESA and the MMPA.

Comment 2: COA noted a preliminary monitoring report by the applicant was not made publicly available with the supporting documents on the project website and that NMFS should make monitoring and compliance reports publicly available with a schedule of when such reports will be released.

Response: The preliminary report submitted by the applicant and noted in the **Federal Register** notice (89 FR 46073, May 28, 2024) proposing this action was a requirement under the BOEM Project Design Criteria (PDC) and Best Management Practices (PDC 8), not the final reporting requirements under the 2023 IHA (88 FR 30278, May 11, 2023), therefore, it was not made publicly available. NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements and a final

marine mammal monitoring report is required for the 2023 IHA. As included in the proposed IHA, the final IHA includes requirements for reporting that supports COA's recommendations, as well as timeframes for when reports will be considered complete and subsequently made publicly available. Orsted is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. All final reports and associated data submitted to NMFS are included on the website for public inspection. However, NMFS does not concur with the suggestions that draft reports be made publicly available.

Comment 3: COA provided comments suggesting that this IHA is a renewal. COA also noted that multiple IHAs, including renewals, have been requested by Orsted for the same project activities and stated that, in circumstances when it is not clear how long the proposed activities would span, a Letter of Authorization (LOA) is more appropriate than an IHA. COA stated that, given past delays, it is not clear how long the proposed activities would occur and that it is unrealistic and unreasonable to expect survey activities will actually cease after 1 year.

Response: As NMFS stated in the notice of the proposed IHA, the proposed action for which we requested comments was not for a renewal IHA. As described in the proposed **Federal Register** notice (89 FR 46073, May 28, 2024), we determined that a renewal IHA was not appropriate due to the release of comprehensively updated Duke University density information (Roberts *et al.*, 2023). Instead, we have issued a new IHA relying substantially on information and analysis produced in support of the previously issued 2022 IHA, as project details remain the same (also as described in the proposed **Federal Register** notice (89 FR 46073, May 28, 2024)). As we noted in the proposed notice and in this final notice for the 2024 IHA, Orsted has the option for a renewal if specific conditions and criteria are met.

Regarding clarification on authorizations, as described on our website, IHAs are 1-year authorizations and Incidental Take Regulations (ITR) are 5-year regulations that allow for the issuance of LOA. An ITR must be used if authorization of take by mortality is necessary. However, both options are available for applicants requesting authorization of harassment only. While applicants may request a 5-year regulation for HRG survey activities,

NMFS has not received any such requests to date and there is no expectation presented in the MMPA or Congressional record that activities continuing for more than 1 year must seek ITR and authorization under 101(a)(5)(A) of the MMPA. Therefore, a determination of which option to take is not dependent on any expectation regarding whether the activity will continue for more than 1 year or not.

Comment 4: COA stated the information provided in the proposed (89 FR 46073, May 28, 2024) and previous notices (87 FR 15922; March 21, 2022; 87 FR 30182, May 18, 2022; 88 FR 30278, May 11, 2023) for this action regarding vessel strike is insufficient for NMFS to claim the probability of vessel strike due to HRG survey vessels is low enough to be discountable. COA noted the North Atlantic Right Whale (NARW) Speed Zone Dashboard does not clearly indicate whether HRG survey vessels are included and which vessel type category HRG survey vessels fall under, nor does the proposed notice specify the number of trips HRG survey vessels would take to complete the survey activities. COA stated this IHA cannot be issued without consideration and correction of these issues.

Response: Orsted did not request authorization for take incidental to vessel strike during marine site characterization surveys. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If Orsted were to strike a marine mammal with a vessel, this would be an unauthorized take and be in violation of the MMPA. This gives Orsted a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. Orsted proposed a very conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to NARWs. Section 4(f) in the IHA contains a suite of non-discretionary requirements pertaining to vessel strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of any site characterization vessels from surveys reporting a vessel strike within the United States despite intensive requirements for visual monitoring at all times during survey activity. When considered in the context of low overall

probability of any vessel strike by Orsted vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid vessel strike. These measures are described fully in the Mitigation section below, and include, but are not limited to: training for all vessel observers and captains, daily monitoring of NARW Sighting Advisory System, WhaleAlert app, and U.S. Coast Guard Channel 16 for situational awareness regarding NARW presence in the survey area, communication protocols if whales are observed by any Orsted personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

Comment 5: COA believes that preserving the existence of NARW warrants pausing offshore development off the Atlantic coast and states NMFS needs to consider the cumulative impact, including the total number, speed, and distance of vessel trips required for marine site characterization survey activities, for all concurrent projects in the region and adjust the permitted activities accordingly.

Response: NMFS reiterates our action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the specified activities themselves. COA did not provide any new or compelling evidence that suggests that wind energy development activities have the potential to negatively impact NARW. NMFS notes the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for Bureau of Ocean Energy Management Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (<https://repository.library.noaa.gov/view/noaa/29291>). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 85 FR 21198, April 16, 2020; 86 FR 26465, May 10, 2021), which are similar to those planned by Orsted under this current IHA request.

NMFS reiterates that there is no evidence that acoustic noise resulting from offshore wind development-related activities could potentially cause marine mammal stranding, and there is no evidence linking recent marine mammal

mortalities an currently ongoing offshore wind development activities. This point has been well supported by other agencies, including the Bureau of Ocean Energy Management and the Marine Mammal Commission (Marine Mammal Commission Newsletter, Spring 2023). In addition, a recent study by Thorne and Wiley (2024) reviewed spatiotemporal patterns of strandings, mortalities, and serious injuries of humpback whales along the U.S. east coast from 2016–2022 and found vessel strikes to be the major driver in the increase of humpback whale strandings, mortalities, and serious injuries. Based upon the spatiotemporal analysis, no evidence was found that offshore wind development played a role in the increased number of strandings over time; for example, spatiotemporal patterns between strandings and site assessment surveys did not seem associated. In fact, the potential for vessel strike increased from 2016–2022 in association with increased container vessel traffic that overlapped with whales in new and shallow foraging areas. This potential for vessel strike also seemed to increase with the increased presence of juvenile humpback whales foraging off the Mid-Atlantic States. Under the IHA, NMFS requires Orsted to abide by vessel speed restrictions and maintain separation distances between vessels and marine mammals that are intended to minimize the risk of any potential vessel strikes.

There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (e.g., national and state parks) where responders had limited or no access to the carcasses. Of the roughly 90 whales examined, about 40 percent had evidence of human interaction (i.e., vessel strike or entanglement). The remaining 50 necropsied whales either had an undetermined cause of death due to a limited examination or

decomposition of the carcass, or had other causes of death (e.g., parasite-caused organ damage and starvation). Ongoing UMEs are also occurring for North Atlantic right whales and minke whales, both since 2017. NMFS will continue to gather data to help us determine the cause of death for these stranded whales. Vessel strikes and entanglement in fishing gear continue to be the greatest human threats to large whales.

For NMFS’ response on cumulative impacts, please see our response to *Comment 1*.

Changes From Proposed to Final IHA

No changes were made from the proposed IHA to the final IHA.

Description of Marine Mammals in the Area of Specified Activities

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 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 draft 2023 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 supporting issuance of 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 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, N _{min} , most recent abundance survey) ³ | PBR | Annual M/SI ⁴ |
|--|----------------------------------|------------------------|--|--|-----|--------------------------|
| Order Artiodactyla—Cetacea—Mysticeti (baleen whales) | | | | | | |
| <i>Family Balaenidae:</i> North Atlantic right whale ⁵ | <i>Eubalaena glacialis</i> | Western Atlantic | E, D, Y | 340 (0, 337, 2021); 356 (346–363, 2022). | 0.7 | 27.2 |

TABLE 1—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES¹—Continued

| Common name | Scientific name | Stock | ESA/ MMPA status; strategic (Y/N) ² | Stock abundance (CV, N _{min} , most recent abundance survey) ³ | PBR | Annual M/SI ⁴ |
|---|---|--------------------------------|--|--|-------|-----------------------------|
| Family Balaenopteridae (rorquals): | | | | | | |
| Fin whale | <i>Balaenoptera physalus</i> | Western N Atlantic | E, D, Y | 6,802 (0.24, 5,573, 2021) | 11 | 2.05 |
| Humpback whale | <i>Megaptera novaeangliae</i> | Gulf of Maine | - , - , N | 1,396 (0, 1380, 2016) | 22 | 12.15 |
| Minke whale | <i>Balaenoptera acutorostrata</i> | Canadian Eastern Coastal | - , - , N | 21,968 (0.31, 17,002, 2021) .. | 170 | 9.4 |
| Sei whale | <i>Balaenoptera borealis</i> | 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 | <i>Physeter macrocephalus</i> | N Atlantic | E, D, Y | 5,895 (0.29, 4,639, 2021) | 9.28 | 0.2 |
| Family Delphinidae: | | | | | | |
| Long-finned pilot whale ... | <i>Globicephala melas</i> | Western N Atlantic | - , - , N | 39,215 (0.30, 30,627, 2021) .. | 306 | 5.7 |
| Short-finned pilot whale ... | <i>Globicephala macrorhynchus</i> | Western N Atlantic | - , - , Y | 18,726 (0.33, 14,292, 2021) .. | 143 | 218 |
| Atlantic spotted dolphin ... | <i>Stenella frontalis</i> | Western N Atlantic | - , - , N | 31,506 (0.28, 25,042, 2021) .. | 250 | 0 |
| Atlantic white-sided dol- phin. | <i>Lagenorhynchus acutus</i> | Western N Atlantic | - , - , N | 93,233 (0.71, 54,443, 2021) .. | 544 | 28 |
| Bottlenose dolphin | <i>Tursiops truncatus</i> | Northern Migratory Coastal ... | - , - , Y | 6,639 (0.41, 4,759, 2016) | 48 | 12.2–21.5 |
| Bottlenose dolphin | <i>Tursiops truncatus</i> | Western N Atlantic Offshore .. | - , - , N | 64,587 (0.24, 52,801, 2021) .. | 507 | 28 |
| Risso's dolphin | <i>Grampus griseus</i> | Western N Atlantic | - , - , N | 44,067 (0.19, 30,662, 2021) .. | 307 | 18 |
| Common dolphin | <i>Delphinus delphis</i> | Western N Atlantic | - , - , N | 93,100 (0.56, 59,897, 2021) .. | 1,452 | 414 |
| Family Phocoenidae (porpoises): | | | | | | |
| Harbor porpoise | <i>Phocoena</i> | 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 | <i>Halichoerus grypus</i> | Western N Atlantic | - , - , N | 27,911 (0.20, 23,624, 2021) .. | 1,512 | 4,570 |
| Harbor seal | <i>Phoca vitulina</i> | 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/>).

² 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 of Specified Activities 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 of Marine Mammals

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/action/incidental-take-authorization-orsted->

wind-power-north-america-llcs-site-characterization.

The take NMFS has authorized 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 was requested and none is anticipated. Therefore, NMFS has not authorized any take by Level A harassment. Mortality or serious injury (M/SI) is neither anticipated nor authorized.

TABLE 2—ESTIMATED TAKE NUMBERS AND TOTAL TAKE AUTHORIZED

| Common name | Stock | Estimated abundance | Take authorized under previous 2022 IHA | Total calculated take | Authorized take | 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 |

TABLE 2—ESTIMATED TAKE NUMBERS AND TOTAL TAKE AUTHORIZED—Continued

| Common name | Stock | Estimated abundance | Take authorized under previous 2022 IHA | Total calculated take | Authorized take | Estimated take as a percentage of population |
|---------------------------------|-----------------------------|---------------------|---|-----------------------|--------------------|--|
| 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 | ^a 2 | <1 |
| Long-Finned pilot whale | Western N Atlantic | 39,215 | 20 | 1 | ^a 8 | <1 |
| Atlantic spotted dolphin | Western N Atlantic | 31,506 | 15 | 6 | ^a 24 | <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 | ^c 4,118 | 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 | ^a 7 | <1 |
| Common dolphin | Western N Atlantic | 93,100 | 400 | 98 | ^a 302 | <1 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 85,765 | 82 | 79 | 79 | <1 |
| Gray seal | Western N Atlantic | 27,911 | 4 | 13 | ^d 13 | <1 |
| Harbor seal | Western N Atlantic | 61,336 | 4 | 13 | ^d 13 | <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 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.

Mitigation, Monitoring, and Reporting Measures

The mitigation measures, and 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 included in this authorization are found below.

Mitigation

The following mitigation measures must be implemented during Orsted's marine site characterization surveys. Pursuant to section 7 of the ESA, Orsted must also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS 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) must be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSO):

- 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 must adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements must 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 |

TABLE 3—LEVEL B HARASSMENT ZONES—Continued

| Equipment | Distance to Level B harassment threshold (m) |
|--------------------|--|
| 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 must 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 must implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones must 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 must 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 must 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/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 must 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 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.

Monitoring and Reporting

Visual monitoring must 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 must 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 must 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, *etc.*);
- 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 must 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).

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 planned mitigation and related monitoring measures, are identical to those assumed when considering 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 planned 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 authorizing take numbers, 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 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 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 authorized 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 authorized 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 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 planned 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 km²) in comparison with the entire migratory habitat for the NARW (Biologically Important Area of 269,448 km²) 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, 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 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 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 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) 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 OPR is authorizing the incidental take of four species of marine mammals which are listed under the ESA, the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the 3 Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

National Environmental Policy Act

To comply with NEPA of 1969 (42 U.S.C. 4321 *et seq.*) and 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 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 IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Orsted for the potential harassment of small numbers of 15 species (16 stocks) of marine mammals incidental to conducting marine site characterization surveys off the coast of Delaware for a period of 1 year, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: July 25, 2024.

Kimberly Damon-Randall,

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

[FR Doc. 2024-16788 Filed 7-30-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE142]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2024. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held on Wednesday, September 4, from 9 a.m. to 5 p.m. ET; and Thursday, September 5, from 9 a.m. to 3 p.m. ET.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting will also be accessible via WebEx webinar/conference call. Conference call and webinar access information are available at: <https://www.fisheries.noaa.gov/event/september-2024-hms-advisory-panel-meeting>.

Participants accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT:

Peter Cooper, peter.cooper@noaa.gov, 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635.

The Magnuson-Stevens Act requires the establishment of APs and requires NMFS to consult with and consider the comments and views of AP members during the preparation and implementation of FMPs or FMP amendments (16 U.S.C. 1854(g)(1)(A)-(B)). NMFS meets with the HMS AP approximately twice each year to consider potential alternatives for the conservation and management of Atlantic tunas, swordfish, billfish, and shark fisheries, consistent with the Magnuson-Stevens Act.

Some of the discussion topics are:

- Electronic reporting rulemaking update;
- HMS economic situation update; and
- General updates related to HMS.

We anticipate having other NMFS offices, other Federal agencies, and the U.S. Coast Guard to provide updates, if available, on their activities relevant to HMS fisheries. Additional information on the meetings and a copy of the draft agenda will be posted prior to the meeting (see **ADDRESSES**).

All members of the public will have virtual access to the meeting available via webinar and status updates of in-person public access to the meeting will be available on the NMFS website (see **ADDRESSES**). The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at 301-427-8503, at least 7 days prior to the meeting.

Dated: July 25, 2024.

Lindsay Fullenkamp,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-16764 Filed 7-30-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[AFD-2071]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive (the field to include First Responder Market) patent license to The Science and Engineering Corps having a place of business at 9179 AA Highway, California, KY 41007.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Pamela Kallio, AFRL/SPT, 711 East Monument Avenue, Dayton, OH 45402; Phone: (937) 999-1621; or Email: pamela.kallio.3.ctr@us.af.mil. Include Docket No. AFD 2071 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Pamela Kallio, AFRL/SPT, 711 East Monument Avenue, Dayton, OH 45402; Phone: (937) 999-1621; or Email: pamela.kallio.3.ctr@us.af.mil.

SUPPLEMENTARY INFORMATION:

Abstract of Patent

Personal hydration systems with cooling and/or warming capability, and the components thereof are disclosed. The personal hydration systems may include a liquid transport system for transporting cooling or heating fluid between a reservoir and a pad, which pad is configured for wearing adjacent to a wearer's body. A pump is provided for pumping the liquid through the system. A drinking tube is connected to the system for removing liquid from the system. Liquid can be removed from the system for drinking by sucking on the end of the drinking tube. A check valve is used to bypass the pump so the user will not have to suck the liquid through the pump. Alternatively, liquid can be removed by spraying the liquid out of the drinking tube using the power of the pump.

Intellectual Property

U.S. Patent No. 11,717,074, issued on August 8, 2023, and entitled, "Personal Hydration System With Cooling or Warming Capability."

The Department of the Air Force may grant the prospective license unless a